
(1970) 01 BOM CK 0013

In the Bombay High Court

Case No : Civil Revision Application No. 25 of 1965

Madansa Annasa Jain

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 07-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1908 — Article 30, 31, 36, 48, 49
Railways Act, 1989 — Section 55, 56, 72, 77

Citation : AIR 1971 Bom 34 : (1972) 74 BOMLR 568 : (1971) MhLj 338

Hon'ble Judges : Bhole, J

Bench : Single Bench

Advocate : D.N. Belekar and Y.R. Dandige, for the Appellant; K.V. Tambe and W.K. Sheorey, for the Respondent

Judgement

1. This is an application in revision by the plaintiff against the decree and judgment, dismissing his suit, passed by the Court of the Small Causes, Akola.

2. The plaintiff filed a suit against the Union of India representing the Central Railway Administration, Bombay, as well as the Northern Railway Administration New Delhi, for compensation for non-delivery of goods as well as for conversion of goods. The case of the plaintiff is that on 5-1-1962 one Amarnath Harindramohan, a commission agent of Tanakpur booked five bags of stoke flowers from Tanakpur Railway Station on the Northern Railway to Akola Railway Station on the Central Railway under a railway receipt. The consignment was booked to self and the railway receipt was endorsed in favour of the plaintiff. It was sent through the Akola branch of the Allahabad Bank, The plaintiff deposited the necessary sum in the Bank and obtained the railway receipt for the purpose of presenting it to the railway authorities at Akola. The plaintiff presented the railway receipt many times but he was informed that the goods had not yet arrived at the destination. Because the plaintiff did not get any goods till 6-6-1962 therefore he referred a claim to the Central Railway on that date. The Claims Superintendent by his letter dated 25-7-1962 asked the plaintiff to send

the original railway receipt and the Bijak. However, he received another letter from the Chief Commercial Superintendent, Central Railway, Bombay, on 27-7-1962 intimating that 5 bags of stoke-flowers had been received at Akola Railway Station on 7-2-1962 and were lying there undelivered and that the plaintiff should take delivery of the same after identification and after presenting the original railway receipt and on payment of the freight charges, if any. The plaintiff received this letter on 31-7-1962 at Bashim.

3. Because of the letter from the Chief Commercial Superintendent, the plaintiff went to Akola Railway Station on 2-8-1962 to take the delivery of the goods. He was, however, informed by the Station Master there that the goods were sold by public auction on 28-7-1962 for a sum of Rs. 112/- and that the Chief Commercial Superintendent Central Railway had already been informed of the same. The plaintiff, therefore, sent the Railway receipt and the original Bijak to the claims Superintendent Central Railway, and claimed compensation for non-delivery and conversion of his goods. He did not get any reply. Therefore, he served a notice u/s 80 of the Civil P. C. claiming loss on account of non-delivery of the goods. Thereafter, he filed the civil suit on 9-9-1963. The cause of action as mentioned by the plaintiff in the civil suit was on ? 2-8-1962 when he finally came to know that the goods could not be delivered to him as they were sold by auction.

4. The Northern Railway Administration did not file a reply but the Central Railway Administration contested the claim and claimed that there was no conversion of the plaintiff's goods and that the suit was barred by limitation as it was filed beyond one year from the date when the goods ought to have been delivered to the plaintiff. They have also mentioned that five bags of stoke-flowers were received at Akola Railway Station on 7-2-1962 and were lying there and the plaintiff did not claim the same.

5. The trial Court was requested to decide only the issue of limitation and therefore after finding out the value of the suit consignment he decided the question of limitation. The contention on behalf of the defendant before the trial Court was that Article 31 of the 1st Schedule of the Limitation Act was applicable to the facts of this case and as the suit had been filed beyond one year from the date on which goods ought to have been delivered, it was barred by limitation. The defendant relied upon the ruling in Martab Ali Vs. Union of India, . On the other hand, the plea of the plaintiff was that Article 48 of the first Schedule of the Limitation Act was applicable and therefore the suit was in time because it was filed before the prescribed period of three years. The learned Small Cause Court Judge relying on the case in Martab Ali Vs. Union of India, came to a finding that Article 31 was applicable to the facts of the case and therefore dismissed the plaintiff's suit. This order is challenged here.

6. The only point that is raised here therefore is that whether the plaintiff's suit is or is not barred by limitation.

7. It is admitted that we are here governed by the old Limitation Act and not by the new Limitation Act, because the goods were despatched on 5-1-1962. The case of the plaintiff is that the cause of action arose on 2-8-1962 when he finally came to know that the goods could not be delivered to him as they were sold by auction. On the other hand, the contention of the learned advocates for the opponents defendants is that this is a suit which is governed by Article 31 of the First Schedule of the Limitation Act and, therefore, the period would start running from the time when the goods ought to have been delivered. It is common ground that when the goods were despatched on 5-1-1962 from Tanakpur to Akola, the goods in the ordinary course would have reached by about 5-2-1962 or 12-2-1962. If we come to a conclusion that Article 31 is applicable then the suit would be out of time because it was filed on 9-9-1963 and because the period of limitation is one year. If, however, we come to a conclusion that Article 48 is applicable then the period of limitation being three years, the suit will be within time.

8. The point, therefore, that arises here for consideration is to see whether Article 31 applies or Article 48 applies to the facts and circumstances of this case.

9. The trial Court relied upon a finding in *Martab Ali Vs. Union of India*, and the learned Advocate for the petitioner contends here that the ruling in this Bombay case is not correct and therefore the ruling has to be reviewed. On the other hand, the learned Advocate for the opponents contends here that that ruling is correct as that has been approved also by the Supreme Court in *Governor General in Council Vs. Musaddi Lal*, . Let us see whether Article 31 is applicable or Article 48 is applicable.

In *Martab Ali Vs. Union of India*, Mr. Justice Desai was considering a case of goods which did not reach the destination because of serious disturbances and riots in the Punjab. They were despatched from Gujranwalla Railway Station in the Punjab. The plaintiff, therefore, based his cause of action on loss suffered by him by reason of wrongful detention or non-delivery of the bales and in the alternative on wrongful conversion of the bales. No notice, in that case, was alleged to have been given by the plaintiff u/s 77 of the Railways Act. While considering Section 77 of the Railways Act, Mr. Justice Desai observed during the course of his judgment that on a plain reading of the section, it clearly shows that it was incumbent on the consignor to notify to the railway administration his claim for compensation for loss, destruction or deterioration in respect of goods delivered for carriage within six months from the date of the delivery of the goods. The point was raised before him that the plaintiff had not notified to the railway administration his claim as required by Section 77 of the Railways Act. While considering this contention as well as while considering the basis of the cause of action of the plaintiff, the learned Judge was trying to find out the meaning of the word "loss" in Section 77. Many cases were cited. He came to the conclusion that the word "loss" should not be given any restricted meaning. According to him, therefore, the word "loss" in Section 77 did include the entire

claim made by the plaintiff whether on the footing of non-delivery or negligence or wrongful detention or conversion on the part of the railway administration. It is on the basis of this finding that he considered the contentions raised before him regarding limitation. On behalf of the defendant, reliance was placed on Articles 30 and 31 of the First Schedule to the Indian Limitation Act. On behalf of the other side, it was urged that Article 48 was applicable to the facts of that case. It was observed by him that Article 48 is a general Article and its operation would be excluded by the specific articles which deal with suit against carriers as such. According to him, therefore, Article 31 must apply to all cases of claims for non-delivery of goods irrespective of the question whether the suit was laid in contract or tort as was decided in the Full Bench case - *Jaldu Venkatasubba Rao v. Asiatic Steam Navigation Co., Calcutta*, cited in AIR 1916 Mad 314. The case according to him could not fall within the purview of Article 48.

10. Now Article 31 is as follows:--"

"Against a carrier for compensation for One year When the goods ought to be non-delivery of, or delay in delivering delivered. goods. Article 48 is as follows:--

"For specific moveable property lost or Three years When the -person having the acquired by theft, or dishonest right to the possession of the misappropriation or conversion, or for property first learns in whose compensation for wrongfully taking or possession it is." detaining the same.

The learned Advocate for the petitioner has also pleaded that the facts of our case might even be within the purview of Article 49. Article 49 is as follows:-

"For other specific moveable property Three years When the property is wrongfully or for compensation for wrongfully taken or injured or when taking or injuring or wrongfully the detainer's possession becomes unlawful " detaining the same. It is clear from the language in Article 48 that that Article is a special one whereas Article 49 is a general provision. It is now a well established ruling that where a special provision applies, the general provision does not apply. Article 48 deals only with specific moveable property which falls under one of the two classes mentioned therein. No other kind of moveable property is affected by this Article. If the case is not covered by Article 48, then Article 49 would apply. But so far as Article 31 is concerned, this Article is more specific than Article 48. A suit against a carrier for compensation for non-delivery of goods obviously appears to be governed by Article 31. The non- delivery of goods can be as a result of conversion or for any other reason. Therefore, the view taken by Mr. Justice Desai in the above cited case, with respect, appears to be correct. Therefore, a suit against a carrier for compensation for non-delivery of goods whether it is non-delivery simpliciter or whether it is due to conversion, misappropriation or any other reason ought to be governed by Article 31. If that is so, then a suit for compensation for such non-delivery must be brought within one year no matter what the circumstances are which occasioned the non-delivery.

11. But the learned Advocate for the petitioner relies on *Union of India v. Alladad Faizulhukka Pathan* AIR 1960 Mys 283. This was a case of wrongful refusal to deliver the goods and therefore it was said to be an act of conversion. The Mysore High Court on those facts observed that in such a case, the rule of law that a consignee was bound to take the delivery of the goods, when the Railway administration offers to deliver them even if they are in a damaged condition when they arrived at the destination and that he should thereafter proceed to claim such compensation as he might be entitled to in respect of the injury caused to his goods has no application; that in offering to deliver the goods nearly 4 months after their arrival at destination; there was unjustifiable delay and the consignee was entitled to refuse to take the delivery of goods of which there had been conversion. Such a suit according to the High Court being not a suit for the recovery of compensation for loss, destruction or deterioration of the goods, but being one for compensation for Conversion, will not attract Article 31 but Art, 49. Although the Mysore High Court observed that Article 49 will be applicable, yet they were of the view that even if Article 31 was applicable that suit was within time, for reasons given by the High Court during the course of their judgment. But I must now mention here that the Supreme Court has also approved the decision in *Martab Ali Vs. Union of India*, in *Governor General in Council Vs. Musaddi Lal*, . That Court also was considering a case for loss on account of non-delivery. A bale of cloth was despatched and that did not reach the destination and the Railway administration were unable despite efforts to trace the same. Failing to obtain satisfaction for the loss suffered by the plaintiff he had served a composite notice u/s 77 of the Indian Railways Act and Section 80 of the Civil P. C. and thereafter filed the suit for loss on account of non-delivery. After considering Section 77, the Supreme Court was dealing with the point of limitation. The Supreme Court observed in paragraph 6 that there are undoubtedly two distinct articles, Arts. 30 and 31 of the First schedule of the Indian Limitation Act dealing with limitation for suits for compensation against carriers, that Article 30 prescribes the period of limitation for suits against a carrier for compensation against loss or injury to goods and Article 31 prescribes the period of limitation for suits for compensation against a carrier for non-delivery or delay in delivering the goods. While discussing this point of limitation, their Lordships also observed that they were unable to project the provisions of Articles 30 and 31 of the Limitation Act upon Sections 72 and 77 of the Railways Act and to hold that a suit for compensation for loss because of non-delivery of goods did not fall within Section 77. They observed that this view was supported by a large volume of authority in the courts in India, and one of the cases cited with approval was *Martab Ali Vs. Union of India*, . They differed from certain cases of the Allahabad High Court and Patna High Court cited by them. Evidently, therefore. Article 31 which is with respect to a carrier will be the relevant article in so far as the facts and circumstances of this case are concerned. It is more specific than Article 48 and the instant suit with which we are concerned was for compensation for non-delivery of the goods. This view is also supported in ILR 39 Mad 1 = AIR 1916 Mad 314. That Court was also dealing with non-delivery of

goods and it was a suit against a carrier.

12. The learned Advocate for the petitioner also relied upon Article 36 of the first Schedule of the Indian Limitation Act. This is for compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for in the first Schedule. The period of limitation is two years from the date when the malfeasance, misfeasance or non-feasance takes place. It is difficult for me to agree with him, because the suit with which we are concerned could not be said to be independent of any contract. In fact, the delivery of goods to the plaintiff is based on a contract between him and the railway administration. But the learned Advocate for the petitioner says that the railway administration had auctioned his goods without any notice to him. He says that under Sections 55 and 56 of the Railways Act, he ought to have been given a notice. According to him, therefore, the railway administration are liable for compensation for this malfeasance or misfeasance. It is, however, difficult for me to agree for the aforesaid reasons. Moreover, as mentioned above, Article 31 is a special article provided for and as observed by the Madras High in ILR 39 Mad 1 - AIR 1916 Mad 314 the legislature indicated an intention that Article 31 should apply to a claim against a carrier for compensation for non-delivery of goods irrespective of the question whether the suit was laid in contract or in tort. Moreover, the plaintiff does not appear to have filed the suit on the basis of tort at all, although he mentioned in para 8 of his plaint that the auction was highly inequitable, illegal and wrongful. He further says that because of this he suffered a loss of Rs. 354-61 and therefore the defendant was liable to pay this sum to the plaintiff as compensation by way of damages for the non-delivery and conversion of his goods, therefore, his claim appears to be based upon non-delivery and conversion of his goods. Looking from this point of view also, the contention raised by the learned counsel for the petitioner is without substance.

13. The learned Advocate for the petitioner also relies on *Palanichami Nadar v. Governor-General of India in Council* AIR 1946 Mad 133 and *Secy. of State Vs. Simla Footwear Company*, . I, however, think that the facts and circumstances of these cases cannot be compared with the facts and circumstances of the case with which we are concerned. The Madras case was a case where the Madras High Court was concerned with a suit for damages for loss of a part of goods in railway transit. That was a case in which a railway company tried to trace some of the goods and ultimately informed that lost goods could not be delivered. Part of the consignment had already been delivered on an earlier date and part remained to be delivered. It is in the context of these circumstances that that Court held that the time to institute suits against railway company for compensation of lost articles u/s 80, Railways Act (1890) would begin to run under Article 31, Limitation Act, from after a definite refusal or declaration of inability to deliver by the railway company held responsible to deliver the lost goods. We are here not concerned with any part of the consignment having been delivered on an earlier date and part remaining to be delivered or any enquiry being made by the railways. The Allahabad case also was a case where the

properties were sold by the auction-sale against the express direction of the plaintiff. It was in that context that the Allahabad High Court held that that suit was governed by Article 48.

14. It appears to me therefore that the" order of the trial Court is quite legal and proper and this revision application, therefore, should fail. I, therefore, dismiss it with costs.

15. Revision dismissed.