
(1998) 08 BOM CK 0039
In the Bombay High Court
Case No : Second Appeal No. 252 of 1983

Khandelwal Ferro Alloys Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Railways Act, 1890 — Section 78B

Citation : (1999) 1 ACC 211 : (1999) ACJ 939 : AIR 1999 Bom 50 : (1999) 2 ALLMR 79 : (1999) 1 MhLj 86

Hon'ble Judges : S.D. Gundewar, J

Bench : Single Bench

Advocate : A.S. Kilor, for the Appellant; P.N. Chandurkar, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Gundewar, J.—By this second Appeal, the appellant/plaintiff challenges the judgment and decree passed against him by both the Courts below.

2. Both the Courts below found that the claim for compensation preferred by the plaintiff to the Railway authorities was not within the statutory period of six months as contemplated u/s 78-B of the Indian Railways Act, 1890. In the result, both the Courts below dismissed the plain tiff's claim.

3. Shri A. S. Kilori, the learned counsel for the appellant, by inviting my attention to the provisions of Section 78-B and Section 140(C) of the Indian Railways Act. 1890 urged that when a letter/notice is posted, it is presumed that the claim is preferred as contemplated in Section 78-B of the Indian Railways Act and, therefore, according to him, in the present case the claim preferred by the plaintiff from the date of posting of letter is well within time and both the Courts below erred in holding otherwise.

4. As against this, it is submitted by Shri P. N. Chandurker, the learned counsel for the respondent, that in the context in which the word "preferred" is used u/s 78-B of the Indian Railways Act, it means "served" and not merely despatched or

posted. According to him, the claim must reach the Railway administration within the prescribed period, i.e. within six months. It is also submitted by him that merely addressing a claim to the Railway administration and posting it through a registered post within the prescribed period is not enough. In support of his aforesaid submission, he has placed his reliance on a decision in *Union of India Vs. Amin Chand Payarelal*, . In the said case, while discussing the point in question. Their Lordships of Punjab and Haryana High Court have observed that a claim has to be preferred in writing to the Railway administration within six months from the date of delivery of goods to the Railway. The claim can be said to be preferred to the Railway administration only if it reaches the said authorities within the prescribed period. It is also observed by Their Lordships in the said ruling that (at p. 192) :

"To say that addressing a claim to the railway administration and posting it through a registered post within the prescribed period would amount to preferring the claim to the railway administration would be stretching the meaning of the word "preferred" and ignoring the words "to the railway administration" occurring in Section 77. In the context in which the words "preferred" is used it can reasonably be interpreted only to mean "served" and not merely despatched or posted. From the point of view of the railway administration," the claim is preferred only when it reaches the railway administration and not otherwise."

In my view, the observations made by Punjab and Haryana High Court in the aforesaid ruling is a complete answer to the argument advanced on behalf of the appellant. I, therefore, find no substance in the submission made by the learned counsel for the appellant in this behalf.

5. Another argument pressed into service by the learned counsel for the appellant is that when the goods are neither delivered nor traceable, then there is non-delivery of the goods which amounts to a loss to the party, and in such a case, there is no necessity to issue any notice to the railway administration. For this he placed reliance on a decision in *Union of India v. Sha Vastimull Harakchand* reported in AIR 1959 Mys 13. In the said case, there was a loss to the party on account of nondelivery of goods, but here it is not so and, therefore, this decision, in my view, does not help the appellant/plaintiff in any way.

6. For the reasons stated above, I hold that the letter/notice sent by the appellant/plaintiff to the Railway administration was not within the period of six months as prescribed by Section 78-B of the Indian Railways Act and was, therefore, barred by limitation. No fault can, therefore, be found with the findings recorded by both the Courts below in this behalf.

7. No other point was urged before me.

8. In this view of the matter, there is no reason to interfere with the judgment and decree passed by both the Courts below.

9. In the result, the appeal fails and is dismissed. In the circumstances of the case, there shall be no order as to costs.