was incumbent upon him to join the other two trustees in the submission to arbitration. He failed to do so, and it seems to me, therefore, that his action was contrary to the express provisions of sections 43 and 48 of the Trusts Act.

For these reasons I would accept the petition, set aside the order of the Senior Sub-Judge and restore that of the trial Court. There will be no order as to costs.

The parties have been directed to appear before the trial Court on the 25th October, 1957.

B. R. T.

APPELLATE CIVIL.

Before Falshaw and Mehar Singh, JJ.

FIRM GULAB SINGH, JOHRI MAL,—*Plaintiff-Appellant.*

versus

UNION OF INDIA, NEW DELHI,—*Defendant-Respondent.*

Regular First Appeal No. 50-D/52.

1957

Sept., 26th

Indian Post Office Act (VI of 1898)—Section 6—Indian Post Office Rules, 1933—Rules 31 to 46-A, Rules 72 to 83-A and Rule 126—Liability of postal authorities in regard to uninsured and insured parcels—Extent of—Rule 76(2)—Effect of non-compliance—Rule 81—Liability of postal authorities—When arises—Postal authorities offering delivery of insured parcels in the condition received without allowing the consignor to prepare inventory—Consignor refusing to take delivery without making inventory—Whether at fault for not taking delivery—Post and Telegraph Guide—Whether an authentic book.

Held, that Rules 31 to 46A of the Indian Post Office Rules, 1933, relate to uninsured parcels in the case of which there is no liability of the postal authorities. These rules are, therefore, not relevant to determine the liability of the postal department in respct of insured parcels. The rules relating to insured parcels are contained in Part IV of the same Rules beginning with rule 72 and ending with rule 83-A. In the case of an insured postal parcel packing is to

meet the requirements of clause (2) of rule 76 and one effect of non-compliance with this clause is that the postal authorities can refuse to insure the parcel. The other effect is the question of liability of the postl authorities in regard to such a postal package which is dealt within rule 81. If the packing is in accordance with clause (2) of rule 76 the postal authorities are liable to pay compensation for the loss of the postal article or any of its contents or any damage caused to it in course of transmission by post under clause (e) of rule 81.

Held, that in this case the postal authorities put the consignor's representative in a position either to take the bottles as they were or not to take them. They were not agreeable to preparing an inventory with the true statement of condition of the parcels. In these circumstances the fault for not taking delivery lies not with the consignor but with the employees of the postal department and this consideration cannot weigh against the claim of the consignor.

Held, that the Post and Telegraph Guide is an authentic book as it is published under the authority of the Director-General of Posts and Telegraphs and reference to it also appears in rule 43 of the Rules.

Regular First Appeal from the decree of the Court of Shri Rameshwar Dayal, Commercial Sub-Judge, 1st Class, Delhi, dated the 16th day of May, 1952, dismissing the plaintiff's suit but ordering the parties to bear their own costs.

R. S. NARULA and P.C. KHANNA, for Petitioner.

BISHAMBER DAYAL and KESHAV DAYAL, for Respondent.

JUDGMENT

Mehar Singh, J.

MEHAR SINGH, J.—This is a plaintiff-firm's first appeal from the judgment and decree, dated 16th May, 1952, of the Commercial Subordinate Judge of Delhi, dismissing its suit for the recovry of Rs. 5,137-8-0 against

Union of India as damages for insured parcels sent through the Post Office.

The plaintiff-firm sent five insured parcels one No. 5 on 21st May, 1948, and four Nos. 36 to 39 on 22nd May, 1948, from Chandani Chowk Post Office, Delhi, to Kalba Devi Post Office, Bombay, for delivery to its branch at Bombay. The plaintiff-firm is manufacturer of *attar*. In the five parcels there were bottles of *attar* of the total value of Rs. 6,000. The details of the parcels are given in the amended plaint at page 6 of the printed paper-book. A letter (Exhibit P. 17), dated 25th May, 1948, was received by the plaintiff-firm that the insured parcels had been received in the office of the Presidency Postmaster in a leaking condition and the plaintiff-firm was asked to send somebody to take the delivery. The plaintiff-firm replied to that letter saying that an open delivery be given to the manager of its branch at Bombay. It at the same time wrote to its Manager Shanker Lal at Bombay to take open delivery. Accordingly Shanker Lal, who has appeared as plaintiff's witness, went to the General Post Office, Bombay, to obtain delivery of the parcels. He asked for open delivery because of the condition of the parcels, but that was refused. He refused to take the delivery. After that, the parcels were sent by the insurance section to the Dead Letter Office. There the same were opened and then on 19th July, 1948, a letter was addressed which letter is printed at page 83 of the printed paper-book, by the Manager of the Dead Letter Office to the plaintiff-firm giving details of the condition of each parcel and requiring the plaintiff-firm to take delivery of the same within twenty days from the receipt of the letter. Shanker Lal, the Branch Manager of the plaintiff-firm, wanted to measure the contents of the bottle of *attar* in the condition the same were after the

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parcels had been opened by the Dead Letter Office, but he was not allowed to do so, and again he refused to take delivery. It was after that the plaintiff-firm instituted the suit on 20th December, 1949, for recovery of Rs. 6,000 from the defendant. The learned trial Judge, during the trial, directed the plaintiff-firm to take delivery of the goods after preparing necessary inventory about the details of what was received by the plaintiff-firm. This was obviously with a view to minimise the damage. The delivery was taken by the plaintiff-firm and in view of the bottles and *attar* received by it and in view of the condition of the same, the plaintiff-firm revalued the loss it had suffered and put in an amended plaint, according to which the claim of the plaintiff-firm has been reduced to Rs. 5,137-8-0. There is no dispute about this figure now. The claim of the plaintiff-firm is based on damage to the parcels and consequent loss to it. The defendant has taken the defences that the parcels were available for delivery and the plaintiff-firm refused to take delivery within reasonable time, that the condition of the parcels outwardly was showing no signs of damage and there was no justification for the plaintiff-firm to refuse to take delivery, that there is no liability of the defendant in view of section 6 of the Indian Post Office Act, 1898, and clauses 39 and 81(2) of the Post and Telegraph Guide, and that the amount of damage claimed is not exactly what has been suffered by the plaintiff-firm.

The learned trial Judge found that the parcels were available for delivery immediately after 25th May, 1948, but the delivery did not take place because of the condition of the parcels, that the parcels were in a leaking condition and that condition arose during transmission of the same and when the parcels were in the possession and under

the control of the postal authorities, that the cloth wrappers were not torn nor were the wooden boxes broken, and that the amount of the damage claimed by the plaintiff-firm is actually the correctly assessed value of the loss, but that the defendant is not liable because it is exempt from liability under section 6 of the Indian Post Office Act, since the parcels were not packed in accordance with rule 35(2) of the Indian Post Office Rules, 1933. The suit has been dismissed leaving the parties to bear their own costs.

Section 6 of the Indian Post Office Act, provides—

> "6. The Government shall not incur any liability by reason of the loss, misdelivery or delay, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Central Government as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage unless he has caused the same fraudulently or by his wilful act or default."

The Central Government has made provision with regard to its liability having regard to the provisions of this section. Those provisions are to be found in the Rules. It has obviously no liability in the case of uninsured parcels, such parcels are referred to in Part II of the Rules beginning from rule 31 up to rule 46-A, in so far as the same are relevant to the present case. The learned trial Judge has relied upon rule 35(2) [which is substantially reproduced as clause 81(2), in.

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Section II, at page 23, of the Part I of the Post and Telegraph Guide, July, 1948]. It runs thus—

> "35(2). Liquids and substances which liquefy easily shall be despatched in a double receptacle. Between the first receptacle (bottle, flash, pot, box, etc.) and the second (which shall be a box of metal or of strong wood) some space shall be left to be filled with saw-dust, bran, or some other absorbing material in sufficient quantity to absorb all the liquid contents in the event of breakage."

The learned trial Judge has found that the packages in this case were not packed according to this sub-rule, but it is pointed out by the learned counsel for the plaintiff-firm that this sub-rule appears in Part II of the Rules under the heading 'Parcels' beginning from rule 31 onwards. His contention is that this sub-rule has no application to an insured parcel for it merely applies to an ordinary parcel intended to be sent through a Post Office. Sub-rule (2) of rule 42 provides that "if a parcel containing any of the articles mentioned in clauses (2) and (3) of rule 35 and in rules 36, 37, 38 and 39 is not packed in the manner prescribed therein, it shall not be forwarded". So that provision is made for refusing to accept a parcel and to forward it in the event of non-compliance with the provisions of clauses (2) and (3) of rule 35. It is clause (2) that has been invoked in this case by the learned trial Judge. Now, if this clause applies, then the authorities should have refused to forward the parcels and returned them to the plaintiff-firm in the beginning.

There is then Part IV of the same Rules beginning with rule 72 and ending with rule 83-A in so

far as it relates to insurance of postal articles having reference to inland postal articles. Rules 72 to 83-A deal with the insurance of inland postal articles. In these rules there is clause (2) of rule 76 which is in these terms—

> "76(2). Every parcel tendered for insurance must be packed carefully and substantially, with due regard to the nature of the contents and the length of the journey, and must be sealed with wax or lead, bearing a private mark, in such a way that it cannot be opened without either breaking the seal or leaving obvious traces of violation. Seals must be placed over each joint or loose flap of the covering of parcel; and, if string be used in packing, a seal must be placed on the ends of the string where they are tied. If a parcel contaimns gold or silver bullion or coins, it must be packed in a strong case of wood or metal with an outer covering of cloth or stout paper."

It is clear that in the case of an insured postal parcel packing is to meet the requirements of clause (2) of rule 76. This clause corresponds to subclause (1) of clause 123, in Section II, at page 33, of Part I of the Post and Telegraph Guide, July, 1948. In the same Section of the same Guide, there is clause 126 which reads thus—

> "126. *Failure to comply with condition*: Articles not properly packed or not fully prepaid or which do not comply with the conditions prescribed in clauses 123, 124 and 125 will not be insured."

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This Guide is published under the authority of the Director-General of Posts and Telegraphs and reference to it also appears in rule 43 of the Rules So that this is an authentic book. One effect of non-compliance with clause (2) of rule 76 is that the postal authorities can refuse to insure the parcel. Then the other effect is the question of liability of the defendant in regard to such a postal package. That is dealt with in rule 81 and in so far as that rule is material for the purposes of the present case it is produced below—

> "81. There shall be payable to the sender of an insured postal article compensation not exceeding the amount for which the article has been insured, for the loss of the postal article or any of its contents or for any damage caused to it in course of transmission by post:
>
> (The first proviso is not relevant) Provided also, that no compensation shall be payable—
>
> * * * * *
>
> (e) where the loss or damage was due to improper or insecure packing;
>
> (f) where there is no visible damage to the cover or seals;
>
> * * * * *
>
> * * * * *

The learned trial Judge has found that clause (f) of rule 81 has no application in the present case because it is an admitted fact that the parcels were leaking and were soiled with the *attar* liquid, but he has applied clause (e) of this rule read with

clause (2) of rule 35 and has come to the conclusion that as the packages were not packed according to clause (2) of rule 35, so under clause (3) of rule 81 there is no liability of the defendant. Rule 35 appears in Part II of the Rules and rules 76 and 81 appear in Part IV of the same. Rule 35 and the other connected rules in Part II deal with ordinary postal parcels. First Section of Part IV from rule 72 to rule 83-A deals with insurance of inland postal articles. For the purposes of rule 81, it is obvious that the method of packing that is to be considered is the manner of packing as provided in the Section relating to insurance of inland postal articles. The manner of packing in such cases is provided for in clause (2) of rule 76 and where packing is improper and insecure having regard to the provisions of that clause, the defendant is absolved from liability under clause (e) of rule 81. In consideration of clause (e) of rule 81, a rule like rule 35 cannot be picked up from another Part of the Rules not connected with rules on insurance of postal articles and then used to show that there is no liability under clause (e) of rule 81. So, in my opinion what has to be seen for the application of clause (e) of rule 81 is whether the packing was in accordance with clause (2) of rule 76.

The learned trial Judge has accepted the evidence of plaintiff's witnesses Shankar Lal and Nihal Chand, who have been dealing with similar packings of the plaintiff-firm for 15 or 20 years, and has come to the conclusion that the packing can neither be said to be improper nor insecure. The manner of packing of *attar* bottles has been described by these witnesses in this way that the bottles were first corked, thereafter they were sealed with sealing wax and then wrapped in a piece of paper. After that the bottles were covered with dry grass and then again wrapped in

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a piece of paper. There was a wooden box that was furnished with dry grass and the bottles wrapped, as described above, were then placed in the box, which was then closed and nailed and over it then a cloth wrapper was sewn and sealed. This manner of packing conforms strictly to what is required by clause (2) of rule 76 and the finding of the learned trial judge is obviously correct that the packages in this case were packed properly and securely and cannot be said to have been packed improperly and insecurely. It was only on consideration of clause (2) of rule 35 that the learned trial Judge found that the packings did not conform to the requirements of that clause, but I have shown that that clause has no application to inland insured postal articles, which are dealt with in a separate Part with complete rules relating to them including rule as regards the manner of packing. Obviously, therefore, as the packing was neither improper nor insecure, clause (e) of rule 81 has no application to the present case. Even clause (f) of that rule has no application, because, leaving aside any other evidence, there is the letter, dated 19th July, 1948, printed at page 83 of the paper-book, by the Manager of the Dead Letter Office which clearly shows that the parcels were soiled and leaking when in the Post Office at Bombay. Obviously the covers or seals, if any, were visibly damaged and there is no case for the application of clause (f) of rule 81. The defendant is not exempt from liability under rule 81 of the Indian Post Office Rules, 1933.

The learned counsel for the defendant has urged that letter from the Manager of the Dead Letter Office of 19th July, 1948, already referred to, shows that the parcels had been opened and delivery was offered after opening, but the representative of the plaintiff-firm refused to take

delivery and therefore, the plaintiff-firm is not entitled to any claim for loss. In any case the plaintiff-firm could have minimised the loss by taking delivery immediately in consequence of that letter. It is in the evidence of Shanker Lal, the plaintiff's manager at Bombay, that when, in consequence of that letter, he approached the Dead Letter Office for delivery, he was not given delivery after measurement of the contents of the bottles. It is true that in the case of three parcels some bottles were full and the contents of others had completely leaked out, but in the case of two parcels Nos. 36 and 39 there were some bottles that were only half full and were still leaking. Now, the representative of the plaintiff-firm could not possibly have properly taken delivery unless an inventory of what he was receiving from the postal authorities had been prepared with the complete and accurate measure of contents of the bottles. It is nobody's case that the postal authorities were prepared to give delivery of bottles that were still full and bottles that were completely empty, leaving out the bottles that were partly full. They put the plaintiff's representative in a position either to take the bottles as they were or not to take them. They were not agreeable to preparing an inventory with the true statement of condition of the parcels. In these circumstances the fault for not taking delivery in consequence of that letter lies not with the plaintiff-firm but with the employees of the defendant. This consideration does not weigh against the validity of the claim of the plaintiff-firm.

The consequence is that the damage to the insured parcels was done in the course of transmission and the loss proved to have been thus suffered by the plaintiff-firm is Rs. 5,137-8-0. This appeal

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succeeds and the suit of the plaintiff-firm is decreed for that amount with costs, throughout.

FALSHAW J.—I agree.

B. R. T.

APPELLATE CIVIL.

Before Khosla, J.

KASTURI AND OTHERS,—*Appellants.*

versus

MEHAR SINGH AND BACHAN SINGH,—*Respondents.*

1957

Sept., 26th

Execution Second Appeal No. 6(P) of 1956.

Code of Civil Procedure (V of 1908)—Sections 37, 38, 39 and 150—Court passing the decree ceasing to have territorial jurisdiction in the place where property is situate by reason of change in the territorial jurisdictions of the Courts—Execution applications filed in the Court having territorial jurisdiction at that time—Whether competent—"Court which passed the decree"—Interpretation of.

Held, that both the Courts which passed the decree and the Court which has been invested with the territorial jurisdiction of the first court are competent to entertain the application for execution and to execute the decree. This appears to have been the intention of the Legislature and the too narrow interpretation of the condition set out in section 37(b) would defeat rather than further the ends of justice. Section 37 enlarges the meaning of the expression "Court which passed the decree" and does not merely provide an alternative meaning to it.

Case law discussed.

Appeal under Section 47, of Civil Procedure Code, from the order of Shri Ranjit Singh Sarkaria, District Judge, Sangrur, dated 3rd February, 1956, affirming that of Shri Kahan Chand Kalra, Sub-Judge, II Class, Sunam, dated 15th July, 1955, accepting the objections and holding that this Court has no jurisdiction to entertain the Execution application.

D. S. NEHRA, for Petitioner.

DALIP CHAND GUPTA, for Respondents.