

(2013) 12 DEL CK 0092

In the Delhi High Court

Case No : Regular First Appeal 529 of 2013 and CM No. 18073 of 2013

M/s. Varuna Integrated Logistics Pvt. Ltd.

APPELLANT

Vs

M/s. Goel Road Carriers and Another

RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 406

Citation : (2013) 12 DEL CK 0092

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : S.R. Parashar, Mr. S.S. Parashar and Mr. Anand Parashar, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The appeal impugns the judgment and decree dated 24th June, 2013 of the Court of the Additional District Judge (ADJ)-III, Rohini Courts, Delhi of dismissal of Suit No. 234/2011 filed by the appellant/plaintiff on the preliminary issue framed of limitation. The appeal came up before this Court first on 2nd December, 2013, when the counsel for the appellant/plaintiff pegged his case on Article 68 of the Schedule to the Limitation Act, 1963. However, the appellant/plaintiff along with the memorandum of appeal had not filed a copy of the plaint to show that the case as pleaded was within the ambit of said Article. A perusal of the Trial Court judgment did not show the counsel for the appellant/plaintiff to have before the Trial Court urged Article 68 of the Act. In the circumstances, the Trial Court record was requisitioned and the appeal posted for today for hearing on admission.

2. A perusal of the Trial Court record shows the appellant/plaintiff to have on 25th May, 2011 instituted the suit, pleading:

(i) that the appellant/plaintiff is carrying on transport business;

(ii) that the respondent/defendant No. 1 is a transport broker providing trucks to

various transport companies;

(iii) that the respondent/defendant No. 2 M/s. Hindustan Unilever Ltd. is a contract client of the appellant/plaintiff and the appellant/plaintiff carries goods/ consignments of respondent No. 2 to various destinations;

(iv) that the appellant/plaintiff approached the respondent/defendant No. 1 for delivering consignment of respondent/defendant No. 2 to Delhi;

(v) that the respondent/defendant No. 1 provided truck No. HR-38-H2012 to the appellant/plaintiff for transporting the goods of the respondent/defendant No. 2;

(vi) that the value of the goods of the respondent/defendant No. 2 so booked for transportation was Rs. 17,00,423.53 paise;

(vii) that the consignment was booked vide Goods Consignment Note dated 22nd January, 2008 of the appellant/plaintiff;

(viii) that the respondent/defendant No. 1 failed to deliver the consignment to the respondent/defendant No. 2 due to the alleged theft in the truck and a First Information Report (FIR) bearing No. 14/2008 of Police Station Alipur, Delhi was lodged in this regard;

(ix) that out of 1029 cartons, only 490 were recovered;

(x) that the invoice value of 539 undelivered cartons was Rs. 8,90,697/-;

(xi) that the appellant/plaintiff also got registered FIR No. 32/2008 against the respondent/defendant No. 1 u/s 406 I.P.C. at Police Station Ranipur, Haridwar, Uttarakhand;

(xii) that the appellant/plaintiff many times approached the respondent/defendant No. 1 for settling the claim of the appellant/plaintiff but the respondent/defendant No. 1 did not settle inspite of assurances;

(xiii) that the appellant/plaintiff came to know about the quantity of the lost cartons, after FIR No. 14/2008 was got lodged and accordingly the consignment was got released by the appellant/plaintiff from the Court of Metropolitan Magistrate vide order dated 29th May, 2008;

(xiv) that the cause of action accrued to appellant/plaintiff for the first time on 29th May, 2008 when the appellant/plaintiff came to know about the quantity of the cartons so recovered by the police in FIR No. 14/2008 and thereafter when the appellant/plaintiff requested the respondent/defendant No. 1 to settle the claim but the respondent/defendant No. 1 did not.

Accordingly, the suit for recovery from the respondent/defendant No. 1 of Rs. 8,90,697/- with interest was filed.

3. A perusal of the Trial Court record further shows that when the suit first came up before the ADJ on 26th May, 2011, the counsel for the appellant/plaintiff was

asked to satisfy, as to how the suit was within time. It was pointed out to him that in the entire plaint, neither date of theft nor the place of theft had been mentioned and the appellant/plaintiff appeared to have concealed material facts to wriggle out of the law of limitation. The suit was adjourned to enable the appellant/plaintiff to furnish better particulars.

4. No such particulars were furnished and dates were taken from time to time. Thereafter, only copy of FIR No. 14/2008 of Police Station Alipur was filed and again adjournments were taken from time to time.

5. Ultimately, the learned ADJ vide the impugned judgment/order dismissed the suit, finding/observing/holding:

(a) that the appellant/plaintiff had also placed on record copy of FIR No. 32/2008 lodged by it on 28th January, 2008 at Police Station Ranipur against the respondent/defendant No. 1;

(b) thus, the cause of action had arisen to the appellant/plaintiff at least on 28th January, 2008, when FIR of theft/misappropriation of consignment was lodged against the respondent/defendant No. 1;

(c) that as per Article 10 of the Limitation Act, 1963, the period of limitation for compensation against carrier for losing or injuring the goods, is three years from the date when the loss or injury occurs;

(d) that since the appellant/plaintiff came to know about theft or misappropriation of the goods at least on 28th January, 2008, even if the period of three years is counted therefrom, the suit filed on 25th May, 2011, was barred by time;

(e) that the judgments cited by the counsel for the appellant/plaintiff are not applicable;

6. Though the counsel for the appellant/plaintiff has not argued any further, but again a perusal of the Trial Court file shows that the judgments relied upon by the counsel for the appellant/plaintiff and which were held to be not applicable, pertained to Article 68 supra of the Schedule to the Limitation Act.

7. The said Article 68 in part VI titled "suits relating to movable property" of the Schedule to the Limitation Act provides a limitation of three years for a suit for specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion, commencing from the date, when the person having the right to possession of the property first learns in whose possession it is.

8. On a bare reading of the said provision, it appears that the suit to which the said Article can apply, has to be a suit for recovery of specific movable property and not a suit for recovery of value thereof, as the subject suit was. However, in the judgments relied upon by the counsel for the appellant/plaintiff before the Trial Court, are found to be the following judgments:

(I) Champalal Vs. Ramchander and Another, , where relying on K.S. Nanji and Company Vs. Jatashankar Dossa and Others, , it was held that a person having the right to possession of a movable property wrongfully taken from him by another, can file a suit to recover the said specific movable property or for compensation therefor within three years from the date, when he first learns in whose possession it is;

(II) Lodna Colliery Co. (1920) Ltd. Vs. Bholanath Rai and Others, , where also a suit for damages for coal wrongfully taken away was held to be governed by the equivalent Article to the Limitation Act of the year 1908;

(III) K.S. Kanji and Co. Vs. Jatashankar Dossa and Others, to the same effect;

(IV) Jaganji Vs. Bandan, , where a suit for recovery of money in lieu of specific movable property, was in view of earlier judgments, held to be a suit for specific movable property, though expressing a doubt qua the said proposition;

(V) K.S. Nanji and Company Vs. Jatashankar Dossa and Others, ;

(VI) Sankar Dastidar Vs. Shrimati Banjula Dastidar and Another, laying down that though Article 68 is for recovery of specific movable property but since Article 91 providing for a suit for compensation for wrongfully taking or detaining any specific movable property lost or acquired by theft or dishonest misappropriation or conversion, is three years beginning from the date, when the person having the right to possession of the property first learns in whose possession it is, the principle of Article 68, applies to money claims also in lieu of such property.

9. Thus, it has to be accepted that Article 68 has been correctly invoked by the counsel for the appellant/plaintiff and the learned ADJ is in error in holding that the judgments relied upon by the counsel for the appellant/plaintiff, were not applicable. The learned ADJ appears to have so held without even going through the said judgments.

10. However, for Articles 68 or 91 to apply, there has to be a plea as to on what date, the plaintiff first learnt in whose possession the property is. There is no such plea in the plaint in the present case. The suit is claimed to have been instituted within three years of 29th May, 2008, which is pleaded to be the date of the order by which the goods recovered were ordered to be released to the appellant/plaintiff. No date has been given on which date the appellant/plaintiff first learned that the goods whose value was claimed, were in wrongful possession of the respondent/defendant No. 1. In fact, there is no plea even to the effect that the goods, though claimed by the respondent/defendant No. 1 to have been stolen from it in transit, were found to be in respondent/defendant No. 1's possession only. Rather, the pleas are that the respondent/defendant No. 1 merely provides and "provided" the truck to the appellant/plaintiff for transporting the goods. The question of the respondent/defendant No. 1 thus being in possession of the goods for the purposes of transit, would not arise, as once the truck had been provided by the respondent/defendant No. 1 to the

appellant/plaintiff and the appellant/plaintiff was carrying the goods of the respondent/defendant No. 2 therein, the goods would be deemed to be in possession of the appellant/plaintiff only. The observations made by the learned ADJ on the very first date when the suit was listed, of the appellant/plaintiff having concealed facts to get over the limitation, is thus found to be apposite.

11. A perusal of the order dated 29th May, 2008 of the Metropolitan Magistrate found on the Trial Court record, though refers to recovery of goods, does not show from whom the goods were recovered. The FIR No. 14/2008 lodged by the respondent/defendant No. 1 is also of having provided the truck to the appellant/plaintiff and having gone missing. FIR No. 32/2008 dated 28th January, 2008 of Police Station Ranipur, Haridwar, Uttarakhand lodged by the appellant/plaintiff on 22nd January, 2008, is also of apprehension that Mr. Jatin Goel proprietor of the respondent/defendant No. 1 having in conspiracy with the driver, misappropriated the goods. There is not a single document to show that some of the goods were recovered from the respondent/defendant No. 1 or as to when the appellant/plaintiff learnt thereof.

12. The counsel for the appellant/plaintiff during the hearing argued that the appellant/plaintiff learnt of the recovery from the respondent/defendant No. 1 on 28th May, 2008. However, in the absence of any pleading neither in the plaint nor in this appeal, no cognizance of such oral submission can be taken. In fact, the counsel is also unable to tell, as to when the application for release of goods on which the order dated 29th May, 2008 was made, was filed. No copy of such application has also been filed. There is thus no merit in this appeal, which is dismissed; however the appeal having been dismissed without issuing notice to the respondent/defendant No. 1, no costs.

Decree sheet be drawn up.