(1954) 06 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : First Appeal No. 29 of 1950

Union of India APPELLANT

Vs

Chanan Shah Mahesh Dass RESPONDENT

Date of Decision : 22-06-1954

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 2(5), 80
Contract Act, 1872 — Section 56

Citation : AIR 1954 P&H 51

Hon'ble Judges : Passey, C.J;Mehar Singh, J

Bench : Division Bench

Advocate : Lachhman Das, A.G, for the Appellant; R.B. Anant Ram, for the Respondent

Final Decision : Allowed

Judgement

Mehar Singh, J.—This is a first appeal by the defendant from the judgment and decree, dated 26-6-1950, of the District Judge at Patiala.

2. The suit is for recovery of Rs. 24,115/-, on the basis of four railway receipts, as the value of goods consigned to the North Western Railway, in un-divided Punjab, for delivery at Nabha, in the former Nabha State and now in Pepsu, and non-delivery of the same.

On 11-8-1947, four consignments, three of black iron sheets and the fourth of black iron sheets G. C. sheets and iron-rounds, were booked from Lahore railway station to Nabha railway station of the N.W. Railway by Chanan Shah plaintiff, Gulab Rai P.W. 1, Pashori Lal P.W. 2, and Hazari Lal P.W. 3 under railway receipts, respectively Exs. P4, P1, P2 and P3, and in each case the railway receipt was endorsed to ''self''. On the same day or on the next day the plaintiff and those three witnesses left Lahore for what later on, after the partition, became the Dominion of India. On 20-8-1947, Gulab Rai, Pashori Lal and Hazari Lal transferred and endorsed the railway receipts in their favour to Chanan shah plaintiff for value.

The goods not having been delivered at Nabha in due time, Chanan Shah plaintiff served notices dated 22-12-1947, under Ss. 77 and 140, Railways Act, on the Chief Administrative Officer of the East Punjab Railway, Delhi, claiming the value of the goods under the railway receipts on the ground of loss and non-delivery of the consignments. On 30-1-1948, he served notices on the same officer, under S. 80, C.P.C. of his intention to institute a suit against the defendant, the Dominion of India, through the Ministry of Railways, East Punjab Railway Section, New Delhi, for recovery of the value of the goods because of loss and non-delivery of the same at Nabha.

The claim not having been met, the plaintiff instituted a suit forma pauperis for recovery of the said amount in the Court of Subordinate Judge 1st Class at Delhi on 18-12-1948. The learned Subordinate Judge at Delhi by his order, dated 21-12-1949, came to the conclusion that, though the plaintiff was a pauper, the Court at Delhi had no jurisdiction to try the suit. He, therefore, returned the application of the plaintiff to sue in forma pauperis to him on 22-12-1949, for presentation to the proper Court having jurisdiction; and on 24-12-1949, the plaintiff presented that application in the Court of the District Judge at Patiala seeking permission to sue the defendant forma pauperis. On 11-4-2006 Bk. (February, 1950) the application of the plaintiff was granted and the suit of the plaintiff was registered.

3. The defendant did not deny the consignment of the goods under the railway receipts to N.W. Railway at the Lahore railway station on 11-8-1947, and their non-delivery at Nabha, but pleaded that the goods were dispatched by N.W. Railway to Karachi instead of Nabha and were lying there but could not be transported from Karachi to India without an export permit from the Controller Iron and Steel Pakistan, according to the law of that country, and so the carriage of the same from Karachi to destination is beyond the power of the defendant.

The other defenses taken by the defendant are apparent from the issues in the case, which are

1. Whether the suit of the plaintiff is within limitation?

2. Whether a valid notice under S. 80, C. P. C. was served on the defendants?

3. Whether the plaintiff has locus standi to institute the present suit being a consignee or endorsed consignee of railway receipts in the present suit?

4. To what extent the plaintiff is entitled against the defendant in respect of the railway receipt in the suit?

5. Whether this Court has jurisdiction to try and decide the present suit?

6. Whether the defendant is not liable for non-delivery of the goods in suit owing to goods being available in Pakistan and restriction being imposed by the Pakistan Government for export to India?

7. To what relief the plaintiff is entitled?

4. The Teamed District Judge found the first six issues in favour of the plaintiff and against the defendant. He, therefore, decreed the claim of the plaintiff in full and with costs.

5. In this appeal the learned Advocate General, appearing for the defendant, has not questioned the correctness of the decision of the learned trial Judge on issues Nos. 3 and 5, but on the remaining four issues he has attacked the same on the grounds (a) that the value of the goods has not been established, (b) that notices according to Ss. 77 and 40, Railways Act and S. 80, C.P.C. were not served on proper authority and are not valid notices, (c) that the contract became impossible of performance due to un-foreseen disturbances after partition of the country which brought to a standstill the railway traffic between the two Dominions and made it impossible for the defendant to carry the goods from Lahore to India and now that is impossible unless the plaintiff obtains an export permit for the export of goods from Pakistan to India and thus the contract is discharged because of frustration, and (d) that the suit is barred by the statute of limitations.

6. On the question of the value of the goods the plaintiff himself came into the witness-box as P.W. 6 and also produced Gulab Rai P.W. 1, Pashori Lal P.W. 2 and Hazari Lal P.W. 3. The plaintiff says that he purchased the goods for Rs. 5,900/- on 11-8-1947. The other three witnesses depose that they respectively purchased the goods for Rs. 5,375/- on 8-8-1947, Rs. 5,100/- on or about 1-8-1947, and Rs. 6,500/-. The total of these sums comes to Rs. 22,875/-. The plaintiff has claimed Rs. 1,240/- above that amount and this excess appears to be for freight charges and profits.

The learned trial Judge has believed these witnesses and no reason has been suggested why their testimony should be discarded. There is no evidence in rebuttal, excepting that the defendant has produced Lachhmi Narain D. W. 4, Claims Inspector and a subordinate of the defendant, to depose that he looked into the account-books of Bishna Mal Sardha Ram of Nabha, Tata iron dealers and found the value of the goods in suit nearly 50 per cent less than claimed by the plaintiff according to the prices ox those goods prevailing at Nabha in the month of August, 1947.

Nobody from the firm of Bishna Mal Sardha Ram has been produced and the books of that firm were not produced. The evidence of Lachhmi Narain D.W. 4 is both inadmissible and worthless. It was, therefore, rightly rejected by the learned trial Judge.

The plaintiff has also examined Mohan Lal Aggarwal P.W. 4 and Kari Ram P.W. 5 in an attempt to prove that the price of the goods was much more than claimed by him according to the rates of those goods at Nabha in the month of August, 1947. The two witnesses claim to be dealers in such goods at Nabha, but they have not come forward to support their testimony from the account-books of their firms and depose to rates from memory only. This evidence of the plaintiff is also of no value. But, as stated, there is no reason at all why the plaintiff and Pashori Lal, Gulab Rai and Hazari Lal should not be believed as regards the value of the goods purchased by them at Lahore immediately before consignment.

The last three witnesses have also deposed that they transferred the railway receipts in their favour for value to the plaintiff having received part of the consideration at Lahore and the rest at Delhi. The value of the goods has, therefore, been proved by the evidence of these, witnesses and the total comes to Rs. 24,115/-. The finding of the learned trial judge on this point is correct.

7. It is not the contention of the learned Advocate General for the defendant that the notices both under Sections 77 and 140, Railways Act & under S. 80, C.P.C. were not given In due time, but what is contended by him is that they were not served on proper authority and so are not valid notices under the law.

After partition the section of the North Western Railway in the Dominion of India was named as the East Punjab Railway and its administrative, head was designated as the Chief Administrative Officer. The notices sent by the plaintiff were received by that Officer; when they were received, at that time such notices could not be served on him, and, under the law, had to be served on the Secretary to the Government of India in-charge of the Railway Department. There is no doubt, therefore, that to begin with the notices were not addressed to and received by proper authority under the law.

Section 80, C.P.C. was amended by the CPC (Amendment) Act, 1948 (No. 6 of 1948), which came into force on 21-2-1948, and has amended S. 80 C.P.C. provides for notice to the General Manager of a railway in case of la suit against the Central Government where it relates to a railway. It is admitted on behalf of the defendant that after this amendment the Chief Administrative Officer of the E.P. Railway was designated as the General Manager of that Railway. The application by the plaintiff to sue the defendant forma pauperis was made in the Court of the Subordinate Judge at Delhi on 18-12-1948, and subsequently in the Court of the District Judge at Patiala on 24-12-1949.

On 8-7-1948, and 18-2-1948, the Chief Administrative Officer of the E.P. Railway wrote letters Exs. P-5 and P-6 to the plaintiff in reply to the Matter''s notices, that the matter of his claim was still under enquiry. By those dates the Chief Administrative Officer had become the General Manager. He was therefore, dealing with notices; served on him by the plaintiff in the capacity of General Manager of the E.P. Railway and service of those notices had been effected on him months before those dates.

The argument of the learned Advocate General is that the notices are not valid according to law as having been not initially served on proper authority according to the provisions of Ss. 77 and 140, Railways Act and S. 80, C.P.C. He relies upon - "The Secy. of State v. Dip Chand'', 24 Cal 306 (A) - and ''Nadiar Chand v. Wood'', 35 Cal 194 (B), in which notice to a Traffic Superintendent or a Traffic Manager of the Railway was held to be no notice to the railway administration or the Agent of the Railway Company and so no valid notice.

On the other side are - ''V. Woods, v. Mehar Ali'', 3 Ind Cas 479 (Cal) (C); -''Ram Gopal v. Agent, B.B. & C.I. Rly. Co., 13 Ind Cas 297 (Ajmer) (D): Chaturbhuj - Ram Lal Vs. Secretary of State for India, ; - Bengal and North Western Ry. Co. Ltd. Vs. Kameshwar Singh Bahadur, : and Sristhidhar Mandal Vs. Governor-General in Council, in which cases it has been held that a notice to a subordinate officer of the railway administration, whose duty it is to settle all claims in the Claims Department, is in fact notice to the Agent or General Manager of the Railway Company or the Railway administration and so it is valid notice according to law.

However, on the facts of the case, it is not necessary to consider the rulings cited above on either side, because in this case after the service of notice the Chief Administrative Officer became the General Manager and in the latter capacity he was entitled to receive notice under Ss. 77 and 140, Railways Act and S. 80, C.P.C. and further he dealt with the notices in that capacity. He having taken cognizance of the claim of the plaintiff and having informed him that the same was under enquiry, it is not now open to the defendant to say that notices in the present case were not in the hands of the proper authority in due time before the institution of the suit. So, in my opinion, there is no defect in the notices in this case. Similar view has been taken in the - '' The Governor-General of India in Council Vs. G. Krishna Shenoy, in which it has been held that:

Where the name of the Secretary of State was inadvertently given at the head of the notice but it was treated by the Governor-General-in-Council as a notice to him, and action was taken on the notice in the same way as if the notice had been addressed to the Governor-General-in-Council this is sufficient compliance with the requirements of S. 80.

In 24 Cal 306 (A), the objection on the ground of want of notice was not taken in the written-statement but only in the arguments and the case was remanded on the ground that the plaintiffs were entitled to have an opportunity of meeting the objection. The learned Judges observed at page 309:

in our opinion it will be sufficiently met if it is shown that the notice served on the Traffic Superintendent reached the Manager within six months from the date of delivery of the goods.

This observation also supports the view taken above that even if initially notice is not served on the proper authority according to law but if it ultimately either reaches the proper authority or is dealt with and action taken upon it by the proper authority within due time, it is good and valid notice according to law. Therefore, the argument on behalf of the defendant founded on the questionable validity of the notices served on the General Manager of the E.P. Railway in this case cannot be accepted.

8. The third argument of the learned Advocate General is based on the doctrine

of frustration and with reference to second paragraph of S. 56, Contract Act, which says

a contract to do an act which, after the contract is made, becomes impossible, - becomes void then the act becomes impossible.

and in this connection reliance is placed upon - ''S. Gundayya v. I. Subbaya'', AIR 1927 Mad 89 (I); - AIR 1945 192 (Nagpur) - ''Parshotam Das v. Municipal Committee, Batala'', AIR 1949 E.P. 301 (K); - ''Rama Nand Vijay Prakash v. Gokal Chand Gian Chand'', AIR 1951 Simla 189 (L); '' Parmeshwari Das Mehra and Sons Vs. Firm Ram Chand Om Prakash and Another, and - ''Josheph Constantine Steamship Line, Ltd. v. Imperial Smelting Corporation Ltd.'', (1942) A.C. 154 (N). In the last mentioned authority - and the other rulings cited take the same view the doctrine of frustration of the contract is stated at page 163 by Viscount Simon L.C. thus:

The doctrine of discharge from liability by frustration has been explained in various ways sometimes by speaking of the disappearance of a foundation which the parties assumed to be at the basis of their contract, sometimes as deduced from a rule arising from impossibility of performance, and sometimes as flowing from the inference of an implied term. Whichever way it is put the legal consequence is the same. The most satisfactory basis I think, on which the doctrine can be put is that it depends on-an implied term in the contract of the parties. This was the basis adopted in - ''Taylor v. Galdwell'', (1863) 3 B. & S. 826 (O), which is practically the first case of the modem line of authorities. It is the view taken in many later cases nowhere more clearly than in Lord Loreburn''s exposition in - ''F.A. Tamplin Steamship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd.'', (1916) 2 AC 397 (P). It has the advantage of bringing out the distinction that there can be no discharge by supervening impossibility if the express terms of the contract bind the parties to performance notwithstanding that the supervening event may occur.

In the case referred to last, in the above cited passage from the speech of Viscount Simon L.C, expounding the principle of law underlying the doctrine of frustration of the contract Lord Earl Loreburn said at page 403:

When a lawful contract has been made and there is no default, a Court of law has no power to discharge either party from the performance of it unless either the rights of some one else or some Act of Parliament give the necessary jurisdiction. But a Court can and ought to examine the contract and the circumstances in which it was made, not of course to vary, but only to explain it, in order to see whether or not from the nature of it the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist. and if they must have done so, then a term to that effect will be implied, though it be not expressed in the contract. In applying this rule it is manifest that such a term can rarely be implied except where the discontinuance is such as to upset altogether the purpose of the contract............

In the recent case of - ''Horlock v. Beal'', (1916) 1 AC 486 (Q), this House considered the law upon this subject and previous decisions were fully reviewed, especially in the opinion delivered by Lord Atkinson. An examination of those decisions confirms me in the view that when our Courts have held innocent contracting parties absolved from further performance of their promise it has been upon the ground that there was an implied term in the contract which entitled them to be absolved. Sometimes it is put that the parties contemplated a certain state of things which fell out otherwise. In most of the cases it is said that there was an implied condition in the contract which operated to release the parties from performing it, and in all of them I think that was at bottom the principle upon which the Court proceeded. It is in my opinion the true principle, for no Court has an absolving power, but it can infer from the nature of the contract and the surrounding circumstances that a condition which is not expressed was a foundation on which the parties contracted.

But in the words of Lawrence J. in - ''Scottish Navigation Co. Ltd. v. W.A. Souter'', (1917) 1 KB 222, at p. 249 (R):

no such condition should be implied when it is possible to hold that reasonable men could have contemplated the circumstances as they exist and yet have entered into the bargain expressed in the document.

This was approved by Lord Sunmer in - ''Bank Line, Ltd. v. Capel & Co.'' 1919 AC 435, at p. 460 (S). and same view has been expressed in Surpat Singh and Others Vs. Sheo Prasad Gupta, , in which at page 304, the learned Judges have observed that:

before the doctrine of frustration can be invoked it must be shown that the event which has produced frustration was an event which the parties to the contract did not foresee and could not with a reasonable diligence, have foreseen.

9. In this case on 11-8-1947 it was unquestionably common knowledge that India was being divided into two Dominions on 14-8-1947, only three days before that date the railway accepted the consignments in this case at the Lahore Railway Station for carriage to Nabha railway station. Two goods clerks, Raja Ram D.W. 2 and Rup Ram D.W. 3. depose that on 11-8-1947 there were stray stabbing incidents at the railway station and the railway staff started leaving Lahore. The first witness himself left on 19th August and the second says that his last day on duty was 14th August, and he left on 16th August. He further says that people had started leaving Lahore by 2nd or 3rd August. It has already been pointed out that the plaintiff and his three witnesses Gulab Rai, Pashori Lal and Hazari Lal left Lahore on or immediately after 11-8-1947.

There is, therefore, no manner of doubt from this evidence of both the parties that non-muslims of Lahore were already quitting the city on 11th August and disturbances had started, though the learned Advocate General contends that at that time there were only stray cases and the railway administration could not possibly foresee the holocaust that followed. I think there is no substance in this contention because before that there was wholesale evacuation of non-muslim population beyond Lahore and passenger train service was anything but satisfactory and there could be no question of there being normal goods train service in those days. The evidence of the parties, already referred to, clearly establishes that the disturbances were already on in Lahore on 11th August and the railway administration could not possibly ignore what was going on not only around the railway station but had penetrated it also. The railway administration was therefore, aware of the state of circumstances in which it accepted the consignment and the disturbances had already started when the acceptance was made. It does not now lie with the defendant to say that what happened was something that could not be foreseen by reasonable men. I think the tempo that the disturbances were to reach was too apparent by 11th August and the defendant cannot say that what happened could not be foreseen and, therefore, an implied term in the contract between the parties must be read that the state of things, i.e., the peaceful atmosphere necessary for efficient running of the railways, the continuance of which they expected at the time of the making of the contract, ceased to exist because of the disturbances thus rendering the purpose of the contract impossible and that the supervening events could not be contemplated or foreseen by the parties. Upon evidence there is no substance in this argument.

10. The defendant never took this defence of the impossibility of the performance of the contract because of the disturbances in his written statement. All that has been stated there is that the goods have been carried to Karachi and cannot be carried to India without an export permit according to the law of Pakistan. As to this last ground, the learned District Judge has taken a proper view of the matter. There was no law on 11-8-1947, that was an obstruction in the carriage of the goods from Lahore to Nabha and subsequently after partition, the defendant has not shown when the law requiring an export permit came into force in Pakistan and proved an impediment in the movement of the goods from Karachi to India. Unless the defendant proved that on the day Pakistan came into being that law also was immediately enforced thus making it legally difficult for the defendant to move the goods from Karachi to India, I can see no force in this objection. But even if such a law was enforced in Pakistan on the day it came into existence. I still think that that would not provide an effective defense to the defendant because when the defendant accepted the goods, there was no such legal impediment, and since the date of partition was known at that time, such a contingency cannot be said to be outside the contemplation and foresight of the parties. Therefore, this argument does not bring the case within the scope of doctrine of frustration.

The argument based on the dislocation of the railway service because of disturbances has no foundation in the case of the defendant in his written statement. It appears to have been somewhat faintly urged at the time of the arguments before the learned District Judge, and it has been clearly raised now in the grounds of appeal. In 1942 AC 154. (N)'', it has been held that the party pleading frustration of contract is not bound to prove further that the cause of the frustration was not due to its neglect or default, and that onus of proving such neglect or default by the party pleading frustration as defence is on the opposite party. So if the special defence of frustration of the contract is not pleaded by a party, the opposite party gets no opportunity to show that frustration was due to the neglect or default of the party pleading that defence. As for instance in the present case if this defence had been taken in the written-statement, the plaintiff could have shown more definitely, than, is now apparent from the evidence on the record, that it was through the neglect or default of the defendant that the goods were not despatched with the care of a prudent man from Lahore for Nabha, but were, due to the negligence and default of the servants of the defendants, instead dispatched to Karachi, though I think the record provides enough material to indicate that that was due to the neglect and default of the servants of the railway administration.

The learned Advocate General says that at the Lahore railway station majority of the railway employees were muslims and so they probably deliberately despatched the goods to Karachi rather than to Nabha and for this railway administration is not to blame. I consider that this rather speaks against the defendant for it is not open to the defendant to say that he is not responsible for the neglect and default of his servants. Mulla in his CPC 12 Edition, at page 582 says that:

where he (defendant) alleges that he is released from or exonerated and discharged from, the performance of his contract, he must in his written statement give sufficient information to his opponent as to how and when he was so released or discharged.

However, the learned Advocate General relying on AIR 1949 EP 301 (K)'' contends that the defence of frustration can be taken for the first time in appeal even if it is not pleaded in the trial Court. In that case at page 303 Teja Singh J. remarked:

The Learned Counsel for the respondent committee urged that the plea of frustration should not be allowed at this stage, because (1) it had not been raised specifically in the plaint, and (2) that it has never been argued in the Courts below. As regards the first objection, I concede that the term ''frustration'' is not used anywhere in the plaint but since my opinion is that the facts set out therein are sufficient to make out a case of frustration, and it is a well-recognized rule that the pleading of the Muffassil Courts should not be construed strictly, I do not think it correct to rule out the pica merely on this ground. As regards the second objection all that I wish to say is that if the facts on record are sufficient to make out a plea, it would be wrong to ignore it simply because it did not strike counsel in the Courts below.

In the first place, facts are not set out in the plaint in this case that are sufficient to make out a case of frustration, and secondly, I do not think that the authority in 1942 AC 154 (N)'' was brought to the notice of the learned Judges in that case, because when that authority is considered it becomes clear that where frustration is pleaded as discharging a contract, the opposite party must have an opportunity to be able to show that frustration occurred due to the neglect or default of the party relying upon it and if it is not specifically pleaded then the opposite party is deprived of this opportunity and is taken by surprise. So the ruling in ''AIR 1949 EP 301 (K)'', does not apply to the present case on facts and it is a matter of considerable doubt whether it can apply where frustration is not specifically pleaded in view of the English case already referred to.

11. So the argument on behalf of the defendant founded on the doctrine of frustration of I the contract fails because (a) the supervening ''event which is said to have made the performance of the contract impossible was within the contemplation of the parties and was before their eyes, (b) this defence as urged at the time of the arguments in appeal was not taken in the written statement, and (c) that defence not having been taken in the written-statement cannot be allowed to be raised in appeal because of the other party not having had an adequate opportunity to meet it.

12. The last defence on behalf of the defendant is that the suit is barred by limitation. On the facts now admitted by both the parties it is evident that it is a case of non-delivery of goods and thus falling within Art. 31, Limitation Act and the limitation is one year from the date "when the goods ought to be delivered". The goods were made over to the railway on 11-8-1947. Allowing two months period for notice under S. 80, C.P.C. and allowing at the most about a week or a fortnight for the goods to reach Nabha, the plaintiff ought to have brought his suit some time in the third week of October, 1948, and in fact he instituted the application to sue the defendant in forma pauperis on 18-10-1948, in the Delhi Court.

It is obvious that if the suit had been tried there it was within limitation. It is admitted by both the parties that if the time spent by the plaintiff in prosecuting the civil proceedings in the Delhi Court is to be excluded according to S. 14, Limitation Act, the suit of the plaintiff is within time. But the question is whether that period can be excluded under s. 14, of the Patiala Oudh Sunai Act (No. 1 of 1969 Bk).

I may state here that the Patiala Act is a copy of the Indian Limitation Act and there is no difference, in so far as the present- case is concerned in the provisions in both the Acts. I may state here again that the proceedings in the Delhi Court were started on 18-10-1948, anti terminated on 21-12-1949. The application was returned to the plaintiff on 22-12-1949, and he presented it in the Court of the District Judge at Patiala on 24-12-1949. By that time Pepsu had come into being on 20-8-1948, and the Constitution of India had not been applied to Pepsu. The Patiala Civil Procedure Code, which was a copy of the Indian CPC and had been applied mutatis mutandis to the former Patiala State, and the Patiala Oudh Sunai Act (No. 1 of 1969 Bk) became the law of the new

State of Pepsu on its formation. The Courts in Pepsu were constituted under the CPC applying therein and apparently the Patiala Oudh Sunai Act (No. 1 of 1969) could apply and refer to the Courts in that State alone and to no other Courts.

In S. 2(5), Civil P.C. in force at the relevant time, the definition of ''foreign Court'' is:

"?foreign Court? means a Court situate outside India and not established or continued by the authority of the Central Government.

When this definition is read mutatis mutandis as applied to Pepsu it would be in this form:

foreign Court" means a Court situate outside Pepsu....

This means that the Court of the Subordinate Judge at Delhi was at that time, a ''foreign Court'' under the law of procedure in Pepsu. At the same time on 7-8-1948, the Rajpramukh of Pepsu by the Instruments of Accession acceded to the Dominion of India accepting the jurisdiction of the Federal Court "for the purpose only of the Dominion". The matters numerated in lists I and in of the VII Schedule to the Government of India Act, 1985, were accepted as matters in respect of which the Dominion Legislature may make laws for Pepsu, and the only exception was the entry relating to taxation.

So from 7-5-1948, to a limited extent at least, the Federal Court of India had jurisdiction in relation to Pepsu and the Courts therein. When this is taken into consideration, I am not prepared to say that after that date the Courts in Pepsu can strictly be said to be "foreign Courts" There is therefore, apparent inconsistency arising out of the provisions of the Patiala Civil P.C. and the Instrument of Accession when read side by side. But I do not think that for the purposes of the question under consideration it is necessary to go to the length of deciding whether in the years 1948 and 1949 the Court of the Subordinate Judge at Delhi was or was net a ''foreign Court'' so far as Pepsu is concerned, because I am quite clear that it was not a Court constituted under the Patiala CPC or to which the Patiala Oudh Sunai Act (No. 1 of 1969 Bk.) extended. Legislation is primarily territorial and at that time Pepsu had its own laws as to civil procedure and limitation for suits that the Courts in Pepsu had to observe. Those laws could not possibly either apply to the Court at Delhi or contemplate within their scope that Court. So, in my opinion, the court of the Subordinate Judge at Delhi was not a Court falling within the scope of the words ''in a Court'' of first instance, or in a Court of appeal as used in S. 14, Limitation Act.

Support of this view is to be found in - ''Chanmalapa Chenbasapa v. Abdul Vahab'', 35 Bom 139 (U), in which, in a similar case the argument that the term "Court" in the Limitation Act is not expressly restricted to a "Court having jurisdiction in British India or established by Government in British India" was rejected and the learned Judge observed:

All legislation is primarily territorial and a limit must be placed upon the general sense of a word used in a statute with reference to that principle of law, unless there is something in the language or object of the statute which compels the Court to interpret the word in its wide sense. Following that canon of construction, our Court held in ''Queen Empress v. Bapuji Dayaram, that the words ''any Court'' in Section 258 of the CPC of 1882 meant only ''any Civil Court''.

Turning now, to the limitation Act, its preamble shows that the ''Courts'' to which it applies are Courts in British India, not foreign Courts. The word must be read in that restricted sense, or else the absurdity would follow that the Legislature intended to provide a ''law relating to the limitation of suits, appeals and certain applications for Courts outside its jurisdiction. and if that is the restricted meaning of the word as used in the preamble, the same meaning must be attached to the word where it occurs in the enacting portions of the Act, unless the enactment is itself so clear and unambiguous as to show that the Legislature intended a departure from that meaning in the case of any particular section of the Act. Neither expressly nor by necessary implication has the Legislature made any such purpose apparent in the Limitation Act. The implication is rather the other way. Section 11 of the Act relates to a suit on foreign contracts; and Article 117 to Schedule I of the Act provides a period of limitation for a suit upon a foreign judgment. Whenever, therefore, the Legislature intended anything relating to a foreign State to be brought in, it has provided for it by express language. It is a fair inference from it that had the Legislature intended to include a foreign Court in the word ''Court'', in Section 14, it would have said so.

13. The learned Judges then held that the word ''Court'' in S. 14, Limitation Act does not include a foreign Court and confirmed the decree whereby the suit had been dismissed as time-barred.

This ruling has been followed in - ''Rajanna v. Narayan'', AIR 1923 Nag 321 (V) and - ''Hari Singh v. Muhammad Said'', AIR 1827 Lah 200, at p. 208 (W).

In the first of these two rulings the question was whether a court in Berar, which was not a part of British India though it was administered by the Governor-General in Council, was a Court within the scope of S. 14, Limitation Act and the learned Judges observed:

A Berar Court can hardly be said to be a foreign court but it is not a, Court contemplated by S. 14, Limitation Act, namely, a Court in British India.

So although the Court of the Subordinate Judge at Delhi cannot be said to be a foreign Court in relation to Pepsu, but it certainly is not a Court contemplated by S. 14, Patiala Oudh Sunai Act, 1969 Bk, with the result that time spent in prosecuting civil proceedings in the Subordinate Judge''s Court at Delhi cannot be excluded under S. 14 of that Act. That being so, the application of the plaintiff to sue forma pauperis having been first instituted in the District Judge''s Court at Patiala on 24-12-1949, the suit was clearly time-barred under Art. 24 of the Patiala Oudh Sunai Act, 1969 Bk., which corresponds to Art. 31 of the Indian

Limitation Act. The finding of the learned trial Judge on this point is, therefore, not correct and the suit of the plaintiff is time-barred.

14. In consequence, the appeal of the defendant succeeds and the suit of the plaintiff is dismissed, but, in the circumstances of the case, no order is made as to costs.

Passey C.J.

15. I agree.

