(1956) 09 AP CK 0017

In the Andhra Pradesh High Court

Case No : Revision Petition No. 309/4 of 1952-53

Shankarappa APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 25-09-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Hyderabad Limitation Act, 1322 — Section 15(2), 46
Hyderabad Railways Act — Section 46
Limitation Act, 1963 — Article 25, 30, 30
Railways Act, 1989 — Section 77

Citation : (1956) 09 AP CK 0017

Hon'ble Judges : Srinivasachari, J

Bench : Single Bench

Advocate : Bishambar Dayal, for the Appellant; Srivastava, for the Respondent

Judgement

Srinivasachari, J.—This is a revision against the judgment of the Dist. Judge, Secunderabad, on the small cause side who dismissed the Petitioner''s suit as being barred by limitation. The revision Petitioner herein filed a suit for the recovery of Rs. 1071-3-0 against the Union of India as owning the Western and Central Railways. The Plaintiff alleged that he sent a consignment of 133 bags of garlic on 1-6-1950, from Khambalia station (Saurashtra State) and booked the same to Secunderabad.

The consignment was delivered to the consignee on 26-6-1950. A certain quantity of garlic had got rotten during transit and this quantity was assessed at 25 per cent, of the total quantity dispatched. The consignor preferred a claim for damages, for Rs. 1071/- before the Railway administration at Secunderabad. The Railway rejected the claim on, 23-7-1951. The Petitioner thereupon filed the present suit on 13-2-1952.

The Defendant Railway filed a written statement resisting the Plaintiff?s suit on various grounds. The liability of the Railway for damages was denied. A specific plea of limitation was raised. The trial Judge dismissed the suit as being burred by limitation. Hence this Revision.

2. Various arguments were advanced before me by the learned Advocate for the Revision Petitioner. The first contention was that the suit was not barred by limitation because he was entitled to deduct the time that elapsed in the enquiry before the Railway. The claim before the Railway was preferred on 18-7-1950 and the Rail way rejected the claim only on 23-7-1951. The argument was that this period of 1 year and 5 days between the preferring of the claim and the disposal of the claim by the Railway should be added to the period prescribed for filing suit.

3. The present suit is one to recover by way of compensation for damage to the goods, the goods having got rotten by the delay in transport. The position of the Railway being that of a carrier therefore, a claim for damages as against a carrier would be governed by Article 30, Limitation Act. Article 30 is in the following terms:

Against a carrier for compensation for losing or injuring goods - one year - when the loss or injury occurs.

This article takes in both cases of claims for compensation for losing the, goods as well as a claim for compensation for injury to the goods. The present case is of the latter kind. The period of limitation would therefore have to be computed from the date when the injury was caused and the suit filed within one year of that date. The damages were assessed and the goods delivered to the Plaintiff on 26-6-1950. The suit was filed only on 13-2-1952 which is clearly barred. Revision Petitioner''s (advocate contends that the law of Limitation that would apply would be the Hyderabad Limitation Act, which was in force when the cause of action arose.

4. The Law if Limitation is a procedural law and enactments which deal with procedure are an exception to the general rule that the operation of a Statute is always prospective. In the case of an enactment relating to procedure, its provision would apply to proceedings already commenced for the obvious reason that no one can be said to have a vested right in any form of procedure. It, therefore, would follow that this case would be governed by the Indian Limitation Act and the Article of the Limitation Act that would apply would be Article 30.

(b) The Petitioner''s advocate contended that at the time when the cause of action accrued viz., When the goods were delivered to him, the Hyd, Limitation Act having been in force, Article 25 of the Act (which corresponded to Article 30 of the Indian Act) would apply. That article is identical in terms of Article 30 of the Indian Limitation Act, the period prescribed being one year from the date When the loss or injury occurred.

Therefore even according to the Hyderabad Limitation Act the present suit would be barred but reliance is placed on Section 15(2) of the Hyd. Act. As has been observed above the Law of Limitation applicable to the case is the law which was in force on the day on which the suit was instituted. Vide in this connection Lala Soniram v. Kanhyalal 40 Ind App 74 (PC) (A). Therefore, there is no question of this case being governed by the Hyderabad Limitation Act.

5. The learned advocate placed reliance upon Section 30, Indian Limitation Act which was inserted by Act 3 of 1951 (Part B States Laws Act) and argued that the suit was within time. Section 30 is as follows:

Notwithstanding anything herein contained any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by any law corresponding to this Act in force in a Part B State which is repeal ed by the Part B States. (Laws) Act 1951 may by instituted within the period of two years next after coming into force of this Act in that Part B State or within the period prescribed for such suit by such corresponding law whichever period expires first.

6. The first desideratum for the application, of this provision is that the period of limitation, that had been prescribed under the repealed law of Limitation (Hyd. Limitation Act) should be shorter than the one prescribed under the Indian Act. As observed above, the Article corresponding to Section 30 of the Indian Limitation Act, Article 25, prescribed the same period viz., one year. Therefore the first desideratum is not satisfied.

But it is urged that when considering what period is prescribed for a suit the Court ought to take into consideration not merely what time has been prescribed under the Schedule to the Limitation Act but also what has been mentioned in the sections of the Limitation Act and it is further urged that u/s 15(2) of the Hyd. Limitation Act the period that elapsed in the submission of the claim to the Railway and the disposal of the claim by the Railway i.e., to say the period between 18-7-1950 and 23-7-1951 has to be excluded.

It was, therefore, contended that the Period prescribed under the Hyd. Act was larger than the one prescribed under the Indian Limitation Act to consequently Section 30 came into operation. It is no doubt true that in order to ascertain what is the date of the expiration of the prescribed period the days that could be excluded from operating by way of limitation, have to be added to what is primarily prescribed period. Vide in this connection the decision of the Privy Council in the case of AIR 1935 85 (Privy Council) . But it has to be observed that it is only where there is ground for excluding the period that those days could be added on to that period prescribed primarily. The party has to satisfy that he is entitled to deduct a particular (period, then alone could it be added to the period prescribed.

7. Does Section 15(2) help the Petitioner? Section 15(2) of the Hyderabad Limitation Act is to the following effect:

When any law makes it obligatory upon the Plaintiff that before instituting a suit in a court he should take some proceedings in any department or get pea-mission or give notice, then the time that is taken in such proceedings or getting permission or in the notice shall be excluded from the period of limitation prescribed.

8. The case of the Plaintiff is that under the Hyd. Railways Act which was extant then, he had to prefer his claim before the Railway in the first instance and that it was only after the claim had been disposed of by the Railway that he could institute the suit. My attention was drawn to Section 46 of the Hyd. Railways Act which enacts that suits for compensation for loss or damage of goods or cattle shall not be made unless such a claim were made before the Railway within six months of the delivery of the goods or cattle. This section is nothing different from Section 77, Indian Railways Act, which is as follows:

A person shall not be entitled to a refund of an over-charge in respect of animals or goods carried by Railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the Railway ad-ministration within six months from the date of the delivery of the animals or goods for carriage by Railways.

The object of this section is merely to prevent stale and dishonest claims for loss when owing to apse of time it might become impossible to trace the transaction and verify the allegations of the claimants. Section 77, Indian Railways Act, corresponding to Section 46, Hyderabad Railways Act, docs not put a statutory bar to the filing of a suit be-fore preferring a claim before the Railway. The preferring of a claim before the Railway cannot be regarded as a condition precedent to the institution of the suit just as the serving of a notice u/s 80, CPC is for filing suits against the Government.

The notice u/s 80, CPC is the notice of a suit which is different from preferring a claim before the Railway Authorities early to facilitate investigation into the matter. A claim u/s 77 is not notice of a claim to warrant deduction of the period of notice. The words ''it would not be open to a party'' occurring in See 46, Hyd. Railways Act & a person shall not be entitled to a refund occurring in Section 77, Indian Railways Act do not connote that the suit could not be filed till the claim before the Railway is investigated and disposed of.

9. The above discussion leads to the conclusion that Section 30, Indian Limitation Act, would not apply to this case for the obvious reason that the period prescribed under the Indian Limitation Act cannot be regarded as being shorter than the period prescribed under the repealed Hyderabad Limitation Act.

10. The suit is clearly barred by limitation. The judgment of the lower Court is upheld and this revision petition dismissed with costs. Advocate''s fee Rs. 55/-.

