

**(1975) 01 CAL CK 0026**  
**In the Calcutta High Court**  
**Case No : Civil Rule No. 1023 of 1961**

Union of India (UOI)

APPELLANT

Vs

Bararashi Lal Agarwalla

RESPONDENT

---

**Date of Decision :** 15-01-1975

**Acts Referred:**

Limitation Act, 1963 — Article 31  
Railways Act, 1890 — Section 77

**Citation :** AIR 1975 Cal 417

**Hon'ble Judges :** Bankim Chandra Ray, J; Anil Kumar Sen, J

**Bench :** Division Bench

**Advocate :** Ajoy Kumar Basu, for the Appellant;

**Final Decision :** Allowed

---

## Judgement

1. This Rule is at the instance of the defendant Railway administration and is directed against an appellate decree whereby the lower appellate court reversing the decision of the trial court decreed the money claim of the opposite party as against the Railway administration.

2. Undisputedly the plaintiff opposite party booked a consignment of coal with the Railway administration on June 28, 1951. It was so booked at the Barakar Railway Station in the Eastern Railway. According to the plaintiff-opposite party the consignment should have reached the consignee at Chapra within 15 days but it did not do so. After a long correspondence between the parties the suit was instituted for realisation of damages for non-delivery assessed at Rs. 767/-. This suit having been contested by the Railway administration was dismissed by the trial court on two-fold grounds namely the claim was barred under Article 31 of the Old Limitation Act and on the ground that no such claim is maintainable in the absence of a notice u/s 77 of the Indian Railways Act. The fact that there was no such notice u/s 77 is also not in dispute.

3. On an appeal by the plaintiff-opposite party this decision of the trial court was

reversed and the suit was decreed. On the question of limitation, the lower appellate court accepted the position that the case would be governed by Article 31 of the old Limitation Act and the limitation would be one year from the date when the goods ought to be delivered. But according to the lower appellate court the date of such delivery is to be proved by the carrier defendant and the defendant not having discharged that burden it cannot be said positively what would be the date when the goods in suit ought to have been delivered. In addition thereto, the lower appellate court took the view that the limitation was to run only from the date of final refusal to deliver and as such refusal should be construed to be the last of the correspondence dated March 10, 1956; the suit which was instituted on April 22, 1957 must be considered to be well within the period of limitation calculated from that date excluding the period of notice u/s 80 of the Code of Civil Procedure. On the question of the effect of absence of notice u/s 77 of the Indian Railways Act, the court of appeal below took the view that the said section can have no application to the present case where the claim is based on non-delivery and the carrier defendant has not proved that such non-delivery is due to any loss incurred by the Railway administration.

4. Being aggrieved by such a decree of reversal the Railway administration has now come up in revision to this Court the judgment and decree being not appealable in view of the provision of Section 102 of the Code.

5. This Rule is not being contested at the hearing by the plaintiff-opposite party although the said opposite party did enter appearance at one stage.

6. Mr. Bose, learned Advocate for the Railway administration has contended that the lower appellate court was in error on both the points as to limitation and maintainability of the claim in the absence of notice u/s 77 of the Indian Railways Act. According to him, both the points are covered by two decisions of the Supreme Court. In our considered opinion, the contention raised by Mr. Basu has ample merits.

7. It cannot now be disputed that in a suit of the present nature, the limitation for the claim would be governed by Article 31 of the Act and the period prescribed is one year from the date when the goods ought to be delivered. The significance of the terms when the goods ought to be delivered previously led to some diversion of judicial opinion which has been set at rest by the Supreme Court decision in the case of Bootamal Vs. Union of India (UOI), . It has been held that the limitation under Article 31 should run from the date where there is an agreed date for delivery from the date so agreed and in the absence of any such agreed date from the date after the lapse of reasonable time for the delivery. Now, in the present case admittedly there was no agreed date for delivery and upon the plaintiff's own case reasonable time for delivery is 15 days from the date of the consignment. The consignment having been booked on June 28, 1951 the date of delivery would be about the middle of July 1951 so that the period of limitation when counted from that date would expire in or about the middle of July 1952. The suit having been filed long after such a date the claim is

clearly barred under the provisions of the Limitation Act. The learned Judge in the lower appellate court is clearly in error when he thought that in the absence of any proof by the carrier defendant as to the date when the goods ought to have been delivered the limitation would not run or that the limitation should run only from the date of final refusal. Neither of these two elements is to be found on the language of Article 31 of the old Act which corresponds to Article 11 of the new Act. In this view, we must accept the contention of Mr. Basu and hold that the claim being *ex facie* barred even on the allegations made in the plaint, the court of appeal below acted illegally in the exercise of its jurisdiction in decreeing the suit of the plaintiff. While on this point we must, however, make it clear that there is no question of saving the limitation by virtue of any acknowledgement arises in the present case on the correspondence between the parties in view of the fact that there had been no acknowledgment before the expiry of one year from the middle of July 1951.

8. So far as the other point of maintainability of the claim is concerned, the claim being a claim of damages for non-delivery of the goods must be held to be governed by Section 77 on the decision of the Supreme Court in *The case of Governor General in Council Vs. Musaddi Lal*, . The Supreme Court has clearly pointed out that non-delivery is the consequence of loss or destruction and the non-delivery itself cannot be distinguished as a separate cause of action for a suit of the like nature. Loss is not only loss to the administration but also to the owner of the goods. As such, it has been definitely held that it cannot be said that a suit for compensation for loss, because of non-delivery of the goods does not fall within Section 77. This being the position, the finer distinction sought to be made by the lower appellate court is clearly unsustainable in law and it must be held that the suit not being instituted on a prior notice u/s 77 of the Act the claim itself was not maintainable. The lower appellate court, therefore, equally acted illegally in the exercise of its jurisdiction in decreeing a claim which was not otherwise maintainable in law.

9. For reasons as above, this application succeeds and the Rule is made absolute. The judgment and decree of the lower appellate court is set aside and that of the trial court restored.

10. There will be no order as to costs.