Mutsaddi Lal vs Government-General In Council Through ... on 25 July, 1952

Equivalent citations: AIR1952ALL897, AIR 1952 ALLAHABAD 897

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This second appeal arises out of a suit brought against the East Indian Railway for non-delivery of goods. In the grounds of appeal two main questions of law have been raised. One question is that no notice under Section 77, Railways Act was required because this was a case of non-delivery and not a case of loss, destruction or deterioration of goods. The second question raised is that the suit is not barred by time because limitation began to run from the date on which the Railway intimated their failure to deliver the goods and not from the date on which the goods should have been delivered in the ordinary course. These are both important questions of law, and I understand that the first question is up for decision before a Full Bench of this Court in Governor-General in Council v. Mahabir Bam, First Appeal No. 525 of 1944. (ALL). On this first question there is already a conflict of opinion in views expressed in two cases both of which were decided by Division Benches of this Court.

In Sheo Dayal Niranjan Lal v G. I. P. Rly. Co., 49 ALL. 236, it was held that non-delivery includes 'loss' as that term is used in Section 77, Railways Act, 1890, and notice of the suit under that section was necessary. On the other hand, in Secy. of State v. Firm Daulat Ram Makhan Lal, 1937 ALL. L. J. 794, the reverse view was taken that where a claim is one for non-delivery or mis-delivery it is not a claim for loss and no notice under Section 77, Railways Act is necessary.

In view of the fact that there is such a conflict of opinion and that a case in which the same point is involved is already before a Full Bench of this Court. I direct that this appeal may also be laid before Hon'ble Chief Justice with a request that this may also be referred to the same Full Bench so that the parties in this appeal may also have the benefit of putting their point of view before the case is decided one way or the other. The second question of limitation also involves art important, question of law and I would, therefore, suggest that the whole case be referred to the Full Bench.

Judgment of Full Bench Bind Basni Prasad, J.

2. This is a plaintiff's appeal arising out of a suit against the railway administration for the recovery of Rs. 997-3-6 as compensation for non-delivery of one bale of cloth. The bale was delivered to the railway administration on 30-1-1943 at Agra for carriage to the railway station at Chola. The case as put forward in the plaint was that on account of the negligence and carelessness of the servants of the railway administration the bale was not delivered to the plaintiff and thereby he suffered the loss. The plaintiff started correspondence with the railway administration in the first week of February 1943. A number of letters passed between the parties, but neither the goods were traced nor was any compensation granted to the plaintiff. On 6-12-1943, that is to say, about 10 months after the delivery of the bale for carriage a notice under 77, Railways Act was sent by the plaintiff.

3. Various pleas were taken in defence, but for the purposes of the present appeal it is necessary to set out only two of them, viz. that the suit was not maintainable as no notice under Section 77, Railways Act was served within time and that the suit was barred by limitation.

4. Sri R.R. Rastogi 2nd Munsif, Bulandshahr, who tried the original suit, wrote an exhaustive judgment discussing in detail the case law on the subject. He held that no notice under Section 77, Railways Act was necessary as the suit was not based upon "loss, destruction or deterioration" of goods, but upon non-delivery for other causes. He further held that the suit was not time barred. In the result he decreed the claim for Rs. 882-3-6.

5. The defendant-went up. in appeal. Learned Additional Civil Judge held that no notice was in fact sent under Section 77 and that such a notice was necessary. He further held that the suit was barred by limitation. Accordingly he allowed the appeal and dismissed the suit. The plaintiff, therefore, comes in appeal.

6. This appeal first came up before a learned single Judge who, in view of the conflict of opinion on the question whether or not a notice is necessary under Section 77 in the circumstances of the case, referred it to a Full Bench. A similar point was raised in Governor-General in Council v. Mahabir Bam, First Appeal no. 525 of 1944 (All.) and this appeal was connected with that first appeal. That first appeal was decided on 14-5-1952 and it has been held in it that non-delivery of goods may be due to a variety of causes. Where non-delivery is due to "loss, destruction or deterioration" of goods then a notice under Section 77, Railways Act is required, but where non-delivery is due to any other cause, e.g. conversion, detention, misconduct, misdelivery, wrongful sale of goods, capricious acts etc. then a notice under Section 77 is not necessary. The word "loss" occurring in Section 77 does not mean loss to the owner, but loss suffered by the railway administration. I would invite attention to the discussion on the subject in the judgment in First Appeal No. 525 of 1944 (All). It is unnecessary to reiterate the reasons in this appeal.

7. The railway administration did not plead that the goods were not delivered owing to the "loss, destruction or deterioration" of the consignment. In para. 13 of the written statement the railway administration alleged:

> That the consignment in suit seems to have been mis-sent owing to the illegible address given over it, and has not been traced so far, inspite of the best efforts on the

> part of the Railway Administration, and the charge of gross negligence and misconduct is uncalled for,"

8. There is no finding of the courts below that the consignment was not delivered to the plaintiff owing to the "loss, destruction or deterioration." In these circumstances, having regard to the view taken in Governor-General in Council v. Mahabir Bam, First Appeal No. 525 of 1944 decided on 14-5-1952, no notice under Section 77, Railways Act was necessary

9. The second question is that of limitation. The facts are that the consignment was handed over to the railway administration for carriage on 30-1-1943. In the normal course it was expected to reach the destination at Chola on or about 7-2-1943. After waiting for some time, the plain-tiff began correspondence with the railway administration. There are on the record a number of postal receipts showing the despatch of letters by the plaintiff- to the railway administration.

The first reply which came to the plaintiff from the Chief Commercial Manager B. I. Railway is dated 14-4-1943. It runs as follows:

> "With reference to your letter dated 23-3-43, I beg to state that the matter is receiving attention. In the meantime please send me sender's beejuck in original together with its translation in English to enable me to consider your claim.
>
> This without prejudice."

10. The second letter, dated 31-8-1943, is from the Chief Commercial Manager, E. I. Railway to the plaintiff in which the former after acknowledging the plaintiff's letter said that the matter was receiving attention. He asked for certain details about the consignment and ended with the remark that the information was being called for without prejudice and the same may be furnished as early as possible to facilitate inquiries and quick disposal of the case.

11. The third letter from the Chief Commercial Manager, E.I. Railway is dated 7-2-1944 and runs as follows:

> "The matter is receiving my best attention and I shall let you hear further as soon as I am in a position to do so. Will you please send me without prejudice B true copy of the sender's sale invoice to enable me to verify the claim early."

12. It will be noted that this was more than one year after the despatch of the consignment from Agra. The plaintiff then corresponded with the Railway Board. The Board in its reply dated 3-1-1944 informed the plaintiff that his claim had been forwarded for disposal to the General Manager, E. I. Railway, Calcutta, who was the competent authority to deal with the matter and to whom all further references on the subject should be made.

13. The case as framed in the plaint is for compensation for non-delivery of goods and in para. 8 thereof it is expressly mentioned that Article 31, Limitation Act is applicable. Both the courts below

have held that this article and no other applies. It was not argued in this Courts that any other article is applicable. The period of limitation provided in Article 31 is one year. The time from which the limitation is to be reckoned is "when the goods ought to be delivered." Learned counsel for the respondent contended that as in the present case, in the normal course of affairs, the goods should have reached the destination on or about 7-2-1943, the period of limitation should be counted from that date. He added that as the suit was brought on 30-5-1944, it was barred by limitation.

The crucial point in the case is as to what is the meaning of the phrase "when the goods ought to be delivered." Neither in the railway receipt nor in the forwarding note was any date fixed for the delivery of this consignment at Chola. If such a date had been fixed then certainly that was the date from which the period of limitation should be reckoned. The phrase "ought to be delivered" means "must be delivered." It cannot be said that if in the normal course the consignment was to reach Chola on or about 7-2-1943, then that was the date on which it ought to be delivered, spesially when we find from the correspondence mentioned above that the railway administration did not refuse delivery to the plaintiff at any point of time, but always kept the plaintiff on hopes. There are a number of decided cases on this point.

14. In Jugal Kishore v. G. I. P. Rly. Co., A. I. R. 1923 ALL. 22 (2), Stuart and Sulaiman JJ. held that 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, then the suit is not barred by Article 31, Limitation Act. Their Lordships observed :

> "The treatment accorded to the plaintiff is unfortunately not the first which a consignee has had to suffer. When there was a delay in the arrival of the goods the plaintiffs started writing to both the companies, who delayed action by the plaintiff by informing him that the matter was under enquiry. A perusal of the lengthy correspondence that ensued shows that the plaintiff was all along made to believe that enquiry was being made."

We entirely agree with these observations.

15. In S.I. Rly. Co. v. Narayana Iyer, A.I.R. 1924 Mad. 567 it was held:

> "Article 31 applies to a suit by a consignee for damages for the loss of goods in transit, the starting point being the date when the Railway Company finally-says that the goods cannot be delivered,"

16. In the Governor-General in Council v. Messrs. Khadi Mandali, A. I. R. 1950 Mad. 438, Govinda Menon J. held that the time under Article 31 begins to run from the date of definite refusal or declaration of inability to deliver by the railway, A number of authorities are cited in that case.

17. On behalf of the respondent reliance was placed upon Durga Prasad Badri Prasad v. B. B. & C. I. Rly., A. I. R. 1925 ALL. 780. Jugal Kishore's case, A. I. R. 1923 ALL. 22 (2) was referred to but it was distinguished on the ground of the peculiarity of the facts of that case. The correctness of the

principle enunciated in Jugal Kishore's case, A. I. R. 1923 ALL. 22 (2) was not doubted.

18. 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 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 cannot be said to be the date on which the goods should have reached the destination in the normal course. The phrase "when the goods ought to be delivered" 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 inability to deliver the goods on 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.

For example, if after the despatch of goods there is a breach in the railway line the normal period of transit cannot be taken as fixing the starting point of limitation. The period under which the running of trains had to be suspended owing to the breach of the line must be added to it. Similarly, if the consignment has, by mistake, been mis-sent and the railway administration informs the consignee that it is inquiring into the matter and trying to trace it out the period taken by inquiry must be kept in view. In short, events which affect the means of transport or the way in which the consignment itself has been dealt with after its being handed over to the carrier for transit have an important bearing on the construction of the phrase "when the goods, ought to be delivered." Such events may extend the date contemplated by this phrase.

It is significant to note that the phrase is not followed by the phrase ''in the normal course of business." If the law contemplated only the period required in the ordinary course of business for the transit then the words "in the ordinary course of business" should also have occurred there. The last letter from the railway administration to the plaintiff is dated 7-2-1944, in which it was said that the matter was receiving attention and the invoice was asked for. There has been no definite refusal so far by the railway administration to deliver the consignment. The suit was brought well within one year from this last letter. It was, therefore, within time.

19. In my opinion the view taken by the learned Munsif was correct and that taken by the learned Civil Judge erroneous. I hold that the suit is not barred by limitation.

20. I would," therefore, allow the appeal with cost, set aside the decree of the learned Additional Civil Judge and restore that of the learned Munsif.

Waliullah, J.

21. I agree.

Gurtu, J.

22. I agree.

By the Court.

23. The appeal is allowed with cost, the decree of the learned Additional Civil Judge is set aside and that of the learned Munsif is restored.