Further I am of the view that the whole case is being looked at from a perspective which is not tenable. Once we concede that the order dismissing the appeal under Order 41, rule 11 is a decree, then it automatically results in the merger of the decree of the Court below, and as a result thereof it is this Court which can amend the decree. Moreover, the question of jurisdiction cannot be decided on the premises that the decree of the Court below remains untouched; rather it has to be decided keeping in view the fact that it is the judgment or order of this Court which has finally determined the rights of the parties. It is beyond my comprehension that after the final adjudication by this Court, the jurisdiction to amend the decree of the lower Court which has been affirmed as a result of the dismissal of the appeal would vest in the inferior Court. If such a course is permitted, then the result that would follow, would be that the lower Court would be in a position to again reopen the matter between the parties which had been finally adjudicated upon and settled between the parties by this Court. This course certainly is neither permissible nor warranted by any law. As earlier observed, I am in full agreement with the view taken by the High Courts of Andhra Pradesh, Allahabad, Madras and Calcutta and with respect, am unable to concur with the view taken by the learned Judges of the High Courts of Patna, Bombay and Oudh and a learned Single Judge of this Court in *Shmt. Murti Devi and others* v. *Bishan Singh and others* (4).

(16) In the light of the discussion above, I hold that the order passed by this Court dismissing the appeal *in limine* under Order 41, rule 11, is a decree and that an application for the amendment of the decree lies to this Court. The case now shall go back to the learned Single Judge for deciding the same on merits.

HARBANS SINGH, C.J.—I agree.

APPELLATE CIVIL

*Before Man Mohan Singh Gujral and D. S. Tewatia, JJ.*

UNION OF INDIA,—*Appellant.*

*versus*

M/S. AMIN CHAND PYARE LAL,—*Respondent.*

R.F.A. No. 120 of 1962.

September 10, 1973.

*Indian Railways Act (IX of 1890)—Section 77—Claim for compensation for short delivery of goods under section 77—Whether*

*should reach the railway administration within six months from the date of the short delivery—Sending of the claim through registered post within such period—Whether enough.*

*Held*, that according to section 77 of the Indian Railways Act, 1890, a claim for short delivery of goods has to be prefered in writing to the railway administration within six months from the date of delivery of goods to the railway. The claim can only be preferred to the railway administration if it reached the concerned authorities within the prescribed period. The addressing of a claim to the railway administration and posting it through a registered post within the prescribed period would not amount to preferring the claim to the railway administration. To hold it otherwise would be stretching the meaning of the word "preferred" and ignoring the words "to the railway administration" occurring in section 77. In the context in which the word "preferred" is used it can reasonably be interpreted only to mean "served" and not merely despatched or posted. From the point of view of the railway administration, the claim is preferred only when it reaches the railway administration and not otherwise. Hence a claim under section 77 of the Act should reach the railway administration within six months from the date of delivery of goods and it is not enough if it is posted by registered post within such period.

(Para 5)

*Case referred by the Hon'ble Mr. Justice D. S. Tewatia on 5th March, 1973, to Hon'ble the Chief Justice for constituting a larger Bench since an important question of law was involved. Case was finally decided by the Division Bench consisting of Hon'ble Mr. Justice Man Mohan Singh Gujral and Hon'ble Mr. Justice D. S. Tewatia on 10th September, 1973.*

*Regular First Appeal from the decree of the Court of Shri J. N. Verma, Senior Sub-Judge, Jullundur, dated the 17th day of February, 1962, granting the plaintiff a decree for the recovery of Rs. 5,139.50 N.P., with proportionate costs with the direction that the defendant shall satisfy the decree within a period of three months from the date of order.*

K. L. Khanna & V. M. Jain, Advocates, for H. S. Gujral, and Mr. D. S. Gujral, Advocate, *for the appellant.*

Roop Lal and Mr. S. K. Khosla, Advocates, *for the respondents.*

JUDGMENT DATED 10TH SEPTEMBER, 1973.

GUJRAL, J.—Messrs Amin Chand Payare Lal, respondent in this appeal, filed a suit against the Union of India representing Northern Railway, Delhi, and Eastern Railway, Calcutta, for the recovery of

Rs. 5,195.93 as the price of short delivery of pig iron, which had been despatched by Messrs Hindustan Steel Ltd., after it had been purchased by the plaintiff firm. The suit was contested by the Union of India, but was decreed by the learned Senior Subordinate Judge by judgment, dated 17th February, 1962. Being aggrieved, the Union of India has challenged this judgment and decree through the present appeal.

2. The appeal was first placed before a learned Single Judge but as the main question cavassed, which related to the interpretation of the provisions of section 77 of the Indian Railways Act, was of considerable importance the matter was referred to a Division Bench and this is how this appeal is before us now.

3. In appeal before us only the findings on issue No. 2, which is as follows were challenged:—

"Whether notices issued under section 77 of Indian Railways Act were not served within time?

4. The facts necessary for decision of this appeal are not in dispute. Notice under section 77 of the Indian Railways Act (hereinafter called the Act) was despatched through post to the Railway authorities on 17th August, 1960 and was received after the expiry of six months' period. The question which needs consideration in this case is whether a notice under section 77 of the Act has to reach the railway administration within six months from the date of the delivery of goods for carriage by railway or has merely to be posted by a registered post within the period of six months. It may be stated at the outset that there is a conflict of authorities on this point inasmuch as the Patna and Madhya Pradesh High Courts have taken the view that if the notice was forwarded by a registered post within the prescribed time it would be presumed that the service has been effected in time while the Allahabad, Kerala and Nagpur High Courts have taken the contrary view.

5. In order to appreciate the rival contentions reference will have to be made to sections 77, 140 and 142 of the Act, which are set down below.

"77. *Notification of claims to refunds of over-charges and to compensation for losses.*—A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration 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 to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

140. *Service of notices on railway administration.*—Any notice or other document required or authorised by this Act to be served on a railway administration may be served, in the case of a railway administered by the Government, on the Manager, and, in the case of railway administrtered by a railway company, on the Agent in India of the railway company—

(a) by delivering the notice or other document to the Manager or Agent; or

(b) by leaving it at his office; or

(c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office and registered under Part III of the Indian Post Office Act, 1866 (14 of 1866).

142. *Resumption where notice is served by post.*—Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered."

Section 77 of the Act provides that unless a claim to a refund or compensation has been *preferred in writing* to the railway administration within six months from the date of the delivery of goods for carriage by railway a person shall not be entitled to compensation. In *Ram Gopal Marwari and others* v *Bengal and North-Western Railway Co.* (1), the view taken was that when a letter is posted the claim is preferred as contemplated in section 77. Support for this argument was sought from section 140(c) of the Act, which provides for the modes of service of notice on railway administration required by the Act to be served on the railway administration. Another argument pressed into service was that if a claim was to reach the railway company within six months it would have to be posted a couple of days before the end of the period of

(1) A.I.R. 1927 Patna 241.

limitation and in that case the period of limitation would be curtailed. The view taken in that case was followed in *Union of India* v. *Asharfi Devi and others* (2), wherein the following observations appear:—

> "If it is held that S. 77 of the Indian Railways Act should be interpreted to mean that the notice must be served on the Railway Administration within the statutory period of six months, it would not be giving to the consignee full use of the statutory period of six months. Section 77 of the Indian Railway Act only means that the claim should be preferred within that period and not that it should also reach the Railway Administration before its expiry. As held in *Ram Gopal* v. *B. and N. W. Ry. Co.*, (C) (supra), the interpretation that is canvassed for would lead to the curtailment of the period of six months in case where the consignee lives at a long place from the office of the Railway Administration. This interpretation would conflict with the statutory provision and cannot, therefore, be accepted."

From the above observations it would appear that the reasoning adopted in *Ram Gopal Marwari's case* was accepted. while considering the above observations and the ratio of the decision in *Ram Gopal Marwari's case* it may be stated at the outset that in both these cases the provisions of section 142 of the Act were not considered. Even otherwise, with all the respect for the learned Judges who decided these two cases, I am unable to agree with the interpretation placed on section 77 of the Act. According to this provision, a claim has to be preferred in writing to the railway administration within six months from the date of delivery of goods to the railway. The claim can only by preferred to the railway administration if it reaches the concerned authorities within the prescribed period. To say that addressing a claim to the railway administration and posting it through a registered post within the prescribed period would amount to preferring the claim to the railway administration would be stretching the meaning of the word "preferred" and ignoring the words "to the railway administration" occurring in section 77. In the context in which the word "preferred" is used it can reasonably be interpreted only to mean "served" and not merely despatched or

(2) A.I.R. 1957 M.P. 114.

posted. From the point of view of the railway administration, the claim is preferred only when it reaches the railway administration and not otherwise.

6. Section 140 of the Act provides for the various modes in which a notice or other document required or authorised by the Act to be served is to be served on the railway administration. Clause (a) relates to personal service on the manager or agent while according to clause (b) the notice is deemed to be served if it is left at the office of the manager or agent. Clause (c) of section 140 allows a notice to be served by post provided, it is in a prepaid letter addressed to the manager or agent at his office and is registered under Part III of the Indian Post Office Act. Section 140 is not concerned with the period within which the notices of claim are to be served or preferred but only deals with the modes of service. In case the modes provided in clauses (a) and (b) are adopted the date of service of notice or preferring the claim would be the date when it is personally served on the manager or agent or left at his office. In those cases where notices are sent by post as required by clause (c) a question could arise as to when the notices were served, for a letter may get lost in transit or may take unduly long in reaching the destination. To avoid confusion and doubt in such cases the legislature enacted section 142 which provides that in cases where a notice or other document is served by post it shall be deemed to have been served at the time when the latter containing it would be delivered in due course of post. To take the benefit of this presumption the party has only to prove that the letter containing the notice or other document was properly addressed and registered. Viewed in this context, in my opinion, clause (c) of section 140 cannot be pressed into service to interpret the expression "preferred in writing to the railway administration" occurring in section 77.

7. In coming to the above conclusion and in the interpretation that I have placed on section 77, I find support from *Narain Ram Chandra Kelkar* v. *Union of India* (3),, where in the following observations appear:—

> "We have no doubt that "preferred in writing. ..... to the railway administration" means that the written claim has reached the railway administration. "Prefer" means "to

(3) 1961 A.L.J. 983.

lay (a matter) before any one formally for consideration, approval, or sanction; to bring forward, present, submit (a statement, bill, indictment, information, prayer, etc.). To put, place, or set (something) before any one for acceptance" Murray's Dictionary. So there can be no preferment unless the matter reaches the person to whom it is to be preferred. By simply writing out a claim addressed to the railway administration, one cannot be said to have preferred a claim to it. If it is not posted and has not reached the railyway administration it has certainly not been preferred to it. Preferring a claim to a particular person involves the element that the claim has been brought to his notice; otherwise the requirement that the claim must be preferred to a particular person loses its importance. The law is not that the claim must be preferred; it is that it must be preferred to a particular person and it cannot be said to be preferred to a particular person unless he receives it."

The argument that if the above view is adopted the period of limitation would be curtailed was considered in the above case and was repelled as under:—

"It would be illogical to say that the meaning of the limitation was that the claim should be sent, posted or despatched within six months because otherwise it would have to be sent, posted or despatched within less than six months and thereby the period of limitation would be shortened. The Legislature never fixed any period of limitation which would be shortened by the interpretation that we propose to give. There is no provision at all in the Railways Act laying down that a claimant has the right of writing for six months before preferring a claim and in the absence of such a provision it cannot be said that requiring him to see that the claim reaches the railway administration within six is to curtail the period at his disposal. When there was no period placed at his disposal by any other provision, it would be fallacious to argue that the very provision which places a period at his disposal curtails it. A question of curtailment of a period of limitation can arise only if it is prescribed by one provision and another provision is interpreted so as to curtail it."

It was further observed that there was nothing in section 77 or any other provision of the Act to indicate that the legislature intended to give the claimant six clear months before taking any step in the matter. Had this been the intention of the legislature, it would have used the word "sent", "despatched" or "posted" instead of the word "preferred".

8. On behalf of the respondent an alternative argument was put forth and it was contended that sections 140 and 142 of the Act are only concerned with the service of notice or other document and not with the preferring of a claim mentioned in section 77 of the Act. The plausibility of this argument was considered in *Union of India* v. *M/s. Lakshmi Textiles,* (4) and Velu Pillai, J., who delivered the judgment, made the following observation :—

> "But learned counsel for the respondent argued, that whereas Section 78B uses the term "preferred", Sections 140 to 142 use the term "served". Such a distinction was not maintained in any of the cases relied on by him, not even in the two cases just cited. Even the term "served" accord- to clause (c) of Section 140 and S. 141 contemplates no more than forwarding by post and not actual or constructive delivery by post. According to the dictionary too, the distinction does not seem tenable. It is useful to note, that there is no provision in the Act, which expressly and in terms uses the term "serve" or "service by post" on or by the railway administration except Sections 140 to 142. Section 59(2) speaks of "giving" notice to a railway servant, and Section 78B appears to be the only provision in the Act for a notice of claim being given to the railway administration. Similarly Section 56(1) appears to be the only provision in the Act for a notice being served by the railway administration upon any person. It seems to follow, that Sections 140 and 141 were intended to govern the manner of service of claims or notices under Section 78B and Section 56(1) respectively; to hold otherwise would be to render both Sections 140 and 141 otiose. According to Section 27 of the General Clauses Act, the term 'serve' has the same meaning as the terms "give", "send" etc. If so, the term "prefer" cannot mean anything different.

(4) A.I.R. 1968 Kerala 23.

Apparently, the respondent himself adopted the mode presbribed by Section 140(c) for preferring the claim under Section 78B. On these considerations, it is not possible to hold that Section 142 has no application to a claim under Section 78B."

The above observations provide a complete answer to the argument raised on behalf of the respondent and in agreement with the above I hold that there is no merit in the contention that sections 140 and 142 of the Act do not apply to the preferring of a claim under section 77. It may be added that no other provision has been pointed out in the Act which provides the mode in which the claim under section 77 has to be preferred. Moreover, even if the claim under section 77 may not be considered as a notice but it would certainly fall within the expression "document" used in sections 140 and 142 of the Act.

(9) For the reasons stated above, I hold that the claim sent by the respondents was not sent within six months as prescribed by section 77 of the Act and was, therefore, barred. Findings on issue No. 2 are set aside and this issue is found against the plaintiff-respondent. No other point having been raised before us, this appeal is allowed and the plaintiff's suit is dismissed. Having regard to the circumstances of the case, the parties will bear their costs throughout.

Tewatia, J.—I agree.

*N. K. S.*

CIVIL REFERENCE

*Before D. K. Mahajan and C. G. Suri, JJ*

DURGA PARSHAD SODHI,—*Petitioner.*

*versus*

THE STATE OF PUNJAB, ETC.—*Respondents.*

Civil Reference No. 6 of 1970

September 11, 1973.

*Indian Pensions Act (XXIII of 1871)—Section 4—Punjab Civil Services Rules, Volume II—Rule 6.4—Constitution of India (1950)—Article 19(1)(f)—Right to pension—Whether 'property' and enforceable in a civil court—Section 4 creating bar to such enforcement—Whether* ultra vires *Article 19(1)(f)—Rule 6.4—Whether also void.*