

(2003) 01 JH CK 0007

In the Jharkhand High Court

Case No : Appeal from Original Decree No. 147 of 1988

Tata Yadogawa Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-01-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1963 — Article 10
Railways Act, 1890 — Section 78B

Citation : (2003) 51 BLJR 780 : (2003) 1 JCR 497

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Debi Prasad, L.K. Lal and Prabhat Kumar Sinha, for the Appellant;
D.N. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal is directed against the judgment and decree dated 26th April, 1988 passed by Sub-Judge, 1st Court, Seraikella in Money Suit No. 33/60 of 1984 whereby he has dismissed the suit as barred by limitation.

2. The plaintiff-appellant filed the aforementioned suit against the respondent-Railway Administration for realization of Rs. 51,612.43 paise being the loss and damages for short delivery of the consignment. Plaintiffs case is that on 15.7.1981 M/s. Ferro Alloy Corporation Ltd. booked the consignment under railway receipt No. 448609, invoice No. 3 from Garibidi railway station for its safe delivery to the plaintiff at Gamhariya railway station in South Eastern Railway. The consignment was booked under railway risk. The total value of the consignment was Rs. 2,46,730.27 paise. The railway wagon was found in a broken condition in the destination station and consequently open delivery was taken on 17.8.1981. It is alleged that out of 361 bags 26 bags were found and delivered entirely empty. Consequently, short certificate was issued. The plaintiff, thereafter, served notice u/s 78B of the Indian Railways Act and also u/s 80, CPC

and then instituted the suit.

3. The defendant-respondent appeared and filed written statement taking various defences including that the suit is barred by limitation. The Court below, on the basis of the pleadings of the parties, framed the following issues :

"(i) Is the suit as framed maintainable?

(ii) Has the plaintiff got cause of action to sue?

(iii) Is the suit barred by limitation?

(iv) Whether the notices u/s 78B of the Indian Railways Act and u/s 80, CPC were served upon the defendants or its authority?

(v) Whether the consignment was booked at railway risk and if whether the plaintiff is entitled to realise the amount as claimed for?

(vi) Is the plaintiff entitled to any other relief?"

4. While deciding issue No. (iv) the Court below has held that notices under Sections 78(B) of the Railways Act and Section 80 of the CPC were duly served upon the respondent. The Court below also decided issue No. (v) in favour of the plaintiff and held that the damage of the consignment and its loss took place due to misconduct and negligence of the Railway. However, issue No. (iii) with regard to limitation was decided against the plaintiff holding that open delivery of the consignment was taken on 17.8.1981 and the suit has been instituted on 5.11.1984. Accordingly, it is barred by limitation inasmuch as the suit has not been filed within three years from the date when the delivery was made to the plaintiff. The relevant portion of the finding of the Court below is reproduced hereinbelow :

"From perusal of the plaint it transpires that the open delivery of the consignment booked in favour of the plaintiff took place on 17.8.1981 as stated in para 5 of the plaint. The suit has been instituted on 5.11.1984. According to Article 10 of the Limitation Act the period of limitation is 3 years. Thus a plain reading of the plaint makes it clear that the suit was instituted after three years from the date when the delivery was made to the plaintiff on 17.8.1981. Therefore, I hold that the suit is hopelessly time barred. Thus, this issue is decided against the plaintiff."

5. From bare perusal of the aforesaid finding it appears that the Court below had not correctly appreciated the law while deciding the issue of limitation. Admittedly before instituting the suit the plaintiff served notices u/s 78(B) of the Railways Act and Section 80, CPC. The period of two months, therefore, ought to have been taken into consideration by the Court below while deciding the issue of limitation. The plaintiff-appellant has filed a petition for amendment of the plaint for inserting some facts by way of clarification that notice u/s 80, CPC was sent on 28.7.1984 and was served on 30.7.1984. The suit was to be filed within three years two months i.e. upto 16.10.1984. The civil Court was closed for Puja

vacation from 30.9.1984 to 31.10.1984 and from 1.11.1984 to 3.11.1984 the Courts were closed due to assassination of the then Prime Minister, Indira Gandhi and 4.11.1984 was Sunday. The period of notice u/s 80, CPC and the period when the Court was closed, has to be deducted while computing the period of limitation. As such, the suit was filed on 5.11.1984.

6. Mr. D.N. Chatterjee, learned counsel appearing on behalf of the respondent-Union of India, has not disputed the correctness of the aforesaid facts. In my opinion, therefore, the suit was instituted within the time prescribed under law. The Court below has not correctly decided the issue of limitation.

7. Having regard to the fact that the other issues have been decided in favour of the plaintiff-appellant, the suit is bound to be decreed in favour of the plaintiff.

8. For the aforesaid reasons this appeal is allowed and the impugned judgment so far it relates to issue of limitation, is set aside. Consequently, the suit is decreed.