

**Pradeep Kumar Vs. General Manager, Western Railway and 3 ors.**

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**Court :** Madhya Pradesh

**Decided On :** Feb-15-1994

**Reported in :** II(1995)ACC421

**Judge :** K.M. Aggarwal, J.

**Appellant :** Pradeep Kumar

**Respondent :** General Manager, Western Railway and 3 ors.

**Judgement :**

**K.M. Aggarwal, J.**

1. This appeal by the plaintiff is against the dismissal of his suit for damages against the Railway on the ground of non-delivery.

2. Certain books worth Rs. 10,700/- as per bill dated 18.4.1986 (Ex. P.2) were alleged to have been sent from Jaipur by Laxmi Book Binding Centre for being delivered to the appellant at Varanasi. The consignment of books was not delivered and, therefore, a suit for recovery of a sum of Rs. 22,500/- was filed by the plaintiff. The suit was resisted, inter alia, on the ground of non-service of notice under Section 78-B of the repealed Indian Railways Act. The objection prevailed and the suit was dismissed. Being aggrieved, the plaintiff has preferred this appeal.

3. After having heard the learned Counsel for the appellant, I am of the view that this appeal has no substance and deserves to be dismissed. A perusal of railway receipt dated 18.4.1986 (Ex. P. 1) would show that the consignment was booked on 18.4.1986 by Laxmi Book Binding Centre, Jaipur, for being delivered to one Pradeep, i.e., the appellant-plaintiff. One Dr. Bhagchandra Jain of Nagpur, sent a letter dated 24.7.1986 (Ex. P.3) addressed to the Station Master, Jaipur, complaining about non-delivery of the books. This Bhagchandra Jain was neither the consignor nor the consignee of the books. There is nothing on record to show that this letter was sent for and on behalf of the appellant (plaintiff). This letter was addressed to the Station Master instead of being addressed to the Railway Administration as mentioned in Section 78-B of the repealed Indian Railways Act read with the definition of 'Railway Administration' as given in Section 3(6) of the aforesaid. Act and, therefore, this letter dated 24.7.1986 by Dr. Bhagchandra Jain cannot be treated as a notice under Section 78-B of the repealed Indian Railways Act. The plaintiff also did not treat it as a notice under Section 78-B of the Act and, therefore, the subsequent notice which was sent for and on behalf of the appellant on 12.1.1987 was styled as a combined notice under Section 80 CPC and under Section 78-B of the repealed Indian Railways Act. It was not disputed that unless a notice under Section 78-B of the repealed Act was served on the Railways within a period of six months from the date of booking of the consignment, the Railways cannot be held liable for any loss due to non-delivery or short delivery of any consignment. In this view of the matter, I am of the view that the suit of the appellant was rightly dismissed by the Court below.

4. The learned Counsel for the appellant placed reliance in *Union of India v. Punjab State Co-operative S.A.M. Fodn. Ltd.* ; *Union Northern Rly. v. Firm Anis Khan* : AIR1981 All18 ; *Indian Iron and Steel Co. v. Union of India* : AIR1978 Cal46 ; *Samaratmal v. Union of India* : AIR 1959 MP305 and *Union of India v. Imperial Tobacco Co.* : AIR 1959 MP232 in support of his contention that the letter of Bhagchandra Jain could be treated as a notice under Section 78-B of the repealed Indian Railways Act. However, in none of these cases the notice of claim was served on any Station Master. Notice on commercial Superintendent of Railways was held to be sufficient compliance with Section 78-B of the Act in the peculiar facts and circumstances of those cases. I am, therefore, of the view that none of

these cases relied for and on behalf of the appellant is of any help to the appellant.

5. In the result, this appeal fails and it is hereby dismissed but without any order as to costs.

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