

Supreme Court of India

Lufthansa German Airlines vs Vij Sales Corporation on 28 February, 1996

Equivalent citations: (1998) 8 SCC 623

Bench: N Singh, S Sen

ORDER

1. The defendant is the appellant before this Court. The plaintiff-respondent filed the suit in question claiming an amount of 1,87,769.40 along with interest as damages for non-delivery of the goods to the consignee. The goods in question were carried by the appellant to London.
2. Apart from other defences which were taken on behalf of the appellant in the suit, a specific defence was taken that the suit itself was barred by limitation. According to the appellant, in the facts and circumstances of the case, Articles 10 and 11 of the Limitation Act, 1963 shall not be attracted, rather, the period of limitation has to be calculated in terms of Article 30 of the Second Schedule of the Carriage by Air Act, 1972.
3. The learned Judge decided the question of limitation as a preliminary issue and came to the conclusion that the suit was not barred by limitation. This appeal has been filed against the said order.
4. The learned counsel appearing for the respondent took an objection that the learned Judge should not have decided the question of limitation as a preliminary issue, especially when that question did not arise, merely on the basis of allegations made in the plaint. This Court has pointed out the undesirability of deciding a suit on a preliminary issue. This Court has also insisted that normally all issues should be decided while disposing of the suit. The amendment introduced in Order XIV Rule 2 of the CPC by the Amendment Act of 1976, also provides that notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2) of Rule 2, pronounce the judgment on all issues. Sub-rule (2) of Rule 2 of Order XIV is an exception where a suit can be disposed of on the question of law only.
5. After hearing learned counsel for the parties, we are of the opinion that the present case was not one of such suits which should have been disposed of on the preliminary issue. While deciding the question whether the suit was barred by limitation, the High Court had to examine the allegations made in the plaint and the stand taken by the appellant in the written statement. In our view, it shall not be proper for this Court to express any opinion on the finding recorded by the learned Single Judge on the question of limitation. The proper course shall be to direct that the trial of the suit which had been withheld for more than 14 years should proceed. We request the High Court to dispose of the said suit as early as possible. We make it clear that it will be open to the appellant if the suit is decreed in favour of the respondent to raise all the questions including in respect of the finding recorded by the learned Single Judge on the question of limitation before the court of appeal. The appeal is accordingly disposed of. No costs.