
(1953) 08 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 401 of 1949

Balli Mal and Others

APPELLANT

Vs

Dominion of India

RESPONDENT

Date of Decision : 21-08-1953

Acts Referred:

Limitation Act, 1908 — Article 31, 49

Citation : AIR 1954 P&H 44

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : C.L. Aggarwal, for the Appellant; Partap Singh, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This is an appeal brought against an appellate decree of District Judge Dalip Singh dated 8-1-1949 confirming the decree of the trial Court whereby the suit of the plain-tiff was dismissed on the ground of limitation.

2. The goods were despatched by Gowardhan Das Jai Lal of Rawalpindi to Panipat on 4-8-1944 and when the plaintiff who is the assignee of the Railway Receipt went to receive goods at the Railway Station he was offered six "boras" of inferior wool weighing ten maunds on 4-10-1944. This he refused to accept because the goods were not his and they were of an inferior quality. A suit for the recovery of the price of goods was brought on 14-1-1946, but the suit was dismissed on the ground that Article 31, Limitation Act applied and that the date when the goods ought to have been delivered was 4-10-1944. This finding was confirmed on appeal to the District Judge.

3. Mr. Chiranjiva Lal Aggarwal has in support of the claim of the plaintiff put forward two arguments (1) that Article 49, Limitation Act applies, and (2) that even under Article 31 the period of limitation begins from the date when the Railway finally refused to deliver the goods.

4. In support of the first argument Mr. Chiranjiva Lal Aggarwal relies on a

judgment of Lord-Williams J. in -- "Golab Rai Paliram v. Secy, of State" ILR (1941) Cal 160 (A), where the learned Judge said that the Railway administration cannot be absolved from the onerous responsibility of common carriers and at the same time have the benefit of the short period of limitation expressly provided by Article 30 for traders who are burdened by the law with such obligations. He then referred to Article 49, Limitation Act and was of the opinion that where two Articles of the Limitation Act apply the plaintiff is entitled to avail himself of the longer period. Reliance was there placed on -- Tofa Lal Das Vs. Syed Moinuddin Mirza and Others, In -- "Secy, of State v. Golab Rai" AIR 1938 Cal 298 (C), it was held that the word "carrier" included railways whether controlled by the State or not and the same view was held by King J. in -- F.D.R. Footwear Vs. N.W. Railway and Others and by Mukerji J. in -- Alamgir Footwear and Co. Vs. Secy. of State and Another,

5. With great respect to the opinion of Lord-Williams J. I am unable to agree with that part of his judgment where he has held that Article 49 is applicable to cases where claim is made against a railway for compensation for non-delivery of goods. Article 30 provides:

"30. Against a carrier One year. When the loss or for compensation for losing injury occurs." or injuring goods. And Article 31 is as follows.

"31. Against a carrier One year. When the goods for compensation for non ought to be delivered, delivery of, or delay in delivering." delivering goods.

These Articles are both applicable to carriers and in the present case the claim is for compensation for non-delivery and therefore of the two Articles Art 31 will be applicable & Article 49 is not applicable on the ground that where there is a specific Article applicable the general will be excluded on the principle "generalia speciali- bus non derogant". In a judgment of the Madras High Court in -- "Jaldu Venkatasubba Rao v. Asiatic Steam Navigation Co., Calcutta" AIR 1916 Mad 314 (FB) (F), it was held that a suit against a carrier for non-delivery of goods is governed by Article 31 and the principle "generalia specialisms non derogant" was held to apply.

This judgment was followed by a Division Bench of the Lahore High Court in -- "Secy, of State v. Dunlop Rubber Co." AIR 1925 Lah 478 (G). With the exception of the judgment of Lord-Williams J. in -- "Golab Rai's case (A)", I am not aware of any other judgment where the inapplicability of Article 31 was based on the ground that the Railways were not carriers like traders and the law which was applicable to the Railways on that ground. I am therefore of the opinion that the Article applicable is Article 31, Limitation Act.

6. The other question that arises is as to what is the "terminus a quo" for such suits. The Article states "when the goods ought to be delivered". The date when the goods ought to be delivered is, in my opinion, a question of fact in each case depending upon all the circumstances of the case; and in this particular case both Courts have held that they ought to have been delivered on or about

4-10-1944. Mr. Chi-ranjiva Lal Aggarwal has referred me to several cases where it has been held that the "terminus a quo" will be the date when the Railway finally refused to deliver the goods. With very great respect to the learned Judges who have decided these cases, I cannot see how the words "ought to be delivered" can mean the date when the Railway finally refuses to deliver the goods because for the goods to reach a particular Railway Station would depend on many factors taking into account the rush on that Railway, the type of goods and other circumstances in regard to the carriage of goods.

Those are circumstances which I can understand to be applicable in the matter of deciding the words "ought to be delivered" but a determination on the basis of those facts will be a question of fact. But to say that the time begins to run from the date when the Railway informs that they have lost the goods is in my opinion not warranted by the language of the statute. It is not necessary for me to refer to the observations of these various learned Judges and I prefer to follow the judgment of the Lahore High Court in --- "AIR 1925 Lah 478 (G)".

7. In my view therefore the Courts below have rightly held that the suit is barred by time. I would therefore dismiss this appeal but in the circumstances of this case where the Railway has been trying to put off the plaintiff the Railway is not entitled to any costs and the parties will bear their own costs throughout.