

Explanation III.— * * * *

Hazara Singh

v.

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Singh
and another

Mahajan, J.

It will be apparent from the language of this section that the acknowledgement has to be by a party or person against whom the right is claimed. In the present case the debt is sought to be recovered both against the principal debtor as well as the surety. Therefore, the right is claimed against both. The acknowledgement is only by one. Therefore, the right will only be saved *qua* one and not *qua* the other by whom there is no acknowledgement.

After giving the matter my careful consideration I am of the view that the contention of Mr. Bahri to the effect that the acknowledgement by the surety does not save the period of limitation as against the principal debtor must prevail. I would accordingly allow this appeal, set aside the judgment and decree of the Courts below as against defendant No. 1 only. The decree will stand against defendant No. 2, but in the circumstances of the case, there will be no order as to costs throughout so far defendant No. 1 is concerned.

B.R.T.

FULL BENCH

Before S. S. Dulat, Inder Dev Dua and Daya Krishan
Mahajan, JJ.

THE UNION OF INDIA,—Appellant.

versus

THE LANDRA ENGINEERING AND FOUNDRY WORKS
AND OTHERS,—Respondents.

Regular Second Appeal No. 598 of 1958.

Code of Civil Procedure (Act V of 1908)—Section 80—
Object and purpose of—Goods booked by Eastern Railway
to be delivered at a station on Northern Railway—Goods
short-delivered—Consignee giving notice only to General
Manager, Northern Railway and filing suit against Union
of India as owner of both the Railways—Notice—Whether
sufficient.

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Held, that the object of section 80 of the Code of Civil Procedure is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision, it is necessary that it or he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for. This section does not define the rights of parties nor confer any rights on them. It only provides a mode of procedure for getting the relief in respect of a cause of action. It is a part of the machinery for obtaining legal rights, i.e., machinery as distinguished from its products. A notice required to be given under this section is clearly for the protection of the defendant concerned and he can also lawfully waive his right to the notice. The provisions of notice under this section are not intended to be used as a trap for defeating the claimant's suit against the Government.

Held, that when a suit relates to a Railway, the notice contemplated by it is required to be served on the General Manager of that Railway, though the suit is to be instituted against the Central Government named as the Union of India. The General Manager of the Railway concerned is required to be served with the requisite notice as an agent of the Central Government defendant. The Railway administered by the Government is not to be named as a party to the suit. It is, thus, clear that in a case where the goods are booked by one Railway to be carried over two Railway and are to be delivered at a station on the other Railway, both the Railways being owned by the Central Government, which has been sued for the loss, notice under section 80 of the Code of Civil Procedure, 1908, on the General Manager of one of the Railways concerned is sufficient and it is not necessary to serve such a notice on the General Managers of all the Railways concerned.

Sunder Lal-Brij Lal v. Union of India (1), overruled;
Salig Ram v. Dominion of India (2), approved.

Case referred by Hon'ble Mr. Justice Dua to a larger Bench,—vide his order dated the 12th December, 1960, for

(1) A.I.R. 1958 Punj. 149.

(2) A.I.R. 1953 Punj. 43.

decision of the legal question involved in the case and finally decided by a Full Bench consisting of Hon'ble Mr. Justice Dulat, Hon'ble Mr. Justice Dua and Hon'ble Mr. Justice Mahajan on 15th December, 1961.

Second Appeal from the decree of the Court of Shri Murari Lal Puri, Additional District Judge, Jullundur, dated the 20th day of February, 1958, modifying that of Shri Om Nath Vohra, Sub-Judge, 1st Class, Jullundur, dated the 29th August, 1957 (dismissing the plaintiff's suit with costs) to the extent of granting the plaintiff a decree for Rs. 983.30nP. against the defendant Union of India with costs throughout and affirming the rest of the decree of the trial Court.

N. L. SALOOJA WITH SURINDER SINGH, ADVOCATES, for the Appellant.

S. D. BAHRI, K. S. THAPAR, SURJIT KAUR, A. L. BAHRI AND V. P. PRASHAR, ADVOCATES, for the Respondents.

JUDGMENT

DUA, J.—The facts necessary for our present purpose have been stated in my referring order and, therefore, need not be repeated. The question requiring consideration by this Bench is whether notice under section 80 of the Code of Civil Procedure was required to be served on both the Eastern and Northern Railways or service on the Northern Railway alone is sufficient compliance with the provision of this section. It is admitted that a proper notice has been served on the General Manager of the Northern Railway, whereas no such notice has been served on that of the Eastern Railway.

Dua J.

Section 80, Code of Civil Procedure is in the following terms:—

“No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after

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notice in writing has been delivered to, or left at the office of—

- (a) in the case of a suit against the Central Government, (except where it relates to a railway), a Secretary to that Government;
- (b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;
- (c) in the case of a suit against a State Government, a Secretary to that Government or the Collector of the district;

and in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

In order to better understand its scope and effect, it is necessary also to advert to section 79 which provides for suits by or against Government. According to this section, in a suit by or against Government, the authority to be named as plaintiff or defendant, as the case may be, shall be:—

- (a) In the case of a suit by or against the Central Government, the Union of India and;
- (b) In the case of a suit by or against the State Government, the State.

Reading the two sections together, it is obvious that when a suit is instituted against the Central Government relating to a railway, it is the General Manager of that railway to whom or at whose office, a notice

in writing, as contemplated by section 80, may be delivered or left, as the case may be. The railway administered by the Government, it may be mentioned, is not required, to be named as a party to the suit. On behalf of the appellant it has been contended that this section contemplates service of notice on the General Manager of each railway which is intended to be made liable by the plaintiff. The argument is that liability is primarily and essentially that of the railway and the Central Government is made a defendant merely as representing the railway in question. If this premise is correct then there is certainly something to be said for the contention. The counsel has tried to get support for his argument from several reported decisions. A recent decision of a Division Bench of this Court in *Sunder Lal Brij Lal v. Union of India* (1), has been very strongly relied upon by Mr. Salooja and indeed this is his star authority. In the reported case, Chopra and Gosain JJ., after reproducing section 80 of the Code of Civil Procedure made the following observations:—

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“The section leaves no doubt that for the purposes of its provisions each railway administration owned by the Central Government is to be treated as a separate legal entity. If the suit against the Union of India is to be regarded as one relating to the Assam Railway, a notice under Section 80, Civil Procedure Code, ought to have been delivered to, or left at the office of the General Manager of Assam Railway. That having not been done, the suit would be defective for non-compliance with the imperative and explicit provisions of section 80, Civil Procedure Code. Notice against one Railway Administration of the plaintiff’s claim cannot be regarded as sufficient compliance with the provisions of the section to constitute a notice against the other Railway Administrations”.

The facts of this case may here briefly be stated. On 27th July, 1947, Mr. N. R. Aggarwal, consigned 65

(1) A.I.R. 1958 Punj. 149.

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of bags of brass scrap weighing 130 maunds of the value of Rs. 5,460 to the River Steam Navigation Company Limited at Dibrugarh Ghat (Assam) to be delivered to self at Jagadhri on the erstwhile N.W. Railway (then the E.P. Railway and now the Northern Railway). The Navigation Company passed on the goods to the Assam Railway at Amingaon on 31st July, 1947, for being transported by rail to the station of destination. The same day, the goods were despatched by a goods train for Naihathi, a railway station on the E.P. Railway. Thereafter the goods were to pass through the E.I. Railway before being delivered by N. W. Railway at Jagadhri. The goods do not appear to have reached Naihathi and, therefore, could not be delivered to the plaintiff. On 23rd April, 1948, a notice was served under section 80, Civil Procedure Code on the General Manager, E.P. Railway, and thereafter, a suit for the recovery of Rs. 7,280 on account of price of undelivered goods and damages was brought. In the plaint, the E.P. Railway was sought to be made liable on the ground that the goods had been received by it. The trial Court dismissed the suit holding that notice under section 77 of the Indian Railways Act and also notice under section 80, Civil Procedure Code, to E.P. Railway was not a sufficient compliance with the requirements of the section inasmuch as the notice did not disclose a cause of action, nor was it served on the other Railway administrations. On appeal the Division Bench took the view that if the plaintiff had succeeded in proving that the notice had been received by the Northern Railway, he would have every right to sue and demand compensation from the administration of that Railway, and the notice as well as the suit would, in that case, be free from any defect on the score of section 80 of the Code. On the record of that case, however, there was no evidence to prove or even to indicate that the goods had reached any station within the jurisdiction of E.P. Railway administration or had even been received by that administration. It was in the circumstances observed that notice on both the General Manager of the Assam Railway and the E.P. Railway was necessary. The attention of the Court was drawn to the following observations

of an earlier. Division Bench (Falshaw and Kapur JJ.), in *Salig Ram v. Dominion of India* (1), at page 45:—

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“Mr. Nand Lal Salooja for the Railway then urged that the suit is not properly framed as no suit could be brought against the E.P. Railway because the loss had occurred on the Jodhpur Railway and he relies on Section 80, Railways Act, 1890. In the first place, the suit has been brought against the Dominion of India, now the Union of India, which is the owner of both these Railways and secondly in their replication the plaintiffs had alleged that the loss had not occurred on the Jodhpur Railway, but had occurred on the E.P. Railway and there was no serious attack on this part of the plaintiffs’ case in the trial Court”.

But these observations were described to be merely obiter and, therefore, of no help. The question before us is whether the ratio of the decision in *Sunder Lal, Brij Lal’s case* lays down the legal position correctly.

Mr. Salooja has contended that the provisions of sections 77, 80 and 140 of the Indian Railways Act throw considerable light on the meaning to be placed on section 80 of the Code of Civil Procedure. Section 77 of this Act provides for notification of claims to refund of overcharges and to compensation for losses. So far as relevant for our purpose, it lays down that no person shall be entitled 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 6 months from the date of the delivery of the animals or goods for carriage by railway. Section 80 of the Act, which deals with suits for compensation for injury to through-booked traffic, so far as relevant for this case, provides that notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic, while

(1) A.I.R. 1953 Punj. 43.

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on the railway of another administration, a suit for compensation for loss, destruction or deterioration of goods, where the goods were booked through, over the railways of two or more railway administrations, may be brought either against the railway administration to which the goods were delivered by the consignor thereof, as the case may be or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred. Section 140 which provides for the mode of service on Railway administrations lays down that any notice or other document required or authorized 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 case of a railway administered 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.

At this stage, it is relevant also to refer to the definitions of the expressions "Railway" and "railway administration" or "administration" as given in section 3 of this Act. The word "railway" means a railway, or any portion of a railway for the public carriage of passengers or goods and includes:—

- (a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;
- (b) all lines of rails, sidings or branches worked over for the purpose of, or in connection with, a railway;
- (c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed

for the purpose of, or in connection with, The Union of
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- (d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway. The Landra
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The expression "railway administration" or "administration" in the case of a railway administered by the Government has been defined to mean the Manager of the Railway and includes the Government and, in the case of railway administered by a railway company, means the railway company.

Now so far as section 77 is concerned, it merely lays down that in order to sustain the claim mentioned in it, the claimant should prefer it to the Railway Administration within the prescribed period. This section appears to me *prima facie* to be intended to prevent and discourage stale and belated claims. The notice contemplated by it is really meant to enable the Administration to make prompt enquiry. I have not been able to appreciate as to how this section can throw any helpful light on the interpretation of section 80, Civil Procedure Code.

The language of section 80, Railways Act, also does not lend any substantial support to the appellant's contention. This section seems to me to be based on the principle that the Railway which accepts goods undertaking to deliver them safe, is an agent of the Railway over which the goods have to pass to reach the destination and *vice versa*, for, it permits a suit to be brought against either of the two Administrations. Now if this be the correct underlying principle of this section, then it would perhaps, to some extent, seem to go against the appellant's contention, for, either of the two Railway Administrations would be liable to be sued and notice to the Administration sued might from that point of view meet with the requirements of the statutory notice. But then this section proceeds on the assumption that each railway Administration over the Railway of which the goods have to pass is liable to be sued as a separate entity which

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does not seem to be the case when the Central Government becomes liable to be sued for discharging the liabilities of both the Railways. This apart, it is not easy to understand how section 80, Railways Act, can lend any support to the appellant's contention that section 30, Civil Procedure Code, contemplates notices to both the Railway Administrations in case of through-booked traffic. The two sections appear to have been intended to meet with different contingencies, and I am unable to get any valuable assistance from section 80, Railways Act, in support of the appellant's argument. Section 140 seems to me to be still less relevant or helpful in throwing light on the point in issue.

Coming now to section 80, Code of Civil Procedure, which has already been set out *in extenso*, it is clear from its language, read with section 79 of the Code, that when a suit relates to a railway, the notice contemplated by it is required to be served on the General Manager of that railway, though the suit is to be instituted against the Central Government named as the Union of India. The General Manager of the railway concerned would seem to be required to be served with the requisite notice as an agent of the Central Government defendant. Shri Salooja has argued that unless the plaintiff's case be that the goods in question were lost on Northern Railway, notice to the General Manager of Eastern Railway is also essential, for, in that case the liability would also be that of the Eastern Railway Administration. I do not find it easy to sustain this contention. This argument might have some validity when the various railways in this country were owned or administered by private Companies or when the two railways concerned are administered by different owners, who are both to be sued, but when, as is the case before us, both the railways are 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, then it is not easy to spell out from the language of section 80 of the Code a legislative intent of serving two notices on the two Railway Administrations. Section 80 of the Code appears to

contemplate one notice to the party against which a suit is intended to be instituted. In the present case, the suit has been instituted against the Central Government described as Union of India, as required by section 79 of the Code. As the suit relates to railway, the notice is to be served on the General Manager of that railway and this notice must be considered to amount to the requisite notice on the Central Government. It may here be stated that at the time of the accrual of the cause of action and also of the institution of the present suit, both the Eastern and Northern Railways were owned and administered by the Central Government, though for the purposes of management and administrative convenience different Managers have by some internal arrangement been appointed of these two railways. But then, does this circumstance necessitate two notices under section 80 of the Code? Shri Salooja would answer this question in the affirmative, basing his submission on the ground that the suit in the instant case must be considered to relate to two railways and not one. Clause (b) of section 80 of the Code, according to him, must be construed to contemplate two notices if the suit relates to two railways.

It would be pertinent at this stage to notice, in brief, the object, purpose and scope of section 80 of the Code. This section, though its terms have to be strictly complied with, must be construed with due regard to common sense and to the object with which it has been enacted. Its object, to use the words of S. R. Das, C.J., in the *State of Madras v. C.P. Agencies* (1), "is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for." I may also at this stage reproduce an instructive passage from the judgment of that eminent judge M.C. Mahajan J. (as

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(1) A.I.R. 1960 S.C. 1309.

The Union of India (he then was) in *State of Seraikella v. Union of India* (1), at page 266:—

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“Section 80 does not define the rights of parties or confer any rights on the parties. It only provides a mode of procedure for getting the relief in respect of a cause of action. It is a part of the machinery for obtaining legal rights, i.e., machinery as distinguished from its products. *Vide Poyser v. Minors* (2)”.

A notice required to be given under this section is clearly for the protection of the defendant concerned and he can also lawfully waive his right to the notice; *Vellayan Chettiar, etc., v. The province of Madras* (3).

I may also observe here that the provisions of notice under section 80 of the Code are not intended to be used as a trap for defeating the claimants' suits against the Government.

In the light of the object of this section, as just discussed, it is to be seen if two notices are mandatory in the instant case. The defendant against whom a decree is claimed is the Union of India or the Central Government which alone would seem to be entitled to notice. This position does not appear to admit of any serious doubt. Now the suit does indisputably relate to the Northern Railway on which the goods were short delivered and the plaint clearly shows it; notice has admittedly been served on the General Manager of this railway and, therefore, it must be considered to have been properly served on the Central Government. Service of notice on the General Manager of Eastern Railway would also, under the law, have been intended to achieve the object of effecting service of the statutory notice on the Central Government. This position too seems to admit of no serious controversy. Now if this be the correct position, then I fail to see why

(1) A.I.R. 1951 S.C. 253.
(2) (1881) 50 L.J. Ex. 555.
(3) A.I.R. 1947 P.C. 197.

service on the Northern Railway alone should not be considered to be proper compliance with the provisions of section 80, Code of Civil Procedure, even if it is assumed that the suit also relates to Eastern Railway, as contended by Shri Salooja: an assumption with which as at present advised, I am not inclined to agree. The object of section 80 of the Code apparently is to serve notice only on the defendant sought to be sued and not on all of its agents. It is, however, suggested that the Eastern Railway may be wholly unaware of the plaintiff's claim and, therefore, may not be in a position to report to the Central Government about the merits of the claim. I am completely unimpressed by this suggestion, for, it is exceedingly difficult to believe that a notice on the General Manager, Northern Railway, would not serve the purpose of putting the Railway Administration into motion for enquiring into the allegations contained in the notice. The appellant's suggestion seems to me to be not only highly technical and pedantic, but also without any sound basis from a practical point of view.

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The foregoing discussion leads me to hold that the view expressed in *Sunder Lal Brij Lal's* case is erroneous and unsound and the observations of the Division Bench in *Salig Ram's* case lay down the correct legal position.

It is only fair before concluding to make a passing reference to some of the other decisions as well, which were brought to our notice by Mr. Salooja in his attempt to get support for the view taken in *Sunder Lal Brij Lal's* case. In *Messrs Kanyaka Parameshwari Cloth Stores v. Union of India* (1), Barman J., while considering the scope of sections 77 and 80 of the Railways Act, observed that notice to one Railway Administration concerned is not sufficient to constitute notice to other Railway Administration in case of through-booked goods. The learned Judge disagreed with the view taken by the Madras High Court in *P. R. Narayanaswami Iyer v. Union of India* (2), and relied on certain decisions of the

(1) A.I.R. 1960 Orissa 154.

(2) A.I.R. 1960 Madras, 58.

The Union of Orissa, Patna and Andhra High Courts, which were also cited before us. These decisions are clearly no authority for the proposition that under section 80, Code of Civil Procedure, two notices are necessary as contended on behalf of the appellant. They are concerned with sections 77 and 80 of the Railways Act and, therefore, nothing more need be said about them.

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For the reasons given above, in my opinion, the notice served on the General Manager of the Northern Railway in the present case fully complies with the provisions of section 80, Code of Civil Procedure and the appeal, therefore, must fail which is hereby dismissed with costs.

Dulat, J. S. S. DULAT, J.—I agree.

Mahajan, J. D. K. MAHAJAN, J.—I agree.

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CIVIL MISCELLANEOUS

Before S. B. Capoor and Inder Dev Dua, JJ.

MANSA RAM,—Petitioner

versus

**THE DEPUTY COMMISSIONER, HISSAR AND OTHERS,—
Respondents.**

Civil Writ No. 1305 of 1961.

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Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Section 5(2)(a)(iii)—‘Market Committees in the block’—Meaning of—Residence within the block of some producer members of a market committee located outside the block—Whether makes it a Market Committee in the block—No Market Committee in the block—No member elected under section 5(2)(a)(iii)—Panchayat Samiti—Whether properly constituted without such a member.

Held, that the words “market committees in the block” as used in section 5(2)(a)(iii) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, mean the “market