

(1964) 04 GUJ CK 0003

In the Gujarat High Court

Case No : Civil Revision Application No's. 826 and 1182 of 1960

Ibrahim Isaphai

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 09-04-1964

Acts Referred:

Contract Act, 1872 — Section 103, 160, 188, 211, 37
Negotiable Instruments Act, 1881 (NI) — Section 13
Railways Act, 1890 — Section 72
Sales of Goods Act, 1930 — Section 19, 2(4), 23(2)
Transfer of Property Act, 1882 — Section 130, 135, 136, 137, 19(2)

Citation : AIR 1966 Guj 6

Hon'ble Judges : N.M. Miabhoy, J;J.B. Mehta, J

Bench : Division Bench

Advocate : S.B. Majmundar, for M.C. Shah, P.M. Rawal, for D.D. Vyas, for the Appellant; I.C. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

Miabhoy, J.—Civil Revision Application No. 826 of 1000 is made u/s 25 of the Provincial Small Causes Courts Act and is directed against the decree passed by the learned Civil Judge (Senior Division) at Broach in Small Cause Suit No. 170 of 1958. That suit was brought by petitioner herein for recovery of a sum of Rs. 1099-74 nP. on the allegation that the opponent--Union of India which was, at the relevant time, the owner of the Western and the Central Railways had failed to discharge its duty as a bailee in respect of a part of a consignment, booked from Bhopal to Broach. The Union of India contested the suit on a number of grounds. The ground material to be mentioned for the purposes of this revision petition is that petitioner was not entitled to sue on the facts and circumstances of the case. It is not necessary to mention the other defences of the Union because it is conceded by Mr. Majumdar that those other defences would fall to be considered only if a finding is recorded in favour of petitioner that he was entitled to sue. The learned Judge upheld the contention of the opponent that

petitioner was not entitled to sue. It is this finding which is challenged in the revision petition. We shall mention presently the various grounds on which the finding is challenged by Mr. Majumdar. The same point also arises for determination in Civil Revision Application No. 1132 of 1960. That petition has been also fixed for hearing along with the present petition. We heard Mr. Rawal in support of that petition. The additional arguments which Mr. Rawal advanced will be considered in this petition.

2. Before we mention the various submissions on which the Civil Revision Application No. 826 of 1900 was sought to be supported, we may briefly state the facts of that case. On the 8th June 1957, Bhopal Pharmaceuticals Company Ltd. (hereafter called "pharmaceuticals") consigned nine drums of French Polish to "self" to the railway authorities at Bhopal railway station under a goods invoice bearing No. 3 and railway receipt bearing No. G-6368/28 for being carried to the railway station at Broach. This Railway Receipt, Ex. 15, was endorsed by the pharmaceuticals to the order of M/s. New Era Trading Co. That company endorsed the Railway Receipt to the order of the Central Bank of India. The latter endorsed it to the order of one Mohanlal Tribhovandas. This Mohanlal made the last endorsement on the railway receipt, which reads as follows: "The goods of this railway receipt have been sold to Ebrahim Isapbhai (petitioner)." On the 1st July 1957, petitioner went to the Broach railway station for taking delivery of the goods. At that time, he found six drums cut and crushed. Three of those drums were completely empty. The remaining three drums were partially empty. Thereafter, petitioner made a claim for compensation from the Railways for breach of their duty as bailees. He gave the usual notices. When his claim was refused, he instituted the present suit from which this revision petition arises, claiming Rs. 1,014-74 nP. for short delivery, Rs. 55 as railway freight, Rs. 30 as interest on the amount of the price upto the date of the suit, and the costs of the suit. The opponent contested the suit, inter alia, on the ground that petitioner had no right to file the suit. From the judgment of the learned Judge, it appears that petitioner had claimed a decree on the basis that he was the owner of the goods represented by the railway receipt. The learned Judge found that petitioner had failed to establish that he was the owner of the goods. In this revision petition, petitioner has contended that that finding was perverse. We are unable to agree with this contention. Petitioner has examined one Thakorlal Ambalal in support of his claim that he was the owner of the goods aforesaid. From the evidence of Thakorlal, it appears that petitioner's case was that he had sent Thakorlal to Bhopal for purchase of drums; that Thakorlal contacted M/s. New Era Trading Company and offered to purchase nine drums of French Polish from them; that the New Era Trading Company had no drums to sell; that, therefore, that company purchased drums from the pharmaceuticals; that Thakorlal paid a part of the purchase money to the pharmaceuticals through New Era Trading Company; that, thereafter, Thakorlal requested the pharmaceuticals through New Era Trading Company to forward the goods to Broach; that the pharmaceuticals then consigned the goods to the railway company and got the

railway receipt issued to "self"; that the railway receipt was endorsed by the New Era Trading Company to the Central Bank of India Ltd.; that the latter endorsed the railway receipt in favour of Mohanlal; that Mohanlal was a servant of petitioner and that Mohanlal ultimately made the aforesaid final endorsement. Now, all this evidence has been disbelieved by the learned Judge and, having regard to the facts and circumstances of the case, we do not think it proper to interfere with that finding. In any case, having regard to the facts and circumstances of the case, it is impossible for us to record a finding that the conclusions arrived at by the learned Judge were perverse. In the first instance, the account-books of petitioner did not support the claim made by Thakorlal that he had visited Bhopal or that he had made part payment there, or that the balance of the price was paid by petitioner to the Central Bank of India through Mohanlal. In fact, if the ultimate endorsement was made under the circumstances as deposed to by Thakorlal, it is difficult to understand as to how Mohanlal could have made the last endorsement in the form in which he has done. That endorsement implies that Mohanlal was the ultimate owner of the goods and that he had sold them to petitioner. Under the circumstances, in our judgment, the claim made by petitioner on the basis that he was the owner of the goods must necessarily be rejected.

3. Mr. Majmundar, however, contended that, even if petitioner was not held to be the owner of the goods, petitioner had acquired an interest in the goods by the mere fact of his being the ultimate endorsee and that that interest was sufficient in law to entitle petitioner to sue the railway administration for the loss or the damage to goods represented by the railway receipt. Now, in order to understand this plea of petitioner, it is necessary, first of all, to understand the basis of the claim on the strength of which ultimately the decree was being claimed by petitioner. In the first instance, we will presume that, when the consignment was booked at Bhopal and the railway receipt was issued by the railway administration let the consignor, a contract of bailment took place between the railway administration and the consignor as a result of which the railway administration undertook the liability as enunciated in Section 72 of the Indian Railways Act as it stood prior to its amendment by the Amending Act 39 of 1961 which came into force on the 1st of January 1962. We may at once mention that, having regard to the fact that the consignor himself was the consignee and that, therefore, the consignor had reserved the right of disposal of goods to himself, the consignor had not constituted himself as the agent of the buyer and that, therefore, the transaction did not fall within the purview of Section 23, Sub-section (2) of the Indian Sale of Goods Act. Therefore, any rights or liabilities of the parties which would arise in the present case would not be governed by the law as laid down in Section 23, Sub-section 2 of the Indian Sale of Goods Act. A single Judge of the Bombay High Court has taken the view that the consignor is always entitled to institute a suit for recovering compensation from the railway administration for the loss or deterioration of goods even though the property in the goods in the meantime may have been transferred to another individual. This

view was taken in the case of AIR 1947 169 (Bom.) . We are not concerned with this aspect of the matter in the present case We are not so concerned because the suit in the present case has not been instituted by the consignor. At the end of his arguments, Mr. Majmundar contended that petitioner was entitled to sue under the contract of bailment, entered into between the consignor and the railway administration. We will discuss this aspect of the matter after we have disposed of the main contentions of Mr. Majmundar. A Division Bench of the Bombay Court has taken the view that, besides the person who is a party to the contract of bailment, the owner of the goods represented by the railway receipt is also entitled to institute a suit against the railway administration for recovery of damages arising out of nondelivery or short delivery of goods. This decision was given in Union of India v. Taherali Isaji, 58 Bom LR 650. We have already rejected the claim of petitioner, based on the ground that he was the owner of the goods. Therefore, that decision has also no application to the facts of the present case.

4. Mr. Majmundar, however, contends that an endorsee of a railway receipt is entitled to sue the railway administration for damages for non or short delivery by virtue of the endorsement and delivery of the railway receipt itself. In support of this contention, Mr. Majmundar relies on the decision of a Division Bench of the Bombay High Court in Dolatram Dwarkadas v. Bombay, Baroda and Central India Rly. Co. 16 Bom LR 525: (AIR 1914 Bom 178). He contends that Taherali Isaji's case 58 Bom LR 650 does not affect the ratio of Dolatram's case 16 Bom LR 525: (AIR 1914 Bom 178) . On the other hand, Mr. Bhatt, learned advocate for the respondents, relies on the decision of another Division Bench of the same High Court in Chhangamal Harpaldas and Another Vs. Dominion of India and Another, . In that case, the Division Bench held that a bare endorsee of a railway receipt is not entitled to institute a suit of the aforesaid kind. Mr. Majmundar's contention is that Chhangamal Harpaldas and Another Vs. Dominion of India and Another, also does not affect the ratio of the earlier case of Dolatram 16 Bom LR 525: (AIR 1914 Bom 178). The principal question which requires to be determined in the present case is, whether an endorsement of a railway receipt creates such a right in the endorsee as entitles him to institute a suit against the railway administration to enforce the liability of the railway administration imposed by Section 72 of the Indian Railways Act. Both the sides concede that the aforesaid two decisions are binding on this Court and require to be followed. The questions that arise are which of the ratios enunciated in the above two cases applies and whether there is a conflict in the two decisions. Before undertaking to decide this, it will be useful to understand the exact significance of each of the two decisions. Now, if we turn to the judgment of Beaman J., in Dolatram's case 16 Bom LR 525: (AIR 1914 Bom 178) we find that all the facts on the basis of which the decision was recorded are not found in the judgment itself. It appears from the judgment that the trial Court had taken the view that a railway receipt was not a document of title. The Division Bench referred to a decision of another Division Bench in the case of Amarchand and Co. v. Hamdas,

reported in 15 Bom LR 890: (AIR 1914 Bom 290) which had decided that a railway receipt was a document of title. After referring to this Division Bench case, Mr. Justice Beaman in Polatram's case 16 Bom LR 525: (AIR 1914 Bom 178) proceeded to record the judgment in the following words: "That being so, we think it necessarily follows that the endorsee of such a railway receipt has sufficient interest in the goods covered by it to maintain an action of this kind"". Now, in the report itself, certain facts have been given by the Editor. But, it is impossible to say from the facts narrated in the report as to what exactly was the character of the receipt and the endorsement. Therefore, in our judgment, Dolatram's case 16 Bom LR 525: (AIR 1914 Bom 178) should not be regarded as an authority for the general proposition that an interest is created in the goods represented by a railway receipt by the very factum of an endorsement. As to whether an actionable Interest is or is not created would depend upon the law governing the transfer of property in goods. In our judgment, it is possible to read Dolatram's case 16 Bom LR 525: (AIR 1914 Bom 178) in that way and having regard to the decision of Chhangamal Harpaldas and Another Vs. Dominion of India and Another, , it must be so read. If the judgment in Dolatram's case 16 Bom LR 525: (AIR 1914 Bom 178) were to be read in the manner suggested by Mr. Majmundar, then, it would become irreconcilable with the decision in the case of Chhangamal Harpaldas and Another Vs. Dominion of India and Another, . Moreover, the decisions recorded in a large number of cases on the ground that the claimants were entitled to compensation because they were the owners of goods covered by the railway receipts must, in that contingency, be regarded as otiose. The very fact that, in Taherali's case 58 Bom LR 650 this question of ownership of goods was considered would suggest that an endorsement of the railway receipt by itself does not amount to a transfer of goods. In fact, the reasoning of Taherali's case 58 Bom LR 650 militates against the suggested reading of Dolatram's case 16 Bom LR 525: (AIR 1914 Bom 178). Dealing with the question as to whether the plaintiff in Taherali's case 58 Bom LR 650 had or had not become the owner of the goods, Mr. Justice J. C. Shah (as he then was) made the following observations:

"The property in the goods covered by a railway receipt is not necessarily transferred merely by an endorsement on the railway receipt. The endorsement is in form only an authority by the consignor or by his endorsee to a named person to ask for delivery of the goods represented by the receipt from the railway administration. By the request endorsed on the railway receipt to deliver goods to the endorsee, the endorsee does not become a transferee of the goods represented thereby. Bill a railway receipt being a document of title to goods, the property in the goods may be transferred by mere delivery of the receipt. In each case the question is not whether an endorsement effects a transfer of the goods but whether the endorsement of the railway receipt and the delivery thereof is made with the intention of transferring the goods to the endorsee. If the delivery of the railway receipt with an endorsement is made with the intention of transferring the goods, the holder of the railway receipt would be entitled, as

owner of the goods, to file a suit against the railway administration for loss or damage thereof"

The same remarks, in our judgment, would apply to a case where an endorsee claims an interest lesser than that of an owner. In the case of moveable property the question as to whether the whole or partial property in the goods has or has not passed must necessarily be governed by the provisions contained in the Sale of Goods Act. This would be subject to a consideration of the further two points urged by Mr. Majmundar as to whether a railway receipt is or is not a negotiable instrument or whether it does or does not represent an actionable claim. But, if a railway receipt does not embody any of these two transactions, then, it is crystal clear that the matter must be governed by the provisions contained in the Sale of Goods Act. The main principle relating to the transfer of property in goods is to be found in Section 19 of the Indian Sale of Goods Act and that section states that "Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred." Sub-section (2) of Section 19 further provides that "For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case." Sub-section (3) of Section 19 provides that "Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer." Therefore, for the purpose of ascertaining as to whether the property or any interest in the goods has or has not passed, the material question to be considered in each case is whether the parties did or did not intend at the time when the endorsement was made and the railway receipt was delivered that the property or interest in the goods should pass and this has got to be ascertained with reference to the terms of the contract by which the sale of goods took place, the conduct of the parties, and the circumstances of the case. Under the circumstances, in our judgment, it is not possible to agree with the wide proposition canvassed for by Mr. Majmundar that a mere endorsement, by itself, without anything more, but accompanied by a delivery of the receipt, transfers property or interest in the goods. Whether this result does or does not occur will depend upon the facts of each case and, in our judgment, having regard to the definite case which was set up by petitioner that the events which preceded the final endorsement had constituted him the owner of the goods, the conclusion is irresistible that petitioner had not acquired ownership in the goods represented by the railway receipt. It may be noticed that neither in the pleadings, nor in the evidence, did petitioner allege that he had acquired any lesser interest than that of an owner by the aforesaid transaction. Therefore, in our judgment, the present case does not fall within the purview of *Dolatram's* case 16 Bom LR 525: (AIR 1914 Bom 178) but, it falls directly within the purview of *Taherali's* case 58 Bom LR 650.

5. Mr. Majmundar, however, contended that there were certain aspects of the matter which had not been considered in any of the three Division Bench cases

of the Bombay High Court aforesaid. Firstly, he very strongly contended that a railway receipt was a negotiable instrument and that, therefore, under the law merchant a railway receipt would pass title from hand to hand by delivery and negotiation. His further contention was that such negotiation of the railway receipt would not merely pass title in the receipt, but also the goods represented by the receipt. In support of these propositions, Mr. Majmundar very strongly relied upon the decision of the Nagpur High Court in the case of *Shah Mulji Deoji, a Firm v. Union of India*, reported in AIR 1957 Nag 31. Two questions were raised for decision before a Division Bench of that High Court consisting of Hidayatullah C. J. (as he then was) and R. Kaushalendra Rao, J. The two questions are mentioned in the judgment of Hidayatullah C. J. at page 39 as follows:

"(1) When goods are consigned to self under a railway receipt and the receipt is endorsed in favour of another, can the endorsee, merely by reason of the endorsement in his favour, institute a suit against the railway administration for damages either for non-delivery or short delivery of the goods covered by the railway receipt?

(2) Where there is a series of endorsements on the railway receipt, can the last endorsee institute a suit in his own name on mere proof of the fact that he paid consideration to the prior endorsee, or is it necessary for the former to establish that the title to the goods represented by the railway receipt passed from the original consignee through the intermediate endorsees to him?"

The two learned Judges constituting the Division Bench differed as to the answers to be given to the aforesaid two questions. Therefore, the matter was referred to a third learned Judge of the Nagpur High Court. The final decision was given by Tambe J., who agreed with the conclusions arrived at by Hidayatullah C. J. In answering the first of the aforesaid questions, Hidayatullah C. J. considered the question of the negotiability of a railway receipt in paragraph 64 onwards at page 41 of the report. In paragraph 64, the learned Chief Justice posed the question in the following way.

"Whenever a new document is used to base a suit, the question arises and the Courts try to find out (a) if it is a document of title in goods, i.e. a negotiable document, or (b) whether in the ordinary course of business it is regarded as so negotiable."

From the question posed by the learned Chief Justice, it is crystal clear that the term "negotiable" has been used by the learned Chief Justice not in the sense in which that term is used to designate a negotiable instrument which has the quality of transferring by mere endorsement, title in the debt represented by the instrument, but the term "negotiable" has been used by him in the sense of transferring the right to take delivery of the goods represented by the railway receipt. It is for this reason that Tambe J, recorded his conclusion at page 46 in the following words in paragraph 108.

""In view of these statutory provisions, in my opinion, a railway receipt is in

effect clothed with all the essential characteristics of negotiability though it may not be a negotiable instrument in its strictest sense. It is for this reason that, in my view, the Indian Legislature did not deem it necessary to enact any separate legislation similar to the Bills of Lading Act of 1856."

Therefore, a close scrutiny itself of the two judgments on which Mr. Majmundar relies shows that a railway receipt has not been held to be a negotiable instrument in the same sense in which a promissory note, a cheque or a bill of exchange is so regarded under the law relating to negotiable instruments. A railway receipt has been held, in terms, not to be a negotiable instrument by the Division Bench in Taherali's case 58 Bom LR 650 already referred to. At page 654, Mr. Justice J. C. Shah (as he then was) has made the following observation:

"But under the Sale of Goods Act, a railway receipt is regarded as a document of title and delivery of goods to which it refers may be effected by delivery of the railway receipt. It is, however, not a negotiable instrument". In our judgment, this also follows from the observations made by Their Lordships of the Privy Council in Ramdas Vithaldas v. S. Amerchand and Co. AIR 1916 P. C. 7. At page 9, their Lordships have made the following observations:

"It remains to consider the appellant's argument, so far as it is based on the use of the expression "instrument" instead of "document" of title. In the first place it is to be observed that "title" in both expressions can relate only to the right to receive delivery of the goods to which the instrument or document relates. It can have nothing to do with ownership."

It is true that the aforesaid observations were made by Their Lordships of the Privy Council in connection with the interpretation of the words "document of title to goods" used in Section 103 of the Indian Contract Act which has since been repealed. But, in this connection, it is important to notice that the definition which Their Lordships gave and the test which they laid down for determining as to whether a particular document is or is not a document of title has now been incorporated by the Legislature as the definition of the expression "document of title" in Section 2, Sub-section (4) of the Indian Sale of Goods Act and that definition emphasizes the fact that a document in order to be a document of title to goods must be "used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented." By the definition, a railway receipt has in terms been stated to be a document of title to goods. The adoption of the aforesaid definition given by the Privy Council clearly shows that the Legislature did not intend to use the term "title" in the expression "document of title to goods" in the wider sense of the ownership of goods. The term "title" is used in the limited sense of a right to receive or take delivery of goods. It is in this limited sense that a railway receipt is a document of title and, in view of the fact that there is no provision in the Indian Sale of Goods Act which either expressly or impliedly states that an endorsement on or a delivery of the railway receipt

passes title to the goods represented thereby, the proposition cannot be subscribed to that such an endorsement and delivery would pass title to the goods. A reference was made in the afore said Nagpur case to the custom alleged to be prevailing among the merchants on the question of the negotiability of a railway receipt. So far as the Bombay High Court is concerned, before the 1st of May 1960 and so far as this High Court is concerned, the question has never been raised and decided that, by custom, a railway receipt has acquired negotiability in the sense that the title to the goods represented by the railway receipt passes by mere endorsement and delivery. On the contrary, all the three Division Bench cases, which we have referred to above, have been decided on the assumption that no such custom prevails about the transfer of title to goods represented by the railway receipts. In fact, the observations made by Their Lordships of the Privy Council in Ramdas's case AIR 1916 PC 7 militate against the existence of any such custom. In any case, in our judgment, it would be risky to take such a decision in a revision petition when the question has not been raised and discussed in the trial Court itself. Under the circumstances, we have come to the conclusion that the proposition that a railway receipt is a negotiable instrument or a quasi-negotiable instrument cannot be subscribed to. Even if the instrument were to be regarded as a quasi-negotiable instrument, in our judgment, there is no authority for the proposition that by mere endorsement and delivery of that instrument, not merely the right to take delivery of the goods represented thereby passes but also the title in the goods themselves. Under the circumstances, we must reject the aforesaid submission of Mr. Majmundar.

6. Then Mr. Majmundar contended that the right of a consignor under the railway receipt was an actionable claim and such a right could be transferred without having recourse to the provisions contained in Sections 130 to 136 of the Indian Transfer of Property Act. He further submitted that an assignee of an actionable claim had, in law, a right to institute a suit in enforcement of the actionable claim. For these propositions, Mr. Majmundar also strongly relied upon the same Nagpur case reported in AIR 1957 Nag 31. Now, if the contention is justified that the right of a consignor of a railway receipt is an actionable claim, then, there cannot be much difficulty in accepting the further submissions that the right can be assigned by mere endorsement and that the assignee will have the right of instituting a suit for recovering compensation for breach of the liability undertaken by the railway administration u/s 72 of the Indian Railways Act. But, the question which requires serious consideration is whether the right aforesaid is, in fact an actionable claim. Tambe J., has considered this question at pages 43 to 46 of the report. At page 44, after quoting the definition of the expression "actionable claim" as given in Section 3 of the Transfer of Property Act, the learned Judge has proceeded to make the following observations:

"It cannot be disputed that the rights under a contract are beneficial interest in moveable properties. They are certainly not things in possession and a right to the benefit of an obligation under a contract can only be and are enforced by an

action at law. Right to benefit of a contract therefore falls within the definition of "actionable claim".

With great respect to the learned Judge, we are unable to agree that the right which a consignor has either in the contract of bailment or in the goods bailed to the railway administration is an actionable claim. An "actionable claim" has been defined in Section 3 as follows:

" "Actionable claim" means a claim to any debt, other than a debt secured by mortgage of Immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."

Now, it is conceded by Mr. Majmundar that the right under the contract of bailment does fall within the purview of the first part of the aforesaid definition. His submission, however, is that the right does fall within the second part of the definition which relates to a claim "to any beneficial interest in moveable property not in the possession, either actual or constructive of the claimant." Therefore, the crucial question is whether, by the aforesaid contract of bailment, any claim is created in regard to any beneficial interest in property. In our judgment, if the consignor is the owner of the goods, then, the definition does not apply at all. The consignor being the owner, he is not the owner of a mere beneficial interest in moveable property. When the consignor consigns the goods to another person, it cannot be said that the consignor has thereby transferred any beneficial interest in moveable property which is not in his either actual or constructive possession for, even after delivery of goods to the railway administration for transmission, the consignor still retains constructive possession of the property except in a case covered by Section 23(2) of the Sale of Goods Act. If the consignor has transferred the property in the goods, then, the transaction would be a sale and no actionable claim would be created in favour of the consignee. Mr. Majmundar did not dispute the legal validity of the above propositions. But he argues that where the consignor himself is the consignee and where he makes the first endorsement, then, the right transferred by the first endorsement is an actionable claim. He also argues that the interest of a consignee in a railway receipt itself is an actionable claim. We cannot agree. The right of the first endorsee or the consignee can become an actionable claim only if, prior to the endorsement and delivery, a beneficial interest has been created in favour of the consignor or consignor-endorser. Unless such a beneficial interest in the goods in favour of the consignor or consignor-endorser has been created before the making of the endorsement, it cannot be said that an actionable claim has come into existence at all. Now, as to whether a beneficial interest has or has not been created in the goods would depend upon the general law of the land especially in view of the conclusions that we have already arrived at. In none of the contingencies mentioned above does any beneficial interest

pass.

7. Mr. Majmunder relied upon two cases in support of his proposition that a beneficial interest is created in the goods. One case is Hunsraj Morarji v. Nathoo Gangaram, reported in 9 Bom LR 838. The Head Note of this case is as follows:

"Where the following endorsements were separately made on the back of two contracts-(a) "As to the whole of my right (and) interest in this contract I have sold the same to"

--(b) "I have sold the whole of my right and interest in the contract and (in) the goods mentioned therein to "

Held that what was transferred thereby was property; that none of the exceptions to Section 6 of the Transfer of Property Act applied: and that the subject of transfer was an actionable claim requiring notice u/s 135 of the Transfer of Property Act on the part of the transferee to prevent any dealings prejudicial to himself"

He also relied upon the case of Jaffer Meher Ali v. Budge-Budge Jute Mills Co., reported in ILR Cal 702. In that case, it was held that "the right to claim the benefit of a contract for the purchase of goods is it "beneficial interest in moveable property" within the definition of "actionable claim" in Section 3 of the Transfer of Property Act (IV of 1882), and, as such, assignable." In our judgment, both these cases are cases in which, under the law governing the sale of goods, beneficial interest in the goods was created. None of these cases can be used as an authority for the pro-position that a beneficial interest in goods comes to be created by endorsement and delivery of a railway receipt proprio vigore. Just as the owner of the goods can, by expressing an intention, transfer title in goods, similarly, the same owner, by entering into an agreement of sale of goods and by retaining possession of those goods, can transfer a beneficial interest therein. If the latter transaction takes place, then an actionable claim can come into existence but not otherwise. Under the circumstances, the right created in favour of the consignor in the consignee or in favour of any of the endorsees vis a vis the final endorsee would not become an actionable claim by virtue of a simple endorsement and delivery of the railway receipt, but that it would be so only if, by virtue of the transaction in which the endorsement and the delivery of the railway receipt take place, a right to an actionable claim arises and the same is assigned in favour of the final endorsee. In the absence of the creation of an actionable claim, the rights created under the contract of bailment would be rights in personam, rights which arise out of the contract of bailment, pure and simple, and the law which would govern the rights of the parties to the contract would be the same which govern the rights of the parties to an ordinary contract. It is well known that, ordinarily, only a privy to a contract has a right to sue for breach of a contract. It is true that the benefits of a contract are assignable. But, it is well known that the person to whom the benefits are assigned does not get a right to sue the other contracting party for breach of the

contract itself unless the case comes within one of the recognized exceptions. Mr. Justice J.C. Shah (as he then was) in Taherali's case 58 Bom LR 650 has mentioned four such exceptions. Mr. Majmundar put his case under the first of these exceptions. The first exception is stated to be that of a person who is claiming through a party to the contract. The refer-ence obviously is to Section 37 of the Indian Contract Act. That section refers to a person claiming through a party to a contract by operation of law. In view of this legal position, we are unable to agree with the final conclusion recorded in AIR 1957 Nag 31 by Tambe J., at page 46, wherein the learned Judge has stated as follows:

"For reasons stated above, in my judgment, an unqualified endorsement on a railway receipt has the effect of not only transferring to the endorsee the property in the goods covered by the railway receipt but also of transferring to him the right and benefit of the contract of carriage evidenced by the railway receipt. He has, therefore, a right to maintain an action to enforce its performance in his own name, or to sue to recover damages occasioned by failure to perform the contract." In our judgment, the learned Judge is right in stating that the benefit under a contract of bailment can be transferred, but the proposition that the transferee of such a benefit will have a right to sue the railway administration cannot be accepted absolutely. Having regard to the facts that a railway receipt is not a negotiable instrument and that the right under that document is not an actionable claim, the assignee will have no right to sue and the matter, being still in the region of contract, the assignee of the benefit of contract can have a right to sue only if he is able to bring his case within any of the exceptions to the general rule which general rule debar any person who is not a party to a contract from instituting a suit for breach thereof.

8. Mr. Majmundar, however, contended that, as to what exactly is the effect of an endorsement must depend upon the nature of an endorsement itself and that there is a vital distinction between an endorsement in favour of the order of an individual and in favour of an individual himself. In our judgment, this distinction is not of any importance having regard to the conclusions that we have arrived at. The distinction would have been of some importance if we had agreed with any one of Mr. Majmundar's two submissions that a railway receipt is a negotiable instrument or that a right under a contract of bailment is an actionable claim. But, having regard to the fact that such is not the case and that, subject to the case of a person falling within the executed class of persons, a right to sue arises only if the property or an interest in the goods represented by the railway receipt passes in the endorsee, the question in the case of each endorsement would be whether the endorsement is such which, by its own force, passes not merely the benefit of contract of bailment, but also the property or the interest in the goods. It is from this angle that each endorsement must be examined and, having regard to all the facts of the case, we are unable to come to the conclusion that the endorsements made in the present case were such endorsements as evidence an intention to pass any property or interest in the goods represented by the railway receipt.

9. Mr. Rawal relied upon three decisions, viz. (1) Dominion of India as owner of G.I.P. Rly. and Another Vs. Gaya Pershad Gopal Narain, Governor- Governor-General in Council Vs. Joynarain Ritolia, and (3) AIR 1944 362 (Nagpur) In Dominion of India as owner of G.I.P. Rly. and Another Vs. Gaya Pershad Gopal Narain, , Kidwai, J., speaking for the Full Bench of the Allahabad High Court took the view that a consignee, who was not the owner of the goods but to whom the goods were consigned for the purpose of sale on commission basis, was entitled to maintain a suit for loss in respect of damage caused to the goods in transit. This view was based upon the ground that there was nothing to prevent the consignor and the railway administration from entering freely and voluntarily into a contract for the benefit of a third person. "In such an event'", the learned Judge observes, "one of the contracting parties--the railway--cannot without the consent of the other party resile from the contract and refuse to make delivery to the third party." We are unable to agree with this view. In our judgment, when the railway administration undertakes to give delivery to the order of the consignor or to the consignee, the obligation is undertaken by the railway administration, not in favour of the prospective consignee or endorsee, but, the obligation is undertaken, by it only for the consignor. It may be that the consignor or any of the intermediate endorsees may have a right to transfer the benefit of the aforesaid right to receive or take delivery of the goods at the destination end. But, it is one thing to say that a person acquires such a right and it is another and a totally different thing to say that that person has a right to sue for breach of the contract of bailment. In AIR 1944 382 (Nagpur) , Bobde, J., held that the endorsement on the back of the railway receipt by a Company which was both the consignor and the consignee, entitled the plaintiff to claim delivery of the goods and must entitle him to bring the suit. The first proposition is well established. But, the second proposition that that endorsement must entitle the endorsee to bring a suit, in our judgment, is not well-founded. The learned Judge has given no reasons for the second proposition. Governor-General in Council Vs. Joynarain Ritolia, , in our judgment, supports the view that we have taken and negatives the propositions for which Mr. Majmundar and Mr. Rawal contend. In that case, the learned Judge expressed his conclusion in the following words:

"Of course, the intention must be to make an absolute delivery carrying with it a right to the goods. The railway receipt might be handed over only for a limited purpose. Here again, see AIR 1938 52 (Privy Council) But in a case where the railway receipt is handed over on payment of the price of the goods, as is the common practice under the V.P.P. system, and as happened in the present case, clearly there has been an absolute transfer both of the goods and of the right to take delivery under contract. Also it is clear that the property in the goods under the contract of sale passes to the buyer directly the latter pays the price and the railway receipt endorsed in blank is delivered to him."

10. For the aforesaid reasons, we must negative all the submissions which were made by Mr. Majmundar and Mr. Rawal. In view of our aforesaid conclusions,

revision petition No. 826 of 1960 will have to be dismissed with costs.

11. Civil Revision Application No. 1132 of 1960 arises from a decree passed by the learned Second Joint Civil Judge (Junior Division) Surendranagar, on the 29th April 1960, dismissing the claim of petitioner for a sum of Rs. 149.50 np. The facts of the case are as follows. One Ajitkumar booked 120 bags of wheat and 54 bags of millet from station Bhildi to station Surendranagar under a railway receipt in which he was both the consignor and the consignee. Ajitkumar sold the receipt to Shah Mafatlal Mohanlal and the latter made the bare endorsement on the 3rd October 1958 on the railway receipt in favour of petitioner. Petitioner's agent went to take delivery of the consignment on the 7th October 1958. At that time, 26 bags of wheat were found damaged. The damage was assessed at Rs. 149. Petitioner claimed the aforesaid sum by way of damages from the railway administration. The railway administration offered a sum of Rs. 100 to petitioner, which petitioner rejected. Thereafter, he instituted the aforesaid suit for recovering the aforesaid sum and the costs of the suit. The learned Judge, who decided the suit, dismissed the claim on the ground that petitioner had not established his right to sue the railway administration. The other issues were decided in favour of petitioner. Therefore, if petitioner is able to substantiate his plea that he has a right to sue, it cannot be denied that a decree for the aforesaid amount should necessarily follow. Now, the interest which petitioner claimed in the goods was deposed to by petitioner's clerk, one Chandrakant Amratlal. This witness deposed that petitioner-firm was a firm of "Pucca Adatias", that Mafatlal Mohanlal was a constituent of the firm; that Mafatlal Mohanlal had consigned the goods to the firm for sale; that an advance of Rs. 6000 was given to Mafatlal on the 6th October 1968; that the amount was debited to the account of Mafatlal in the account-books of the firm; that the railway freight was paid by the firm and the amount thereof was debited to Mafatlal's account; that the sale proceeds of the goods were to be credited to the account of Mafatlal and, in fact, were so credited as and when they were sold. The witness in the cross examination admitted that, in case of the loss of the goods represented by the railway receipt, the liability for the loss would not be of the firm, but would be that of the constituent Mafatlal. The learned Judge, however, did not believe the aforesaid evidence in toto. He did not believe that the amount of Rs. 6,000 had been advanced to Mafatlal against the aforesaid consignment. The finding appears to be that the amount was advanced in the general course of business with Mafatlal and that there was only an expectation on the part of the firm to realise the amount in case the consignment was sold. Therefore, the claim of the firm, based on the allegation that the aforesaid amount had been advanced against the aforesaid goods, has not been accepted by the learned Judge. This is a finding of fact and, having regard to the state of the accounts and specially having regard to the fact that no such allegation was made in the plaint, it is not possible for us in this revision petition to take a different view. That leaves us only this position that the consignment was assigned in favour of a "Pucca Adatia" by his constituent who had given

instructions to the "Pucca Adatia" to sell the consignment for and on his behalf. The question for consideration is, whether this transaction creates any such interest in petitioner as would entitle petitioner to sue for the loss or damage to the consignment under the principle enunciated in Dolatram's case, reported in 16 Bom LR 525: (AIR 1914 Bom 178) . In Civil Revision Application No. 826 of 1960, we have considered the various submissions which were made in that case in regard to the right of a person to sue, in which revision application we have also heard Mr. Rawal who supported the contentions raised in that revision petition and in which we have also considered some cases which were relied upon by Mr. Rawal. The conclusion that we have reached in that revision petition is that a mere endorsement in favour of an endorsement does not give him a right to sue the railway administration unless the transaction between the consignor or any of his successors and the final endorsee who institutes the suit has resulted in the transfer of the property in the goods or any interest therein. Now, Mr. Rawal's broad contention was that the very fact that petitioner is a "Pucca Adatia" creates such an interest in the goods in relation to which instructions are issued by the constituent that the "Pucca Adatia" would be entitled to institute a suit for damages. Mr. Rawal was unable to cite any law or authority for this broad proposition. It may be that, if the "Pucca Adatia" carries out the instructions issued by the constituent even without receipt of the goods, he may have certain rights in law against the constituent, but that would not entitle the "Pucca Adatia" to institute a suit directly against the railway administration unless he is able to show that the goods represented by the railway receipt had been transferred to him or any interest therein had been created in his favour. It is not the contention of petitioner that, by the endorsement aforesaid, or any other transaction preceding or succeeding the same, ownership in the goods had been transferred from the constituent to petitioner. Having regard to our conclusion that the aforesaid advance had not been made against the specific goods, it is not necessary for us to consider the further question as to what the effect of the aforesaid advance would have been and what interest that advance would have given to petitioner in the subject-matter of the railway receipt. All that has happened in the present case is that instructions were issued by the constituent to the "Pucca Adatia" to sell the consignment. That, in itself, would not create any interest in the aforesaid goods. Under the circumstances, petitioner can succeed only under the contract of bailment, the benefit whereof, viz. to take delivery of the goods, was transferred to petitioner by the aforesaid endorsement. Even if we proceed that that benefit was transferred for value, having regard to the conclusions that we have arrived at in Civil Revision Application No. 826 of 1960, it is crystal clear that petitioner cannot have a right to sue the railway administration unless he brings his case within one of the exceptions mentioned in Chhangamal Harpaldas and Another Vs. Dominion of India and Another, which exception entitles a person not a privy to a contract to institute a suit for breach of a contract. It is not the case of petitioner that he falls within one of these exceptions. Under the circumstances, in our judgment, the petition must fall and must be dismissed with costs.

12. Rules in both the revision petitions discharged with costs.