

(1949) 12 CAL CK 0021
In the Calcutta High Court
Case No : A.F.A.D. No. 218 of 1946

Basanta Lal

APPELLANT

Vs

Comrs. for the Port of Calcutta and Others

RESPONDENT

Date of Decision : 16-12-1949

Acts Referred:

Calcutta Port Act, 1890 — Section 112, 142
Railways Act, 1890 — Section 77

Citation : AIR 1951 Cal 460

Hon'ble Judges : R.P. Mookerjee, J

Bench : Single Bench

Advocate : Dwijendra Krishna Dutta, for the Appellant; Chandra Sekhar Sen and Ajoy Kumar Basu, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Mookerjee, J.—The pltf.-applt. had despatched on 14-4-1943 a consignment of goods consisting of 264 tins of cocoanut oil from Sahebbazar, a station on the Calcutta Port Rly. to Bankura a station on the Bengal Nagpur Ry. On April, 23, delivery was obtained by the consignor as the goods had been booked to self & it then transpired that 44 of the tins had been cut open & were completely empty. The total quantity of oil of which delivery could not be obtained was assessed before delivery of the remaining tins. On 6-4-1944, the present suit was filed claiming damages for the loss of the quantity of oil which had not been delivered. Before the suit was filed notice u/s 77. Railways Act, had been served on 15-1-1944. The claim was preferred against the Comrs. for the Port of Calcutta as also the Bengal Nagpur Rly. Administration & during the pendency of the suit the Governor-General in Council was also brought on the record as it was stated that the administration of the Bengal Nagpur Rly. had been taken over by, Govt. The Comrs. of the Port, pleaded that the loss or the damage had not occurred when the wagon in question was in the custody of this dept. Allegations of negligence & misconduct were also denied. It was further stated that as the consignment was covered by Risk Notes (A) & (B) & the wagon had been loaded

by the consignor himself, the present action was not maintainable. Defence was also entered on behalf of the Administration for the Bengal Nagpur Ry, & subsequently by the Governor General in Council, but the defence as entered by this deft, need not be stated as the two Cts. have come concurrently to the conclusion that the loss did not occur while the wagon was in charge of the Bengal Nagpur Rly. Administration. The suit was decreed in part against deft. 1 alone.

2. An appeal was taken by the Comrs. to the Ct. of the Subordinate Judge, Bankura. During the hearing of the appeal, a new point was taken on behalf of the applt. It was maintained that the pltf.'s claim was barred u/s 142, Calcutta Port Act, III [3] of 1890 as limitation had begun to run from 23-4-1943 & the present suit had not been filed within three months from that date. The learned Subordinate Judge considered whether the point of limitation could be raised at the appellate stage & having found in favour of the deft. applt. the claim was found to have been barred. The suit was accordingly dismissed. The pltf. has preferred the present appeal.

3. It is contended on behalf of the applt. in the first place that the provisions contained in Section 142, Calcutta Port Act, are not attracted in the present case as u/s 112 of the same Act the provisions of the Indian Railways Act, 1890 are made applicable as also certain provisions of the Indian Contract Act. It is urged that Section 77, Railways Act, would be applicable. Under that section, notice in writing is to be given within six months from the date of the delivery of the goods which were placed in charge of the Rly. for carriage Section 142, Calcutta Port Act, which limits the period of limitation to three months only is, therefore, wholly inapplicable. Article 31, Limitation Act, will be attracted & the suit is accordingly within time.

4. Section 112, Calcutta Port Act, is in the following terms :

(1) The responsibility of the Comrs. for the loss, destruction or deterioration of animals or goods whether landed for import or received for export or for carriage by Rly.,

during such time as the same remain in the possession or under the control of the Comrs., shall, subject to the other provisions of this Act & in the case of animals or goods received for carriage by rly , subject also to the provisions of the Railways Act, 1890, be that of a bailee under Sections 151, 152 & 161, Contract Act, 1872, omitting the words "in the absence of any special contract" in Section 152, of that last mentioned Act.

(2) With the previous sanction of the Central Govt. & under such circumstances & conditions as the Central Govt. may prescribe, the Comrs. may enter into an agreement relating to animals or goods landed for import or received for export or for carriage by rly., which may impose upon the Comrs. greater responsibility than that imposed by Sub-section (1)

(3) Every such agreement must be in writing & must be signed by, or on behalf of, the Comrs.

5. It is contended on behalf of the applt. that as provided in para. 3 of Sub-section (1) of this section the provisions of the Railways Act are attracted. It however need be pointed out that the provisions contained in the Railways Act are attracted "subject to the other provisions of the Act." It will have to be considered, if necessary, whether the presence of these words still make the provisions contained in Section 142, Calcutta Port Act, applicable, but Mr. Sen., appearing on behalf of the resps. points out that Section 112 refers only to "the responsibility of the Comrs. for the loss, destruction & deterioration of animals or goods" & it is only for determining the nature of the responsibility that the relevant provisions of the Railways Act will be attracted. The opening words of Section 112, Calcutta Port Act, make it abundantly clear as to the purpose for which the provisions of the Railways Act or the particular sections of the Contract Act as are referred to are made applicable & not that the entire Railways Act is attracted. It is only for the purpose of making it clear that the responsibility of the Comrs. of the Port of Calcutta, while receiving or carrying goods, is that of a bailee as provided in Sections 151, 152 & 161, Contract Act, that S. 112 has been introduced. This section does not lay down any rule either for the service of a notice far less determine the period of limitation within which actions have to be brought. It is only the nature of the responsibility which is to be determined according to the terms contained in para. 3 of Sub-section (1) of this section.

6. If this interpretation of Section 112 be not adopted, there would arise anomalies which it may be difficult to resolve. If it were to be accepted that Section 77, Railways Act, requiring a notice for any loss for which compensation is claimed to be given within six months is calculated to either abrogate the provisions contained in Section 142, Calcutta Port Act altogether or to modify the period mentioned therein extending the terms of three months to six months that would not be either reasonable or justified. It would have been difficult to modify the provisions contained in Section 142 with reference to the provisions as appearing in Section 77, Railways Act. The interpretation put on Section 112, Calcutta Port Act, on behalf of the pltf. applt. cannot be accepted.

7. It is next contended that even if Section 142, Calcutta Port Act, be applicable, the Act complained of is not one which is founded on "anything done or purporting or professing to be done in pursuance of this Act." The Cts. below have found that the loss complained of had occurred after the goods had been placed in the wagon at Sahebbazar Station & before the latter was sealed at that station. The seals were found intact when the goods arrived at Bankura. The learned Subordinate Judges state that the damage was done at the Sahebbazar Rly. Station by the servants of that station. The servants of the port Rly. Administration were therefore found to be guilty of misconduct.

8. It is contended on behalf of the pltf. applt. that a claim which is founded on such misconduct cannot be taken to be arising out of any act which had been

done or had been purported to have been done in pursuance of the Act. No doubt a theft cannot be deemed to be an act perpetrated in pursuance of any provisions of the Calcutta Port Act.

9. The word "purporting" means intending to mean. This implies that though a particular act is not strictly according to law, one may still intend it to appear as if it is according to law so far as act done in a public capacity is concerned. It is only the use of the word "purporting", but the addition of the word "professing" as appearing in Section 142, Calcutta Port Act that makes the implication even wider than when the word "purporting" only is used. My attention has not been drawn to any decision interpreting Section 142, Calcutta Port Act, determining the implication of the words "purporting or professing to be done." Reference however may be made to the provisions contained in Section 80, C. P. C , requiring notice to be given against the Govt or a public officer "in respect of any act purporting to be done by such public officer in his official capacity". Although there had been some difference of opinion as to the implication of the words used in this section the current view of this Ct. is to be found in *Dakshina Ranjan v. Omar Chand* 50 Cal 992: (+) a Bench decision of this Ct. where it was held that a wrongful arrest, even though mala fide, was an act purporting to be done by the deft, as a public officer in his official capacity. Reliance was placed upon an earlier decision of this Ct. in *Jogendra Nath v. J.C. Price* 24 Cal. 584, where Macpherson & Ameer Ali, JJ. observed:

"we are not aware of any instance, certainly no such case has been cited to us, in which it has been held that the section does not apply to the case of a public officer charged with a tortuous act done by him in his official capacity. The section does not seem to us to warrant the drawing of any distinction between acts of this kind done inadvertently or otherwise."

The contrary observations by Fletcher J in *Peary Mohan Das v. Weston* 16 C.W. N. 145 : (13 I. C. 721 : 13 Cri.L. J. 65) referred to by the applt. were made relying on a passage in *Shahunshah Begum v. Fergusson* 7 Cal. 499 where the acts done by public officers were distinguished & explained. Similar view had been expressed by the Madras H. C. in *Samanthala Koti Reddi Vs. Pothuri Subbiah and Others*, . as also in *Abdul Rahim v. Abdul Rahin* 46 ALL. 884 : (A. I. R. 1924 ALL. (51), *F. H. Wilson v. Nathmull* 59 M. L. J. 501 : (A. I. R. 1930 Mad. 458), *Parvateppa, Mallappa v. Hubli Municipality* 39 Bom. L. R. 381 : (A. I. R. 1937 Bom. 491).

10. The expression "purporting or professing to be done" in Section 142, Calcutta Port Act, cannot be interpreted to exclude acts which are either improper or even mala fide. Further the claim against the Port authorities is based upon their responsibility for the loss or destruction of goods which had been received by them for carriage by Rly. It is their liability as a bailee which is the basis of the claim in the present case. Even if in the discharge of the statutory duties any loss occurs, whether by a mala fide act on the part of some one or other serving under the Administration or otherwise, that by itself will not take the case out of

the provisions of Section 142, Calcutta Port Act.

11. The opening words of Section 142, Calcutta Port Act, further make no distinction between particular "types of cases, but the period of limitation is made applicable to all suits irrespective of the nature of the claim or the parties.

12. The suit, therefore, was rightly found to be barred u/s 142, Calcutta Port Act. Had the suit not been found to be barred, in view of the concurrent findings by the Cts. below that there had been mala fide acts on the part of the servants of the deft. the deft. would have been liable for the same.

13. The appeal is accordingly dismissed. In view of the special circumstances of the case & as the point of limitation had not been taken in the trial Ct. each party will bear his own costs throughout.

14. Leave to appeal under Clause 15, Letters Patent, has been asked for & is granted.