IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 271 of 2024

Indian Oil Corporation Ltd.

VERSUS

Union of India

For the appellant: Mr. Amit Kumar Nag, Adv.
Mr. Partha Banerjee, Adv.

For the respondent/UOI (South Eastern Railway): Mr. Pinaki Bhattacharyya, Adv.
Mr. Partha Chakraborty, Adv.

Last Heard on: February 06, 2026

Judgment on: May 22, 2026

Biswaroop Chowdhury,J:

The appellant before this Court was an applicant under Section 16 of the Railway Claim Tribunal Act 1989 and is aggrieved by the Judgement and Award dated 21-06-2016 passed by Learned Railway Claims Tribunal, Kolkata Bench in claim Application No. OA(III)/Kol/2013/0034 filed by the applicant/appellant.

The case of the applicant/appellant before Learned Tribunal may be summed up thus:

One racket of Naptha was loaded and booked EX-HDCB to I.O.C/Bahauli from 17-07-11 to 29.10.11 vide RRs. The local booking authority charged 20/RR surcharge whimsically total amounting to Rs. 8,67,595/-. Inspite of several letters representation and protest by IOCL authority to the Railway authorities against the said erroneous RR Surcharge the Railway authority did not consider IOCL against the illegal deduction of RR and regret the IOCL justified demand. Getting no other alternative to get the refund of illegally deducted 20/RR, Surcharge amounting to Rs. 86,7595/-, the applicant prayed for passing an award of Rs. 8,67,595/- with cost and interest 15% per annum from 17-07-11 till finalization of the case along with application fees Rs. 6805/- and advocate fees etc.

The Respondent Union of India contested the case by filing written statement. ISSUES were framed and evidence was adduced. Learned Tribunal upon considering the evidence and upon hearing the Learned Advocates for the parties by Judgment and Award dated 21-06-2016 was pleased to dismiss the claim case.

The appellant/applicant being aggrieved by the Judgment and Award passed by the Learned Tribunal has come up with the instant appeal.

Heard Learned Advocates for the parties. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Railway Circular dated 16-10-2007 applies to the case of the appellant. As per Goods Tariff No. 45, Part-I (VOL-II) which was given effect from 1st April 2007 in clause 12.0 thereof the abbreviation “OR” in Column No. 6 (Captioned as ‘Risk Rate’) was defined as ‘Owner Risk’. As opposed to the same the expression ‘RR’ was defined as ‘Railway Risk’. The concept was that if the consignment was booked with the endorsement ‘OR’ in the Risk Rate Column (Column No.6) the risk for the same would be covered by the owner, whereas if the booking was with the endorsement ‘RR’ under Column No.6 the risk would be of the Railways for which payment of 20% surcharge was levied by Railways.

Learned Advocate further submits that during the subsistence of Good Tariff No. 45, Part-I (VOL-III) the Railway Board issued circular dated 16th October 2007, universally replacing the endorsement ‘OR’ with ‘RR’. As such from the said date there would be no option for the consigns to book a consignment by depicting ‘OR’ under the Risk Rate Column but the consignor would be compulsorily have to book the goods as ‘RR’. In the said circular the product Petroleum Products and Gases, under which the commodity-in-question (Naptha) falls is under the ‘General Tariff Lines.’ Therefore as per the Circular the consignment had to be booked with endorsement ‘RR’ in Column-6 and would be free from levy of additional 20% surcharge. Learned Advocate also submits that the application does not fall within the purview of Order 2 Rule 2 of the Code of Civil Procedure 1908. The appellant has filed two claim case before the Railway claim Tribunal for two different consignments which were booked on two different dates and the amount of surcharge which was levied by the Railway was different for the two different consignments. Both the consignments have no relation to each other except the product which is 'Naptha'. It is submitted that both the consignments were booked on two different dates and the amount of surcharge deducted for two consignments were also different. Therefore both the disputes arose from different cause of action and are not similar.

Learned Advocate relies upon the following Judicial decisions:-

FMAT No. 237 of 2019.

Indian Oil Corporation VS Union of India.

High Court at Calcutta.

Learned Advocate for the respondent Union of India submits that the appellant/applicant M/S. Indian Oil Corporation Limited (MD) Kolkata filed a suit being No. OA. (III)/34/2013 on 19-03-2013 before the Learned Tribunal claiming refund of a sum of Rs. 8,67,595/- along with cost, interest, application fees and advocate fees. Learned Advocate further submits that subsequently the appellant M/S. Indian Oil Corporation Limited (M.D.) Kolkata filed another suit on the same day that is on 19.03.2013 for refund of 12 RR. Charge amounting to Rs. 1,14,05,071 on the same grounds as pleaded in the first suit and this second suit was numbered as OA (III)/35/13.

Learned Advocate also submits that suppression of material facts and documents are rampant in the pleading of both the suits, namely notice dated 23-08-2011 stipulate an amount of Rs. 8,67,595/- whereas the II (Index) is amount mentioned against the first suit amounting to Rs. 8,67,595/-. In the light of the facts and circumstances second suit being No. OA (III)/35/13 filed on 19-03-2013 is barred by Order 2 Rule 2 CPC.

It is submitted by the Learned Advocate that the provisions of Order-2 Rule 2 are offshoots of principle of law that there should be an end of litigation. No one ought to be vexed twice for the same cause. In the instant case both the suits were filed on 19-03-2013 and the allegation contained in the second suit would have been incorporated in the first suit itself. It is further submitted that two split suits based on same cause of action cannot be maintainable in law and the relief claimed in the second suit ought to have been included in the first suit. It is also submitted that proper court fees is not paid by the applicant on the amount claimed.

Before proceeding to decide the material in issue it is necessary to consider as to whether the Railway Authority wrongly charged 20/RR. Surcharge whimsically total amounting to Rs. 8,67,595/-.

It is the case of the appellant/applicant that total freight paid was Rs. 52,92,341/- out of which Rs. 8,67,595/- is charged, on the ground Rs. 8,67,595.32 which is RR charge is not applicable on petroleum products. The claim of the appellant/applicant is based on the circular dated 16-10-2007 being No. TCR/1078/2007/2 which is annexed to the application filed along with this Appeal.

The circular dated 16-10-2007 provides as follows:

‘Sanction of the Central Government is hereby accorded to replace ‘OR’ with ‘RR’ of the commodities mentioned below in Column 6 of the IRCA Goods Tariff No. 45 Pt. I (VOL-II).

a) General Tariff lines.
b) All commodities under the main commodity heads 1. Acids and Alcohols 2. Alloys and Metals; 3. Caustic Potash and Soda. 4. Cement; 5. Chemical Manures; 6. Clay and sand. 7. Foodgrain Flowers and Pulses, 8. Hydrogenated and other Edible Oils; 9. Iron or steel, 10. Mineral and Ores, 11. Metal scrap and Pig Iron 12. Oil Cakes and Seeds, 13. Petroleum products, 14 Soap, 15. Sugar, 16, Miscellaneous and,
c) Low Rated Tariff Lines.

   22. Division ‘A’- All Commodities under head Electrical appliances and fittings, Empty drums Jerrycomes and Barrels, Jagre Jute, Organic Manures, Vegetable oil pitches and Water.

   24. Division C-Boiler Components and Paper.

   25. Division D-Bamboos Brooms Coffee and Tea, Coir, Cotton and other Textiles; and IV and Insecticide fluid.

There will be no change in the class given in column 8. To illustrate after this change, Acids and Alcohols will be booked at 'RR' and charged at class 210 without levy of additional 20% surcharge.'

Thus from the bare reading of the circular dated 16-10-2007. 'RR'. has to be replaced with 'OR' and 20% surcharge cannot be imposed on petroleum product. Naptha was transported by Railway being an inflammable oil comes under General Tariff lines and is Covered by the circular dated 16-10-2007. Thus imposing of additional surcharge is bad in law. Although the circular was not before the Learned Tribunal for consideration but the Respondent Railway Authority having knowledge of the said circular ought to have brought to the notice of the Learned Tribunal for decision. Moreover respondent Railway Authority being State under Article 12 of the Constitution has the duty to see that lawful claims of any individual or institution are honoured without the said persons being put to hardship. In the instant case also the Respondent Railway Authority could have considered the representation of the Appellant for refund on the basis of circular dated 16-10-2007 if necessary upon giving the appellant an opportunity of being heard instead of relegating the appellant to Tribunal.

In the case of Indian Oil Corporation VS Union of India (supra) Hon'ble Division Bench of this Court observed as follows:

‘6. In order to decide the short issue involved, as to the legality of the levy of 20% surcharge, the relevant Circulars as well as GT Nos.45 and 46 of the IRCA are required to be examined.

7. Circular No.TCR/1078/2007/2 dated October 16, 2007 replaced “OR” with “RR” in Column No.6.

8. To appreciate such change, GT No.45, Part-I (Vol.-II), which was given effect from April 1, 2007, is to be looked into. As per Clause 12.0 thereof, the abbreviation “OR” in Column No.6 (captioned as “Risk Rate”) was defined as “Owner’s Risk”. As opposed to the same, the expression “RR” was defined as “Railway Risk”. The concept was that if the consignment was booked with the endorsement “OR” in the Risk Rate Column (Column No.6), the risk for the same would be covered by the owner, whereas if the booking was with the endorsement “RR” under Column No.6, the risk would be of the Railways, for which payment of 20% surcharge was levied by the Railways.

9. During subsistence of GT No.45, Part-I (Vol.-II), the Railway Board issued Circular No.TCR/1078/2007/2 dated October 16, 2007, universally replacing the endorsement “OR” with “RR”. As such, from the said date, there would be no option for the consignor to book a consignment by depicting“OR” under the Risk Rate Column but the consignor would compulsorily have to book the goods as “RR”.

10. Simultaneously, the Circular dated October 16, 2007 also remitted the additional 20% surcharge in case of “RR” consignments.

11. In the self-same Circular, the product "Petroleum Products and Gases", under which the commodity-in-question (Naptha) falls, was shown under the head "General Tariff Lines".

12. Thus, on and from October 16, 2007, the consignments had to be booked mandatorily with the endorsement "RR" in Column No.6 and would be free from levy of additional 20% surcharge.'

Now the issue for consideration is whether claim is barred under Order 2 Rule 2 CPC.

Order 2 Rule 2 of the Code of Civil Procedure provides as follows:

'*Rule-2 Suit to include the whole claim:-*

1) *Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*
2) *<u>Relinquishment of part of claim</u>-Where a plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*
3) *<u>Omission to sue for one of several reliefs</u>-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs but if he omits except with the leave of the Court to sue for all such reliefs he shall not afterwards sue for any relief so omitted.*

Explanation- For the purpose of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.'

Now upon plain reading of Order 2 Rule 2 of the Code of Civil Procedure it will appear that the intention of the said provision is to bring as far as possible all matters in dispute between the parties relating to same transaction to be disposed of in the same suit. Thus it intends to prevent multiplicity of suits in respect of same cause of action. The effect of Order II Rule 2 of CPC is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action from filing a second suit in regard to other reliefs based on the same cause of action. Second suit based on a different and distinct cause of action is not barred under Order II Rule 2 CPC.

In the instant case the appellant filed two claim cases with regard to two consignments. As each consignment agreement dispute gives rise to a particular cause of action it cannot be said that dispute with regard to both the consignment agreement is to be raised in one suit.

Moreover Railway Tribunals are not bound by provisions of CPC but by the principles of Natural Justice thus rigid view in this regard may not be taken.

In the facts and circumstances this Appeal FMA 271 of 2024 stands allowed. Judgment and Award dated 21-06-2016 passed by Learned Railway Claim Tribunal Kolkata Bench Kolkata in Claim Application No. OA

(III)/Kol/2013/0034 is set aside. The Respondent Railway Authority is directed to refund additional 20% surcharge an freight to the appellant amounting to Rs. 8,67,595/- along with interest @6% from date of filing of claim application till today.

Such payments shall be made within 8 weeks from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)