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BHAGWANT-RAO ABAJI v. RAMANATH KANIRAM

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is applied to a specific case. In my opinion, the present case does not fall within those limits. It might have been different if Manubai's husband had been buying and selling bullocks as a trade and the widow had merely raised money in order to carry on such trade. But those are not the facts found by both the lower Courts.

Appeal allowed.

J. G. R.

APPELLATE CIVIL

Before Mr. Justice Patkar and Mr. Justice Baker.

1928
March 19

HIRACHAND SUCCARAM GANDHY (ORIGINAL PLAINTIFF), APPELLANT *v.* G. I. P. RAILWAY COMPANY, BOMBAY, NOW ADMINISTERED BY GOVERNMENT OF INDIA AND HENCE THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act V of 1908), sections 79, 80, 26, Orders IV, XXII, rule 16—Suit against a Railway Company instituted in First Class Subordinate Judge's Court—Pending suit railway acquired by Government—Presentation of plaints in District Court—Notice of suit to Secretary of State necessary—Suit against a State Railway—Indian Railways Act (IX of 1890), section 3, clause (6) and sections 77, 140.

The plaintiff filed two suits against the G. I. P. Railway in the Court of a First Class Subordinate Judge. Notices were given by the plaintiff to the railway administration under sections 77 and 140 of the Indian Railways Act, 1890. While the suits were pending the G. I. P. Railway was taken over by Government on July 1, 1925, and consequently, the Secretary of State for India in Council had to be joined as a party to the suits. The plaints were, therefore, returned to the plaintiffs for presentation to the proper Court and were then presented to the District Court. The defendant, the Secretary of State, having raised an objection that the institution of the suits was bad as the notice required by section 80 of the Civil Procedure Code, 1908, had not been given.

Held, upholding the objection, that the notice under section 80 of the Civil Procedure Code, 1908, was necessary in a suit against the Secretary of State whatever be the nature and character of the suit. That the presentation of the plaints in the District Court was an institution of the suits under section 26 and the provisions of Order IV of the Civil Procedure Code.

Secretary of State v. *Kalekhan*[1]; *Secretary of State for India* v. *Gulam Rasul*[2]; *Secretary of State for India in Council* v. *Rajlucki Debi*[3] and *Bhagchand* v. *Secretary of State*,[4] followed.

*First Appeal No. 206 of 1926 (with F. A. No. 222 of 1926).

(1) (1912) 37 Mad. 113.
(2) (1916) 40 Bom. 392 at p. 396.
(3) (1897) 25 Cal. 239.
(4) (1927) 29 Bom. L. R. 1227 : 51 Bom. 725.

A suit against a State Railway must be brought against the Secretary of State for India in Council under section 79 of the Civil Procedure Code 1908.

Sukhnand Shamlal v. *Oudh and Rohilkhand Railway*,[1] followed.

A notice given under sections 77 and 140 of the Indian Railways Act, would not dispense with the necessity of a notice under section 80 of the Civil Procedure Code 1908, though a notice served under section 80 of the Civil Procedure Code on the Government within six months, may be considered to be a good notice under section 77 to the "railway administration" by virtue of the extended definition of "railway administration" which includes the Government under section 3, clause (6) of the Indian Railways Act, 1890.

FIRST APPEAL against the decision of R. S. Broomfield, District Judge at Sholapur.

The facts material for the purposes of this report are sufficiently stated in the judgment of His Lordship Mr. Justice Patkar.

G. S. Mulgaonkar, for the appellant.

B. K. Desai, with Messrs. *Little & Co.*, for the respondent.

PATKAR, J.:—These appeals arise out of two suits brought against the G. I. P. Railway in the Court of the First Class Subordinate Judge at Sholapur on March 10, 1925, and June 29, 1925, respectively. On July 1, 1925, the G. I. P. Railway became a State managed railway, and in September 1925, the learned First Class Subordinate Judge returned the plaints for presentation to the proper Court, on the ground that the Secretary of State for India in Council being joined as a party to the suits, he had no jurisdiction to try the suits. The plaints were presented to the District Court and numbered as Suits Nos. 4 and 11 of 1925.

The learned District Judge raised a preliminary issue "whether the suit is bad for want of notice under section 80 of the Civil Procedure Code," and found on the issue in the affirmative and rejected the plaints.

It is urged on behalf of the appellants that section 80 of the Civil Procedure Code has not been properly

[1] (1928) 48 Bom. 297.

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construed, that the suits were already instituted in the First Class Subordinate Judge's Court, that the suits in the District Court were merely continuations of those suits and therefore no notice under section 80 of the Civil Procedure Code was necessary, and that the notice given under section 140 of the Indian Railways Act was a sufficient notice. In support of the contention that the suit in the District Court was a continuation of the previous suit, reliance is placed on Order XXII, Rule 10, of the Civil Procedure Code, and the decision in *Chunni Lal* v. *Abdul Ali Khan*.[1] If the plaints had not been returned by the First Class Subordinate Judge for presentation to the proper Court and the suits had been tried by the First Class Subordinate Judge, it could have been said that the suits were continued against the Secretary of State, who was added as a party, under Order XXII, Rule 10. Jurisdiction is now given to the Subordinate Judge to try suits against State managed railway companies by Bombay Act VI of 1926, but in the present case the plaints were returned for presentation to the proper Court before Bombay Act VI of 1926 came into force. Under section 32 of the Bombay Civil Courts Act, XIV of 1869, the First Class Subordinate Judge had no jurisdiction to try a suit in which the Government was a party. See *Secretary of State* v. *Narsibhai*.[2] The First Class Subordinate Judge was, therefore, justified in returning the plaints for presentation to the District Court under Order VII, Rule 10. When a plaint is returned for presentation to the proper Court and is in fact presented to the Court having jurisdiction, it cannot be said that the previous suit instituted in a Court having no jurisdiction was continued in the Court which had jurisdiction to try the suit. Under section 26 of the Civil Procedure

[1] (1901) 23 All. 331 at p. 335.

[2] (1923) 25 Bom. L. R. 992 at pp. 1002, 1004.

Code, " every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed." Under Order IV, Rule 1, " every suit shall be instituted, by presenting a plaint to the Court or such officer as it appoints in this behalf," and under Rule 2 " the Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits, and such entries shall be numbered in every year according to the order in which the plaints are admitted." On presentation of the plaints in the District Court, the suits were entered in the register of civil suits of the District Court. The presentation, therefore, of the plaints in the District Court was an institution of the suits under section 26 and the provisions of Order IV of the Civil Procedure Code. Under section 14 of the Indian Limitation Act, the time occupied in prosecuting the previous suits shall be excluded in computing the period of limitation for the fresh suits instituted in the District Court. In *Hedlot* v. *Karan*[1] it was held that the combined effect of section 57 of the old Civil Procedure Code (corresponding to Order VII, Rule 10) and section 14 of the Indian Limitation Act was that when the plaint was returned to be presented in a Court of competent jurisdiction, the suit was to be considered as instituted on the date of such presentation, and the plaintiff should amend the plaint so as to include all intermediate transactions between the date of the first presentation and the date of the presentation to the competent Court. To the same effect are the decisions in the cases of *Bimala Prosad Mukerji* v. *Lal Moni Devi*[2] and *Mohidin Rowthen* v. *Nallaperumal Pillai*.[3]

The next question is whether a suit against a State railway must be brought against the Secretary of State for India in Council. Under section 3, clause (6), of the

[1] (1911) 15 Cal. L. J. 241. [2] (1925) 30 Cal. W. N. 90.
[3] (1911) 21 Mad. L. J. 1000.

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Indian Railways Act, "railway administration" includes the Government, and the Secretary of State being the proprietor of the railway, the suit must be brought against the Secretary of State for India in Council under section 79 of the Civil Procedure Code, and the revenues of the Government of India would be liable to pay the damages awarded to the plaintiff and the suit would lie against the Secretary of State under section 32, clause (2), of the Government of India Act, 1915. See *The Peninsular and Oriental Steam Navigation Company* v. *Secretary of State for India.*[1] We agree with the view of Fawcett J. in *Sukhnand Shamlal* v. *Oudh and Rohilkhand Railway*[2] that a suit against a State railway must be brought against the Secretary of State for India in Council.

The suits having been instituted against the Secretary of State for India in Council, it would follow that a notice under section 80 of the Civil Procedure Code would be necessary before the institution of the suits. The words of section 80 of the Civil Procedure Code countenance no distinction based only on the class or character of the suit filed against the Secretary of State. See *Secretary of State* v. *Kalekhan*,[3] *Secretary of State for India* v. *Gulam Rasul*,[4] and *Secretary of State for India in Council* v. *Rajlucki Debi*.[5] In *Bhagchand* v. *Secretary of State*,[6] their Lordships of the Privy Council observe (p. 1242) :—

"The Act, albeit a Procedure Code, must be read in accordance with the natural meaning of its words. *Section 80 is express, explicit and mandatory, and it admits of no implications or exceptions.* A suit in which *inter alia* an injunction is prayed is still 'a suit' within the words of the section, and to read any qualification into it is *an encroachment on the function of legislation.* Considering how long these and similar words have been read throughout most of the Courts in India in their literal sense, it is reasonable to suppose that the section has not been found to work injustice, but, *if this is not so, it is a matter to be rectified by an amending Act.* Their Lordships think that this

(1) (1861) 5 Bom. H. C. (App. A.) 1 at pp. 12, 13.
(2) (1923) 48 Bom. 297.
(3) (1912) 37 Mad. 113.
(4) (1916) 40 Bom. 392 at p. 396.
(5) (1897) 25 Cal. 239 at p. 242.
(6) (1927) 29 Bom. L. R. 1227; 51 Bom. 725.

reasoning is right. To argue, as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while section 80 is mere procedure, is fallacious, for *section 80 imposes a statutory and unqualified obligation upon the Court.*"

It is, therefore, clear that notice under section 80 of the Civil Procedure Code is necessary. This view is consistent with the decision in *Madhavrav Anandrav* v. *The Collector of Kolaba*[1] and *Maharana Shri Fatesingji Jasvatsingji* v. *The Amod Municipality.*[2] There was nothing to prevent the plaintiffs from giving notice under section 80 before presenting the plaints in the District Court, and under section 15, clause (2), of the Indian Limitation Act, they could have done so without any difficulty with regard to limitation.

It is urged, however, that the notice given under sections 77 and 140 of the Indian Railways Act is quite sufficient and that notice under section 80 is unnecessary and can be dispensed with. Under section 77 of the Indian Railways Act :—

" 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."

Under section 3, clause (6), " railway administration " in the case of a railway administered by the Government means the Manager of the railway and includes the Government, and under section 140 of the Act, a notice required to be served on a railway administration may be served, in the case of a railway administered by the Government, on the Manager of the railway. It would, therefore, follow that a notice of claim to recover refund or compensation specified in section 77 may be served by virtue of section 3, clause (6), on Government within six months as required by section 77, and under section 140 may be served on the Manager of a railway administered by Government. The notice so served on

[1] (1890) P. J. 156. [2] (1896) P. J. 129.

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the Manager of the railway administered by Government would not dispense with the necessity of a notice necessary under section 80 of the Civil Procedure Code, though notice given to Government within six months may be a good notice, as railway administration includes Government under section 3, clause (6). Notice under section 140 is an alternative procedure by which a notice may be served on the railway administration by serving it on the Manager of a railway administered by Government. In *The Secretary of State for India in Council* v. *Dip Chand Poddar*[1] notices were served on the Traffic Superintendent and the District Collector under section 80 of the Civil Procedure Code before the institution of the suit. The notice that was given to the Government was not served on the Collector within six months from the date of the delivery of the goods, and the notice which was served within six months was a notice not to the Manager but to the Traffic Superintendent. It was held that as the notice served on the Government was not served within six months and that as the notice served within six months was not a notice to the Manager but to the Traffic Superintendent who was not the Manager's agent, the notice was not a proper notice to the railway administration within the meaning of section 77 of the Indian Railways Act. In *Radha Shyam Basak* v. *Secretary of State for India*[2] notice was served upon the Government through the Collector within six months, and it was held sufficient to meet the requirements of section 77 of the Indian Railways Act. Chatterjee J. observes on page 22 :—

"I think section 140 has not the effect of cutting down the connotation of the words Railway Administration as contained in section 3 (6). It only provides for the convenience of the party aggrieved that if he wants to serve the notice on the Manager of the State Railway or the Agent of the Railway Company he must do so in one of the ways mentioned there. If the party chooses to give notice to the Government or the Native State or the Railway

(1) (1896) 24 Cal. 306. (2) (1916) 44 Cal. 16.

Company there is nothing in the Act to prevent his doing so; the latter alternative may enhance his trouble, but it cannot take away his rights."

Notice served under section 80 of the Civil Procedure Code on the Collector within six months, may be considered to be a good notice under section 77 to the railway administration by virtue of the extended definition of railway administration including the Government under section 3, clause (6). The notice, however, to be served under section 140 of the Indian Railways Act on the Manager of a railway administered by the Government is a notice required or authorised by the Indian Railways Act to be served on a railway administration and would not be a substitute for a notice necessary to be given before institution of a suit against the Secretary of State under section 80 of the Civil Procedure Code.

Besides, notice is necessary under section 77 of the Indian Railways Act, in respect of a claim to the refund or compensation specified in section 77, and is not necessary in respect of other claims against the Railway Company. But a notice under section 80 is necessary in a suit against the Secretary of State whatever may be the nature and character of the suit. No doubt, the object of giving the notice under sections 77 and 140 is to give an opportunity to the railway administration to make amends and settle the claim. Similarly, the object of the notice required by section 80 of the Civil Procedure Code is to give the Secretary of State an opportunity of considering the legal position and to make amends or settle the claim if so advised without litigation. See *Secretary of State for India in Council* v. *Perumal Pillai*[1] and *Secretary of State for India* v. *Gulam Rasul*.[2] It appears unnecessary that the plaintiff should give two notices, one to the railway administration in certain cases and the other to the

(1) (1900) 24 Mad. 279.

(2) (1916) 40 Bom. 392 at p. 396.

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Secretary of State under section 80 of the Civil Procedure Code for securing the same object. But it is a matter for the Legislature to consider whether, in the case of a suit against a railway belonging to the State, it is necessary to give notice under section 80 of the Civil Procedure Code when notice of claim is given under sections 77 and 140 of the Indian Railways Act. We have, however, to give effect to the wide language of section 80 which does not admit of any exception.

We think, therefore, that the plaints were rightly rejected in both the cases, and these appeals must be dismissed with costs.

BAKER, J. :—These two appeals involve the same point. They arise out of two suits brought by two plaintiffs against the Great Indian Peninsula Railway, in one case to recover an alleged over-charge and in the other case to recover damages for short delivery. The suits were originally filed in the Court of the First Class Subordinate Judge. While they were pending, the G. I. P. Railway was taken over by Government on July 1, 1925, and consequently, the Secretary of State for India in Council had to be added as a party. As suits against the Secretary of State have, under the Bombay Civil Courts Act, to be brought in the District Court, the plaints were returned to the plaintiffs for presentation to the proper Court and were then presented to the District Court of Sholapur. The defendant, the Secretary of State, took an objection that the notice necessary under section 80 of the Civil Procedure Code had not been given, and both the suits were dismissed for want of this notice. The plaintiffs appeal.

It is contended that the notice as necessary under section 77 of the Indian Railways Act having been given and the suit having been already instituted against the Railway Company the addition of the Secretary of State

does not necessitate a new suit. Reference is made to Order XXII, rule 10, of the Civil Procedure Code, and it is contended that the defendant cannot take advantage of his own act. The present suits were merely continuations of the suits before the Subordinate Court and were properly instituted and that defendant cannot take advantage of the change in his position. It is also contended in one of the suits that the Government were held to be the owners of the G. I. P. Railway as shown by the case of *Secretary of State* v. *Great Indian Peninsula Ry. Co.*[1] and the taking over of the Railway by Government in July 1925 did not make any difference to the position. As to this, it has been held by this Court in *Sukhnand Shamlal* v. *Oudh and Rohilkhand Railway*[2] that a suit against a State railway, as the G. I. P. Railway now is, must be brought against the Secretary of State for India in Council, and under the Bombay Civil Courts Act as it stood at the date of the suit a suit against the Secretary of State must be brought in the District Court, though this section has subsequently been altered by Bombay Act VI of 1926 with respect to suits against the Railways. There can, therefore, be no doubt that it was necessary to bring the suit against the Secretary of State in the District Court.

The question is whether this is a continuation of the previous suit. I do not think it is. The plaints were returned for presentation to the proper tribunal and the suits ceased to be on the file of the Subordinate Court and were placed under different numbers on the file of the District Court. It has been held by the Calcutta High Court that in such a case the suit is to be considered as instituted on the date of the presentation. In *Bimala Prosad Mukerji* v. *Lal Moni Devi*[3] owing to a change in Court fees the Court in

(1) (1924) 27 Bom. L. R. 810. (2) (1923) 48 Bom. 297.
(3) (1925) 30 Cal. W. N. 90.

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which the suit was originally brought ceased to have jurisdiction and the plaint was returned and the plaintiff accordingly instituted the suit in another Court and it was regarded as a new suit and not a continuation of the old suit. Compare also *Hedlot* v. *Karan.*[1]

Once it is found that the suit was instituted on the date on which the plaint was presented in the District Court the provisions of section 80 of the Civil Procedure Code will apply. Those provisions are imperative and a notice under section 80 cannot be dispensed with. Compare *Bhagchand* v. *Secretary of State.*[2] In the case quoted by the learned pleader for the appellant in *Radha Shyam Basak* v. *Secretary of State for India*[3] there was a suit against the Secretary of State as owner of the Eastern Bengal State Railway and it was held that the notice served upon Government was sufficient to satisfy the requirements of section 77 of the Indian Railways Act. But the present case is the converse of that and it does not follow that a notice served upon the Railway Company under section 77 of the Indian Railways Act, which refers to claims and not to suits, could be held to be sufficient to satisfy the imperative provisions of section 80 of the Civil Procedure Code. Moreover, that case was not one in which the plaint had been instituted in two different Courts, and as has already been pointed out the notice given under section 77 in the suit in the Subordinate Court cannot operate as a notice under section 80 of the Civil Procedure Code in the District Court.

In these circumstances I am of opinion that the view of the lower Court that the suit is bad for want of notice to the Secretary of State is correct. This may appear somewhat hard upon the plaintiff as his suit as originally filed against the Railway Company in the Subordinate

(1) (1911) 15 Cal. L. J. 241. (2) (1927) 29 Bom. L. R. 1227; 51 Bom. 725.
(3) (1916) 44 Cal. 16.

Court was properly framed and under the amendment of the Civil Courts Act by Act VI of 1926 such a suit would now lie. We are, however, bound to apply the law as it stood in 1925 when the suits were filed. There was no difficulty in the way of the plaintiff in serving the notice under section 80 of the Civil Procedure Code on the Secretary of State as section 15 of the Indian Limitation Act would obviate any difficulty as regards limitation, and in view of the circumstances in which the Subordinate Court ceased to exercise jurisdiction the plaintiff would also be entitled to the benefit of section 14 of the Indian Limitation Act. I am, therefore, of opinion that the view of the District Court that both these suits must be dismissed is correct and that the appeals should be dismissed with costs.

Decree confirmed.

J. G. R.

DISCIPLINARY JURISDICTION.

Before Mr. Justice Fawcett and Mr. Justice Mirza.

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY, APPLICANT *v.* DATTATRAYA NARAYAN DESHPANDE, VAKIL, HIGH COURT, BOMBAY, OPPONENT.*

1928
April 4

Disciplinary jurisdiction—High Court—Insolvency of pleader—Suspension of Sanad—"Reasonable cause"—Amended Letters Patent, 1865, Clause 10—Bombay Pleaders Act (Bom. XVII of 1920), section 25—Permission to practise by insolvent pleader—Burden of proof.

Under section 25 of the Bombay Pleaders Act and Clause 10 of the Amended Letters Patent, 1865, the High Court in its disciplinary jurisdiction has full power to suspend the sanad of a pleader, who has been adjudicated an insolvent, *until he obtains a discharge*, if, in the circumstances of the case, it considers that the insolvency coupled with the surrounding circumstances supplies a "reasonable cause" for such a suspension.

Under certain conditions a pleader who is adjudicated an insolvent may be able to satisfy the Court that he should be permitted to continue his professional practice. In such cases the burden of proof is upon the pleader to show that this can be done with safety.

*Civil Application No. 184 of 1928.