

## APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar.

M. SESHACHELLAM CHETTY (PLAINTIFF), PETITIONER,

1911.  
August 17.

v.

TRAFFIC MANAGER, HIS HIGHNESS THE NIZAM'S  
GUARANTEED STATE RAILWAY COMPANY, LIMITED  
(DEFENDANT), RESPONDENT.\*

*Indian Railways Act (Act IX of 1890), section 140—Notice of suit, upon  
whom to be served.*

Under section 140, Indian Railways Act (IX of 1890) notice of suit against a Railway Company can only be served upon the Agent unless it can be shown by evidence that some other officer of the Company had authority to receive the notice.

PETITION, under section 25 of Provincial Small Cause Courts Act (IX of 1887), praying the High Court to revise the decree of T. GOPALAKRISHNA PILLAI, the Subordinate Judge of Kistna at Ellore in Small Cause Suit No. 977 of 1909.

This petition came on for hearing under the provisions of Order XLI, Rule 11 of the Code of Civil Procedure.

The facts for the purpose of this case are set out in the judgment.

*T. Prakasam* for petitioner.

The respondent was not represented.

JUDGMENT.—This is a suit against the Nizam's Guaranteed State Railway Company claiming damages for non-delivery of goods entrusted by the plaintiff to the defendant for delivery at Kondapalli. The suit has been dismissed by the lower Court on the ground that the defendant Company had not proper notice of the claim, and the only question I have to decide in the case is whether this finding is correct.

Notice was given by the plaintiff within the period required by section 77 of Act IX of 1890 to the Traffic Manager. Section 140 of the Act requires that any notice required to be served on the Railway Administration may be served on the Agent of the Railway Company, no other person is designated for the purpose

\* Civil Revision Petition No. 614 of 1910.

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 AYYAR, J.  
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by the Act. The plaintiff adduced no evidence to show that any other person was authorised to receive notice on behalf of the Company. It has been laid down in a series of cases that the proper person on whom notice should be served is the Agent. See *Woods v. Meher Ali Bepari*(1); *G.I.P. Railway Company v. Dewasi*(2); *Great Indian Peninsula Railway Company v. Chandra Bai*(3); *Nadiar Chand Shaha v. Wood*(4). No doubt it may be shown by evidence that some other officer of the Company had authority to receive the notice either by showing that he was the person who, according to the practice of the Company, dealt with the claims of the particular character in question or that there were rules framed by the Railway Company authorising him to receive the notice, or in some other legal manner. The plaintiff has not adduced any evidence in this case to prove that the Traffic Manager to whom the notice was sent was authorised to receive it. The only evidence to which the learned counsel for the petitioner has drawn my attention is the statement of the Traffic Manager that the plaintiff's claim was barred. It is impossible for me to hold that this is sufficient to hold that the plaintiff was entitled to serve the notice on him. I am constrained to dismiss this petition.

## APPELLATE CIVIL.

*Before Mr. Justice Abdur Rahim.*

1911.  
 August 18.

E. KARUNAKARAN NAIR (SECOND DEFENDANT), PETITIONER,

v.

M. KRISHNA MENON AND ANOTHER (PLAINTIFF AND  
 FIRST DEFENDANT), RESPONDENTS. \*

*Limitation Act (IX of 1908), sec. 7F—Bond repayable by instalments; the whole to become payable "on demand" on default in paying one instalment—Meaning of "on demand"—Waiver.*

A bond repayable by instalments contained the following stipulation :—

"In default of our making each payment also the amount that may be found due for all future drawings shall be paid in a lump on your demand."

*Held*, that the cause of action for recovery of all the instalments would not arise until demand is made by the obligee in terms of the stipulation and that in

(1) (1908) 13 C.W.N., 24.

(2) (1907) I.L.R., 31 Bom., 534.

(3) (1906) I.L.R., 28 All., 552.

(4) (1908) I.L.R., 35 Calc., 194.

\* Civil Revision Petition No. 292 of 1910.