
(1990) 08 MAD CK 0094
In the Madras High Court
Case No : O.S.A. No. 10 of 1981

Transformers and Electricals Kerala Ltd. and Another APPELLANT
Vs
Union of India (UOI) RESPONDENT

Date of Decision : 06-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 134A
Limitation Act, 1963 — Section 14

Citation : (1992) 2 ACC 478 : (1992) ACJ 376 : (1991) 1 LW 718

Hon'ble Judges : P.S. Mishra, J;K.S. Bakthavatsalam, J

Bench : Division Bench

Advocate : Madanagopal Rao, for the Appellant; P.S. Srisailam, for the Respondent

Judgement

P.S. Mishra, J.—Plaintiffs-appellants who sued the defendant-respondent Southern Railway for the recovery of a sum of Rs. 65.540/- inclusive of interest on the sum of Rs. 55,544/- being the damages alleged to have been suffered by the first plaintiff on account of the goods having been destroyed in a fire accident in transit when the goods were carried by the defendant railway, have succeeded in showing that the railway had not proved that it had taken reasonable foresight and care, and that on account of the admission of DW 1 the total loss suffered by the first plaintiff was arrived at Rs. 50,000/-, finally lost the suit because it was found that the suit on their part in the court was instituted after the expiry of the period of limitation.

2. The facts of the case are not in dispute. The first plaintiff consignee booked with the Southern Railway five numbers 132 K.V. transformers from Vyasa Nagar to Angamali under R.R. No. 919513 dated 3.3.1972. The Southern Railway informed the first plaintiff by its letter dated 19.7.1973 that the said consignment was involved in a fire accident on 26.3.1972. Since the loss was caused due to the gross negligence on the part of the railway administration and/or its servants, the first plaintiff preferred a claim for Rs. 1,00,000/- but

restricted it to the actual loss that is to say Rs. 55,544/- being the value of the five transformers non-delivered and accordingly issued notice u/s 80 of the Code of Civil Procedure. The railway's defence, however, was that the fire in transit was accidental, that it had taken reasonable foresight and care in the carriage of the goods, that it had provided a good K.C. wagon and the engine which was hauling the wagon carrying the suit consignment was provided with spark arresters and immediately after the fire was noticed, action was taken to extinguish the fire and no time was lost in this behalf. There was also a plea that the transformers loaded were the one rejected by the U.P. State Electricity Board and that they were not in good condition at the time of loading. The railway denied that the non-delivery was due to misconduct or negligence on the part of the railway administration. The main contention, however, was that the suit was barred by limitation in so far as even on the plaint allegation, the cause of action for the suit arose on 26.3.1972.

3. The plaintiffs-appellants presented the suit before the City Civil Court, Madras on 3.5.1975. The plaint, however, was returned on 26.6.1975 on the ground that the claim exceeded the pecuniary jurisdiction of that court. While returning the plaint for its presentation before the court having jurisdiction, the Vacation Officer of the City Civil Court, Madras ordered as follows:

Returned. Since the value of the suit exceeded Rs. 50,000/-, this plaint may be presented in the proper court. Time two weeks after reopening.

Sd/- Vacation Officer, 26.6.1975.

It may be noted that the summer vacation of the court in that year had been extended till 1.7.1975 due to water scarcity. The plaint was presented in this Court on 7.7.1975 that is well within two weeks after reopening of the court after summer vacation.

4. Articles 10 and 11 of the Limitation Act, 1963, provide for a period of limitation of three years against a carrier for compensation for losing or injuring goods and against a carrier for compensation for nondelivery of or delay in delivering goods when the loss or injury occurs or when the goods ought to be delivered. Loss in the instant case did occur due to fire on 26.3.1972. The first plaintiff was informed by the Southern Railway on 19.7.1973 that the consignment concerned was involved in a fire accident. The suit which was filed before the City Civil Court, Madras on 3.5.1975 was thus within a period of three years from 19.7.1973, that is to say the date on which the respondent informed the first plaintiff that the consignment was involved in a fire accident. The suit, however, was beyond a period of three years calculated from 26.3.1972, to be precise, exceeded by a period of two months (as exceeded the period of limitation by about four months reckoned from 26.3.1972 when the presentation on 7.7.1975 before the proper court is taken into account). The suit, however, was well within the time calculated with effect from 19.7.1973.

5. The learned trial Judge has made a fair study of the law on the subject and

relied upon the judgment of the Supreme Court reported in *Bootamal Vs. Union of India (UOI)*, , to hold that the suit was filed beyond the time prescribed under, and is therefore hit by the law of limitation.

6. In *Bootamal Vs. Union of India (UOI)*, , the Supreme Court considered the words used in Article 31 of the Limitation Act, 1908 which has since been repealed by the 1963 Act. The language in Article 11 aforementioned is similar to the language in Article 31 of the repealed Act. The Supreme Court has said that its interpretation has been the subject of a number of decisions of the various High Courts in India and the question that has been considered in these decisions is as to the time from which the period of limitation begins to run. In the words of the Supreme Court:

Under the Article, the time begins to run "when the goods ought to be delivered" and one should have thought that there would be no difficulty in finding out the meaning of these words. Ordinarily, the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or legal proceedings. This was laid down by the Privy Council in two decisions in AIR 1932 165 (Privy Council) and AIR 1941 6 (Privy Council) . In the first case, the Privy Council observed that "the fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions equitable considerations are out of place and the strict grammatical meaning of the words is the only safe guide". In the latter case, it was observed that "a Limitation Act ought to receive such a construction as the language in its plain meaning imports"...Great hardship may occasionally be caused by statutes of limitation in cases of poverty, distress and ignorance of rights, yet the statutory rules must be enforced according to their ordinary meaning in these and in other like cases.

After observing as above, the Supreme Court took notice of the two lines of reasoning which governed the decisions of the various High Courts on the interpretation of the words in Article 31 and observed as follows:

The first is based on the consideration that it was for the railway to prove what time ought to be taken for the delivery of the goods and therefore limitation can only start when the railway says finally that it cannot deliver the goods. The second line of reasoning seems to be based on the principle of estoppel and is to the effect that where the railway enters into correspondence and says that efforts are being made to trace the goods, the railway would be estopped from pleading that the time began to run from sometime anterior to the period before the correspondence on the question came to an end. It may, however, be noted that though the majority of the decisions follow these two lines of reasoning and hold that time begins to run only when the railway finally refused to deliver the goods, here and there a dissentient note has also been struck.

The Supreme Court thereafter proceeded to consider the words in Article 31 of

the Limitation Act and said:

But these words can only mean one thing whether it is a case of late delivery or of non-delivery. Reading the words in their plain grammatical meaning, they are in our opinion capable of only one interpretation, namely, that they contemplate that the time would begin to run after a reasonable period has elapsed on the expiry of which the delivery ought to have been made. The words "when the goods ought to be delivered" can only mean the reasonable time taken in the absence of any term in the contract from which it can be inferred expressly or impliedly, in the carriage of the goods from the place of despatch to the place of destination. Take the case where the cause of action is based on delay in delivering the goods. In such a case, the goods have been delivered and the claim is based on the delay caused in the delivery. Obviously the question of delay can only be decided on the basis of what would be the reasonable time for the carriage of goods from the place of despatch to the place of destination. Any time taken over and above that would be case of delay. Therefore, when we consider the interpretation of these words, in the third column with respect to the case of non-delivery, they must mean the same thing, namely, the reasonable time taken for the carriage of goods from the place of despatch to the place of destination. The view, therefore, taken by some of the High Courts that the time begins from the date when the railway finally refused to deliver cannot be correct, for the words in the third column of Article 31 are incapable of being interpreted as meaning the final refusal of the carrier to deliver.

Answering a contention that even though the words in the third column plainly mean that the time starts when the reasonable period which may be taken for the carriage of the goods from the place of despatch to the place of destination expires, the subsequent conduct of the railway as disclosed in the correspondence that might pass between the railway and the consignor or the consignee, might have a bearing on this reasonable time, the Supreme Court observed as follows:

Now, if the correspondence is only about tracing the goods that would not be material in considering the question as to when the goods ought to have been delivered. On the other hand, if the correspondence discloses material which might throw light on the question of determining the reasonable time for the carriage of the goods from the place of despatch to the place of destination, then it may be open to the court to take into account the correspondence. Further, if there is anything in the correspondence which has a bearing on the question of reasonable time and the railway wants to go back on that, to that extent the railway may be estopped from denying that.

But the correspondence can be taken into account to determine what would be the reasonable time and not to show that because of the subsequent conduct of the railway the reasonable time got extended by the time taken by the railway in tracing the goods. Where, however, the correspondence provides material from which reasonable time in a particular case may be found out, the correspondence

would be relevant to that extent. For example, take a case where the correspondence shows that a certain bridge between the place of despatch and the place of destination has been destroyed on account of floods and that is the reason why the goods have not reached the place of destination. In such a case, the correspondence may well be taken into account to find out the reasonable time for the carriage of the goods in the circumstances. This will show that the reasonable time will depend upon the facts of each case and that in the absence of any special circumstances, the reasonable time would practically be the same between two stations as would normally or usually or ordinarily be taken for the carriage of goods from the one station to the other. Further, there may be no difficulty in finding out the reasonable time where bulk of the goods have been delivered and only a part has not been delivered, for in such a case, in the absence of special circumstances, it would be easy to see that the reasonable time is that in which the bulk of the goods have been delivered.

7. We have taken care to quote in extenso some of the relevant observations of the Supreme Court only to strengthen our view that the learned trial Judge has committed an error of law in not appreciating the significance of the letter of the Southern Railway, dated 19.7.1973. It was in this letter that the first plaintiff/first appellant was informed that there was a fire accident on 26.3.1972 and that the consignment in question was involved in the said accident. One of the illustrations noticed in the judgment of the Supreme Court referred to supra that subsequent conduct and correspondence may be relevant for finding out the reasonable time, fits in fully to the facts of this case. The Supreme Court has said that "where the correspondence shows that a certain bridge between the place of despatch and the place of destination has been destroyed on account of floods and that is the reason why the goods have not reached the place of destination," this will be a ground to extend the period of limitation as a reasonable time read into the language of Article 31 of the Limitation Act.

8. Article 11 of the Limitation Act, 1963 says, "against a carrier for compensation for non-delivery of, or delay in delivering goods" while Article 10 says "against a carrier for compensation for losing or injuring goods". Evidently, loss or injury will be known only when there is no delivery or delivery with damages. Knowledge of the loss or injury will be relevant for finding out whether there have been any deliberate laches on the part of the plaintiff or not. Laches we say in the sense of filing a case beyond the period of limitation knowing that the period of limitation had expired and no effort was made to sue within the period of limitation. The learned trial Judge has taken notice of the two lines of decisions and has chosen to read into the judgment of the Supreme Court a law that the plaintiffs-appellants ought to have sued within the period of three years from the date of the usual period of anticipation of delivery of the consignment expired. In the words of the learned trial Judge:

The above decision only points out that it is not incumbent on the railway to supply the probable date when the goods ought to be delivered and it is for the

consignee to assess in the usual course the probable time by which the goods would have been delivered and to lay the claim within that time.

This, in our view, does not fall in line with the law laid down by the Supreme Court that in every case the court must look into the conduct of the parties and the correspondence exchanged between them to find out whether the suit has been filed within three years of the reasonable period of anticipation of the delivery of the goods or not.

9. The above approach that we have made would dispose of the appeal and the suit as well. There is, however, one more aspect of the case which has to be considered since we have found that the learned trial Judge has taken too technical a view of the matter which appears to us to be opposed to the rule of fair play and justice. We will advert to it now. In the instant case, as we have already noticed, the plaint was initially presented in the City Civil Court, Madras on 3.5.1975. It remained in the City Civil Court from 3.5.1975 to 26.6.1975, on which date it was returned to the plaintiffs with the endorsement aforequoted and it was presented into this Court on 7.7.1975. In this connection, it would be relevant to quote the provisions of Section 14 of the Limitation Act, 1963. The section reads as under:

14. (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order 23 of the Code of Civil Procedure, 1908, the provisions of Sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

10. The learned trial Judge has distinguished a Bench decision of the Patna High Court reported in *Firm Pursottam Das Ganpati Rai Vs. Gulab Khan*, , in which a passage from a Bench decision of the Calcutta High Court reported in *Neerendrabhooshan Lahiri Vs. Berhampur Oil Mills, Ltd.*, , was quoted with approval. The Calcutta Bench has observed as follows:

This being the state of authorities on the subject, the correct view, in my judgment, to take of the matter is that the proceedings cannot be regarded as having ended until the court in whom the duty lies of conforming to the provisions of Order 7, Rule 10, Civil Procedure Code, is in a position to carry out the order of return of the plaint. Till that point of time, no question can possibly arise as regards the plaintiff not being entitled to exclusion of time u/s 14. When that point of time is reached, the question whether the plaintiff would or would not be entitled to a further deduction of time thereafter would depend upon various factors. Ordinarily no further time would be excluded. But it is not inconceivable that in exceptional circumstances, even subsequent to such point of time, the proceedings may have to be regarded as still continuing. And, in determining whether they should be so regarded or not, the question of the plaintiff's diligence or otherwise may have to be considered.

In the case of Firm Pursottam Das Ganpati Rai Vs. Gulab Khan, , the Patna High Court was considering a case where even after the period of limitation, the cause remained pending in a court which had no jurisdiction and there was a delay of four days in presenting the suit before the proper court. Relying upon the Calcutta decision referred supra, the Patna Bench observed as follows:

In my opinion, therefore, the delay of four days thereafter, in considering diligence with which the suit was prosecuted, cannot be regarded as anything but part of due diligence exercised by the plaintiff, and the plaintiff is entitled to the exclusion of this period of four days as well, and the same view has been laid down in the case of Sinna Karuppan and Others Vs. R.M.P.S. Muthiah Chettiar and Others, , wherein it has been held by a learned single Judge of the Madras High Court that in a case where the plaint is ordered to be returned, the proceedings terminate not on the date* of the order directing the plaint to be returned, but on the date of the actual return with the endorsement on the plaint in accordance with the provisions of Order 7, Rule 10 of the Code of Civil Procedure. There is nothing inconsistent between the propositions of law laid down in the above two cases relied on by the learned Counsel for the respondent and in my opinion, the court below was right in holding that the suit was not barred by limitation.

11. A Bench decision of the Madras High Court reported in Thadi Chandrayya and Others Vs. Vaitla Seethanna and Another, which has been relied on by the learned trial Judge, however, is on a different set of facts. That was a case in which the plaint was returned for want of pecuniary jurisdiction. The same plaint was re-presented in the same court after amendment by striking out a part of the claim thus bringing the suit within the pecuniary jurisdiction of the said court. The learned trial Judge has noted from the said judgment a passage which reads thus:

A court which had no jurisdiction could not pass orders in the suit beyond directing the plaint to be presented to the proper court and giving a direction with regard to the costs incurred up to the time of the return of the plaint, and

that the suit must be deemed to have been instituted on the date of re-presentation of the amended plaint which the court had jurisdiction to accept and was therefore barred. Having deliberately undervalued his relief in the first instance, the plaintiff could not claim the benefit of Section 14.

The learned trial Judge held that the case was on all fours with the one disposed of by the Division Bench except that the plaint on return was re-presented to the same court after reducing the valuation to bring the claim within the pecuniary limit of that court. The error is obvious. No diligence could be noticed in the conduct of a person who deliberately changed the valuation of the suit so that the plaint could be brought within the pecuniary jurisdiction of the court which initially found that it had no jurisdiction to entertain the suit. Diligence assumes for itself and acts in good faith and bona fides. A person who deliberately changed the valuation to bring the suit within the pecuniary jurisdiction of a court and when it was found that as presented before it earlier it was beyond its pecuniary jurisdiction, cannot claim any bona fides or good faith. The Calcutta and Patna view which has got the support of an earlier judgment of this Court, though by a learned single Judge, in our view, is one which should be applied in order that justice is not denied only on account of the delay in filing the suit.

12. The Supreme Court in the case of *The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another*, , has observed as follows:

We are of the view, in reiteration of earlier expression on the same lines, that public bodies should resist the temptation to take technical pleas or defeat honest claims by legally permissible but marginally unjust contentions, including narrow limitation. In this and similar cases, where a public carrier dissuades private parties from suing by its promises of search for lost articles and finally pleads helplessness, it is doubtful morality to nonsuit solely on grounds of limitation, a plaintiff who is taken in by seemingly responsible representation only to find himself fooled by his credibility. Public institutions convict themselves of un-trustworthiness out of their own mouth by resorting to such defences.

Reiterating the same approach, the Supreme Court in *Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s*, , has observed:

We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (11 of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens, and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the court has to decide it and if the plea is well-founded, it has to

be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.

13. Railway is a premier carrier of goods in our country. Courts have taken notice, however, of its always coming forward with technical pleas of limitation almost ritualistically adhering to the letters of the statute. Courts have made observations off and on on such conduct of the railway and have gone to the extent of saying that in such matters it behaves like a worst litigant. The instant case is one in which the railway could have taken notice of its own communication to the first plaintiff admitting the loss when by its letter dated 19.7.1973 it informed the first plaintiff that the consignment in question was involved in a fire accident which took place on 26.3.1972. Until 19.7.1973, there could still be some anticipation of delivery. We cannot conceive a case in which thinking that goods have not been delivered within such time as the consignment could have reached its destination, in the usual course a suit is filed and later goods are delivered in good condition. It is only on the knowledge of loss and non-delivery that one is expected to issue a notice u/s 80 of the CPC and not before that.

14. Having noticed the law as above we are of the opinion that the plaintiffs did not exceed the period of limitation in filing the instant suit. The learned trial Judge has committed an error in holding that the suit is barred by limitation.

15. The appellants have also questioned yet another finding of the learned trial Judge pursuant to which he declined to grant any decree for interest for the period prior to the institution of the suit. Learned single Judge has placed reliance upon a judgment of the Patna High Court reported in Bihar Agents Ltd. Vs. Union of India (UOI) and Others, . A similar view has now been expressed by the Supreme Court in Union of India v. West Punjab Factories 1958-65 ACJ 602 (SC). At page 608, the Supreme Court has observed as follows:

The next contention is that no interest could be awarded for the period before the suit on the amount of damages decreed. Legal position with respect to this is well settled. [See AIR 1938 67 (Privy Council) . That decision of the Judicial Committee was relied upon by this Court in Seth Thawardas Pherumal Vs. The Union of India (UOI), . The same view was expressed by this Court in Union of India (UOI) Vs. A.L. Rallia Ram, . In the absence of any usage of contract, express or implied, or of any provision of law to justify the award of interest, it is not possible to award interest by way of damages. Also see recent decision of this Court in Union of India (UOI) Vs. Watkins Mayor and Co., .

The learned trial Judge, in our opinion, has taken the correct view and there is no ground to interfere with his finding that the plaintiffs are not entitled to claim interest prior to the filing of the suit.

16. In the result, this appeal is allowed to the extent indicated above. The

judgment and decree of the trial court are set aside except with respect to the interest prior to the institution of the suit. As a consequence, the plaintiffs are entitled to a decree for Rs. 50.000/- with interest pendente lite and future at the rate of six per cent per annum.

17. Before we part with this judgment, we must record our appreciation to the assistance given by the learned Counsel for the Southern Railway-respondent who, irrespective whether a decision of the Supreme Court or any other court went against the interest of his client or not, assisted the court by drawing our attention to all relevant decisions. In appreciation of the assistance of the learned Counsel and also on the facts and circumstances of this case, we order no costs in this appeal.

18. An oral prayer for certificate for appeal to the Supreme Court has been made before us under Article 134-A(b) of the Constitution of India. We are, however, satisfied that the case involves no substantial question of law of general importance which needs to be decided by the Supreme Court. The oral prayer is refused.