

(1952) 05 GAU CK 0001
In the Gauhati High Court
Case No : First Appeal No. 15 of 1949

Union of India (UOI), Railway Administration	APPELLANT
Vs	
Assam Valley Supply Syndicate	RESPONDENT

Date of Decision : 07-05-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, 80
Limitation Act, 1908 — Article 115, 31, 48, 49, 3

Citation : AIR 1953 Guw 30

Hon'ble Judges : Thadani, C.J.;Deka, J

Bench : Division Bench

Advocate : D.N. Medhi, for the Appellant; S.M. Lahiri and K.P. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Thadani, C.J.—This is a first appeal from the judgment and decree of the learned Subordinate Judge, L. A. D., dated 27-6-1949 by which he decreed the plaintiff's suit with proportionate costs for a sum of Rs. 7,098-10-0.

2. The plaintiff Assam Valley Supply Syndicate, a registered firm brought a suit against the Governor-General-in-Council claiming a sum of Rs. 7,644-10-0 as the value of 500 bags of undelivered salt consigned to the Bengal Assam Railway. The plaintiff-firm was the Agent of Messrs. Shaw Wallace and Company for all the Assam Valley districts up to 31-3-1949.

3. It appears that Messrs. Shaw Wallace and Company booked the consignment of 500 bags of salt on the E. I. Railway on 19-8-1944 at a station called Salkea. The consignment was to be despatched to Barpeta Road on the B. A. Railway under Invoice No. 5, R/R. No. A. 3689. The railway receipt was in due course forwarded to the plaintiff's branch office at Barpeta. On receiving the railway receipt, the plaintiffs made enquiries at the Barpeta Station on the Bengal Assam Railway but obtained no information about the arrival of the consignment. On 27-1-1945 and again on 12-6-1945, the plaintiffs wrote to the Chief Commercial

Managers of the Bengal and Assam Railway and the East India Railway, but the plaintiffs received no reply. On 3-7-1945, the plaintiffs served a notice under S. 80, Civil P. C., upon the Secretary to the Railway Board claiming a sum of Rs. 7,000/- odd. On 18-7-1945, the Secretary. Railway Board requested the plaintiffs to address all further references to the General Manager, Bengal and Assam Railway. Calcutta. According to the plaintiffs, the cause of action arose on 19-8-1944 when the consignment was booked; on 27-1-1945, the date on which the plaintiffs first wrote to the General Manager and lastly on 3-9-1945, the date on which the statutory notice u/s 80, Civil P. C., was sent. It is to be observed that the plaintiffs have not said a word as to when the goods ought to have been delivered. We will refer to the aspect of the case presently when we consider the question of limitation.

4. One of the defences to the suit was that the suit was barred by limitation. The defendants denied that the 500 bags of salt were not delivered at all. According to them, the consignment loaded in wagons No. 4,980 (BB) and No. 68,759 (EI) arrived at Parbatipur and there it was transhipped into M. G. Wagons 4,122/250 and 4,450/250 on 28-8-1944 and despatched therefrom in good condition. Subsequently the two wagons containing 250 bags each were misdespatched to DBRT (instead of to BPRD) where the contents of wagon No. 4122 along with the contents of some other wagons were taken delivery of by the plaintiffs on 2-9-1944.

5. We have reproduced a part of the written statement in some detail in order to facilitate the understanding of the contention raised by Mr. Lahiri for the respondent that, in this case, the question of limitation is to be decided with reference to Article 48 or 49 or 115, Limitation Act, and not Article 31.

6. On the pleadings, the trial Court framed the following issues:

- (1) Have the plaintiffs any right to sue the defendant?
- (2) Is the suit barred by limitation?
- (3) Is the suit bad for want of legally valid notices u/s 77 I. R. Act and Section 80, C. P.C.?
- (4) Whether the consignment in question had been delivered to the plaintiffs? If not, whether the defendant is liable for non-delivery?
- (5) What relief, if any are the parties entitled to? On the issue of limitation, the trial Court stated :

"There is nothing in the evidence to show that the suit is barred by limitation. This point was neither argued at the bar. It, therefore, stands answered in the negative."

Mr. Medhi for the State states that he is unable to say whether or not the question of limitation was argued as he did not appear in the trial Court. Be that as it may, it seems to us that it was the duty of the trial Judge to go into the

question of limitation when it was raised in the pleadings and a specific issue was raised in that behalf. Mr. Lahiri contends that we ourselves ought not to give any decision on the question of limitation as it is not a question purely of law but a mixed question of law and fact; the proper course would be to remand the appeal. We have decided on the facts of this case not to remand the appeal. All the material facts bearing on the question of limitation are before us. All we have to do is "to apply the appropriate article of the Indian Limitation Act.

7. In order to appreciate the applicability of the relevant articles of the Limitation Act, it is necessary to set out certain dates. As we have stated, the consignment was despatched on 19-8-1944. It was miscarried to Dibrugarh on 5-9-1944. Ordinarily, the consignment booked at Salkea on the E. I. Railway for Barpeta on the B. A. Rail-way takes about a fortnight. Mr. Medhi for the appellant contends that the only Article which is applicable to the suit is Article 31, Limitation Act, which is in these terms:

"Against a carrier for compensation for non-delivery of, or delay in delivering goods. One year When the goods ought to be delivered."

8. Mr. Medhi points out that the plaint makes it abundantly clear that the suit is one for compensation for non-delivery of the 500 bags of salt. He has referred to the contents of para. 4 of the plaint and rightly contended that the claim is indubitably a claim for compensation for non-delivery of the consignment, and that when there is a specific article in the Limitation Act providing for a particular suit, that Article is to be applied to the exclusion of other Articles; the defendant was undoubtedly a carrier within the meaning of Article 31, Limitation Act; it is also clear that the consignment in question was not delivered; the determination of the question "when the goods ought to have been delivered" depends on the facts and circumstances of a particular case; it may be that in arriving at the solution of this question, the date of the refusal to deliver the consignment by the party bound to deliver it, is an important fact but it is not the determining factor. Mr. Medhi points out that the plaintiff himself has not mentioned any particular date on which the goods ought to have been delivered as the starting point of limitation; the correspondence between the parties makes it clear that the plaintiffs definitely took the position that the goods ought to have been delivered on or before 3-7-1945.

9. We think there is considerable force in this contention. There is on the record a letter dated 12-6-1945 (Exh. 6) addressed to the Chief Commercial Manager of Bengal and Assam Railway in which the plaintiffs have drawn the attention of the Chief Commercial Manager to the non arrival of the consignment. The earlier correspondence on the subject is dated 27-1-1945, a letter addressed to the Chief Commercial Manager, Bengal and Assam Railway in which also the plaintiffs complained about the non-delivery of the consignment. These two letters are Exs. 5 and 6 in the case. The plaintiffs then sent a notice to the Secretary, Railway Board, Government of India, New Delhi, on 3-7-1945 u/s 80, Civil P. C. To this notice, the Secretary of the Railway Board replied to the plaintiff on

18-7-1945 in these terms:

"Dear Sir,

Claim for compensation of M/s Assam Valley Syndicate, I am directed to state that your 2 notices, dated 29-6-1945 and 3-7-1945 have been forwarded for disposal to the General Manager, Bengal and Assam Railway, Calcutta, who is the competent authority to deal with the matter and to whom all further reference on the subject should be made."

It is not disputed that the plaintiffs did not write to the General Manager as advised by the Secretary to the Railway Board. The plaintiffs adhered to their notice of the suit which they had sent u/s 80, Civil P, C. on 3-7-1945. We think it is reasonable to say in these circumstances that the plaintiffs had made up their minds that as the consignment ought to have been delivered by the 3-7-1945 and it had not been delivered, they were justified in bringing the suit.

10. Mr. Lahiri has on the other hand contended that the date on which the consignment ought to have been delivered is the date on which the party bound to deliver the consignment has refused to deliver it and not before, and has pointed out that it is only in the written statement of the defendants that they definitely refused to deliver the consignment and that the time began to run from the date of the written statement. If this position were to be accepted, then there is nothing to prevent a plaintiff in a given case from waiting for ten years before he files the suit and still rely upon the written statement as saving limitation. We are not prepared to accept this position. We think the question as to when the goods ought to have been delivered has to be determined with regard to the circumstances of each case and one of the circumstances to be taken into consideration is the plaintiff's own attitude in the matter of delivery. In the present case the plaintiff's attitude was that the goods ought to have been delivered on or before 3-7-1945. We ourselves think that the consignment ought to have been delivered certainly before 3-7-1945.

11. To resist the bar of Article 31, Limitation Act, Mr. Lahiri for the respondent contended that the suit in the present case is not a suit against a carrier for compensation for non-delivery, but a suit for compensation for conversion, in that as, in the Written Statement, the defendants have pleaded that the goods have been delivered to the plaintiffs, it must be supposed that, in the absence of proof of delivery of the consignment to the plaintiffs the defendants have converted it to their own use. We cannot accept the proposition so broadly stated. Conversion is question of fact and we are unable to construe the defendant's Written Statement as amounting to conversion of the consignment. The plaint in the suit discloses nothing but a case of compensation for non-delivery of the consignment.

12. Mr. Medhi contends that the Calcutta, Nagpur and the Madras High Courts and the Chief Court of Sind in Chiranji Lal Ram Lal Vs. B.N. Ry. Co. Ltd., Jaldu Venkatasubba Rao v. Asiatic Steam Navigation Co. Calcutta, 39 Mad. 1 ; G. I. P.

Rly., Co. v. Radhakisan Jai-kisan AIR 1926 Nag 57 and National Swadeshi Stores v. Governor-General-in-Council AIR 1948 sind 26 , have correctly interpreted Article 31, Limitation Act, and that the law laid down by the Patna, Sundarji Shivji Vs. Secy. of State, Allahabad, Firm Nawab Boot House Vs. Secy. of State, and Lahore High Courts in Haryana Cotton Mills Co. Ltd., Bhiwani v. B. B. & C. I. Rly. Co., Bombay AIR 1927 Lah 471, on the subject is not the correct law. With respect we are inclined to agree with the Calcutta, Madras and Nagpur High Courts. Article 31, Limitation Act, applies irrespective of the cause of non-delivery.

13. On the second aspect of the case namely when the time begins to run under Article 31, Mr. Lahiri has referred us to certain decided cases reported in South India Ry. Co. Vs. S.P.R.S. Narayana Iyer, ; M.A.P. Palanichami Nadar Vs. The Governor-General of India in Council, ; Jugal Kishore Vs. Great Indian Peninsula Railway and Another, But the Madras cases are of no assistance to the respondents, as they have no bearing on the facts before us. In Jugal Kishore Vs. Great Indian Peninsula Railway and Another, the head-note contains the following :

"Where no time was fixed for the delivery of goods and the correspondence between the parties showed that the matter was being inquired into and there was no refusal to deliver up to well within a year of the suit, the suit is not time barred."

In the case before us, there was no question of any inquiry into the matter after the respondent had sent a notice u/s 80, Civil P. C., on 3-7-1945. In spite of the fact that the Secretary to the Railway Board requested the respondent to correspond with the General Manager, Bengal and Assam Railway, the respondent did not do so. We have, therefore, come to the conclusion that the consignment in this case ought to have been delivered on or before 3-7-1945.

14. Mr. Lahiri for the respondent next contended that Article 31 does not apply to a case of deviation from the agreed route and that as the consignment in the case before us was diverted whether by mistake or wilfully the Railway ceased to be a carrier within the meaning of Article 31, Limitation Act. He has referred us to a passage in the Law of Inland Transport, by Froud, edn. 2 p. 170 where it is stated :

"Deviation has, however, another and more important aspect. While the goods are being carried along a route other than the ordinary one, or, in case of an agreement to carry by a specified route, other than the agreed one, the carrier is no longer deemed to possess the goods as carrier. By deviating from the ordinary or agreed route, he becomes a wrongful possessor whose liability is stricter even than that of the common carrier."

It is to be observed that in the quotation, the deviation referred to is a deviation from the agreed route. In the case before us, there was no deviation from the agreed route. All that happened was that the consignment was over carried

beyond its destination namely Barpeta to Dibrugarh. Moreover, it is to be observed that the quotation does not contain any reference to the English law of limitation, governing a suit brought against a carrier who has deviated from the agreed route. So far as the Indian law of limitation is concerned, we think that it would make no difference even if a carrier were to deviate from the agreed route. A suit for compensation for non-delivery of the consignment will still be governed by Article 31, Limitation Act. Once the goods are delivered to a carrier, Article 31 applies irrespective of the cause of non-delivery.

15. Mr. Lahiri lastly contended that Article 31 applies to a common carrier and that Government as carrier is excluded from the definition of a common carrier. He has referred us to a decision of Lord-Williams J. reported in *Golab Rai Paliram v. Secy. of State for India* in Council IL R 1941 2 cal 160, in support of his contention. Mr. Lahiri concedes that the view of Lord-Williams J. was not accepted by the Division Bench on appeal; that the Division Bench took the view that no distinction can be made as between Government carrying on business of a carrier and any other carrier for the purposes of Article 31.

16. The result is that the appeal succeeds. The plaintiff's suit must be dismissed on the issue of limitation.

17. Mr. Lahiri's last submission was that on the facts of this case, no costs should be awarded against the plaintiffs. Mr. Medhi states that he does not press the question of costs. The result is that the appeal is allowed with no order as to costs. The suit will stand dismissed with no order as to costs.

Deka, J.

18. I agree.