

(1923) 04 CAL CK 0022
In the Calcutta High Court

Vally Mahomed Haji Gunny

APPELLANT

Vs

Nederland S. Navigation Co. and Others

RESPONDENT

Date of Decision : 27-04-1923

Acts Referred:

Citation : 80 Ind. Cas. 612

Hon'ble Judges : Page, J

Bench : Single Bench

Judgement

Page, J.—This is a suit which is brought by the plaintiff against the defendants for damages for failure to deliver 1879 baskets of hard molasses which the Defendants as common carriers had accepted for carriage, and had agreed to carry for the plaintiff from Saurabya in Java to be delivered to the plaintiff at Calcutta. The goods were shipped under a bill of lading on the S.S. "Manada," and the steamship arrived in Calcutta on the 25th January 1920. Notice was given by letter by the defendants to the plaintiff on the 26th January 1920 that the goods were ready to be discharged. On the 26th the ship discharged certain goods on one of the quays Calcutta. On the 27th she put out into the river, and her cargo was discharged there into lighters. The exact time which it took her to discharge the whole of her cargo is uncertain, but it was admittedly completed some considerable time before the 20th February 1920 when she left Calcutta.

2. The plaintiff issued his plaint on the 7th June 1921, which is more than a year after the time by which the goods ought to have been delivered which was about the 27th to 30th January 1920. The plaintiff framed his claim exclusively on contract being for damages for failure to deliver the goods. I refer to one or two paragraphs in the plaint:

Para. 2.—In or about the month of January, 1920 the plaintiff shipped 6936 crates and 2747 baskets of hard molasses on board the defendant Company's steamship "Manada" at Saurabya in Java.

Para. 3.—The master of the said steamship received the said goods to be carried

to Calcutta and there to be delivered to the plaintiff. Freight for the said goods was paid by the plaintiff.

Para. 4.--On arrival of the said steamship at Calcutta aforesaid the defendant Company delivered to the plaintiff 6936 crates and 1868 baskets of molasses, but did not deliver to him 879 baskets of molasses.

Para. 5.--The plaintiff has demanded delivery of the said 879 baskets but the defendant Company have failed and neglected to deliver the same.

Para. 6.--By reason of the defendant Company's wrongful failure to deliver the said 879 baskets as aforesaid, the plaintiff claims as damages from the defendant Company a sum of Rs. 8,284-12-0 being the price of the said 879 baskets as also another sum of Rs. 1,239-9-7 as interest thereon calculated at the rate of 12 per cent. per annum from the 20th February 1920 to 20th May 1921.

Para. 8.--The Plaintiff's cause of action arose not earlier than the 31st day of January 1920 in Calcutta.

The plaintiff, therefore, prays" for, (a) such leave as aforesaid, (b) a decree for the said sum of Rs. 9,503-9-6 with interest, and (c) for costs.

3. Counsel for the plaintiff, in the course of the hearing, admitted that under the circumstances of this case the only issue which could be determined was whether or not the cause of action was barred by limitation on the ground that if that issue was decided against him (and which should be first considered), all other issues which might be raised would become immaterial, and the time spent upon considering them would be wasted. Accordingly, a representative of the defendants was called, and he stated in evidence the facts as to the arrival of the vessel at Calcutta, and the time during which she was discharging, and the date of her subsequent departure from Calcutta, which I have already referred to. Thereupon, the only question which it became incumbent upon me to determine was whether or not the cause of action for damages for non-delivery of the 879 baskets was barred by reason of the provisions of the Limitation Act.

4. The determination of that question, in my view, depends upon whether or not the cause of action comes within Article 31 of the first schedule to the Limitation Act. The schedule reads as follows:

31--Against a carrier for compensation for non-delivery of or delay in delivering goods, one year from the time when the goods ought to have been delivered.

5. The goods ought to have been delivered sometime between the 27th January and the 20th February, and probably sometime between the 27th January and the 30th January 1920. As the plaint was filed on the 7th June 1921, more than a year later, if Article 31 applies, the cause of action is barred by limitation. Counsel, who have strenuously argued on behalf of the plaintiff, contended that Article 31 did not apply for this reason that Article 31 only applies to a claim

against a carrier which is made by the consignee of the goods for nondelivery of the goods to him. In support of his contention he cited the case of Radhasham Basak v. The Secretary of State for India in Council. 34 Ind. Cas. 130 : 20 C.W.N. 790 : 44 C. 16 : 23 C.L.J. 547. In that case M. Justice Chatterjee at page 795 stated it to be his opinion that "Article 31 applies to suits against a carrier for compensation for non-delivery of, or delay in, delivering goods, and the time for suit is one year from the time when the goods ought to have been delivered. I think this article has no application. In the first place, this article seems to contemplate a suit by a party who is entitled to the delivery, namely, the consignee. In the second place, it would be for the Company to show when the goods ought to have been delivered, that fact being presumably within their knowledge, but there is no evidence on that point." Mr. Justice Beachcroft in giving judgment in the same case made this observation: "As regards the question of limitation, it is sufficient to say that I agree that Article 30 does not apply, and if Article 31 does there is no evidence when the goods ought to have been delivered." It might be contended that the decision in this case is to be supported on the ground that there was no evidence adduced as to the time when the goods ought to have been delivered. That would have been sufficient for the decision in the case. Mr. Justice Beachcroft did not affect to decide whether Article 31 applied or not, and therefore one is left with the opinion expressed by Mr. Justice Chatterjee that Article 31 seems to contemplate a suit by the party who is entitled to the delivery, namely, the consignee. Counsel for the plaintiff urged that the meaning of that observation is that it applies to a suit by the consignee only. If that is the meaning which is to be attached to the words of the learned Judge, a meaning which I think is not clear, then I am bound to say with all due deference that I am unable to follow the reasoning upon which it is based. The words of Article 31 are wide enough to include suits brought by the consignor as well as by the consignee, and it may very well happen that the same person is both consignor and consignee. I am unable to see why any distinction should be drawn between a cause of action for compensation for non-delivery by a consignor and one by a consignee, and the view which I hold is also found in the judgment of Mr. Justice Banerjee in the case of Mutsaddi Lal v. The Bombay, Baroda and Central India Railway Co. 58 Ind. Cas. 547 : 42 A. 390 : 18 A.L.J. 377 : 2 U.P.L.R. (A) 84. At page 393 the learned Judge makes these observations:

That Article 31 applies to a case of this kind appears from the ruling of this Court in the case of Great Indian Peninsula Railway Co. v. Ganpat Rai 10 Ind. Cas. 122 : 33 A. 544 : 8 A.L.J. 543. The same view was taken by the Bombay High Court in the case of Haji Ajam Goolam Hossein v. Bombay and Persia Steam Navigation Co. 26 B. 562 : 4 Bom. L.R. 447. It has been urged that Article 31 applies to a suit by the consignee and not, as in this case, by the consignor. This contention is, in my opinion, untenable. The article is wide enough to include a suit brought by the consignor also. It provides for a suit for compensation for non-delivery, that is, a suit by a person who by reason of non-delivery has

sustained to Sections There may be cases in which it is not the consignee who sustains loss but the consignor. In such cases it would be a suit by the consignor for compensation for non-delivery.

6. It is open to doubt whether the ruling of Mr. Justice Chatterjee was necessary for the decision in the case in which it was given, but I am at liberty to form my own view of the matter having regard to the decision of the Calcutta High Court in *Indian General Navigation Co., Ltd. v. Nandalal Banik* 3 Ind. Cas. 469 : 13 C.W.N. 851. Mr. Justice Chitty and Mr. Justice Vincent in giving judgment in this case, which was a case on all fours with the present case, expressly decided that a cause of action such as the cause of action in the present case comes within Article 31 of the first schedule of the Limitation Act. At page 852 the learned Judges in their judgment lay down these propositions:

The question is whether Article 31 or Article 115 of second schedule of the Limitation Act applies to this case. There were decisions regarding Articles 30 and 31 which held that these articles applied only to questions of tort and Article 31 as originally worded applied only to a suit for compensation for delay in delivering goods. Subsequently, however, by Section 3 of Act X of 1899. Article 31 was amended and took its present form. It has been argued for the Opposite-Party that the former decisions must still be held to apply but we cannot accede to such a contention. It has frequently been said that statutes must be interpreted according to the ordinary meaning of their language and the present wording of Article 31 clearly covers such a claim as is put forward in the plaintiff's present suit. It is a suit for damages for failure to deliver, or nondelivery of goods. If it be so read, it is plain that Article 31 must govern the present case and not Article 115, which deals with the case of suits for compensation for the breach of contracts not specially, provided for. It is not contended that the defendants in this case are not carriers, or that the suit does not fall within the description in Article 31. This view of the article has been taken by the Bombay High Court in the case of *Haji Ajam Goolam Houston v. Bombay and Persia Steam Navigation Co.* 26 B. 562 : 4 Bom. L.R. 447. It was on a reference from the Court of Small Causes in Bombay, and with that opinion, we entirely agree. Under the circumstances, we must hold that the suit having been brought more than one year after the date when the goods should have been delivered is barred by limitation.

7. I respectfully agree with that decision which is on all fours in its facts with the present case, and, in my opinion, the claim of the plaintiff in this suit as framed comes within Article 31, and is barred by limitation. No question has been raised in this case as to whether there was an acknowledgment of liability, and no other fact has been relied upon which could prevent the statute of limitation applying. Therefore, as the suit is framed, it discloses a cause of action which is barred by limitation, and must be dismissed