PATNA HIGH COURT

Gajanand Rajgoria

Vs

Union of India

Civil Revn. Appln. No. 59 of 1952

(Imam, C.J. and Das, J.)

16.03.1954

JUDGMENT

Das, J.

1. This is an application under Section 25, Provincial Small Cause Courts Act. The facts so far as they are relevant at the present stage are not seriously in dispute and may be stated very briefly. The petitioners were the plaintiffs. A consignment of 200 bags of sugar was booked from a station called Bagaha on the railway section, known then as the O.T. Railway for another station called Katrasgarh on the E.I. Railway section on 23-3-1950 under railway receipt No.61756. When the consignment reached Katrasgarh, 8 bags of sugar were found out and damaged. Those 8 bags were reweighed and there was a shortage of 11 maunds and 1 seer of sugar. The petitioners took delivery of the 200 bags of sugar on 5-4-1950 under a qualified receipt. Thereafter, the petitioners wrote to the Chief Commercial Manager, East Indian Railway, in Calcutta and received a reply dated 8-6-1950. In this reply, the Chief Commercial Manager stated that as there was no proof of misconduct on the part of the railway administration or its servants, he was unable to accept liability for the shortage and he further expressed inability to entertain any claim to compensation.
The petitioners then served a notice under Section 80, Civil Procedure Code and instituted a suit on 7-6-1951, out of which the present application in revision has arisen.
2. The defendant, opposite party before us, raised several pleas, and two points arose for consideration by the learned Small Cause Court Judge. The first point was if the shortage of sugar was due to misconduct or negligence on the part of the railway and the second question was one of limitation. On the first question, the learned Small Cause Court Judge found in favor of the present petitioners and held that the loss or shortage of sugar was due to the misconduct and negligence of the railway administration. On the second question, he held against the present petitioners. The learned Small Cause Court Judge held that Article 30, Limitation Act applied and, inasmuch as the suit had been brought beyond the period of limitation contemplated by

Article 30, the claim was barred by time.

3. Learned counsel for the petitioners has contended before us that the proper article which should apply in the present case is Article 31. He has argued that short delivery of goods does not amount to loss of goods, and the loss or injury referred to in Article 30 is loss or injury to the goods and not loss or injury to the consignee; therefore, it cannot be said that a case of short delivery falls under Article 30 on the ground that it amounts to loss to the consignee to the extent of the goods short delivered. Learned counsel has relied on a decision of this Court, - *'B. and N. W. Ry. Co. Ltd. v. Kameshwar Singh[1]',* Learned counsel appearing for the opposite party has placed reliance on certain other decisions of this court, - *Rameshwar Das Mali Ram v. East Indian Rly Co. Ltd.[2]',* and - *'Gopi Ram Gouri Shanker v. G.I.P: Ry. Co.[3]',* and has contended that, in the circumstances of this case, short delivery was really due to loss of goods and the proper article applicable is Article 30 of Schedule I to the Limitation Act. I apprehend that short delivery may, in certain circumstances, be due to loss of part of the goods; in certain other circumstances, short delivery may be due to non-delivery of part of goods, particularly when the consignment consists of several units and the units are delivered piecemeal. Article 30 relates to a claim of compensation against a carrier for losing or injuring goods. Article 31 relates to a claim of compensation against a carrier for non-delivery of, or delay in delivering, goods. Whether the one or the other article should apply would depend on the circumstances of each case, and I do not think that it can be laid down as a rule of law that every case of short delivery of goods must come within Article 30 or within Article 31. As I have already said, whether Article 30 or Article 31 will apply will depend on the facts of each case.

4. The case under our consideration can be disposed of without deciding whether the learned Small Cause Court Judge was right in applying Article 30 of Schedule I to the Limitation Act. There is no serious dispute that, if Article 30 applies to the facts of this case, the claim of the present petitioners was undoubtedly barred by time; because the period of one year mentioned in Article 30 runs from the date when the loss or injury occurs. In the case before us, the loss undoubtedly occurred before 5-4-1950, on which date the 200 bags of sugar were delivered to the consignee and, on weighment, it was found that there was shortage in 3 bags.

5. Learned counsel for the petitioners does not dispute that, if Article 30 applies, then the claim of his clients is barred by time. He contends, however, that the proper article to apply in the present case is Article 31. Let me, therefore, consider what the position is if Article 31 applies. Under Article 31, the period of limitation is one year from the date when the goods ought to be delivered. As has been observed in - *'the Governor-General in Council v. Kasiram Marwari[4]',* the question "when the goods ought to be delivered" is essentially question of fact. If no particular date is specified for delivery, it must be determined as a matter of what is reasonable having regard to the circumstances of the contract and the conduct of the parties.

In the case before us, the entire 200 bags of sugar were made over to the consignee on 5-1-1950

and, on weighment, it was found that 8 bags of sugar did not contain as much sugar as they contained when the bags were dispatched or consigned. It should
be obvious that in a case of this kind, the entire quantity of sugar should have been delivered on the same day, namely 5-4-1950, and the sugar which had been removed or pilferred from some of the bags could not be delivered on a subsequent date. Therefore, having regard to all the circumstances, the date when the goods ought to be delivered should, in the present case, be 5-4-1950. Learned counsel for the petitioners has contended before us that the date when the goods ought to be delivered should be reckoned from the date of the letter which the railway administration wrote to the petitioners refusing to entertain the claim of the petitioners. He has relied on four decisions. AIR 1933 Patna 45; - *'Palanichami Nadar v. Governor-General of India in Council*[5]*',* - *'Raigarh Jute Mills Ltd. v. Commrs. for the Port of Calcutta*[6]*', and* In - *'B. and N. W. Ry. Co. Ltd. v. Kameshwar Singh*[7]*',* a consignment of 3229 bundles of round steel rods and 4 wooden frames were despatched. The bundles of round steel rods were delivered piecemeal on three separate dates. The wooden frames were not delivered at all. The claimant wrote to the railway administration and the latter replied that the matter was receiving their attention. In these circumstances, it was held that the date when the goods ought to be delivered was not date when a part of the consignment was delivered. In - *'Palanichami Nadar v. Governor-General of India in Council',* there were 4 consignments of arecanuts and, when the consignment were delivered, 15 bags out of the consignments were short. The petitioners carried on correspondence with the railway administration, as a result of which 11 bags were found and delivered, and there was an ultimate short delivery of 4 bags. In these circumstances, it was held that the time to institute a suit against the railway company began to run from after a definite refusal or declaration of inability to deliver by the railway company. In - *'Raigarh Jute Mills Ltd. v. Commrs. for the Port of Calcutta',* the position was more or less the same. That was a case against the railway administration for non-delivery of jute loaded in a wagon. The decision in - *'Governor-General in Council v. Kasiram Marwari,* to which I have already made a reference, proceeded on the footing that the question when the goods ought to be delivered is essentially a question of fact, and no universal or inflexible rule could be laid down. On the facts of that case, it was found that the suit having been brought within one year from the railway's refusal to deliver the consignment, it could not be held that the plaintiff had brought the suit more than year from the expiry of the reasonable time within which the goods should have been delivered.

6. The facts of the case before us are entirely different from the facts of the four cases on which learned counsel for the petitioners has relied. In the case before us, the entire consignment of 200 bags was delivered on 5-4-1950 and, on weighment, it was found that 8 of the bags of sugar did not contain as much sugar as they should have. Obviously, the entire quantity of sugar ought to have been delivered when the 200 bags of sugar were delivered to the consignee. The shortage could have been made good; but the goods consigned, namely, the sugar which was in the 8 bags, could not have been delivered on any subsequent date. In the circumstances of this case, therefore, the period of limitation even under Article 31, Limitation Act, assuming but without deciding that that article applied, began to run from 5-4-1950.

7. The suit was brought on 7-6-1951. Learned counsel for the petitioners has contended that the letter Exhibit 1(g), which the Chief Commercial Manager, East Indian Railway, wrote to the petitioners amounted to an acknowledgment of liability.
He relied on explanation I of Section 19, Limitation. Act and contended that an acknowledgment may be sufficient, even though it is accompanied by a refusal to pay. Explanation I, however, makes it quite clear that there must first be an acknowledgment of liability, even though of a conditional nature. If there is an acknowledgment of liability, it is sufficient even if it is accompanied by refusal to pay. Exhibit 1(g), however, contains no acknowledgment of liability; on the contrary it states in the clearest of terms that the railway administration does not accept any liability for the loss or shortage. In my opinion, the learned Small Cause Court Judge was right in his view that the letter Exhibit 1(g) does not amount to an acknowledgment of liability within the meaning of Section 19, Limitation Act.

8. The result, therefore, is that the claim of the petitioners was barred by time in either view of the matter, irrespective of whether the appropriate article to apply in the present case is Article 30 or Article 31 of Schedule I to the Limitation Act. The application accordingly fails and is dismissed, It is unfortunate that the petitioners brought the suit a few days after limitation had run out. It is, of course, open to the railway administration to pay compensation, even though the claim be barred by time, but that is a matter for the consideration of the railway administration. In the circumstances of this case, there will be no order for costs.

Imam, C. J.

9. I agree.

Application dismissed.

Cases Referred.

[1] AIR 1933 Pat 45
[2] AIR 1923 Pat 298
[3] AIR 1927 Pat 335
[4] AIR 1949 Pat 268
[5] AIR 1946 Mad 133
[6] AIR 1947 Cal 98
[7] AIR 1949 Pat 268