
(1958) 11 MP CK 0023
In the Madhya Pradesh High Court
Case No : F. A. No. 103 of 1954

S.S. Light Railway

APPELLANT

Vs

Deokinandan

RESPONDENT

Date of Decision : 18-11-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1890 — Section 77

Citation : (1960) JLJ 985

Hon'ble Judges : M. Hidayatullah, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : P.R. Padhye, for the Appellant; A.P. Sen and K.L. Dubey, for the Respondent

Final Decision : Allowed

Judgement

K.L. Pandey, J.—Messrs. Martin & Co., Managing Agents of the S. S. Light Railway (defendant No. 2) have appealed against the lower Court's decree for Rs. 12,659/- on account of delayed delivery, deterioration and loss of goods consigned for transport by rail.

2. The facts of the case, some of which were disputed in the lower Court but are no longer in controversy, are these. On 7 September 1947, Messrs. Raviprakash Om Prakash, a firm of commission agents dealing in jaggery, booked at Khekra on the S. S. Light Railway a consignment of 199 bags of jaggery weighing 485 maunds to be delivered to them at Khandwa. The goods were carried in three N. G. Wagons Nos. 628, 665 and 741. The last two wagons, which contained 174 bags, were loaded and dispatched on 9 September 1947 and reached Delhi Sahadra on the same day. On that day, communal disturbances broke out at Delhi and affected the surrounding areas with the consequence that the working of railways was paralyzed until about 20 September 1947. Thereafter, heavy rain commenced on 22 September 1947 and caused unprecedented floods from 29/30 September 1947. The flood water submerged the railway track and

entered the station building at Delhi-Sahadra. The flood level rose to such an extent that water entered the two wagons standing on the track at Sahadra and damaged the jaggery bags. In a few days, the floods receded, but the track was extensively damaged-and breached at several places. The normal working of the S. S. Light Railway was restored on 12 November 1947.

3. Meanwhile, on 6 November 1947, 174 bags of jaggery in N. G. Wagons Nos, 666 and 741 were transhipped to B. G. Wagon No. B. I. 28084 and, on 29 November 1947 again transhipped to wagon No. N. W. 45444 for transport by the East Punjab Railway. This wagon was dispatched on 7 January 1948 to Ghaziabad where it remained stationed till 17 January 1948 when it arrived at New Delhi. Having been dispatched from New Delhi on 21 January 1948, it reached Khandwa seven days later on 28 January 1948.

4. The third N. G. Wagon No. 628 which contained 25 bags of jaggery was loaded on 25 January 1948 and dispatched from Khekra.

After the necessary transshipment at Delhi-Sahadra, it arrived at New Delhi on 3 February 1948 and reached Khandwa in the usual course on 22 February 1948.

5. After the first wagon arrived at Khandwa on 28 January 1948, the plaintiffs, who claimed to be assignees of the railway receipt issued for the consignment, declined to take delivery of the goods unless the railway authorities assessed the damage caused and certified the shortage and fall in rate. There was some controversy over the matter. Ultimately, the shortage of 40 maunds and 141/2 seers was ascertained and the damage was assessed at 40% and thereupon the plaintiffs took delivery of the consignment on 15 March 1948.

6. The plaintiffs claimed that the railway receipt was endorsed in their favour by and through Messrs. Tarachand Chandrasen and they were, therefore, entitled to take delivery of the goods. According to the plaintiffs, the 3. S. Light Railway, East Punjab Railway and the G. I. P. Railway administrations and their servants deliberately and unduly detained the consignment of 174 and 25 bags at the dispatching, transshipping, and other stations and also misdirected the wagons carrying the consignment and left them unattended and uncared for. The consequence was that when the consignment arrived at the destination after long delay, the market rate had fallen. Also, there was a shortage and the goods had deteriorated considerably. In the normal course, the consignment should have reached Khandwa in 12 days or in a month at the outside, but several months were taken for carrying it to the destination. Even on arrival at that place, delivery was delayed and in the meanwhile the goods remained unprotected and further deteriorated in consequence. Moreover, when Messrs. Tarachand Chandrasen learnt that the consignment was damaged or likely to be damaged by rain, they sought permission of the authorities at Delhi-Sahadra to examine the goods and to refill the wagon for a fresh booking to Kishengarh but the request was not accepted. The entire damage to the goods and the delay in delivery of the consignment were, therefore, attributable to the misconduct of

the railway administrations concerned or their servants. The plaintiff served the usual notices u/s 77 of the Railways Act and section 80 of the CPC and claimed against-

(i) The Dominion of India for the G. I. P. Railway, and

(ii) the Managing Agents of the S. S. Light Railway, compensation as detailed below:-

(a) Rs. 11,752/10/6

being the difference between the market rate on 8 October 1947 and the price for which the delivered consignment was sold on or about 6 April 1948;

(b) Rs. 1,755/ 5/6

on account of interest;

(c) Rs. 92/ -/-

correspondence and other miscellaneous expenses.

7. The defendants resisted the claim on several grounds. They disputed that the railway receipt was endorsed in favour of the plaintiffs or that thereby they did or could become entitled to bring and maintain the suit. They also contested the validity of the notices u/s 77 of the Railways Act and section 80, Civil Procedure Code. According to them, the consignment was booked at owner's risk under Risk Notes A and B and this freed them from all liability except on the ground of misconduct. They pleaded that there were communal disturbances and floods at Delhi-Sahadra at the time when the consignment reached that station. The floods breached the track of the S. S. Light Railway at several points and Inundated the sheds and station buildings at Delhi-Sahadra to such an extent that it became impossible to move any wagon. The wagon carrying the consignment also suffered from the floods. In dealing with the consignment there was no misconduct of any kind on the part of the railway administrations or their servants. On the other hand, the damage, detention and delay were due to acts of God for which the defendants could not be held liable. It was also urged that, on the plaintiff's own showing, the goods should have arrived in a month at the outside, that is, by 7 October 1947. That being so, the suit which was filed more than 14 months later on 23 March 1949 was barred by time under Article 31 of the Limitation Act. The alleged detention, damage, shortage, fall in price and consequent loss to the plaintiffs were denied. Further, since the plaintiffs themselves were to blame for not taking delivery as soon as the consignment arrived at Khandwa, they could not claim any damage which resulted from their own negligence, The defendant No. 1 additionally pleaded that the consignment had a normal transit on the G. I. P. Railway and the plaintiffs had in any event no cause of action against that railway.

8. The lower Court substantially accepted the plaintiff's claim, negative the defense and passed a decree for Rs. 12.659/--, inclusive of interest and

correspondence charges against the defendant No. 2 only, fn this appeal, the defendant No. 2 has raised all those grounds on which the claim was contested in the lower Court.

9. It was unsuccessfully urged in the lower Court that as endorsees the plaintiffs were not entitled to maintain this suit. Tarachand (C. P. W. I.) stated that the consignors endorsed the railway receipt Ex. 1 D-1, in favour of Baburam Brijmohanlal, who in their turn endorsed it in his favour. The witness went on to say that he endorsed it in favour of the plaintiffs and sent it along with the Hundi Ex. P-2 for Rs. 7,500/-drawn on the plaintiffs for realisation through the Agarwal Mandi Bank. In due course, the two documents were received by the Imperial Bank, Khandwa. Jogaram (P. W. 6), plaintiff No. 2, disclosed that he paid Rs." 7,500/-- to the Imperial Bank, Khandwa and obtained the railway receipt, S. S Dutt P. W 7), a clerk of the Bank stated that the railway receipt and the Hundi Ex. P-2 were received in the Bank on 19 September 1947 and Rs. 7,500/ -were paid by the plaintiff No. 2 on 25 September 1947, vide Remittance Schedule No. 902 (Ex. p-8) and the receipt dated 25th September 1947 (Ex P-9). Tarachand (C. P. W. I.) further said that he received Rs. 7,500/-through the Agarwal Mandi Bank and made over the amount to the consignors. In view of the evidence, there can be no question that the plaintiffs paid the price of the consignment in part and thereby they became owners of the consignment It was perhaps urged in the lower Court that the plaintiffs did not plead that they had paid for the consignment and the evidence led by them to prove that fact ought to be disregarded. Even so, as held in *Shah Mulji Deoji vs. Union of India*, 1956 N. L. J. 791 F. B. the plaintiffs are entitled to bring and maintain the suit on the strength of the endorsement made in their favour without any more.

10. The defendants attacked the notice Ex. P-9 u/s 80 of the CPC as invalid on the ground that the plaintiffs made no reference in that notice to nepotism and partiality which they alleged in the plaint and so also to certain new points brought out in the amended paragraph 4 of the plaint and the notice Ex. P-9. We affirm the lower Court's view that the contents of the two documents are substantially the same and the contention of the defendants is without force.

11. In regard to the notice Ex. P-10 u/s 77, Railways Act, dated 4th May 1948, the lower Court wok the view that this was not a case of loss by the railway administration, but one of shortage and deterioration. Also, since the railway administration making delivery had admitted that loss of goods occurred in transit, that admission dispensed with an enquiry into the validity or invalidity of the notice. The lower Court also observed that since the defendant No. 2 on receipt of the notice asked the plaintiffs to refer to the defendant No. 1 for settlement of the claim, that defendant, to whom the claim had been preferred earlier and in time should be regarded as having been retrospectively authorised to receive the notice of claim. In our opinion, the lower Court's view on this point is not correct.

12. M. J. Dandekar (2 D. W. 1), Personal Assistant to the Superintendent, S. S.

Light Railway, whose duty it was to supervise the working of the railway, stated that he personally saw that flood water had entered the wagons. To the same effect is the evidence of A. C. Banerjee (2 D. W. 2), who was then the Assistant Engineer of the Railway. The remark in the Transshipment Register Ex. 2-D-6) indicates that 20 bags on the floor of each of the two wagons were wet due to flood water. Indeed it appears to us that it could not be otherwise. The telegram Ex. 2 D-3 dated 29th September 1947 shows that the flood level was about 3 feet over the track when, as testified to by A. C. Banerjee (2 D. W. 2), the floor level of the N. G. Wagons is 1 foot 9 inches from the rail head.

13. Tarachand (C. P. W. 1) disclosed that he himself transferred the goods carried in the two N. G Wagons to the E. 1. Wagon No. 28084. At another place he said that since the wagon was getting damaged and rain water poured over it, he requested and also subsequently applied to the authorities to transfer the goods to another wagon or to dispatch it to the destination by a different route. Finally, he stated that the roof and floor of the wagon No. 28084 were damaged and there were cracks :so that there was fear of water leaking in. In regard to this matter, it was belatedly pleaded by the plaintiffs that the wagon was "sick, damaged, leaky, unmovable and broken". If so, the witness would not have consented to the transfer of his goods to that wagon without protest. Also, it is not Without significance that this was not mentioned in the notices which the plaintiffs served on the railway authorities, though all along the witness supplied to the plaintiffs all material information relating to the consignment. The witness would have It believed that he belatedly approached the authorities complained of delay and requested for early dispatch, but he had to admit in cross examination that there was no dispute so long as the goods were in the transshipment yard at Delhi-Sahadra. In regard to the damage caused to the consignment by the floods, "the witness stated that there was an ordinary flood and no work had to be suspended on that account, when it is clear to us and is not now disputed that the floods had inundated the track and the transshipment yard, breached the track at several points, damaged the goods in the N. G. Wagons and dislocated the working of the railway for more than a month. It appears that the story that the jaggery bags were damaged after they were transferred to wagon No. 28084 was subsequently put forward to counter the inference arising from the fact that they had been damaged earlier by the floods. In view of these considerations, we think that the unsupported evidence of Tarachand (C. P. W. 1), by which he possibly stands to gain, is untrue.

14. The evidence of Janendra Chand (P. W. 1), Abdul Radar (P. W.2), Razab Ali (P. W. 3), Girdhari Lal (P. W. 4), Mathuralal (P. W. 5), Jogaram (P. W. 6) and Harchand (P. W. 8) shows that jaggery of the first wagon reaching Khandwa was soft and wet, that it had become blackish in colour and that the bags were stained. It is also not in dispute that there was a shortage of 40 maunds and 141/2 seers. Since some of the bags were under flood water, it is obvious that a part of the jaggery contained in those bags would dissolve and be lost. Also, the bags thus affected would get wet and the jaggery would deteriorate by remaining

moist thereafter. In short, the condition in which this part of the consignment was subsequently found at Khandwa was consistent with the ravages of floods from which it suffered.

15. The lower Court has taken the view that this is a case of short delivery and not loss and therefore, the provisions of section 77 of the Railways Act are not attracted. There is a divergence of judicial opinion on the meaning and scope of the word "loss" in the expression "loss, destruction or deterioration of animals or goods" occurring in section 77. One view is that the word must include loss arising from whatever cause. Thus it includes a claim on the footing of non-delivery, or negligence, or wrongful detention or conversion on the part of the railway administration: *Martab Ali Vs. Union of India*. Another view is that the word "loss" means not loss to the owner but loss by the railway administration and does not cover a case of non-delivery or conversion: *Governor-General in Council and Others Vs. Mahabir Ram and Another*. The point is whether the expression "loss, destruction or deterioration of animals or goods" occurring in section 77 bears a more restricted meaning than the one attributable to the same expression in section 80 of the Act. However, it is not necessary for us to decide the point in this case. Even according to the narrow view, when non-delivery is the result of loss, section 77 applies: *Governor-General in Council and Others Vs. Mahabir Ram and Another*, *Governor-General in Council vs. Sarbeswar Das* A. I. R. 1949 Cal. 420, Civil Revision No. 142 of 1953, dated 30th September 1953, Civil Revision No. 744 of 1953, dated 21st October 1954 and Civil Revision No. 173 of 1957, dated 3rd March 1958. In *M/s Janeshwar Lal vs. Dominion of India* A. I. R. 1951 P&H 383 relied upon by the lower Court, the view taken is that in a case of short delivery, no notice is necessary u/s 77 if short delivery is not the result of loss. Here there was short delivery of 40 odd maunds of jaggery which was destroyed by floods. So far as the claim on the footing of deterioration is concerned, it is directly within the meaning of section 77. In our view, a notice u/s 77 of the claim, in so far as it relates to short delivery and deterioration of the goods, is necessary.

16. In this case, the defendants have admitted the short-delivery. This was seized upon by the lower Court to take the view that "the admission distended with an enquiry into the validity or invalidity of the notice u/s 77. The facts of the case reported in *Govindlal vs. Governor-General in Council* I. L. R. (1947) Nag. 369 relied upon by the lower Court, are distinguishable. Also, we are of opinion that a notice u/s 77 is a condition precedent to any claim covered by the section and it cannot be dispensed with because its object is considered to have been otherwise served. In this connection, we may also state that a notice u/s 77 must be separately given to each railway administration impleaded as a defendant u/s 80 of the Act. This is because each railway administration is to be treated as a separate entity with separate existence and personality for the purpose of a suit u/s 80 *ibid*: *Dominion of India, vs. Firm Museram Kishanprasad* I. L. R. (1950) Nag. 212.

17. The lower Court also felt that the provisions of section 77 were substantially observed even in regard to the S. S. Light Railway because, in answer to the notice of claim given by the plaintiffs on 4th May 1948, the railway administration wrote to say that since the destination station lay on the G. I. P. Railway, the matter may be referred to the G. I. P. Railway administration for disposal of the claim (Ex. P-29), This was regarded as a communication authorising retrospectively the G. I. P. Railway administration to receive notices u/s 77 on behalf of the S. S. Light Railway, so that certain earlier communications made to that administration could be treated as notices of claim served on the S. S. Light Railway. The lower Court has relied upon *Govindlal vs. Governor General in Council* I. L. R. (1947) Nag. 369. In that case, the Superintendent of Claims was expressly authorised to receive notice of claims u/s 77, and the notices which he had received before the date of conferral of authority was regarded as good. In the case we are considering, the G. I. P. Railway administration was not authorised to receive notices under-section 7 which were required to be served on the S. S. Light Railway. Also, the reply Ex. P 29 dated 31st May 1948 is merely an intimation that the claim would be dealt with by the other railway administration, presumably under some arrangement between the two railway administrations.

18. The position which emerges is this. The consignment was delivered for carriage on 7th September 1947. The notice of claim u/s 77 dated 4th May 1948 (Ex. I-D-14) was sent to the S. S. Light Railway more than six months later. Therefore, the claim for compensation in so far as it relates to the 40 odd maunds destroyed by the floods and the deterioration of goods, is untenable and must fail.

19. The next point is whether there was undue delay in delivery of the goods. In this connection, it has been urged in one of the grounds of appeal that time was not of the essence of the contract of carriage and the lower Court was in error in regarding the case as one in which time was of the essence of the contract. In our view, this is a case of contract which does not expressly or by necessary implication fix any time for the performance of the contractual obligation. That being so, the law implies that it shall be performed within a reasonable time. We may add that a reasonable time means what is reasonable looking at all the circumstances of the case.

20. The lower Court found that communal disturbances commenced on 9th September 1947 and paralysed the working of the S. S. Light Railway at Delhi-Sahadra till 20th September 1947. The learned Judge of the lower Court was not disinclined to accept the evidence of Surajbhan (C-2 D. W. 8) to the effect that the preceding communal riots and the scare which they had caused affected the attendance of labourers employed for transshipment between, the dates 21st September 1947 and 29th September 1947. Even so, he took the view that some labourers attended to the work during the period and it should have been possible for them to transship the disputed consignment so that it could be

dispatched fore the advent of the floods. Surajbhan (C-2 D. W. 8) stated that the consignments, the invoices of which were issued on 7, 8, 9 or 10 September 1947, were net transhipped prior to the disputed consignment. This seems to be correct so far as the period 21st September 1947 to 29th September 1947 is concerned. It appears to us that the communal disturbances were likely to have caused congestion of goods traffic at the two ends and the plain-tiffs can have no legitimate grievance if their consignment was not attended to in priority.

21. In paragraphs 11 and 12 above, we have referred briefly to the effects of the floods on the working of the S. S- Light Railway. We are satisfied that the working remained dislocated until the track was repaired by 12 November 1947 (Exs. 2D-3, 2D-11, 2D-12 and 2D-13). It is however, clear from Transshipment Register (Ex. 2D-6) that while some consignments booked on 7th and 8th September 1947 were transhipped in October 1947, the disputed consignment was transferred to wagon No. 28084 on 6, November 1947. On the basis of this, it was successfully urged in the lower Court that the disputed consignment was deliberately and unreasonably delayed when the movement of goods traffic on the East Punjab Railway, which had not suffered any damage from floods, was possible even in October 1947. This takes us to another aspect of the case which seems to have escaped attention in the lower Court.

22. A part of the disputed consignment was on the East Punjab Railway from 6 November 1947 to 17 January 1948. It was on that railway that it was retransferred from wagon No. 28084 to wagon No. 45444. It was there that the wagon was dispatched to Ghaziabad when it should have been sent to Khandwa via Delhi. In fact the greater part of the delay-more than 2 months-occurred on that railway. But that railway was not impleaded as a defendant and no opportunity was afforded to it to explain how it dealt with the goods during the period. The contention that there was no plea that the East Punjab Railway suffered from the floods prevailed in the lower Court, Also, whatever evidence came on record in regard to the damage caused to the track of that railway was regarded with distrust. In our view, that was not a correct approach to the matter when that railway had no chance to put forward its case on the point and to substantiate it by evidence.

23. Tarachand (C. P. W. 1), whose testimony we distrusted on another point, referred to the dispatch of a large number of wagons from Delhi-Sahadra from 7 October 1947 onwards, but his cross-examination revealed that he had no personal knowledge of the matter. The witness sought to show that the track of the East Punjab Railway suffered no damage, but it seems to us unlikely that the track altogether escaped damage from the severe floods of September-October 1947. M. J. Dandekar (D. W. 1) disclosed that he had personally seen the broken track of the East Punjab Railway, that the work of repairing that railway continued for many days after 12 November 1947 and that it had not been fully repaired by the end of the year. The testimony of Ajitsingh (C-2 D. W. 7) supported him. The somewhat indefinite evidence of Rajendrasingh (C-2 D W.

13) to the effect that one or two trains started running between Ghaziabad and Delhi Sahadra one or two months after the breach, does not affect the probative value of the clear evidence of the other two witnesses. The lower Court referred to the height of the East Punjab track in comparison with that of the S. S. Light Railway and inferred that the former could not possibly be affected by the floods. Track laid on raised ground does not necessarily remain unaffected by floods even though it may escape inundation. What is more, when it is damaged by floods, more time and labour is needed to repair it. In the special circumstances of the case, we are not inclined to distrust the evidence that the track of the East Punjab Railway also suffered from the floods and was under repairs till about the end of the year 1947. We may add that even if, agreeing with the lower Court, we were to take a different view of the evidence, the claim for compensation based on delay in delivering the goods must still fail on another ground as we would show in the sequel.

24. If the track of the East Punjab Railway suffered from the floods and was under repairs till about the end of the year 1947, the dispatch of the wagon No. 45444 on 7th January 1948 and its arrival at Khandwa on 28th January 1948 cannot be regarded as delayed. It is true that the other 25 bags, which all the while lay at Khekra, could have been dispatched before 25th January 1948. There is no explanation in the evidence for the delay in dispatching it. We may, however, hazard one, Each of the N. G. Wagons which was dispatched on 9th September, 1947 contained 87 bags of jaggery. It is usual not to move a wagon with a small load and every endeavor is made to wait for other consignments and to see that, as far as possible, the wagon is fully loaded. In this case, two other consignments booked on 25th January 1948 were accommodated in wagon No, 628 before it was dispatched on 26th January 1948 (Ex. 1 D-6), Possibly this accounts for some delay.

25. The lower Court has applied Article 31 of the Limitation Act and taken the view that 28th January 1948 should be regarded as the starting point of limitation. If so, that date would be the date by which the goods ought to have been delivered. Since the greater part of the consignment actually reached Khandwa on that date, there can in that view be no case for delay in delivering that part of the consignment and the claim for compensation on account of delay must fail on that short ground. It was perhaps not appreciated by the lower Court that in treating 28th January 1948 as the starting point of limitation, it has impliedly accepted that the railway administration concerned could not have dispatched the goods till about the end of 1947.

26. We were referred to a number of cases which lay down that where the railway authorities keep on assuring that the goods are being traced and ultimately intimate that the efforts to that end have proved abortive, the limitation under Article 31 starts when there is a definite inability or refusal to deliver the goods. The cases have no application to the facts before us since the entire consignment was actually delivered.

27. The plaintiffs have not accepted the causes of delay put forward by the railway administrations. According to the plaintiffs, the goods ought to have been delivered in a month at the outside, that is by 7 October 1947. If so, this action initiated on 23 March 1949 in so far as it relates to delay in delivering the goods is barred by time under Article 31 of the Limitation Act. Indeed, if the critical date be any date prior to 23 January 1948, the claim would be out of time.

28. We have still to consider certain other points which have been raised in the grounds of appeal. The duty of a carrier is to follow the route by which it professes to carry the goods. If it deviates unnecessarily without any special contract, it commits a breach which goes to the root of the matter and in the case of loss or damage to the goods, it cannot rely on any provisions of its contract purporting to relieve it from liability whether such loss or damage necessarily results from deviation or not. In this case, wagon No. 45444 was deviated to Ghaziabad. We agree with the lower Court that it was not shown that it had become necessary to carry the goods to Ghaziabad on account of any interruption of through communication. Indeed, the wagon was eventually carried on the route providing for through communication. In our opinion, the lower Court was right in taking the view that on account of the deviation, which was not imperative, the railway administration forfeited the protection afforded to them by Risk Notes A and B: *Firm Mahesh Glass Works Vs. Governor General in Council*,

29. In one of the grounds of appeal, the lower Court's findings relating to the price of jaggery prevailing at Khandwa on various dates were questioned. However, since the ground was not pressed before us, we confirm the lower Court's findings in the matter.

30. It is quite clear from the evidence on record that, after the first part of the consignment reached Khandwa on 28 January 1948, the plaintiffs refused to take delivery unless damage was assessed and the shortage and fall in rate were certified. This was indeed not disputed before us although an unsuccessful endeavor was made in the lower Court to show that the railway authorities themselves withheld delivery until the damage was assessed. The law on this point is this. A consigne has no right to insist that the railway officer giving delivery should weigh the goods consigned and make an endorsement as regards the shortage and to refuse to take delivery if the railway officer refuses so to do. The consigne should take delivery of the consignment in the condition in which it is found after giving notice to the delivering officer as to its condition and then sue the railway administration for damages: *Jusaf & Ismail Company vs. Governor- General in Council* I. L. R. 1947 Nag. 335. In our opinion, the plaintiffs cannot complain of any damage or deterioration of the goods contained in wagon No. 45444 caused after 28 January 1948, because they had themselves declined to take its delivery after it reached Khandwa on that date.

31. In our opinion, the whole claim is unsustainable, partly because the plaintiffs failed to serve in time the notice prescribed u/s 77 of the Railways Act to claim

compensation for loss and deterioration of the goods and partly because the compensation claimed for delay in delivering the goods is barred by time under Article 31 of the Limitation Act. The loss was also due to act of God and was the direct result of floods. We may add that the loss, and nearly whole of the deterioration of the goods had occurred beyond the period of limitation prescribed by Article 30 of the Limitation Act.

32. The appeal succeeds and is allowed. The decree of the lower Court is set aside and the suit is dismissed. The plaintiffs will bear their own costs and pay those of the defendants in both the Courts Counsel's fee according to Schedule.