

(1983) 10 GAU CK 0003
In the Gauhati High Court
Case No : First Appeal No. 454/73

Union of India

APPELLANT

Vs

Motiram Ratanchand

RESPONDENT

Date of Decision : 04-10-1983

Acts Referred:

Limitation Act, 1963 — Section 18, 18

Citation : (1983) 2 GLR 321

Hon'ble Judges : B.L.Hansaria, J and T.C.Das, J

Bench : Division Bench

Advocate : A.R.Barthakur, P.Barthakur, P.P.Duara, Advocates appearing for Parties

Judgement

Hansaria, J.—A suit filed for realisation of a sum of Rs. 14,417.96 due to nondelivery of a consignment of 264 bags of wheat has been decreed by the learned Trial Court, though for Rs. 13,315.00 with proportionate cost. The consignment was booked from K.P. Dock, Calcutta on 5/8/66, and ought to have been delivered at Sibsagar by 5/9/66. As however, this was not done the suit as aforesaid was filed on 18/4/70. The booking of the consignment, and the nondelivery of the same are not in dispute. What has been agitated before this Court by the Defendant relates to issue No. 2 which was "whether the suit was maintainable". Though the issue relates to the general ground of maintainability, what has been urged in this regard is the question of limitation. The only other point urged by Shri Duara is about the quantum of relief granted.

2. In so far as the limitation is concerned there is no dispute that it is Article 11 of the limitation Act which is attracted, according to which a suit of the present nature is required to be filed within a period of 3 years from the date "the goods ought to be delivered". As even according to the plaintiff the goods ought to have been at Sibsagar by 5/9/66 as stated in their notice under Section 80 (Ext. 9), and as the suit was filed on 18/4/70, the same was definitely beyond the period of limitation. But the learned Trial Court counted the period of limitation from

31/1/68 as by a letter written on that date (Ext.10) the Railways had purportedly acknowledged their liability. Thus benefit of Section 18 of the Limitation Act was made available to the plaintiff. Shri Duara has assailed this finding inasmuch as according to him Ext.10 cannot be read to be an acknowledgement at all.

3. To decide the controversy let us read the material portion of Ext.10.

"Enquiry reveals that you have nothing due against the subject invoice over and above you took excess delivery of 82 bags wheat. Out of these 82 bags, 76 bags have been adjusted against invoice No. 112/277775.....and the balance 6 bags wheat are still to be adjusted.

In view of the above circumstances your claim for nondelivery cannot be entertained which is regretted."

Relying on these statements in Ext.10 it is contended by Shri Duara that Section 18 could not have enlarged the period of limitation inasmuch as for that Section to operate, there must first be an acknowledgement of liability. This is what has been stated in *Gajanand vs. Union of India* : AIR 1955 Patna 182; indeed this follows from the Section itself, even if the Explanation to the Section is borne in mind.

4. Had it been that Ext.10 is the only document in this connection, we would have perhaps agreed with the learned counsel that the suit was barred by limitation. But there is another document dated 8/12/68 (Ext.11) which is a letter addressed by the Station Master of Sibsagar to the plaintiff's firm. This letter relates to the consignment in question and states

"The above consignment was not received at the destination. CCS. PNO. was informed vide my letter No. Nil of 5.1.67 regarding non arrival of the same. But up till now no such consignment received and delivered to you. This is for your information please."

It has to be seen whether this latter can be said to be an acknowledgement of liability. To decide this aspect it would be useful to refer to *S.F. Mazda vs. Durga Prasad* : AIR 1961 SC 1236. That case had dealt with Section 19 of the old Limitation Act which was a predecessor of Section 18 of new Act, and whose language was in parimateria with the present Section in so far as it is relevant for our purpose. While explaining as to what might be taken to be acknowledgement, it was stated that the statement in writing must first indicate the existence of jural relationship between parties, and it must appear that the statement was made with the intention to admit such jural relationship, which could be inferred by implication from the nature of the admission and need not be expressed in words. Then the acknowledgement need not be accompanied by promise to pay either expressly or even by implication, though statement must relate to a present subsisting liability. It was further opined that stated generally the courts lean in favour of a liberal construction of such a statement, though it does not mean that where no admission is made, it should be inferred by far

fatched processes of reasoning.

5. To appreciate the above statement of law more, the letter which was regarded as an acknowledgement may be quoted :

"My dear Durgaprosad,

Chandni Bazar is again advertised for sale on Friday the 11th instant. I am afraid it will go very cheap. I had a private offer of Rs. 2,75,000/ a few days ago but as soon as they heard it was advertised by the Registrar they withdraw. As you are interested why do not you take up the whole. There is only about 70,000/ due to the mortgagee payment of Rs. 10,000/ will stop the sale."

The question was whether by this letter the writer acknowledged Durga Prosad as mortgagee. It may be stated that Durga Prosad was the second mortgagee, and the proposed sale was on behalf of a prior mortgagee. Though the letter in terms did not describe Durga Prosad as a mortgagee, the court held that when it was stated to Durga Prosad that "you are interested", the same meant his interest as a mortgagee, and not any other interest like lessee or purchaser. As such, a jural relationship of mortgagor and mortgagee was read in the letter. The status of Durga Prosad as mortgagee was, therefore, said to have been acknowledged by this letter.

6. If we read Ext.11 now in the light of what has been stated in the aforesaid decision, there can be no denial that it did indicate a jural relationship of consignor and consignee/endorsee. Ext.11 also shows the intention of admitting such relationship. Further the letter clearly states that the consignment had not been delivered to the addressee even by 8/12/68 As such, all the facts necessary to show admission of liability are to be found in Ext.11. In this connection we may refer to Jai Narain vs. Governor General of India : AIR 1951 Calcutta 462 wherein it has been held that acknowledgement may not be a specific and direct, and if there be admission of facts which lead to admission of liability as a necessary consequence, the same would be an acknowledgement within the meaning of the aforesaid section. As a liberal construction has to be given to these statements as observed in Mazda, (supra) ratio of which was affirmed in Tilok Ram vs. Nathu : AIR 1967 SC 935 by emphasising that admission of jural relationship must subsist at the time of making of the same, we have no difficulty in reading in Ext.11 all the necessary ingredients of acknowledgement. As this had come on 8/12/68, and the suit was filed on 18/4/70, we hold that the same was not barred by limitation.

7. The only other question relates to the quantum of relief. A reference to discussion on issue No. 7 relating to relief shows that though the plaintiff claimed the price of wheat at the rate of Rs. 55/ per quintal, the same was accepted at Rs. 50/ as that was the prevailing Govt. price of wheat. But then the learned trial court allowed business loss at the rate of 12/. Shri Duara urges that in view of section 78(d) of the Indian Railways Act, the indirect or consequential damage could not have been allowed. We accept this submission, and modify the decree

by disallowing the business loss. The plaintiff would, therefore, be entitled to decree for the goods in question by calculating the loss at the rate of Rs. 50/ per quintal alongwith proportionate cost.

8. Subject to this modificaton, the appeal is dismissed.