M/s Kashmiri Mal-Om Parkash v. M/s Durga Parshad-Gulzari Lal and another

figurehead. Under all these circumstances, the learned Senior Subordinate Judge was right in holding that the alleged assignment had not taken place and was a bogus transaction effected only to give jurisdiction to the Jullundur Courts to try the present suit.

Pandit, J.

In the result, this appeal fails and is dismissed with costs. The original plaint filed along with the appeal may be returned to the appellant.

*B.R.T.*

## APPELLATE CIVIL

*Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.*

SHIV CHAND AGGARWAL,—*Appellant*

*versus*

THE UNION OF INDIA AND OTHERS,—*Respondents.*

**Regular First Appeal No. 1050 of 1956**

1962

Feb., 1st

*Railways Act (IX of 1890)—Section 77—Notice under, served on one of the Railways—Whether sufficient to make other railways liable.*

*Held,* that service of notice, under section 77 of the Indian Railways Act, 1890 on one of the Railways is sufficient compliance with the provisions of that section and is sufficient to make other Railway Administrations liable where the goods have travelled on more than one Railway since all the Railways are now owned by the Government.

*First Appeal, from the decree of the Court of Shri Om Nath Vohra, Sub-Judge, Ist Class, Jullundur, dated the 21st May, 1956, dismissing the plaintiff's suit with costs.*

SHAMAIR CHAND AND P. C. JAIN, ADVOCATES, for the Appellant.

H. L. SIBAL AND K. L. KHANNA, ADVOCATES, for the Respondents.

### JUDGMENT.

Pandit, J.

PANDIT, J.—Shiv Chand, proprietor of Shiv Chand Aggarwal Steel Re-rolling Mills, Tanda Road, Jullundur City, carried on the business of

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re-rolling steel and iron scraps in his Mill. He was allotted 195 tons 8 cwt.. 2 qrs. 24 lbs.. steel scrap rail pieces for re-rolling by the Iron and Steel Controller, Calcutta. On 20th December, 1952, the Divisional Operating Superintendent, Kalyan (Bombay), consigned to the plaintiff 124 tons 3 cwts and 19 lbs. steel scrap rail pieces from Kalyan (Central Railway) to Jullundur City (Northern Railway). When the goods reached their destination, namely, Jullundur City, the Northern Railway charged freight at III Class rates, being Rs. 3-3-8 per maund for the said goods on the ground that it was not scrap iron but they were steel rails. Shiv Chand, consequently, brought a suit against the Union of India through (1) the General Manager, Central Railway, Bombay, and (2) the General Manager, Northern Railway, Delhi, for the recovery of Rs. 6,362-1-0, which, according to him, had been illegally charged by the Railway authorities. His allegations were that the Railway could charge freight for the said goods at W.L.C. rates, applicable to iron and steel scrap, being Rs. 1-5-3 per maund. According to this rate, the defendant had overcharged the amount sued for. It was stated in the plaint that although, under the law, no notice was necessary, still the plaintiff had served the defendant with notices under section 77 of the Indian Railways Act and section 80 of the Code of Civil Procedure before filing this suit.

The suit was resisted by the defendant on a number of pleas but in the present appeal we are concerned only with one of them, namely, that no notices under section 77 of the Indian Railways Act and section 80 of the Code of Civil Procedure were ever served on the General Manager, Central Railway Administration and, therefore, the suit was not maintainable against the Central Railway Administration. It was also pleaded that the Northern Railway Administration could not be held liable under any circumstances, because the contract for the carriage of the goods was with the Central Railway Administration and the plaintiff had a cause of action, if any, against the contracting Railway and not against the Northern Railway,

which acted as the agent of the other Railway Administration.

The trial Judge came to the conclusion that valid notices, both under section 77 of the Indian Railways Act and section 80 of the Code of Civil Procedure, were served on the Northern Railway Administration, but no such notices were served on the Central Railway Administration. He also found that the Northern Railway Administration was not liable in the present case. On these findings, he dismissed the suit. Against this decision, the present appeal has been filed by the plaintiff.

After hearing the counsel for the parties, I am of the view that this appeal must be accepted. So far as the question of notices under section 80 of the Code of Civil Procedure is concerned, it has been decided by a Full Bench of this Court in *The Union of India, etc.* v. *The Landra Engineering and Foundry Works and another* (1), that a notice on one Railway is proper compliance with the provisions of section 80 of the Code of Civil Procedure, because now both the Railways are being administered by the Central Government and it is that very Government which is being proceeded against and is sought to be held liable for the satisfaction of the plaintiff's claim.

As regards the service of notice under section 77 of the Indian Railways Act, a Division Bench of the Madras High Court consisting of P. V. Rajamannar, C.J., and Ganapatia Pillai, J., in *P. R. Narayanaswami Iyer and others* v. *Union of India* (2), has held as under:—

> "One notice under section 77 to a General Manager of one Government railway concerned in the route over which through traffic passed will be sufficient because all the railways over which the traffic passed, are owned by the Central

(1) I.L.R. (1962) 1 Punjab 379.
(2) A.I.R. 1960 Mad. 58.

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Government. In the absence of any specific enactment either in section 77 or in section 140, indicating the particular General Manager, to whom notice ought to be given in a case of through traffic carried over more than one zonal unit of the Government railways, notice to any one such General Manager is sufficient compliance with these provisions."

This authority was followed by Mahajan, J., in *Messrs. Amin Chand-Bhola Nath* v. *The Union of India*, Regular Second Appeal No. 920 of 1956 (decided on 21st December, 1961). Learned counsel for the respondent, however, submitted that the view taken by the Madras Division Bench was not correct but that of the Orissa High Court in *Fagumani Khuntia* v. *Dominion of India* (3), was correct, where it was observed thus—

> "Each Railway administration is a separate entity and a different legal person capable of suing and being sued independently. Notice against the one Railway administration of the claim of the plaintiff is not, therefore, sufficient compliance of the provisions of section 77 to constitute a notice against the other Railway administration."

But he has not been able to convince us with his arguments. As at present advised, I am of the opinion that the view taken by the Madras Bench is correct. It is pertinent to mention that this view has been given effect to by the Legislature by introducing section 78-B by the Indian Railways (Amendment) Act (39 of 1961), which is in the following words—

> "S. 78-B. A person shall not be entitled to a refund of an overcharge in respect of

(3) A.I.R. 1956 Orissa 29.

animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf—

(a) to the railway administration to which the animals or goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or destruction occurred,

within six months from the date of the delivery of the animals or goods for carriage by railway:

Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this section, be deemed to be a claim to the refund or compensation."

Therefore, the service of notice, on one Railway Administration was sufficient compliance with the provisions of section 77 of the Indian Railways Act.

Admittedly, valid notices, both under section 77 of the Indian Railways Act and section 80 of the Code of Civil Procedure, were served on the Northern Railway Administration and even if no such notices had been served on the Central Railway Administration, the suit cannot be dismissed

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on this ground, because the proper service on the Railway Administration alone is sufficient compliance with the provisions of section 77 of the Indian Railways Act and section 80 of the Code of Civil Procedure. The suit can now proceed on merits.

In view of what I have said above, this appeal is accepted, the judgment and decree of the trial Court are set aside and the case is remanded to the trial Court for decision on merits. Costs will abide the event.

Since the suit was dismissed on a preliminary objection and that decision is being reversed the court-fee on appeal will be refunded to the appellant.

Parties have been directed to appear before the trial Court on 26th February, 1962.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

*R.S.*

## LETTERS PATENT APPEAL

*Before S. S. Dulat and Inder Dev Dua, JJ.*

THE REGIONAL PROVIDENT FUND COMMISSIONER, PUNJAB, AND ANOTHER,—*Appellants.*

*versus*

LAKSHMI RATTEN ENGINEERING WORKS LTD.,—*Respondent.*

**Letters Patent Appeal No. 392 of 1958**

1962

Feb., 2nd

*Employees' Provident Funds Act (XIX of 1952)—Section 5—Whether* ultra vires *Articles 14 and 19, Constitution of India—Section 2(f)—"Employee"—meaning of—Whether excludes persons receiving emoluments exceeding Rs. 200 per month—Employees' Provident Funds Scheme 1952—Para 2(f)—Whether contravenes the provisions of the Act—Interpretation of Statutes—Interpretation of terms used in one statute by reference to those terms in another statute—Whether permissible.*

*Held,* that section 5 of the Employees' Provident Funds Act cannot be said to be unconstitutional as offending Articles 14 and 19 of the Constitution of India. It does