

**(1962) 01 PAT CK 0005**

**In the Patna High Court**

**Case No :** A.F.A.D. No. 1497 of 1957 and Letters Patent Appeal No. 79 of 1959

Union of India (UOI)

APPELLANT

Vs

Gangadhar Mimraj and Another

RESPONDENT

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**Date of Decision :** 31-01-1962

**Acts Referred:**

Contract Act, 1872 — Section 2  
Government of India Act, 1935 — Section 175(3)  
Limitation Act, 1908 — Article 115, 120, 145

**Citation :** AIR 1962 Patna 372

**Hon'ble Judges :** S.N.P. Singh, J;Kanhaiya Singh, J

**Bench :** Division Bench

**Advocate :** Lalnarayan Sinha, P.K. Bose and Mahabir Choudhary in A.F.A.D. No. 1497 of 1957 and Lalnarayan Sinha, in L.P.A. No. 79/59, for the Appellant; J.C. Sinha, for A.F.A.D. No. 1497 of 1957 and R.P. Katiriar, for L.P.A. No. 79/59, for the Respondent

**Final Decision :** Allowed

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## Judgement

Kanhaiya Singh, J.—These two appeals involve common questions of law and have, therefore, been heard analogously, and this judgment will govern both.

2. The suit in which Second Appeal 1497 of 1957 arises was brought by the respondent for recovery from Union of India a sum of Rs. 2500, being the amount of the security deposited by him with the Divisional Superintendent, Dinapur of the East Indian Railway (now the Eastern Railway) for due performance of a contract. Shortly put, the facts are these. On 25th November 1947, the defendant (sic) entered into a contract with the Divisional Superintendent for supply of 340 maunds of Zira at the rate of Rs. 72/5/- per maund by 25th December, 1947, at Dinapur Reserve Department. In respect of this contract, the plaintiff deposited with the Divisional Superintendent Rs. 2500 as security money. On 4th December 1947, the plaintiff hooked at Jumna Bridge station 340 maunds of Zira to be delivered at Dinapur. The wagon containing the Zira, however, was despatched through inadvertence to some other place,

instead of Dinapur, with the result that the wagon could not reach Dinapur earlier than 3rd March 1948. In other words, the consignment reached Dinapur after the expiration of the stipulated date of delivery, i. e., after 25th December, 1947. The Divisional Superintendent declined to accept the consignment on the ground that there was considerable delay in the arrival of the consignment and that the Zira was not of the quality contracted for. He, therefore, forfeited the security money, which the plaintiff had deposited with him without notice. The plaintiff's demand for refund of the same was turned down.

Acting on a supposed arbitration clause the plaintiff proposed to the Divisional Superintendent to refer the matter to the arbitration of Sri Babulal Mahansaria of Bhagalpur and called upon the General Manager, Eastern Railway, to concur in the appointment. The General Manager withheld concurrence on the ground that the purchase order (Ext. 1), which embodies the terms of the contract, contained no arbitration clause. In spite of this objection, Sri Babulal Mahansaria accepted to act as the sole arbitrator and fixed 20th November, 1950 for hearing. The Railway Department did not enter appearance. The said arbitrator proceeded ex parte and in due course made an award on 20th February, 1951, in favour of the plaintiff. A notice of the award dated 29th February, 1951, was served on the General Manager. The award was thereafter filed in Court u/s 14(2) of the Indian Arbitration Act, which was numbered as Title Suit 40 of 1951 of the Court of the 2nd Munsif, Patna.

The Union of India resisted the claim substantially on the ground that the entire proceeding before the arbitrator was misconceived and illegal, as the contract did not provide for reference of the dispute to the arbitration of anybody. This defence prevailed, and the suit was dismissed on 23rd July, 1952, and an appeal by the plaintiff against the decree of the Munsif was dismissed for default on 25th August, 1954. An application by the plaintiff under Order 41, Rule 19, Code of Civil procedure, to set aside the order of dismissal and restore the appeal was also dismissed on 6th November, 1954. On 20th July, 1955, the plaintiff sent a notice u/s 80 of the CPC to the authority concerned and instituted the present suit on 27th September, 1955.

3. The Union of India resisted the claim on two main grounds, first, that the forfeiture was legal and justified, and, second, that the suit was barred by limitation.

4. The learned Munsif held that the forfeiture was illegal and unjustified, but the suit was barred by limitation. He, therefore, dismissed the suit. On appeal, the learned Subordinate Judge agreed with the learned Munsif that the forfeiture was illegal but differed from him on the question of limitation. He held that the suit was not barred by limitation. The suit was accordingly decreed. The Union of India has come up in Second Appeal and has reiterated the grounds urged before the Courts below.

5. The other appeal, viz., Letters Patent Appeal 79 of 1959, is from a decision of

the learned Single Judge of this Court dated 1st October, 1958, affirming, with modification, the decree of the Additional Subordinate Judge dated 7th September, 1953, passed in a suit brought by the plaintiff respondent for refund of a sum of Rs. 6051, being the amount deducted from a security deposit, together with a sum of Rs. 199 by way of damages in lieu of interest. The facts culminating in this suit may be briefly stated. On 14th March, 1943, the plaintiff entered into a contract with the Union of India for construction of roads around Petrel Pump at Nawadih Camp, departmentally known as Job No. 130, and he started the work on that very day. He deposited a sum of Rs. 15,000 as security money. The work could not be completed by the 15th of May, 1943, and on the application of the plaintiff dated 14th May, 1943, time was extended till 30th June, 1943. The plaintiff completed the work on 15th March, 1944.

Payments were made to the plaintiff from time to time, and the final payment in satisfaction of his bill was made on 12th September, 1946. In addition to the security deposit, the Government of India deducted, in accordance with the terms of the contract, from the interim bills further amounts, equivalent to 5 per cent. of the total bills by way of additional security, with the (sic) the total amount of the security come to Rs. 15,724. On 12th April, 1947, a sum of Rs. 6051 was deducted from the security deposit aforesaid, and the balance of Rs. 9673 was paid to the plaintiff. The deduction was made on the ground that there was delay in the completion of the work. The plaintiff averred that there was no delay on his part and that the delay that occurred was due to laches on the part of the Union of India and to the fact that a good deal of extra work had also to be done, which necessitated the extension of time. He accordingly pleaded that the deduction was illegal and that, at any rate, the acceptance or the completed work without protest constituted waiver of delay on the part of the Union of India. He further pleaded duress and coercion in execution of the deed of agreement.

6. The Union of India opposed the claim substantially on the ground that the work was not completed within the stipulated period, and consequently the deduction was legal, that having received the payment in full Satisfaction of his claim, the plaintiff could not re-agitate the same question and that the suit was barred by time. It denied also the charge of duress and coercion.

7. The learned Subordinate Judge negatived the plaintiff's plea of duress and coercion in execution of the contract, but on other points he held in favour of the plaintiff. In his opinion, the deduction was illegal and the suit was not barred by limitation.

8. Against the decision of the learned Subordinate Judge the Union of India preferred an appeal to this Court, and before the learned Single Judge three points were raised on its behalf, (1) that the plaintiff was not entitled to any extension of time, which was validly rejected by the prescribed authority, and its decision in this regard is final and could not be questioned in this suit; (2) that the plaintiff accepted the balance of the security money in full satisfaction of his

claim, and, therefore, he was not entitled to recover the amount deducted from the security deposit; and (3) that the suit is barred by limitation under Article 115 of the Limitation Act. The first two points were decided in favour of the plaintiff. On the question of limitation, the plaintiff relied upon Article 145 of the Limitation Act, whereas the Union of India urged that Article 115 of the Act governed the suit. The learned Judge held that Article 145 had no application. He was also of the view that the suit was governed not by Article 115 but by Article 120 of the Act. He, therefore, held that the suit was within time.

9. Mr. Lalnarayan ginha appearing for the Union of India did not contest the correctness of the findings that the plaintiff was not guilty of delay and there was no valid justification for deduction. He, however, pressed the other two points, namely, that the acceptance by the plaintiff of the balance of the security money amounted to full Satisfaction and that the suit was barred by limitation.

10. Thus, the points that arise for determination in these appeals are:

(1) whether the forfeiture of the security amount in Second Appeal 1497 of 1957 was legal and justified;

(2) whether the acceptance of the balance of the Security money by the plaintiff in the Letters Patent Appeal amounted to full satisfaction, disentitling him thereby to claim the deducted amount; and

(3) whether the two suits are barred by time.

11. As to the first point, it is common ground that the contract in this case was executed when the Government of India Act, 1935, was in force and was not in strict conformity With the provisions of Section 175(3) of the said Act. It is further agreed that non-compliance with the mandatory provisions of this section rendered the contract wholly void and unenforceable by or against the Government. It was rather on the ground of the voidness of the contract that the plaintiff challenged the forfeiture of the security amount by the Government as illegal and claimed a refund thereof. The learned Government Advocate, on the other hand contended that though the contract was void as against the Government of India and could not be enforced either against the Government or by the Government, it was none-the-less a valid contract between the plaintiff and the Divisional Superintendent and could be enforced in law personally against the latter. The contention of learned counsel appears to be correct and well-founded. In *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, the Supreme Court has laid down that Such contracts, though unenforceable against the Government, are binding upon the officers, who actually made the contracts, u/s 230(3) of the Contract Act, and the authority of this decision is not shaken by the Subsequent decision of the Supreme Court in *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, . If the contract was valid and enforceable by or against the Divisional Superintend dent, Dinapur, personally, then the forfeiture of the security deposit must be held to be legal, if made in accordance with the terms of the contract.

The relevant terms and conditions of the contract are these:

Condition No. 2: The railway administration will not be liable to the merchants for anything that may happen to the supplier's commodities until the same passed into the physical possession of the railway administration as the buyer (and not as a carrier) at place of delivery noted in purchase order.

Condition No. 6:--In case the commodity is wet up to the approved sample it will be rejected. On rejection, the supplier shall be liable to remove the rejected commodities at his own expense and replace the same within the stipulated date. The railway administration may accept the whole or a part of the rejected commodities after an assessment thereof by them. In such case the supplier will be entitled to the assessed value only. No consignment will be treated as having been supplied until and unless it has been sampled and accepted by the railway administration.

Condition No. 7:--The stipulated date of completion may be extended by railway administration within its own discretion on grounds considered sufficient.

Condition No. 8:--Time for completion of delivery should be deemed to be the essence of the contract. If the quantities contracted through this purchase order are not supplied within stipulated date or dates, the supplier is liable to a penalty equal to half per cent per day on the value of the quantities he has failed to deliver by the stipulated date or dates but the railway administration reserves the right of refusing to accept the undelivered portion of the contracted quantity after 1-1-48 (date) whereafter the railway administration will be at liberty to purchase elsewhere on the account and at the risk of the suppliers and said delivered quantity and to recover from the Supplier any extra cost that may be incurred from any money due to the supplier by the railway administration and or forfeit the security deposit in whole or in part at the discretion of the railway administration.

Condition No. 9:--The railway administration may forfeit the security money deposited by the supplier if the latter fails to perform or observe any of the conditions thereof."

There is no dispute that the goods were not supplied within the stipulated period and, as will appear from condition No. 8, the time for completion of the delivery was of the essence of the contract. There was manifestly a breach of the contract. Learned counsel for the plaintiff respondent, however, contended that there was no deliberate delay on the part of the plaintiff and that the goods were booked long before the appointed date, but could not reach in time, as, due to gross negligence and misconduct on the part of the Railway authorities, the wagon was missent. Condition No. 2, in my opinion, affords an effective answer to this contention. The Railway Department was conscious of the accidental delay in the delivery of the goods for some unavoidable reasons, and, therefore, it made a distinction between the Railway Department as a buyer and the Railway Department as a carrier, and the effect of this condition is that the Railway

Department as a buyer will not be responsible for the acts of omission and commission on the part of the Railway Department as a carrier.

The distinction is no doubt Subtle, but it is there, and it cannot be ignored in fixing the liability of one or the other party under the contract. By virtue of this term, the Railway Department will not be liable, unless the contracted goods passed into its physical possession. The expression "physical possession of the Railway Department" is significant. It emphasises that in fulfilment of the contract by the plaintiff, the goods must reach the Railway Department, that is to say, the Officer, who had contracted for the goods, and the acceptance of the goods by the Railway Department as a carrier for carriage will not be regarded as possession of the Railway Department as a contracting party. In construing the terms of the contract, the two personalities of the Railway Department, viz., the Railway Department as a carrier and the Railway Department as a contractor, have to be kept apart, and the coalescence of the two in one and the same person does not tend to obliterate the distinctions in law, because in the eye of law, they form different entities. Accordingly, if the goods were not delivered within the stipulated period, the railway administration or, more particularly, the Divisional Superintendent, Dinapur, will be entitled, under the terms of the contract, to rescind the contract and forfeit the security money, because the time of the delivery was of the essence of the contract.

If the consignment of the contracted goods to the Railway Department at any station in India amounted to effective delivery of the goods to the Railway Department as a contracting party, in fulfilment of the terms of the contract, Condition No. 2 will lose all significance and become wholly nugatory. The contract expressly lays down that the goods must pass into the physical possession of the Railway Department as buyer, contra-distinguished from the Railway administration as a carrier. There was no obligation on the part of the plaintiff to despatch the goods by railway. Had there been any such indication in the contract, the position might have been different. It was open to the plaintiff to send the goods by whatever means at his disposal, and if he chose to despatch the goods by railway, they could not set up the delay on the part of the Railway administration as a carrier as a justification for not delivering the goods on or before the appointed date. The contract has to be read and construed as it stands, and importation of any extraneous consideration into the contract to qualify condition No. 2 will be tantamount to sanctioning transgression of the express terms thereof.

There is no incompatibility between the two aspects of the Railway administration, viz., Railway administration as a buyer and the Railway administration as a carrier, and if these two aspects have been expressly recognised and set apart by the terms of the contract, it will be wrong to disregard this distinction: and treat it as a single person in determining its liability under the contract. The conclusion the Court below reached is in my opinion, wholly erroneous, because it ignores the vital distinction mentioned in

the contract itself between the Railway administration as a carrier and the Railway administration as a buyer. It cannot be reasonably urged that notwithstanding the express provisions of the contract, the consignment of the goods to the Railway Department for carriage must invariably be taken as delivery of the goods to the Railway Department as a buyer in fulfilment of the terms of the contract. The acceptance of the goods by the Railway Department as a carrier, therefore, will not relieve the plaintiff of his obligation under the contract to deliver the goods within the stipulated time. The goods were admittedly not supplied on or before the stipulated date, and consequently it must be held that the Divisional Superintendent was entitled in law to forfeit the security amount and the forfeiture was valid and legal.

Point 2:

12. The plea of estoppel against the plaintiff is rested upon the letter dated 2.1-8-1946, exhibit A(14), addressed by the Executive Engineer to the plaintiff. It is common ground that the work had not been completed within the stipulated period, and the plaintiff's prayer for extension or time had been refused, and the Railway administration had decided to levy a penalty on the plaintiff at the rate of 5 per cent. The last letter of the plaintiff asking for extension of time is dated 11-5-1946, exhibit A (10). This prayer of the plaintiff was refused by the aforesaid letter, exhibit A(14), which runs as follows:

"With reference to your above letter, I have to inform you that the Superintending Engineer, Delhi Aviation Circle has decided that the orders already passed by Superintending Engineer Eastern Aviation Circle, Calcutta levying a penalty of 5 per cent will stand.

Please send your authorised agent within a week of receipt of this, to this office and accept the final bill in full settlement of all demands in respect of the work".

It appears that the total value of the work done by the plaintiff came to Rs. 1,93,453 and the payments previously made to him amounted to Rs. 1,89,603, leaving a balance of Rs. 3850, and this sum of Rs. 3850 he received on 12-9-1946 after the stipulated deduction at 5 per cent towards the security vide copy of the Running Account Bill C (exhibit C). The contention of the learned Government Advocate is that when the payment in respect of the final bill was offered to the plaintiff on the conditions that the payment will be in full settlement of all demands in respect of the work done, he could not accept the payment and ignore "the conditions attaching to it, and therefore, when he accepted the amount with the said conditions, he must be deemed to have accepted the payment in full satisfaction of his dues. If he was not prepared to accept the amount offered in full satisfaction of his dues, it was open to him to refuse it and stand upon the rights which law gives him.

So far as the general proposition of law enunciated by the learned Government Advocate is concerned, no exception can be taken to it. It is no doubt true that when the offer of any payment is subject to any condition, the payment has to

be accepted with the condition imposed, and it is not permissible in law to accept the payment and ignore the condition. It is always open to a person to elect to accept or not to accept that condition. When, however, a person elects to accept payment on the condition imposed, he cannot resile from the position that it was a payment in full satisfaction of the dues. But, this principle, in my opinion, has no relevance in the instant case. What was paid to the plaintiff on 12-9-1946 was the value of the work remaining unpaid. There is no dispute that the only amount remaining unpaid in respect of the work done was Rs. 3850, which, after deducting therefrom Rs. 193 towards the security, was paid to the plaintiff. At that time, therefore, there was no occasion for him to raise any objection. There was no violation on the part of the Railway administration of the terms of the contract till then. There is no dispute with regard to the said payment. The dispute relates to the deduction from the security amount, which came much later.

As stated above, a penalty has been imposed on the plaintiff at the rate of 5 per cent., which, on the basis of the security money of Rs. 15,224, came to Rs. 6051. This amount of penalty was deducted from the security amount, and the balance of the security money, i. e., Rs. 9673, was paid to the plaintiff on 12-4-1947--vide duplicate of payment voucher (exhibit D). The suit has been brought to recover from the Union of India the said amount of Rs. 6051. There was no mention of this penalty in the final bill and no conditions were attached by the Railway administration to the payment of the balance of the security amount. Therefore, the payment of the final bill dated 12-9-1946 does not estop the plaintiff from claiming from the Union of India the deducted amount on the ground that the deduction was contrary to the terms of the contract. The payment of the balance of the security amount subsequent to the payment of the final bill constitutes Sufficient refutation of the contention of the learned Government Advocate, because if the payment of the final bill on 12-9-1946 amounted to full satisfaction and disentitled the plaintiff to claim any further sum from the Railway administration, the subsequent payment of the balance of the security money was wholly uncalled for.

Learned counsel, however, urged that though the payment of 12-9-1946 was not the payment of the security money, nevertheless it involved the adjustment of the security amount. I fail to understand how the payment of 12-9-1946 can operate as an adjustment of the security money when there is no mention of it in the Running Account Bill C (exhibit C). The letter, exhibit A(14), and the payment in accordance therewith, as shown by the Running Account Bill C, show unmistakably that the plaintiff accepted the final bill in full satisfaction of his demand in respect of the work done, and not in respect of the security money which was not included in it. The conditions attached to the payment of the final bill in respect of the work cannot, therefore, be transferred to the payment of the balance of the security money when these two payments were made on two different dates. Accordingly, the payment of the balance of the security money on a subsequent date without any condition does not debar the plaintiff from

claiming the amount which, according to him, was deducted from the security money without authority. The learned Single Judge was right in his view that there was no estoppel against the plaintiff. It must be held, therefore, that the acceptance of the balance of the security money by the plaintiff did not disentitle him to claim from the Union of India the deducted amount.

Point No. 3:

13. In Second Appeal 1497 of 1957 the security money of Rs. 2500 was deposited sometime in November, 1947, and was forfeited on 9-6-1948, Ext. C (3), and the suit was instituted on 27-9-1955 that is to say a little more than seven years after both the date of deposit of the security money and the date of the forfeiture. Mr. J.C. Sinha appearing for the plaintiff respondent has contended that the suit is subject to the rule of thirty years' limitation under Article 145 of the Limitation Act and is, therefore, well within time.

14. In Letters patent Appeal 79 of 1939, the Works Order No. 344045 is dated 14-3-1943; the agreement was actually executed on 17-5-1943; the plaintiff deposited the Security money sometime in March, 1943; the contracted work not having been completed by the agreed date, i.e., 15-5-1943, the plaintiff's prayed for extension of time, but it was refused, and a penalty at the rate of 5 per cent was imposed on 11-4-1944--vide draft memorandum, Ext. A (5); the final bill of the plaintiff with respect to the work done was paid on 12-9-1946 (vide Ext. C); the security money was paid subsequently on 12-4-1947 after deducting therefrom Rs. 6051 as penalty (vide Ext. D) and the present suit was brought on 13-8-1951. It will be seen that the suit was brought more than three years after the date of the said deduction, and more than six years after both the date of the imposition of the penalty and the date of the deposit of the security money.

Mr. Katriar appearing for the plaintiff respondent disagreed with Mr. J.C. Sinha and conceded that Article 145 of the Limitation Act had no application. His contention is that the proper Article applicable to the facts of the case is Article 120 which prescribes a period of six years, and that the suit having been brought within six years of the realisation of the penalty is not barred by time.

15. The learned Government Advocate, on the other hand, countered the arguments of both Mr. Sinha and Mr. Katriar and urged that neither Article 145 nor Article 120 governed the matter. According to him, both the suits fell under Article 115, which prescribes a period of three years. He argued that since these two suits were brought more than three years after the date of deduction, or the date of deposit, whatever may be regarded as the starting point of limitation, they were hopelessly barred by limitation. His alternative argument in the Letters Patent Appeal is that the cause of action for this suit arose 11-4-1944 when the Railway administration finally decided to impose penalty at the rate of 5 per cent for non-completion of the work within the stipulated period, that when once time began to run, it could not be arrested, and that as the suit was instituted more

than six years after that date, it was barred even on the assumption that Article 120 applied. It would thus appear that there is a competition between the three Articles of the Limitation Act, viz., 115, 120 and 145.

16. The learned Government Advocate has contended that Article 145 has no application, because the words "movable property" do not include money. His contention is that this Article applies only when something is to be returned in aspects. I agree that this Article has no application to the facts, of the present suit, but not for the reasons given by him. There has been some divergence of opinion in the different High Courts whether or not the words "movable property" in this Article include money. The High Courts of Allahabad, Madras, Lahore and Hyderabad have expressed the view that the words "movable property" do not include money. On the other hand, the view that has prevailed in the Calcutta High Court and in the High Court of Bombay is that the words "movable property" in Article 145 would include money or other movables capable of being replaced. I would refer particularly in this, connection to the case of Lala Govind Prasad v. Chairman of Patna Municipality 6 C LJ 535. In my considered judgment, the view taken by the Calcutta High Court appears to be correct. There is nothing, in Article 145 to warrant exclusion of money from the words "movable property". There is no reason why the words should not be given the natural meaning they are capable of. I find no justification for restricting these words to all movables excepting money.

In Asghar Ali Khan v. Kurshed All Khan 28 I A . 227 (PC), their Lordships of the Judicial Committee interpreted the words "movable property", occurring in Article 89 of the Limitation Act, to include money- Relying upon this decision, a Bench of the Calcutta High Court in the aforesaid case of Lala Cobind Prasad 6 C LJ 535. held that the words, "movable property" in Article 145 also included money. It appears that whenever the legislature intended to provide for specific movable property, the word "specific" was especially mentioned. For instance, Articles 48 and 49 mention the words "specific movable property." When the legislature has used the expression "specific movable property" in some Articles and the expression "movable property" in others, it will be unreasonable to "ignore this distinction so as to render the word "specific" wholly superfluous and purposeless. The legislature must have used these expressions with some definite purpose. If these words in Article 145 were to exclude money and were intended to include movable property in specie, there is no reason why the legislature did not as in other Articles, use the word "specific" before the words "movable property". The conjunction of the words "depository" and "pawnee" in this Article does not, in my opinion, necessarily indicate that money was not comprehended in the words "movable property".

It is conceivable that in some cases a person may have a special fascination for coins of a particular year, as a curio, and may not like to spend it. The same coins may be given in deposit to raise loan on the specific understanding that they should be returned on repayment of the debt. It is true that the contract

implies return of the coins in specie, nevertheless, the coins are money. The juxtaposition of the word "depository" with the word "pawnee" cannot be regarded as inappropriate to the case of "money", and, in my opinion, on a correct interpretation of Article 145, it will be wrong to exclude money as such from its operation.

In AIR 1938 110 (Privy Council) , Government promissory notes were left by a debtor with his creditor as a security for a sum borrowed by him or for safe custody, and the question arose whether a suit for recovery of the notes or for credit in the account between the parties for the sum realised by a sale of the notes and interest is governed by Article 145. Their Lordships of the Privy Council applied Article 145 and held that the suit was well within time. Government promissory notes cannot be regarded as different from money, strictly speaking. In my opinion, the words "movable property" in Article 145 includes money also. This, however, does not conclude the matter. There are other weightier reasons for holding that this Article does not govern a suit for refund of deposit made for fulfilment of a contract. Article 145 is in the following terms :

"Against a depository or pawnee to recover movable property de-positd or pawned.

Thirty years The date of the deposit or pawn."

17. Thus, this Article provides that a suit against a depository or pawnee to recover movable property deposited or pawned must be instituted within thirty years from the date of the deposit or pawn. The key to the interpretation of Article 145 is furnished by the starting point of limitation. The limitation in the cases governed by this Article starts from the date of the deposit or pawn. In other words, one of the criteria to judge whether or not Article 145 applies is to see whether in a given case the cause of action arose on the very date of deposit or pawn. If the cause of action arose after the deposit, whether it was a case of movable property in specie or not, Article 145 cannot be said to be applicable, and it is this aspect of this Article which was greatly emphasised by a Bench of this Court in *Ram Ranbijay v. Bachai Kuari* AIR 1939 Pat 688. In that case, a Suit was brought by the legal representative of one Ganga (deceased) for return of money deposited by Ganga with the defendant, his employer, as security for good conduct. The question arose whether the Suit was barred. It was, however, clear that unless Article 145 applied the action was barred by limitation. Their Lordships held that Article 145 was not applicable.

Wort, Ag. C. J., delivering the judgment of the Bench observed as follows :

"It is clear therefore that unless Article 145, Limitation Act, applied the action was barred by limitation. It may very well be that Article 145 when speaks of the deposite and pawnee recovering movable property deposited or pawned that may include money or coin. Their Lordships of the Privy Council in 28 Ind App 227, have held that the words "moveable property" in Article 89 were sufficiently wide to cover money. But even assuming that that construction can be placed

upon Article 145 the point is one which seems to be fatal to the plaintiff's case. The period from which limitation runs under Article 145 is the date of the deposit or pawn. That means to say that, although no cause of action arose in this particular case at the date of the deposit, yet time was running against the plaintiff or his legal representative. That makes the application of Article 145 impossible as a general principle. Now the Limitation Act provides for time running only after the cause of action has arisen, and I think it may be taken as quite certain that if any other construction than that is to be placed upon a particular Article, it will be clear the Legislature never intended that that Article should apply to the facts of such a case as this."

In my opinion, this Bench decision is sufficient for holding that Article 145 includes money and also that this Article has no application, because when the amount was deposited as security for due performance of the contract, it cannot be said that the cause of action for return of the deposit arose at the date of the deposit. The deposit in such a case is meant to serve dual role. The deposit is made as a part payment and also as a motive for proper performance of the contract. In *Howe v. Smith* (1884) 27 Ch D. 89. Fry, L. J., while emphasising the dual role that a deposit made for the performance, of a contract plays, made the following significant observations :

"It (that is a deposit for the performance of a contract) is not merely a part payment, but is then also an earnest to bind the bargain so entered into, and creates by the fear of its forfeiture a motive in the payer to perform the rest of the contract".

In these suits, the Railway administration had the authority under the contracts to recover from the plaintiffs any cost which the Railway administration may have to incur for failure to perform the contracts within the stipulated period from any money due to the plaintiffs by the Railway administration and/or forfeit the security deposits in whole or in part. In fact, in the case of D.D. Kapoor, the Railway administration did deduct from the security money the penalty imposed upon him for his failure to execute the contract within the stipulated period. Therefore, in these two cases, the deposits were made, as observed by Fry, L.J. for two purposes, first, as an earnest to bind the bargain so entered into and also as a part payment. In such circumstances, the limitation cannot be said to run from the date of the deposits. The limitation will run obviously from the happening of the given contingency, that is, performance or non-performance of the contract which must be later than the date of the deposit. The Limitation Act provides for time running only after the cause of action had arisen and on this view alone Article 145 must be held to be inapplicable in the instant cases.

I may, in this connection, refer to a Bench decision of the Bombay High Court in *Dhanraj Mills Ltd. Vs. Laxmi Cotton Traders*, which is the only case directly bearing on the question before us. In that case, the respondents entered into a contract with the appellant Mills on the 5th December, 1950. The contract was headed "Provisional Sale Note". and under this contract the respondents agreed

to buy from the appellants certain bales of cotton goods for February-March delivery against confirmed quota to be confirmed within thirty days, U.K. Mill delivery. On the next day, the respondents paid to the appellants a sum of Rs. 3500 and the appellants passed a receipt in respect of this amount stating that the amount was payment against fulfilling the contract. It appears that the respondents could not obtain the necessary quota for exporting the goods to the United Kingdom for which the goods were intended, and, therefore, they did not carry out the terms of the contract. On the 19th October, 1951, they wrote to the Mills that as there was no possibility of their getting quota for export of the piece-goods to the United Kingdom, they would thank the Mills to treat the contracts as cancelled and refund the deposit of Rs. 3500/-.

18. As the Mills refused to return the deposit, the respondents filed a suit for the return of the deposit. One of the questions raised was the question of limitation. The appellant's contention was that the plaintiffs' suit was barred by limitation. On behalf of the plaintiffs, an argument was advanced that the Article which applied to the facts of that case was Article 145, and the suit was not barred. Their Lordships of the Bombay High Court held that that Article had no application. Chagla, C.J., on a review of the various authorities, made the following weighty observations on the interpretation of Article 145.

""Now, the expression "depository" must take colour from the expression that follows, viz. "Pawnee". In the case of a pawn, an article or a moveable property is entrusted to the pawnee as security for a debt. The property in the article or the goods continues to remain in the pawner. In our opinion, the deposit contemplated by Article 145 is a deposit which must as far as possible be approximated to a pawn. In other words, the deposit to which Article 145 applies is only that deposit where there is an element of entrustment. Whereas in the case of a pawn, entrustment is as security for a debt; in the case of a deposit it may be for safe custody; and no question of security or debt may arise; but still the dominating factor in that transaction is the element of entrustment. It will be noticed that the earlier articles of the Limitation Act beginning somewhere about 51 deal with suits in respect of money claims and suits arising out of contractual obligations and then we come to various articles which deal with other subject matters. If the intention of the Legislature was to deal in Article 145 with return of deposits made by a party to a contract for the performance of a contract, it is difficult to believe that the proper place of the article would be where it finds itself to be. There is another aspect also which must be considered on the interpretation of Article 145 and that is the time from which limitation begins to run. The time is the date of the deposit made for the performance of a contract; the deposit does not become returnable until the happening of a certain contingency.

In this case, according to the plaintiffs, the contingency was their not having been able to obtain the quota but till that contingency took place they had no right to the return of the deposit, but according to Mr. Shah if Article 145 were to

apply to the facts of this case, limitation would begin to run not from the time when the contingency happened but from the date of the deposit itself. In other words, limitation would begin to run from a point of time when the cause of action had not accrued to the depositor. Now, such a construction would totally be opposed to the principle underlying the Limitation Act. The principle underlying the Limitation Act is that limitation begins to run from a point of time when the cause of action has accrued to the party who files a suit to assert his right. It is impossible to believe that the Act would have made limitation to run although no cause of action had accrued to the party who brought a suit for the return of a deposit".

With respect, I agree with the view expressed by his Lordship, it will not be profitable to examine afresh the various authorities cited in these cases, because none of them has a direct bearing upon this question and some of them have already been discussed by the learned Chief Justice, in the above case. In my opinion, the instant suits for the return of the deposits made by the plaintiffs for due performance of their respective contracts, which deposits, by their very nature, were to serve both the purpose of a part payment and earnest, do not fall under Article 145.

19. The next question is which Article applies. Two other Articles were suggested at the Bar for consideration namely, Article 120 and Article 115. It is well-settled that Article 120 of Schedule I of the Limitation Act is final and residuary and includes all suits, not especially provided for, and the Court ought not to regard a case as coming under that Article, unless clearly satisfied that it does not come under any of the many Articles dealing with specific cases. Thus, Article 120 only applies to a case when other Articles have no application. The correct approach, before one turns to Article 120, is to find out whether there is any other Article in the Schedule which, would apply to the facts of the case. It is clear, therefore, that if Article 115 applies, Article 120 is automatically, excluded. Article 115 is also a residuary Article and applies to all actions ex contractu, not specifically provided for elsewhere. This Article provides a period of three years for institution of a suit for compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for, the starting point of limitation being the date of the breach of the contract.

The contention of the learned Government Advocate is that the refusal of the Railway administration to return the deposit in either case was, according to the plaintiffs, in breach of the contract, and therefore, although the suits were brought for refund of the deposits, they are, in essence and in effect, Suits for compensation for the breach of the contract. I am inclined to accept this contention as correct. In these actions, the deposits cannot be considered independent of the contracts. The Suits are manifestly founded upon the contracts. The very foundation for the refund of the deposits is the contracts in both the cases. The deposits were made according to the terms of the contracts, and the plaintiffs seek to recover the deposits because, having regard to the

terms of the contracts, the Railway Administration was not justified in withholding the deposit. In my opinion, when the claim for refund of the deposit is based upon a contract, it is a case for compensation for breach of the contract the measure of the compensation, however being the amount deposited as the security. In *Mt. Lakshpat Kuer Vs. Durga Prasad*, , the defendant sold a certain property to the plaintiffs for the sum of Rs. 4200/-. The sale however, did not materialise for certain defect in title. The plaintiffs brought the suit for recovery of the sum of Rs. 4200/- paid by them for the same. On the question of limitation, their Lordships of the Patna High Court held that a suit for refund of purchase money is, in substance, a Suit based upon a registered document and is a suit for compensation for breach of a contract, and, therefore, Article 116 applied. Both Article 116 and Article 115 provide for compensation for breach of a contract, with this difference that whereas Article 116 applies only to contracts in writing registered, Article 115 applies to oral contracts, as also contracts which are in writing, but not registered. When a suit for refund of a purchase money is to be regarded as a suit for compensation for a breach of a contract, there is no reason why a suit for refund of a deposit made for fulfilment of a contract cannot be similarly regarded as a suit for compensation for a breach of contract.

In the *East India Company v. Oditchurn Paul*, 5 Moo Ind App 43, the suit was brought for return of a part of the purchase money, and the suit was considered as a suit for compensation, for the breach of the contract. In *Balakrishnudu v. Narayanaswami* AIR 1914 Mad 4 a Division Bench of the Madras High Court has laid down that a suit to reefer money deposited with another on condition that he should return the same, on the happening of a future contingent event, and brought after the happening of the event, was a suit for compensation for the breach of a contract not in writing registered within the meaning of Article 115 of Schedule I of the Limitation Act and is barred if not instituted within three years from the date on which the event happened. Their Lordships further held that neither Article 60, nor 66, nor 120 governed such a suit. Similarly, in another case, viz., *Srinivasa Aiyangar and Others Vs. Rangasami Aiyangar and Others*, , a Division Bench of the Madras High Court has held that a suit to recover deposit amount payable on the execution of lease by the lessees is a suit to recover compensation for breach of contract within the meaning of Article 115, Limitation Act, and that such a suit must be brought within three years from the date of the breach.

I may further observe that in the case of *Dhanraj Mills Ltd. Vs. Laxmi Cotton Traders*, referred to above, it was observed that Article 115 was the most appropriate Article, although there was no definite pronouncement upon that question. All these cases are similar to the present case, and I do not think why the present suits for the refund of the deposit money cannot be regarded as suits for compensation for the breach of the contracts. It is argued that the deposits were made by the plaintiffs and rightly received by the Union of India, but wrongfully withheld by it, a circumstance falling under the residuary Article 120. This argument is not sound. It is common ground that the deposits were made

and received according to the terms of the agreement That being so, the assertion ""wrongfully withheld" has no special significance. It is manifest that the withholding was wrongful, because it was contrary to the terms of the agreement. I want to emphasise that these deposits cannot be considered independent of and without reference to the contracts.

When the refusal to refund the deposits was in contravention of the terms of the contracts and the plaintiff's case of refund is rested on the contract, the conclusion, in my opinion, is irresistible that the actions are for compensation for breach of contracts. If the mere circumstance that the withholding was wrongful were to determine the applicability of a particular Article, then a simple case of deposit for safe custody, which undoubtedly falls under Article 145, may be contended to come under Article 120, because in that case also the refund to return the security deposit would be wrongful in the eye of law. The proper approach is to see whether the actions for refund of the deposits are founded on contracts, and when the retention of the deposits violates the terms of the agreement, it is a case of compensation for breach of the contract.

In case of a simple deposit for safe custody, there is no question of such a contract, and the relevant Article is 145. I may mention here that in the Second Appeal under consideration, the argument of Mr. J. C. Sinha was that the contract was void. I have held above otherwise in the light of the facts of this case. Suppose the contract is void, then undoubtedly the proper Article applicable is Article 145 for the simple reason that to sustain the claim for refund, the contract cannot be invoked; it is a case of deposit for security or for safe custody. In my opinion Article 115 applies to the present suits, and since they were brought more than three years after the breach occurred, they are barred by the statute of limitation.

20. In the result, both the appeals are allowed and the suits are dismissed with, costs throughout.

S.N.P. Singh, J.

21. I agree.