
(1976) 02 CAL CK 0041

In the Calcutta High Court

Case No : Appeal from Appellate decree No. 2033 of 1965

Union of India (UOI)

APPELLANT

Vs

Brooke Bond India Pvt. Ltd.

RESPONDENT

Date of Decision : 19-02-1976

Acts Referred:

Calcutta Port Act, 1890 — Section 142
Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1908 — Article 21, 31
Railways Act, 1989 — Section 77

Citation : (1976) 1 ILR (Cal) 332

Hon'ble Judges : A.N. Banerjee, J

Bench : Single Bench

Advocate : Ajoy Kumar Basu, for the Appellant; D.K. Chowdhury, for the Respondent

Final Decision : Allowed

Judgement

A.N. Banerjee, J.—In this appeal, the only point which was canvassed was the question of limitation under Article 31 of the Limitation Act. The Respondent/Plaintiff M/s Brooke Bond India Pvt. Ltd. filed a suit for damages against the Appellant and the Respondent No. 2, Commissioners for the Port of Calcutta. The case of the Plaintiff company was that on October 22, 1955, 414 chests of tea were booked at K.P. Docks by the Plaintiff for carriage to Ghatakeswar. On November 23, 1955, the Railway delivered only 398 chests of tea to the Plaintiff at Ghatakeswar. There was short-delivery to the extent of 16 chests of tea as a result of which the Plaintiff had suffered damages to the extent of Rs. 3,190-06 P. The suit was contested by the Appellant on the ground of limitation and also on the non-service of notice u/s 80 of the Code of Civil Procedure. The trial Court over-ruled the pleas of the Defendant/ Appellant and passed a decree in favour of the Plaintiff. An appeal was taken by the Appellant and the learned appellate Court was in agreement with the findings of the trial Court and accordingly, dismissed the appeal. Thereafter, the present appeal has been filed before this

Court. Mr. Ajoy Kr. Basu, the learned Advocate appearing for the Appellant, submitted that in view of the admitted fact, viz. that on November 17, 1955, the consignment of tea chests arrived at the destination minus 16 chests and open delivery was claimed on the self-same date, the period of limitation would run from that date and that as such the suit which was filed on January 19, 1957, would be barred by limitation. Mr. Chowdhury, learned Advocate appearing for the Respondent No. 2, supported the argument of Mr. Basu and submitted that in so far as the Respondent No. 2 was concerned the claim was hopelessly barred by limitation inasmuch as the question of limitation would be governed by Section 142 of the Calcutta Port Act which prescribes the period of limitation of three months only. Article 31 of the Limitation Act prescribes the period of limitation as one year from the date when the goods ought to be delivered against a carrier for compensation for non-delivery of or delay in delivering the goods. In the present case, the admitted position is that out of the total consignment of 414 chests of tea 398 chests of tea arrived the destination station on November 17, 1955 and was unloaded on that very date. It further appears that on the self-same date the Factory Manager of the Respondent company wrote a letter to the Station Master, Ghatakeswar, alleging therein short-delivery of 16 cases and claiming open delivery of the remaining cases (vide Ex. 5). In their notice of claim u/s 77 of the Indian Railways Act dated December 7, 1955, the fact that the consignment reached the destination on November 17, 1955, was mentioned. It is true that the assessment on the demand for open delivery was made on November 23, 1955. If the period of limitation runs from November 23, 1955, that is to say the date on which the assessment was made, then the suit would be within time. But if the period of limitation runs from the date of arrival of the consignment at the destination station, that is to say, November 17, 1955, then the suit would become barred by limitation. Article 31 of the Limitation Act, as has already been pointed out, lays down that the time from which period of limitation begins to run is when the goods ought to be delivered. In the present case, bulk of the goods, viz. 398 chests out of 414 chests, reached the destination on November 17, 1955. We have already seen how on the self-same date claim for open delivery was made on the allegation of short-delivery of 16 chests. That being the position, there is no reason as to why November 17, 1955, should not be taken as the date when the goods ought to be delivered. There may have been delay in making the assessment on the claim of open delivery. There may have been also delay because of the non-appearance of the consignee within reasonable time after the arrival of the goods at the destination station. But such delays cannot be taken into consideration in computing the period of limitation under Article 31 of the Limitation Act. In the case of AIR 1932 165 (Privy Council) the Privy Council laid down that the fixation of the period of limitation must always be to some extent arbitrary and might frequently result in hardship. But in construing such provisions of equitable consideration are out of place and the strict grammatical meaning of the word is the only safe guide. In the case of General Accident Fire and Life Insurance Corporation Ltd. v. Jan Mohammad Abdul Rahim AIR 1041 P.C. 6 it was held that

limitation ought to receive such construction as the language in its plain meaning imports. A great hardship may occasionally be caused by the statutes of Limitation Act in the case of poverty, distress, ignorance of rights. Yet the statutory rules must be enforced, according to their ordinary meaning in this and in other like cases. The aforesaid decision of the Privy Council was referred to with approval by the Supreme Court in the case of *Boota Mal v. Union of India* (1962) 2 S.C.A. 669. In this case, the Supreme Court was concerned with the interpretation of Article 31 of the Limitation Act. It was held that in a case of late delivery or of non-delivery the words occurring in col. III of Article 31 can only mean one thing, viz. 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 the time can be inferred expressly or impliedly) in the carriage of the goods from the place of despatch to the place of destination. Having regard to the facts and circumstances of the present case, as pointed out above, there can be no manner of doubt that the time should run from the date on which 398 chests out of 414 chests arrived at the destination station and were unloaded and also on the date on which the Respondent company complained of short-delivery of 16 chests and claimed open delivery. We have already seen that the relevant dates on account of the aforesaid two was the same, that is to say November 17, 1955. That should be taken to be the date when the goods ought to be delivered. There is no reason as to why it should be extended to November 23, 1955, that is to say the date on which the assessment was made on the claim of the Respondent company. If, therefore, November 17, 1955, is taken to be the date as it should and must from which the period of limitation under Article 21 of the Limitation Act ran, then the present suit which was filed on January 19, 1957, was barred by limitation even after excluding the period of two months on account of notice u/s 80 of Code of Civil Procedure. Accordingly, I hold that the Respondent company's claim was barred by limitation and as such, both the Courts below were wrong in holding that it was so. Having regard to the view taken by me, the question whether the claim against the Respondent No. 2 was barred by limitation u/s 142 of the Calcutta Port Act became an academic one and I need not go into the question.

2. In the result, the appeal is allowed. The judgment and decree of the Courts below are hereby set aside and the suit is dismissed. Having regard to the circumstances of the case, each party to bear its own costs throughout.