

(1972) 07 GAU CK 0015

In the Gauhati High Court

Case No : Second Appeal No. 64 of 1970

Sew Narayan Choudhury

APPELLANT

Vs

M/s. Indian Roadways, Calcutta and another

RESPONDENT

Date of Decision : 17-07-1972

Acts Referred:

Limitation Act, 1963 — Section 30
Penal Code, 1860 (IPC) — Section 420

Citation : AIR 1972 Guw 76

Hon'ble Judges : Baharul Islam, J

Bench : Single Bench

Advocate : K.P. Sen, for the Appellant;

Final Decision : Dismissed

Judgement

Baharul Islam, J.—This second appeal by the plaintiff is directed against the judgment and decree passed by the Assistant District Judge, Dhubri in Money Appeal No. 14/68.

2. The plaintiff is Sew Narayan Choudhury. There are two defendants,- 1. M/s. Indian Roadways, Calcutta and 2. M/s. Indian Roadways, Dhubri. The plaintiff brought a suit on the allegation that the defendants are common carriers and carry on the same transport business on road having Head Office in Calcutta and a branch office at Dhubri. His case was that on 24-5-61, he brought two wooden chests containing cardamom to the office of defendant No. 2 for booking them to Gauhati and the Manager of defendant No. 2 after taking the delivery of the articles asked the plaintiff to come to their office the following day for consignment note as he was then very busy. It was further alleged that the articles were in fact booked on 25-5-61, the consignor and consignee being the plaintiff himself. On 25th of May, 1962, when the plaintiff went to the office of defendant No. 2 for the consignment note, the Manager of the defendant No. 2 took signature of the plaintiff on the consignment note and also took cash memo from him regarding the purchase of the cardamom on a false pretext; but to his

utter surprise, the aforesaid Manager began to abuse him and attempted to assault him when he had to run away. He went to the thana and informed the police about the ill-treatment meted out to him. The plaintiff further alleges that defendant's officer Bhabendra Chandra Modak lodged a false case before the police u/s 420 of the Indian Penal Code and that the plaintiff was charged under that section; but ultimately he was discharged. In para 6

(Contd. on Col. 2)

49. For the specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same of his plaint, the plaintiff says that he made repeated demands for the two boxes of cardamom or its prices from the defendant No. 2, but to no effect. Thereafter he issued pleader's notice on 22-11-61 claiming Rs. 1844.64 P. including interest upto the date of notice. In the plaint the claim is for compensation "for loss and misappropriation of the goods by misconduct of the defendant's servants and men."

3. The defendants filed a written statement. Their defence was that the plaintiff came to the office of the defendant No. 2 on 25-5-61 along with two coolies with two boxes for booking the same from Dhubri to Gauhati falsely representing that the said boxes contained cardamom. After weighment and from the suspicious condition of the boxes the Manager grew suspicious about the contents of the boxes and he requested the plaintiff to open the boxes; but the plaintiff refused. Being more suspicious at the behaviour of the plaintiff, when the Manager with the help of his employees began to open the boxes, the plaintiff ran away. On opening the boxes, it was found that instead of cardamom, they contained bricks, stones, torn gunny bags etc. Thereafter the Manager of defendant No. 2 lodged a case at the Dhubri Police Station against the plaintiff u/s 420, I.P.C.

4. The learned Munsiff after discussing the evidence has come to the conclusion that the plaintiff knew about the alleged loss of goods in question on 25-5-61. The plaintiff's case in para 1 of the plaint is that the defendants are common carriers and as such, the learned Munsiff held, Article 10 of the Limitation Act of 1963 (which will hereinafter be called the new Act) applied to the present case. According to the plaintiff's case in his plaint, the loss of the goods occurred on 25-5-61. The suit was filed on 7-11-64. So he held that the suit was barred by limitation and he accordingly dismissed the suit.

5. From the aforesaid decree, the plaintiff preferred an appeal before the Assistant District Judge, Dhubri. The learned Assistant District Judge also upheld the decree of the learned Munsiff on the question of limitation. Both the Courts below held, in my view erroneously, that Article 10 of the Limitation Act of 1963 applies to the present case.

6. Mr. K. P. Sen, learned counsel appearing on behalf of the plaintiff-respondent submits before me that Article 49 of the Limitation Act of 1908 (which will hereinafter be called the old Act) applies to the case. Article 49 of the old Act aforesaid are as follows:-

49. Three when the property is wrongfully years, taken or injured, or hen the detainer's possession becomes unlawful.

The plaintiff's claim is against a carrier for compensation for loss of goods; therefore the proper Article applicable to the present case is Article 30 of the old Act, read with Section 30 of the New Act, and not Article 49 as submitted by Mr. Sen.

7. The material portion of Section 30 of the new Act is as follows:-

30. Notwithstanding anything contained in this Act- (a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of five years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier. (b).....

Article 30 of the old Act is as follows:-

30. Against a carrier for compensation one, when the loss or injury for loss or injuring goods.

According to plaintiff's own case, the loss occurred on 25-5-61 when defendant No. 2 denied to have received any boxes of cardamom. This is also the concurrent finding of the learned courts below. So the cause of action arose on 25-5-61.

8. Article 30 of the old Act corresponds to Article 10 of the new Act which latter Article provides a period of limitation of 3 years, which period is not "shorter" within the meaning of Section 30 of the new Act, but longer than the period of limitation prescribed by Article 30 of the old Act, which is one year. So the second part of clause (a) of Section 30 of the new Act is attracted to the present case. So Article 30 of the old Act comes into operation. The period of limitation prescribed by this Article is one year. The suit was filed on 7-11-64, while the limitation had expired on 25-5-62. The learned Courts below correctly held that the suit was barred by limitation.

9. In the result, the appeal fails and is dismissed. As there is no appearance on behalf of the respondents, I make no order as to costs.

Appeal dismissed.