

(1979) 10 AHC CK 0069
In the Allahabad High Court
Case No : Second C.A. No. 198 of 1976

Sri Govind Sugar Mills Ltd.	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 06-10-1979

Acts Referred:

Limitation Act, 1963 — Article 11
Railways Act, 1989 — Section 78(B)

Citation : (1979) AWC 760

Hon'ble Judges : K.N. Goyal, J

Bench : Single Bench

Advocate : K.N. Misra, for the Appellant;

Final Decision : Allowed

Judgement

K.N. Goyal, J.—This is a Plaintiff's second appeal arising out of a claim against the railway administration. The Plaintiff-Appellant consigned a machinery part to the Railway on 26-7-67 at Lukhimpur for carriage to Bombay and delivery to the Defendant No. 2. When the goods did not reach the destination station, the Defendant No. 2 enquired about the same and the railway officials did not tell him precisely when the goods would reach. Ultimately, a suit for Rs. 13,600/-for damages was instituted on 26-10-1970. The trial court decreed the Suit. The lower appellate court agreed with the trial court on the question of question of damages and also in holding that the suit was within time, but allowed the appeal of the Union of India on the ground that the suit was barred by Section 78B of the Railways Act inasmuch as the notice was sent to the Chief Commercial Superintendent instead of Manager of the Railway.

2. So far as the validity of the notice is concerned the lower appellate court relied on Ram Padarath Vs. Union of India (UOI) and Others, . In that ruling the notice was given in 1961 and the provisions of Section 140 of the Railways Act as it then stood were considered. In 1962, however, Section 140 was amended and it was provided specially that the notice may be served either on the Manager or

on the Chief Commercial Superintendent. Accordingly, the ruling was not applicable to (he amended provision and as such the view taken by the lower appellate court cannot be upheld.

3. Learned Chief Standing Counsel appearing for the Railway has, however, tried to support the result, namely the dismissal of the suit by the lower appellate court, by assailing the finding of that court on the question of limitation, According to his contention, as it was mentioned in the railway receipt that the normal time of transit was 10 days, the suit after having been filed by 12-10-70 was barred by 14 days. The lower appellate court has, however, held that the entire period during which the Defendant No. 2 the consignee went on enquiring and was not given any definite information about the consignment should be excluded, as the words used in Article 11 of the Limitation Act "When the goods ought to be delivered". The view taken by the lower appellate court is consistent with that expressed in *Bootamal Vs. Union of India (UOI)*, and by Full Bench of this Court in *Mutsaddi Lal v. Governor General 1952 AWR 385 (FB)*. The lower appellate court has noted that Sri R.S. Sagar, a clerk of the Railway Administration produced as DW 1 had himself admitted that if the goods were not received within a month, then only should an enquiry be made. Thus, in the circumstances, it would be reasonable to hold that although the normal time as mentioned in the railway receipt was 16 days, the Railway Administration itself was of the view that the goods ought to be expected to be delivered within a month. The period of 10 days was not a period fixed under a contract between the parties; it was mere intimation about normal expectation. This intimation was non-committal, inasmuch as the Railway Administration did not take any responsibility for any delay in transit beyond period of 16 days, Thus, it cannot be said that the period of 16 days was a period fixed under a mutual contract. I am, therefore, unable to hold the finding on the question of limitation to be illegal.

4. In the result, the appeal is allowed, the decree of lower Appellate Court is set aside and the decree of the trial court restored with costs throughout.