BOMBAY HIGH COURT

Union of India

Vs

Vithalsa Kisansa

(Bhole, J.)

22.01.1970

JUDGMENT

Bhole , J.

1. The applicant Union of India through the General Manager Central Railway, Bombay, has come here in revision from the decree passed by the Joint Civil Judge, Akola, decreeing the claim of the plaintiff against the railway administration for the recovery of a sum of Rs. 155.20. On 17-12-1962, three ginger bags were booked at Ottappalam on the Southern Railway to be carried to and delivered to the consignee at Akola on the Central Railway. These bags never reached Akola and were not delivered. The consignee plaintiff therefore filed a suit against the Central Railway claiming a decree for compensation on 11-8-1964.

2. The defendant denied the claim and contended that the suit was liable to be dismissed because it was barred by limitation. The suit was not filed within one year from 22-10-1962 when the consignment ought to have been delivered. The trial Court considered the plea and came to the conclusion that there was some correspondence between the plaintiff and the railway administration and that it continued upto 12-8-1963. By this correspondence full information had been called for. The correspondence showed that an enquiry was being made and the railway administration had not expressed its inability to make delivery of the consignment. Ac-cording to the trial Court, the starting point of limitation cannot be the date on which the goods should have reached the destination, but the date of the last letter which is 12-8-1963. He has relied upon a Full Bench case of the Allahabad High Court. Mutsaddi Lal v. G. G in Council, (FB). Accordingly therefore, he decreed the plaintiff's suit. This decree is challenged here. The point, therefore, that arises here for consideration is to see whether this decree is legal and proper.

3. I have seen the correspondence between the plaintiff consignee and the railway administration and that correspondence appears to be for the purpose of supporting the claim of the plaintiff-

consignee. The correspondence is neither on the point of the goods reaching late to the place of destination, nor does it show that there was any acknowledgement later on, of the liability by the railways. We have, therefore, to see whether this correspondence would help the plaintiff by extending the period of limitation. In (FB), the Allahabad High Court seems to have taken a view that if the goods do not reach the destination on the date when in the normal course of affairs they are expected to reach there and the railway administration on being approached for delivery holds out a hope to the plaintiff that the goods would be delivered and that the matter was being inquired into, then the starting point of limitation under Article 31 of the Indian Limitation Act could not be said to be the date on which the goods should have reached the destination in the normal course. According to that High Court, the phrase "when the goods ought to be delivered" in Article 31 means, the point of time at which the carrier undertakes to deliver the goods or the date when the carrier informs the consignee that it would be delivered or when the carrier communicates to the consignee its liability to deliver the goods or a reasonable date that may be fixed on a consideration of events subsequent to the handing over of the consignment to the carrier for carriage. So far as the instant case before me is concerned, there was neither an undertaking by the railway administration nor a contract between the parties to deliver the goods on a particular date. There is nothing on record also to show that the carrier informed the consignee that it would be delivered on a particular date. There is nothing also on record to show that the Railways informed the consignee their inability to deliver the goods. Now, can our case be said to be a case wherein a reasonable date could be fixed on a consideration of events subsequent to the handing over of the consignment to the carrier for carriage. Except for the correspondence wherein the railways wanted to settle the claim of the plaintiff, there was no event to extend the date of limitation. It appears to me that even considering this Full Bench decision, the facts of our case are not such that the plaintiff could get an extension of the period of limitation.

4. However, the Supreme Court in *Bootamal v. Union of India,* has laid down a very clear proposition in so far as Art. 31 is concerned. Article 31 is regarding a suit against a carrier for compensation for non-delivery or delay in delivering goods. The period of limitation is one year from the time when the goods ought to be delivered. The word "when the goods ought to be delivered" were construed by the Supreme Court in this case. They considered several cases. They considered *Jugal Kishore v. G.I.P. Rly. Co*[1]*.,* wherein it was observed that when the Railway Company, by its own conduct, made the plaintiff await the result of the inquiry, it is rather startling to find the plea of limitation raised in defence on its behalf. It was further observed that the correspondence between the parties showed that the matter was being inquired into and that there was no refusal to deliver, up to well within a year of the suit. Therefore, according to Allahabad High Court, the period of limitation was extended. The Supreme Court

differed from this conclusion. Because the correspondence only showed that the railway was trying to trace the goods, the period that might be taken in tracing the goods could have no relevance, according to the Supreme Court, in determining the reasonable time that is required for the carriage of the goods from the place of despatch to the place of destination. In a similar way after considering B. and *N. W. Rly. Co. v. Kameshwar Singh*[2] the Supreme Court was of the view that if there is some correspondence which showed that some inquiry was being made by the railways, that also would not alter the starting point of limitation. The Supreme Court was also of the view after considering *Governor General in Council v. S. G. Ahmed*[3], that if the correspondence showed that the railways were hoping to deliver the packages and were making inquiries all along the route, that would not help the plaintiff. After considering a series of cases, the Supreme Court was of the view that the very fact that Article 31 deals with both cases of nondelivery of goods and delay in delivering the goods shows that in either case the starting point of limitation is after reasonable time has elapsed for the carriage of the goods from the place of despatch to the place of destination. The fact that what is reasonable time must depend upon the circumstances of each case; and the further fact that the carrier may have to show eventually what was the reasonable time for carriage of goods will make no difference to the interpretation of the words used in the third column of Article 31. But if the correspondence disclosed anything which may amount to an acknowledgement of the liability of the carrier, that would give a fresh starting point of limitation. If the subsequent correspondence is only about tracing the goods, that will not be material in considering the question as to when the goods ought to have been delivered. On the other hand, if the correspondence also discloses material which may throw light on the question of determining the reasonable time for carriage of goods from the place of despatch to the place of destination, then it may be open to the Court to take into account that correspondence. Further, if there was anything in the correspondence which has a bearing on the question of reasonable time and the carrier wants to go back on that, to that extent the carrier may be estopped from denying that. It is, therefore, clear that a correspondence of a particular nature alone would be taken into consideration to construe the language in the third column of Art. 31 and not any correspondence.

5. In so far as our case is concerned, the correspondence does not appear to come within the categories of the nature of correspondence that are mentioned by the Supreme Court. Even otherwise, it appears to me that the correspondence does not come within the nature observed by the Allahabad Full Bench case. In this view of the matter, therefore, the decree passed by the trial Court is not proper. I, therefore, set aside the decree of the trial Court, allow this revision application and dismiss the suit of the plaintiff-opponent. No order as to costs.

6. Revision allowed.

Cases Referred.

1AIR 1923 All 22 (2)
2AIR 1933 Pat 45
3AIR 1952 Nag 77