
(1952) 09 AP CK 0016
In the Andhra Pradesh High Court
Case No : Revision No. 27/4 of 1952

Mangani Ram Nathumal

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 12-09-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1908 — Article 31, 9
Railways Act, 1890 — Section 77, 80

Citation : (1952) 09 AP CK 0016

Hon'ble Judges : Palnitkar, C.J;M.S. Ali Khan, J

Bench : Division Bench

Advocate : Bishambar Dayal and Girija Parshad Sanghi, for the Appellant;
Krishna Chandra Mulashwar, for the Respondent

Judgement

1. This is a reference from the Single Bench dated 11-4-1952. We have heard the arguments of the learned advocates of the parties and record our opinion below.

2. The reference has arisen from a revision petition against the order of the District and Sessions Court, Secunderabad, dated 9-8-1951, by which the revision Petitioner's (the joint family of Mangani Ram Nathmal per Manager Nathmal) suit against (1) the Government of the Union of India owning the East Punjab Railway per the Chief Administrative Officer of East Punjab Railway, head office, Delhi and (2) the Government of the Union of India owning the Nizam State Railway per General Manager, Head Office, Secunderabad, was dismissed. Hence the revision and the reference by the Single Bench. The facts alleged are that on 20-11-1946 a consignment of two bags of "alu baqara" and one of "hing" valued at Rs. 569 were on behalf of the revision-Petitioner handed over to the North Western Railway at Multan City for carriage and safe delivery to him in Hyderabad. The consignment was not delivered in time and was not delivered till the date of the suit i.e., 20-7-1950. On 8-4-1947, the revision-Petitioner gave notices to both the Respondent Railways u/s 4.6, Hyderabad Railways Act,

corresponding to Section 77, Indian Railways Act. The second Respondent Railway replied on 17-4-1947 that the matter was receiving attention and after some correspondence by which they sent for the original "bichuk" and the receipt, they ultimately intimated the revision-Petitioner on 20-7-1948 that, his claim cannot be entertained as it was barred by limitation. The revision-Petitioner carried on further correspondence protesting that his claim was not barred, but the said Respondent on 17-2-1949 dismissed his claim again on the same plea of limitation. To enable himself to sue the Respondents Railways, the revision-Petitioner filed an appeal to the Secretary to Hyderabad Government, Railway Department, on 6-1-1949 but the Secretary did not reply and it seems that he did not take any action on the appeal till the date of the suit. In these circumstances the revision-Petitioner has claimed that he had no remedy till the advent of the Constitution on 26-1-1950 and the integration of the Nizam State Railway with the Indian Railways on 1-4-1950 and hence his suit is within time. Respondent 2 " filed a written statement on 10-1-1951 pleading that the revision-Petitioner was not entitled to maintain the suit as not only he had given no notice u/s 80, Indian CPC and Section 77, Indian Railways Act, taut his suit is also hopelessly out of time. The first Respondent Railway also filed a written statement on 31-3-1951 and it is to the same effect.

3. The only questions in this revision petition are: whether the notice u/s 00, Indian CPC and Section 77, Indian Railways Act, or the corresponding Section 46, Hyderabad Railways Act, is necessary- and whether the suit is barred by limitation. As far as notice u/s 80, Indian CPC is concerned the learned District and Sessions Judge, Secunderabad, has held correctly, that as at the time of the filing of the suit the Hyderabad CPC was in force and there is no provision in it corresponding to Section 80, Indian CPC no notice u/s 80 was required. Regarding the notice u/s 46 or Section 77 of the Railways Act, the judgment under revision is silent, but the learned advocates of the Respondents argued that notice under the said sections was necessary and though the revision-Petitioner gave a notice on 8-4-1947, it did not comply with the provisions of the sections and was insufficient and incorrect inasmuch as no compensation and no, fixed and determinate amount of compensation was claimed in it. They explained that though the revision-Petitioner's contention is that the consignment was not delivered to him, yet the word "loss" used in Section 77 has been interpreted in the cases cited in the margin to include "non-delivery" and, therefore, it was incumbent on him to give a notice in full compliance of the requirements of the section and claim fixed and determinate compensation. This contention is easily disposed of, for the notice given by the revision Petitioner expressly claimed compensation and though it did not claim any fixed and certain sum. as compensation, neither the wording of Section 77 nor the authorities cited require that a fixed and certain sum should be claimed in the notice. Thus, we are of the opinion that the notice issued by the revision-Petitioner was in sufficient compliance of the provisions of the section. We may mention further that the view taken in the cases cited above that the word "loss" used in the section

includes non-delivery is against the volume of authority of the Indian High Courts. Reference may be given to the marginally cited cases. Of the cases cited by the learned advocates for the Respondents, ? "102 Ind Cas 149 (Lah)" is clearly against his contention and as to the rest of the cases, we can only hold that the volume of authority is against the view taken in them. It is thus clear that as the goods were not delivered, no notice u/s 77 was required; and the notices issued by the revision-Petitioner were in sufficient compliance of the section.

4. The most difficult question in this revision, however, is that of limitation. The learned advocates for the Defendants argued that the suit is hopelessly out of time from every point of view. They argued that Article 26, Hyderabad Limitation Act, corresponding to Article 31, Indian Limitation Act, is the only article that is applicable to this suit; that the goods were consigned for delivery on 20-11-1946 and, therefore, time began to run as soon as the ordinary period of transit was over; that for a consignment to arrive from Multan to Hyderabad it could not take more than a month or so and, therefore, taking the ordinary period of transit to end, say, on 1-1-47 time began to run from that date and the revision Petitioner should have filed the suit before 1-1-48 but he has filed it on 20-7-1950; that there was no need for the Plaintiff to enter into any lengthy correspondence with the Respondent Railways as they were not admitting any liability; that he should, therefore, have forthwith given the notice and filed the suit in pursuance of Section 77, Indian Railways Act; that even conceding without admitting that he waited for a reply of the Respondent Railways, the first reply was given to him on 20-1-1948 and he should have filed the suit within one year of that date; that even conceding further that he entered into negotiations pleading with the Railways that his suit was not barred by limitation, which he should not have done and even exempting this time, he should have filed his suit within one year of the second refusal of his claim on 6-1-1949, i.e., on or before 6-1-1950 whereas he has filed his suit, as already stated, on 20-7-1950" Thus, the learned advocate argued that looked at from any point of view, the Plaintiff's suit is hopelessly out of time. The learned District and Sessions Judge has in the judgment under revision fully endorsed this opinion. We have to examine whether this finding and the contentions of the learned advocates can be upheld after considering the reply of the learned advocate for the revision-Petitioner.

5. The learned advocate for the revision- Petitioner argued that owing to unprecedented political and constitutional circumstances his remedy was affected. He stated that the circumstances which affected his remedy were the attainment of independence by India on 15-8- 1947; and the attainment of independence by Hyderabad; that Hyderabad also became a sovereign state, as the British paramountcy over it was expressly ended and it was recognized that it was not replaced by the paramountcy of any other power; that all the rail way areas in the Hyderabad State were also| renditioned on 2-8-47; that it is a principle of International Law that a sovereign state cannot be sued in any other state; that because of it the revision-Petitioner could not sue the Government of

India owning the East Punjab Railway in Hyderabad, nor could he sue the Nizam State Railway in Delhi; that he could not sue the state-owned Nizam State Railway in Hyderabad, because of the provisions of Section 4, Hyderabad Suits Against Government Act (No. v. of 1320), which provide that before an application for permission to file a suit against Government can be filed with the Government Legal Adviser, the right of appeal to the Department concerned should first be exercised by a Petitioner; that, as already stated above, the revision-Petitioner filed an appeal before the Railway Secretary who, however, did not take any action on it. The learned advocate argued further that this state of affairs continued till the accession of Hyderabad State to India in October 1948, the advent of the Constitution and the integration of the Nizam State Railway with the Indian Railways on 1-4-1950; that till the last-mentioned date he had no forum where he could have sued both the Respondent Railways; that it was essential for the success of his suit to sue both the Railways and no law compels him to sue the North Western Railway alone in Delhi; that as a matter of fact the North Western Railway was partitioned and the portion with the Multan City went to the share of Pakistan and obviously, he could not have sued the Government of India at Multan, that similarly he could not have sued at Delhi the East Punjab Railway which is the portion of the North Western Railway that fell to the share of India before the India Independence (Rights, Property, Liabilities) Order of 1947 and, after the said Order of 1947 he could have sued the East Punjab Railway in Delhi, but in that case he could have sued that Railway alone; that, as already stated even u/s 80, Indian Railways Act, he could not be compelled to sue one Railway only.

In our opinion, the decision of the question of limitation is thus reduced to two points only. One is whether Section 4 of the Act, V of 1320, was really in the way of the revision-Petitioner and the other is whether the revision-Petitioner can be compelled to sue the East Punjab Railway only. Taking the latter point first, it is important to be clear about the reasons why he could not have sued the East Punjab Railway at Delhi soon after the India Independence (Rights, Properties, and Liabilities) Order, 1947. It is clear that the consignment was made to the East Punjab Railway or their predecessor, the North Western Railway at Multan; that the contract was with these Railways; that according to some cases the Nizam State Railway was an agent only while according to some others it was the principal; that it is clear law that one can sue either the principal or the agent. The very cases referred to by the learned advocate, namely, ? Arjundas Gulab Rai Firm v. E. I. Rly. Co. 75 Ind Cas 18 (Pat); ? Jamunadas Ramjas v. E. I. Rly. Co. Ltd. AIR 1933 Pat 630 ? G. I. P. Rly. Co. v. Radhakisan 5 Bom 371 and ? Narang Rai v. River-steam Navigation & Co. Ltd. 34 Cal 419 while holding the forwarding Railway to be the agent of the delivering Railway do not dispute the principle that both the Railways, that is, the forwarding Railway & the delivering Railway can be sued, the principle being that ordinarily a principal is liable for the negligence of his agent, and that the person who suffers the loss would also have the option of suing the agent himself who had been negligent. Thus, it seems

clear that the revision-Petitioner could have sued the East Punjab Railway. But is this really so? For even Section 80, Indian Railways Act, which would have been the section applicable to his suit against the East Punjab Railway, gives him the option to sue the delivering Railway, and in the exercise of this option considerations like the following considerations have been deemed to be valid:

If the Railway which delivers the goods at destination to the consignee or any other Railway in the series should be the railway on whose line the loss, etc., occurred, "the consignee, if he should be a resident of the destination station or of the station of that railway on whose line the loss etc., occurred, may find it easier to institute his suit at that place than if he be obliged to go to the place from which the goods were forwarded". The effect of Section 80 is, therefore, to "enable" the aggrieved party, subject to other conditions, to "choose" the railway for instituting his suit for compensation. Suppose the railway on whose line the loss, etc., occurred, is looked upon as a mere agent of the forwarding railway, then, if this section had not been enacted, it is possible to raise the objection that the agent cannot be sued. *Kokamal v. G.I.P. Rly.* 21 Ind Cas 428 (All) that, therefore, the suit against that railway is not maintainable and that it should be instituted only against the forwarding or contracting railway. Again, the objection to the suit, against the losing railway may also be that there is no privity of contract ? *Gujendro Mohun Shaba v. E. B. Rly. Co.* 18 WR 145 (2) between the Plaintiff and the offending railway and that, therefore, as against such railway, the Plaintiff has no right of suit. In order to prevent the raising of such defences on behalf of the railways, it is now enacted that the Plaintiff has a right to choose the railway which he may sue, either the railway from which the Plaintiff obtained his pass or bought his ticket or to which he delivered his goods or animals, or the railway administration on whose railway the loss, injury, destruction or deterioration occurred. Of course, the Plaintiff has always a right of suit against the railway with which he made his contract originally, that is, with which he has privity of contract, to refer to it shortly, the forwarding or the contracting railway, which he must always sue in his own interests. But he may have no right of suit against the railway at the place where the loss, etc., occurred. To enable, therefore, the Plaintiff, if he happened to be residing at or near the place of loss, etc., to sue the railway on whose line the loss may occur, it is now enacted that he may elect to sue the railway on whose line the loss etc. occurs.

It would thus be seen that by Section 80 the liability of the Railways has been made a statutory liability and is not made to rest either on the shifting relation of principal and agent or on tort, as is held by Sir Courtney-Terrel C.J. of the Patna High Court in ? *B. and N. W. Rly. Co. v. Kameshwar Singh* 12 Pat 67. However this may be, it is fairly clear from what has been quoted above that had the revision-Petitioner sued the East Punjab Railway at Delhi, Section 80, Indian Railways Act, would have applied and under it he would have had an option and would have been permitted to elect to sue the Nizam State Railway. There appears to be no reason why we should not hold that he elected to sue the Nizam State Railway, as that was the Railway of his residence and it was

convenient to him to sue it, but found Impediments in the way. We have already described these impediments above & we will comment upon them just now. But before we do that we may mention here that although Section 80 gives the Plaintiff the option to sue any one of the two companies through whose lines the goods have been carried, it by no means prohibits him from impleading both the companies in a suit. Indeed in many cases, it may be difficult for the Plaintiff to know before the institution of the suit on which line the loss occurred: hence if the Plaintiff sues 1 of the 2 Railways it may very well turn out that the loss occurred on the other railway & it was a necessary party to the suit. Such was the case in ? East Indian Railway Co. Ltd. Vs. Kedarnath Seth and Another, . Thus, the insistence of the learned advocate for the revision-Petitioner that before 26-1-50, that is, before the advent of the Constitution and the integration of the Hyderabad Railways he had no forum where he could sue both the Railways does not seem to be devoid of weight.

Coming to the impediments which the revision-Petitioner had in suing the Nizam State Railway it seems to us fairly clear that the provisions of Suits Against Government Act, (V of 1320 F.) were really in the way. The Nizam State Railway was a state-owned Railway, and to sue it, the permission of the Government was necessary. We do not think that the plea of the revision-Petitioner that the Legal Adviser's Office wanted in some kindred cases that he should also file an appeal before the Railway Secretary is incorrect. In this way, the Plaintiff could not sue the Nizam State Railway till the advent of the Constitution. Nor could he have sued the East Punjab Railway in Hyderabad as India was a sovereign State and in spite of the comment of the learned Sessions Judge, Secunderabad, we have our doubts whether any Hyderabad Court would then have entertained a suit against the Government of India. Thus, it seems to us that the main points of the arguments of the learned advocate for the revision-Petitioner are not devoid of force. The Nizam State Railway took time for inquiry and then without answering what happened to the consignment in a straightforward manner, pleaded limitation on 20-1-48. In this way we are clearly of the opinion that before the advent of the Constitution and the integration of the Railway on 1-4-1950 there was no forum. Absence of forum having regard to Dwijendra Narain v. Joges Chandra 79 Ind Cas 520 at p. 530 Col. (2) (Cal) has the effect of suspension of remedy. Similarly, it has been held in ? Hari Mohan Dalal and Another Vs. Parameshwar Shau and Others, and ? Jateendra Chandra Bandopadhyay and Others Vs. Rebateemohan Das and Others, , that the Plaintiff is entitled to date the cause of action from the date on which the remedy is available. Apart from all this, we are persuaded that the Law of Limitation has to be applied liberally &, having regard to the circumstances of this case, this principle is all the more applicable. We are thus of the opinion that this revision petition should be allowed. In the circumstances of the case we make no order as to costs.