
(1961) 06 CAL CK 0030
In the Calcutta High Court
Case No : A.F.A.D. No's. 558 to 560 of 1956

Himmatsinghka Timber Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-06-1961

Acts Referred:

Limitation Act, 1908 — Article 31

Citation : AIR 1962 Cal 494

Hon'ble Judges : S.K. Niyogi, J

Bench : Single Bench

Advocate : Kamjit Mookerjee, Prodyot Kumar Banerjee and Aditya Narayan Roy, for the Appellant; Bhabesh Narayan Bose, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Niyogi, J.—These three appeals are at the instance of the plaintiff M/s. Himmatsinghka Timber Ltd. and arise out of three suits for recovery of compensation from the Union of India representing the Eastern Railway and the North Eastern Railway for short delivery of goods in respect of three different consignments.

2. The facts of the case about which there is no dispute may shortly be stated as follows : The Range Officer of the Forest Department, Government of Assam, at Rangapahar crossing made over three different consignments of hard wood swan timber to the North Eastern Railway for carriage and despatch to Ultadanga Railway Station on the Eastern Railway for delivery to the consignee, namely, the plaintiff company. The first consignment consisted of 2796 pieces of timber and measured 900.16 cubic ft. and this was booked under R. R. 485790 and Invoice No. 2, both dated 9-3-1951. The second consignment consisted of 1797 pieces of timber and measured 642.08 cubic ft. and was booked under RR 485795 and Invoice No. 2 both dated 4-4-1951. The third consignment consisted of 2377 pieces of timber and measured 853.07 cubic ft. and was booked under RR 485796 and Invoice No. 3 both dated 5-4-1951. Admittedly, the plaintiff

company go short delivery in respect of the above three consignments. Thus there was short delivery of 496 pieces of timber measuring 259.81 cubic ft. in respect of the first consignment. There were similarly a short delivery of 576 pieces of timber measuring 313.44 cubic ft. in respect of the second consignment and short delivery of 494 pieces of timber measuring 326.74 cubic ft. in respect of the third consignment.

3. The consignments were thus booked under what is called LU condition, that is, the loading and unloading of wagons were the responsibility of the consignor and the consignee respectively. The plaintiff company instituted as many as three suits being Money Suits Nos. 15 of 1954, 16 of 1954 and 17 of 1954 in respect of the above three consignments claiming various compensations; after service of notices u/s 77 of the Indian Railways Act and Section 80 of the Code of Civil Procedure. The suits were contested by the defendant Union of India almost on identical grounds. It was thus contended that as the consignments were booked under LU condition, the Union of India could not be made responsible for the alleged short supply. It was next contended that no valid and Sufficient notices u/s 77 of the Indian Railways Act and Section 80 of the CPC had been served in these cases. It was lastly contended that the suits were all barred by limitation. The suits were heard analogously and there were joint appeals from these three suits.

4. All the three suits were decreed by the learned trial Court. On appeal, the learned Court of appeal below reversed the judgment and decree passed by the learned Munsif in the three suits and dismissed all the suits.

5. The learned lower appellate Court held that no valid and sufficient notices u/s 77 of the Indian Railways Act had been served upon the defendant and that the suits were liable to be dismissed on that ground alone. It, however, held that although the consignments were booked under LU condition, the goods were transhipped at Mokamaghat from the meter gauge railway to the broad gauge railway and that at the time neither the consignor, nor the consignee, nor any one on their behalf was present when such transhipments were made by the railway people. The railway people at Mokamaghat had, therefore, an opportunity to find out as to whether the three consignments contained the goods they purported to contain and in this view of the matter the learned Court of appeal below held that the Union of India could not be absolved from liability on account of shortage notwithstanding the fact that the consignments were booked under "LU" condition.

6. On the question of limitation the learned Court of appeal below held that all the suits would in the facts and circumstances of the case, be barred by limitation, under the provisions of Article 31 of the Indian Limitation Act.

7. Mr. Bose appearing for the defendant, Union of India, concedes that they do not press their objection as regards service of notice u/s 77 of the Indian Railways Act. The finding of the Court of appeal below on the question of liability

of the Union of India on account of shortage owing to the fact that there was no sufficient evidence On record to show how the transhipments were made at Mokamaghat is also not challenged. So, the only question for decision before this Court is whether the suits will be held to be barred by limitation.

8. It will be necessary for a proper determination of this question to get certain dates. It appears from evidence that the first consignment was booked by the consignor on 9-3-1951 and that the goods arrived at the destination when short delivery was, given on 3/4th April, 1951. The second consignment was booked on 5-4-1951 and the date of arrival at the destination is 27-4-1951-Again the third consignment was booked on 5-4-1951 and the date of arrival at the destination was 28-4-1951. After such shortages were found, short certificates were granted to the consignee, the plaintiff company. After discovery of such shortages in respect of the first consignment, messages were sent from the destination station to various places On 3/4-4-1951 and M.G.R. record was also made on 9-5-1951. In the case of the second consignment messages relating to short delivery were despatched to various places from the destination station on 26-4-1951 and the M.G.R. was made on 14-5-1951. Similarly, in the case of third consignment messages were sent on 26-4-1951 and M.G.R. was made on 10-5-1951 (This will appear from Ext. O series and N series).

9. In respect of the first consignment which is the subject-matter of Money Suit no. 15 of 1954, the plaintiff company corresponded with the railway people with regard to the fact of short delivery and the first such letter was written on 5-4-1951 (Ext. 29) which is as follows :

"Dear Sirs,

We beg to inform you that we have received only 2302 pcs. against the above consignment as counted by your Tally Clerk, details below:

(a) For wagon No. BN 33922 on 3-4-51 ? 1300 pcs.

(b) For wagon No. GIP 6178 on 4-4-51 ? 1002 pcs.

2302 pcs.

So please arrange to deliver us the balance of 494 pcs. which is still due.

Thanking you.

Yours faithfully, Sd/-"

10. Thereafter the notice u/s 77 of the Indian Railways Act was served on the Chief Commercial Manager (Claims) E. I. Rly., On 12-4-1951. The letter runs as follows :

"Dear Sir,

Re: Ex Rangapahar Crossing to Ultadanga R/R No. 485790 Inv. 2 dated 9-3-51 covering despatch of 2796. pieces H. W. Sawn timber.

We regret to inform you that we have not received 494 pieces mg. 259.81 cft. out of the above consignment. We presume these pieces are missing in course of transit and we have suffered loss thereby. We are therefore, preferring this claim to you for recovery of Rs. 974/13/- being the value of these missing pieces @ Rs. 3/12/- per cft. u/s 77 of the Indian Railways Act, We may note here that our representative by his letter No. SP/159/51 dated 5-4-1951 (a copy whereof is attached herewith) has already requested your Head Goods Clerk, Ultadanga Railway Station to arrange for delivery of the balance timber of the consignment. We would be grateful if you kindly pay us the amount in satisfaction of our claim at an early date.

It may be stated here that we are preferring a separate claim for refund of excess freight wrongly collected from us for the above consignment.

An early reply will be greatly appreciated.

Thanking you.

Yours faithfully, Sd/- (P. Chatterjee) (For Himmatsinghka Timber Ltd.) 12/4"

11. It will thus appear from the contents of the notice that claim was being laid on behalf of the plaintiff company for compensation in respect of the goods thus non-delivered, before the Railway administration. In this notice also reference was made to the previous letter. In reply to the said notice, the plaintiff company received a letter, dated 21-4-1951 from the Deputy Chief Commercial Manager, Assam Railway, to the effect that the letter was receiving attention. Similar letter, dated 28-4-1951, was also received by the plaintiff company from the Superintendent, Chitpur Area, Chitpur, E. I. Railway. The next letter which is important for our purpose is letter dated 21-5-1951, written by one P. Chatterjee on behalf of the plaintiff company and that was to the following effect:

"Dear Sir,

Re : Ex Rangapahar Crossing to Ultadanga R/R No. 485790 Inv. no. 2 dated 9-3-1951 covering despatch of 2796 pcs. H. W. Sawn timber.

We regret to inform! you that we have not received 494 pcs. mg. 259.81 cft. out of the consignment. We presume these pcs. are missing in course of transit and we hence suffered loss thereby. We are, therefore, preferring this claim to you for recovery of Rs. 974/13/- being the price of these missing pcs. @ Rs. 3/12/- per cft. u/s 77 of the Indian Railways Act. We may note here that our representative by his letter No. SP/159/51 dated 5-6-1951 has already requested the H. G. C. UDA Railway station to arrange for delivery of the balance timber of the consignment.

We would be grateful if you kindly pay us the amount in satisfaction of our claim at an early date.

Thanking you.

Yours faithfully, Sd/- (P. Chatterjee) (For Himmatsinghka Timber Ltd.)

The plaintiff company thereafter received the following letters dated 10-8-1951, in reply to the former letter dated 11-4-1951. This letter was written by the Superintendent Chitpur Area, Chitpur, E. I. Railway and was to the following effect:

"Dear Sirs,

Will you please send your beejuck in connection with the above to this office so as to enable me to settle your claim very early."

Thereafter several letters were written by the plaintiff company to the railway people without eliciting any reply thereto. The final letter dated 16-11-1951, was received by the plaintiff company from the Superintendent Chitpur Area, Chitpur, E. I. Railway and it is to the following effect:

"Subject: Rangapahar Crossing to Ultadanga Inv. 2, RR 485790 of 9-3-51.

Dear Sirs,

The consignment under the above particulars was booked with "Said to contain" remark on the Railway Receipt and L/U condition absolving the Railway from any liability for shortage. I regret I therefore repudiate your claim in this case."

12. It has been argued on the plaintiffs' side that this is the final letter of repudiation received by them from the defendant and the suit is well within one year from the date of this letter.

13. There were similar correspondences in respect of the consignments which are the subject-matter of the other suits, namely, Money Suits Nos. 16 of 1954 and 17 of 1954, excepting that no communication was received by the plaintiff company from the railway authorities in any of these cases, asking the plaintiff to send their beejuck in order to enable the railway people to settle their claim.

14. All the three suits were instituted on 17-9-1952. It is not disputed that the limitation for the purpose of these suits would be governed by Article 31 of the Indian Limitation Act. That Article runs thus :

"Description of suit. Period of limitation Time from which period begins to run.

Against a carrier for compensation for non-delivery of, or delay in delivering, goods.

One year

When the goods ought to be delivered."

The expression "When the goods ought to be delivered came up for interpretation in several cases before this Court. In Jainarain Vs. The Governor-General of India, , Chakravartti, J., as he then was, after referring to various cases on this point observed as follows : at p. 465 of the report.

"This impressive array of authorities seems to me to establish beyond doubt that the time "when the goods ought to be delivered" within the meaning of col. 3 of Article 31 is not the time when they should have been delivered in (the normal course, at least in a case where there is no time fixed for delivery, but the time when they ought to be delivered according to the subsequent promises by the railway which informs the parties that it is carrying on enquiries."

It may be mentioned in this connection that that was a case of non-delivery and various correspondences were going on between the parties over the goods not delivered.

15. The above case was considered by a Division Bench of this Court in R.K. Kanodia Vs. Union of India (UOI), . The judgment of the Court was delivered by Das Gupta, J., as he then was. That was also a case of non-delivery of goods and this Court considered what should be the point of time by which the goods ought to be delivered. Their Lordships referred to several decisions of this Court and it was held that the time when the goods ought to be delivered did not mean the time when they ought to be delivered in the normal course and proceeded to observe as follows :

"It was pointed out in Jainarain Vs. The Governor-General of India, and it has been held in a series of cases both in this High Court and other High Courts that "where no time is fixed for delivery and where after the discovery of non-delivery, correspondence ensued between the consignor and the Railway authorities in the course of which the Railway goes on promising enquiries and never denying any liability, limitation does not begin to run till the correspondence ends either fruitlessly or with a final settlement by the Railway of its inability to deliver or a final repudiation of the consignor's claim". It will in my opinion be wrong, however, to read into this statement of the law a view that there must be a final repudiation of the consignor's claim for compensation before the time when the goods ought to be delivered can be taken to have arrived. There may be cases where the correspondence shows that the Railway makes a definite statement that the goods are ready to be delivered. The mere fact that in such a case correspondence thereafter continues as regards any claim for compensation still pursued by the consignor cannot produce, in my opinion, any effect that the time when the goods ought to be delivered has not already arrived. It is only when the correspondence shows that the Railway has not finally stated either that the goods are ready to be delivered or that the goods will not be delivered at all that the question of final repudiation of the claim might arise."

16. Mr. Mukherjee appearing for the appellant has also referred to several cases of this Court (all decided by Single Judges) in support of his contention that the starting point of limitation in these suits should be with effect from the date of final repudiation of the plaintiff's claim by the railway administration. It was thus held in Raigarh Jute Mills Ltd. Vs. Commissioners for the Port of Calcutta, :

"Where, therefore, the plaintiff brings a suit for damages for non-delivery of a part of the consignment, the time under Article 31 begins to run from after a definite refusal or declaration of inability to deliver and the cause of action arises when the owner of the goods is made aware that there will be no further delivery of the undelivered part of the consignment,"

17. Similar views were expressed also by the Madras High Court in *M.A.P. Palanichami Nadar Vs. The Governor-General of India in Council*, , and also by the Full Bench of the Allahabad High Court in *Mutsaddi Lal Vs. Government-General in Council*, , and also in *Lalchand Chowdhury Vs. Union of India (UOI)*, . In the Allahabad case it was held by the Full Bench that if the goods did not reach the destination on the date when in the normal course of affairs they were expected to reach there and the railway administration on being approached for delivery held up hope to the plaintiff that the goods would be delivered and that the master was being enquired into, then the starting point of limitation under Article 31 cannot be said to be the date on which the goods should have reached the destination in the normal course.

18. In the *Lalchand Chowdhury Vs. Union of India (UOI)*, , *S.P. Mitra, J.* held that the phrase "when the goods ought to be delivered" meant the point of time at which the carrier undertook to deliver the goods, or the date when the carrier informed the consignee that it would be delivered or when the carrier communicated to the consignee its inability to deliver the goods or on a reasonable date that might be fixed on a consideration of events subsequent to the handing over the consignment to the carrier for carriage.

19. In my opinion, a sharp distinction should be made in this respect between the case of "non-delivery" and "short delivery". In case of "non-delivery", the point of time for the purpose of limitation should be calculated from the date by which in normal course the goods were reasonably expected to reach the destination station. In the present suits, substantial portions of the goods had already been delivered on particular dates mentioned above and those would be the dates when the remaining portions of the consignments ought to have been delivered. Mr. Bose appearing for the defendant Railway administration has in this connection referred to the decision by another Division Bench of this Court in *Subodh Kumar Bose Vs. Commissioner of Krishnanagar Municipality*, , wherein it has been held that

"where a substantial portion of the consignment was delivered on a date, that date would be the date when the remaining portion of the consignment ought to have been delivered for the purpose of limitation under Article 31 of the Indian Limitation Act."

In another case, *Union of India (UOI) Vs. Meghraj Agarwalla and Another*, , a Division Bench of this Court expressed the following opinion at p. 437 of the report:

"In my judgment, it would, in most cases, be proper to hold in the absence of

peculiar circumstances, that the date when a major portion of the consignment was delivered, would be the date when, the rest of the consignment ought also to have been delivered."

20. Therefore, the important point for our consideration is whether in these cases it can be said that the railway administration had held out any hope to the plaintiff company that they were actively making enquiries about the goods not delivered or that there was any reasonable hope that these goods would be delivered to the plaintiff company. The evidence in these cases does not bear out that the railway administration in fact held out any such hope. I have referred above in some detail to the correspondences that passed between the plaintiff company and the railway administration with regard to the consignments in question. In regard to the second and third consignments, the only replies, that were elicited from the railway, administration were to the effect that the matter was receiving their attention. Thereafter the railway people did not write any other letter to the plaintiff company excepting the final letter in November, 1951 repudiating the claims of the plaintiff company. Besides, as will appear from the letter written by the plaintiff company to the railway people on 21-5-1951 in respect of the first consignment, claim was made on behalf of the plaintiff company for getting compensations straightaway from the railway administration on account of the price, of the missing pieces in satisfaction of their claim as any further delay would mean more loss on their part. Similar letters were also written in respect of the other two consignments. In almost a similar case it was held by another Division Bench of Court consisting of Banerjee, J. and Amaresh Roy, J. (65 Cal WN No. 2, Note Portion vii, published on Monday, 21-11-1960). In that case also there was a short delivery of three bales of goods and short certificate was granted. Besides a formal, acknowledgment of the letter in reply to the notice u/s 77 of the Railways Act, the plaintiff did not receive any other communication from the railway authorities. Then on 16-12-1953 there was a final repudiation by the railway authorities of the claim made by the plaintiff. It was observed by this Court in that case as follows :

"The entire consignment of 49 bales having been booked at one and the same time it is reasonable to assume that 3 missing bales as well ought to have been delivered on the same date, in the absence of any other circumstances indicating that the missing bales did not become deliverable on the same day.

When the plaintiff did not get delivery of the 3 bales on 28-3-1952 and obtained a short certificate he did not feel concerned with enquiries about the whereabouts of the missing bales. He appears to have made up his mind to get compensation for what he had lost and by his letter dated April 1, 1952 demanded a specified sum as compensation xxxxxxxx there was no assurance by the railway authorities that they would Conduct an enquiry about the missing bales. That being the position, the date when, the three missing bales became deliverable must be deemed to be the date when the major portion of the consignment was delivered to the plaintiff, namely, March 28, 1952."

21. In my opinion, therefore, the starting point of limitation under Article 31 of the Indian Limitation Act would be the date or dates when the major portions of the three consignment were respectively delivered to the plaintiff company (consignee). The plaintiff's case in respect of the first consignment is not in any way improved by the fact that the railway authority by its letter dated 10-8-1951 asked the plaintiff, company to send the beejucks so as to enable the railway people to settle their claim. On the other hand, it would appear that the railway authorities were thereby rather indirectly intimating the plaintiff company that there was no hope of getting delivery of the balance of the goods. In this view of the matter I must hold that the learned Court of appeal below rightly held that the suits were barred by limitation.

22. The appeals are accordingly dismissed.

23. The defendant respondent Union of India will get costs from the plaintiff appellant in all these appeals.

24. The application for reception of additional evidence is not pressed and is therefore rejected. Leave to file appeals under Clause 15 of the Letters Patent is asked for and is refused.