

(1960) 07 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 595 of 1955

Firm Gokal Chand Gian Chand and Co., Amritsar and Another	APPELLANT
Vs	
Punjab National Bank Ltd., Amritsar and Others	RESPONDENT

Date of Decision : 28-07-1960

Acts Referred:

Limitation Act, 1908 — Article 120, 89

Citation : AIR 1961 P&H 180

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : F.C. Mital and Prem Chand Jain, for the Appellant; S.L. Puri, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—The only question in this second appeal is whether the suit is within limitation. Both the Courts below have held that the suit is barred by time. It is no longer open to the appellant to contend in view of the concurrent decisions of the Courts below that the relationship between the parties is that of principal and agent. The present suit is for accounts. The contract of agency was with regard to certain bales of cloth which were shipped from New York and which had to be cleared from the Karachi port and were to be sent to the plaintiff's nominee by the defendant Bank. It is common ground that the goods were cleared and handed over to the nominee of the plaintiff on the 8th of July, 1948, Therefore, the contract of agency came to an end on that date. Number of differences were raised to the suit. The only one that really matters is the defence of limitation. It has been held by both the Courts below that Article 89 of the Indian Limitation Act applies to the facts of the present case and the suit is barred by time. Dissatisfied with this decision, the plaintiff has come up in second appeal to this Court.

2. It is contended by learned counsel for the appellant that the Article which governs the present case is Article 120 of the Limitation Act. Article 120 is a

residuary Article and will only apply if the case does not fall under any specific Article in the first schedule. In my opinion Article 89 is the precise Article, which governs the case and therefore the Courts below were right in holding that the suit is governed by Article 89. Article 89 is in these terms-

"89. By a principal against his agent for movable property received by the latter and not accounted for.

Three years.

When the account is during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates."

and from its plain reading no other conclusion is possible. It is then contended that even under Article 89 the suit is within limitation. According to learned counsel, refusal to render accounts was on the 22nd of July, 1949, and the present suit, which is filed on the 8th of July, 1952, is well within time. There are two terminus a quo provided in Article 89-

(1) when the account is during the continuance of the agency, demanded and refused; and

(2) where no such demand is made when the agency terminates.

Learned counsel contends that the suit falls under the first terminus a quo. I am unable to agree with this contention. This argument can only succeed if on the date when the account was demanded and refused, the agency was continuing. In this case, the agency was to clear the goods from Karachi Port and deliver them to the nominee of the plaintiff. Both the clearing and the delivery were completed by the 8th July, 1948, and as such the agency being for a particular purpose and that purpose having finished, came to an end on the 8th of July, 1948. The demand for accounts on the 22nd of July, 1949, cannot be said to be a demand at a time when the agency was continuing.

Therefore, the first terminus a quo does not cover the case. Far this contention, learned counsel has relied on two decisions reported as Babu Ram v. Ram Dayal ILR All 541 and W. R. Fink v. Buldeo Dass ILR Cal 715. In both these cases, it was held that in a contract for agency for the sale of goods the agency continued up to the date when the price of the goods is paid. Even accepting these authorities as laying down the correct rule of law, they do not help the plaintiff because, here the entire purpose of the agency was finished on the 8th of July, 1948 and nothing further had to be done, and the fact that merely accounts had to be rendered would not extend the period of the agency. Moreover, both these decisions were dissented from in decisions reported as Ruchiram Sukha Nand v. Charan Das AIR 1928 Lah 833, Venkatachalam Chetty v. Narayanan Ghetty ILR 39 Mad 376: (AIR 1916 Mad 281), Gordhandas v. Firm of Gokal Khataoo AIR 1926 Sind 264 and I am inclined to follow the Madras and Lahore decisions in preference to the Allahabad and the Calcutta decisions.

3. So far the second teminus a quo is concerned; the period of limitation starts running from the date, the agency terminates, in this case the 8th of July, 1948, and it is not disputed that from that date, the suit is clearly barred by time.

4. For the reasons given above, this appeal fails and is dismissed. In the circumstances of the case, I will make no order as to costs in this Court.