

(1989) 12 GAU CK 0004
In the Gauhati High Court
Case No : First appeal No. 26 of 1981

Union of India (UOI)

APPELLANT

Vs

Ram Kumar Mahabir Prasad

RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15(2), 80
Limitation Act, 1963 — Article 10, 18, 18(1)
Railways Act, 1989 — Section 78B

Citation : (1990) 1 GLR 327

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : P.P. Duara, for the Appellant; J.N. Sarma and S.S. Agarwalla, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—This appeal arises from the judgment and decree passed by the Assistant District Judge Gauhati in Money Suit No. 287 of 1977 decreeing the suit in favour of the Plaintiff.

2. The Plaintiff Respondent instituted the suit against the Defendant-Appellant claiming a sum of Rs. 31,704.80 as a compensation for damage and short delivery of goods. The case of the Plaintiff, in brief, is thus. A consignment of 225 bags of Malaka Massoor was booked at Kota for carriage by railway to New Gauhati. When the goods were delivered to the Plaintiff on 2.8.74 the goods were found short and damaged. The railway authority issued short certificate dated 3.8.74 to the Plaintiff. The shortage and damage were caused due to negligence and misconduct on the part of the railway administration, its servants or agents. Therefore, the Plaintiff claimed Rs. 31,704.80 by way of compensation for the damage and shortage. The Defendant admitted claim to the extent of Rs. 3,343/- and, on 26.7.76 the Defendant sent a cheque No. A 540814 dated 24.7.76 for Rs. 3,343/- stating that it was in full and final settlement of the

claim. But the Plaintiff did not accept the cheque and the same was returned on 28.4.76 to the General Manager (Claims), NF Railways, Maligaon with a request to pay the amount claimed by the Plaintiff. The Defendant failed to pay the amount claimed by the Plaintiff. The Plaintiff therefore instituted the suit after serving notice u/s 80, CPC and u/s 78B of the Railways Act. The Defendant contested the suit stating, inter alia, that the suit was barred by limitation and that the Defendant is not liable for the whole shortage. However, the trial Court decreed the suit for Rs. 28,912.38 in favour of the Plaintiff. Hence this appeal by the Defendant.

3. Upon hearing the learned Counsel for the parties, the only point for determination in the present appeal is whether the suit is barred by limitation. The learned Counsel for the Defendant-Appellant has submitted that the goods were delivered on 2.8.74 and short certificate was issued on 3.8.84 and, as such, the cause arose on 2.8.74 or 3.8.74. Under Article 10 of the Limitation Act, the suit ought to have been filed on or before 3.10.77 after excluding the period of notice u/s 80, Code of Civil Procedure, as provided u/s 15(2). But the present suit was filed on 11.10.77 and, therefore, the suit is barred by limitation.

4. The learned Counsel for the Plaintiff-Respondent has submitted that the suit is within time as the Defendant, by Exhibits-9 and 10, acknowledged the liability of the claim of the Plaintiff and cheque for Rs. 3, 343/- dated 24.7.76, which was however refused by the Plaintiff a fresh period of limitation shall be computed u/s 18 of the Limitation Act from the time when the acknowledgement was so signed.

5. Section 18(1) of the Limitation Act provides that, where before the expiration of the period prescribed for a suit in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. The Explanation (a) to Section 18, inter alia, provides that an acknowledgement would be sufficient though it is accompanied by a refusal to pay.

6. In the context of this case, an "acknowledgement" is admission by the writer that there is a debt to be paid by him to the person who claims it. The statement on which a plea of acknowledgement is based must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor, and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstance. Generally speaking, a liberal construction of the statement in question should be given. That of course does not mean that where a statement is made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and farfetched reasoning see *Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others*, ; *Tilak Ram and Others Vs. Nathu and Others*, and

Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd.,

7. Keeping the above principles in view, let me now examine the case on hand as to whether the Ext--9 is an acknowledgement u/s 18(1) of the Limitation Act. Ext-9 is a letter written on behalf of the General Manager (Claim?) addressed to the Plaintiff. The relevant portion of the letter is as follows:

Your claim for compensation on the above subject for Rs. 31,704.80 has been admitted for Rs. 3,343/- in full and final settlement of the claim....

Date of letter is "30/6". The year is omitted. The letter as written in reply to the notice dated 19.7.1975 u/s 80, CPC (Ext. 8). In such circumstances, the year would be 1976, as held by the trial Court. There is an ellipsis of "76" while dating. For the reasons stated, the letter (Ext--9) is dated 30.6.1976. As regards Ext-10 it is a forwarding letter for despatching cheque dated 24.7.1976 for Rs. 3,343/-.

8. In the letter Ext-9, it is evident that, out of the amount of Rs. 31.704 80 claimed by the Plaintiff, the railway authority has admitted the liability to the extent of Rs. 3,343/- and has denied liability of the whole amount claimed by the Plaintiff. The case of the Defendant Appellant, in the written statement, is that the consignment was transhipped from the original wagon at New Jalpaiguri where only 175 bags were received and, therefore, the Defendant is not liable for the shortage of 50 bags. The offer of Rs. 3,343/- by the Defendant to the Plaintiff was for the damage occurred between New Jalpaiguri and New Gauhati. The pleading of the Defendant therefore indicates that during the course of adjustment of the claim made by the Plaintiff, the Defendant allowed Rs. 3343/- and rejected the rest. In such a situation, I am of the view that there is jural relationship of a debtor and a creditor and the statement in the letter (Ext-9) is an admission of the Defendant that there is a debt owing by him amounting to an acknowledgment of liability u/s 18(1). But the acknowledgement of liability is for Rs. 3,343/-.

The question then is,--Whether the acknowledgement of Rs. 3,343/- will amount to acknowledgement of the entire amount claimed by the Plaintiff? As stated earlier, the intention need not be in express term and it can be inferred by implications from the nature of the admission and the surrounding circumstances and that under Explanation (a) to Section 18, the acknowledgement would be sufficient though it is accompanied by the refusal to pay. It has already been concluded that during the course of adjustment of the claim made by the Plaintiff, the Defendant allowed Rs. 3,343/- and rejected the rest in view of the pleading of the Defendant that the offer of Rs. 3343/- was for the damage occurred between New Jalpaiguri and New Gauhati and the Defendant is not liable for the shortage of 50 bags. Considering this aspect of the matter, if the railway authority has admitted the existence of a part of liability for Rs. 3,343/-, it will be deemed to be an acknowledgement of liability of whatever the amount

is found due from the railway authority. For the reasons stated, there is an acknowledgement of liability of whatever the amount to be found due from the railway authority, and that a fresh period of limitation is to be computed from 30.6.76. Therefore, the suit is within time as it was filed on 11.10.77 within three (3) years of 30.6.76.

9. For the foregoing reasons, the appeal is dismissed. No costs.