Maduari K. Rengiah Chettiar and Co., Madurai Vs. Union of India

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Court : Chennai

Decided On : Jan-24-1969

Reported in : AIR1971Mad34

Judge : Ramaprasada Rao, J.

Acts : Indian Railways Act - Sections 74; Code of Civil Procedure (CPC), 1908 - Sections 80; Evidence Act - Sections 114; Limitation Act, 1908 - Schedule - Article 30

Appeal No. : Civil Revn. Petn. No. 997 of 1967

Appellant : Maduari K. Rengiah Chettiar and Co., Madurai

Respondent : Union of India

Judgement :

ORDER

1. The plaintiff is the revision petitioner. His case was that a consignment of 145 bags of gramdhal was booked from Jakhodhere to Tuticorin under invoice No. 2 dated 10-7-1962, a copy of which was marched by the plaintiff himself as Ex. A-1. The goods arrived at Tuticorin on 3-8-1962. According to P.W. 1, the goods were emitting a bad smell and the packages were considerably damaged. Such damage to the packages was noticed by P.W. 1 even on 3-8-1962. A request was made on 5-8-1962 to the railway authorities for the assessment of the damage to the packages and on such a requisition, the packages were examined and a certificate of damage was issued on 8-8-1962, and the petitioner secured open delivery of the consignment. On the basis of the certificate of damage, he made a claim on the Chief Commercial Manager under the provision of the Indian Railways Act on 9-9-1962. The railway repudiated the liability.

The petitioner issued a notice Ex. A-6 under Section 80. C. P. C. on 7-8-1963, which, according to the petitioner, was received by the Chief Commercial Manager, Southern Railway on 8-8-1963, before noon and the suit was filed at 2 p.m. on 8-10-1963. The suit was resisted both factually and on the ground that it was premature and barred by limitation. The learned District Munsif who tried the suit held, on the points of law involved, that the suit was not barred by limitation, but that it was premature. On the factual issue whether damage was caused by the negligence of the defendant railway, he expressed his view that but for the suit having been prematurely filed the petitioner would normally be entitled to the damages based on the certificate of damages based on the certificate of damage issued by the railway. The petitioner being unsuccessful before the trial court appealed and the learned Subordinate Judge, Turicorin, agreeing in the main with the trial court that the suit was

premature, dismissed the appeal. He also found that the petitioner was not entitled to damages as prayed for. As against this judgment the present civil revision petition has been filed.

2. Mr. V. C. Veeraraghavan raised three contentions two of which involve questions of law and the other relates to the merits of the case. His first contention is that the suit is not prematurely laid as was found. Ex. A-6 is the notice issued by the petitioners under Section 80, C.P.C. Ex. A-7 is the acknowledgment thereto. It is alleged that Ex. A-6 was despatched on 7-8-1963 and the same was received by the General Manager Southern Railway before noon on 8-8-1963 and the suit was filed thereafter at 2 p.m. on 8-10-1963. The learned counsel obviously relies upon the presumption which could be raised under Section 114(e) of the Evidence Act that all official acts are presumed to be done in the normal course and contends that the suit notice Ex. A-6 ought to have been delivered to the General Manager before noon on 8-8-1963, though there is no clinching evidence to prove the same.

The argument proceeds that the suit having been laid in point of time later than 12 noon on the appointed day, that is, at 2 p.m. on 8-110-1963 as is seen from the plaint itself, it is stated that the action is in time and not premature. The argument is prima facie attractive. The suit notice no doubt, was acknowledge on 8-8-1963. It may be that the General Manager of the Southern Railway received it before noon. The question however is whether 8th October 1963 has to be excluded for purposes of calculating the period of limitation. Unfortunately in this case if the suit was laid on 9th October 1963 it would be beyond time. Therefore it was ingeniously the plaint was presented at 2. p.m on 8th October 1963, obviously to sustain an argument against the prematureness of the suit. No doubt, the period of two months available to the petitioner after issuing the notice under Section 80, C.P.C. (Ex. A-6) could be annexed to the ordinary statutory period of limitation fixed for filing such suits.

In the instant case, as to when the suit ought to have been filed including the concessional period available due to the supervention of the issuance of the notice under Section 80, C.P.C. will be adverted to later. At this stage assuming that the suit notice was acknowledged on 8th August 1963, it follows that the petitioner did gain the statutory concession of two months and the normal period within which an action can be laid is extended by such time. The argument however is that Ex. A-6 was received before 12 noon on 8-8-1963, the suit filed at about 2 p.m. on 8-10-1963 is well within time.

3. It is now well established that the two months' concessional period in cases like this, which could be taken advantage of by a litigant ought to be two calendar months consisting of clear days in accordance with the British calendar. Ex. A-6 having been received on 8-8-1963, the suit could not be filed on 8-10-1963, because clear two months have not expired on the date of institution of the action. It is not seriously disputed by the learned counsel for the petitioner that if a suit is filed before the expiration of two months after then notice has been delivered to the authority concerned, then it is not maintainable.

It is also by now well established that whenever period of time is to be computed from or after an act done or the happening of an event, the day on which the act was done or the happening of the event should be excluded. Even the language of Section 80, C.P.C. supports this view. The interdict comprehended in Section 80 is against the institution of a suit against the authority concerned until the expiration of two months

next after notice in writing has been delivered to the authority concerned. Such being the content of Section 80, C.P.C. which intendment is not seriously disputed by the learned counsel for the petitioner, it is obvious that the suit laid on 8-10-1963, is prima facie premature.

4. But the more serious contention of the learned counsel for the petitioner is as the notice should be deemed to have been received on 8-8-1963, before 12 noon, the action in the instant case having been laid at about 2 p.m. on 8-10-1963 there is a lapse of two months as contemplated by statute.

5. Effectively his argument is that the fraction of the day falling on 8-10-1963, can also be taken into consideration to negative the plea of prematurely. I am unable to agree. When the intendment of a statute is clear that two months' clear notice should be given before an action can be laid under special circumstances, then it has to be literally adhered to and any departure therefrom would result in intruding upon the plain language and intention of such a provision of law. I have already stated that its by now well established that the day when the notice has been delivered to the concerned authorities has to be excluded. In other words, the two months' period should be calculated without taking into consideration the date on which the delivery of the notice was effected.

Therefore, the contention that the suit is not premature because it was laid at 2 p.m. on 8-10-1963, which is arithmetically two months beyond 12 noon on 8-8-1963, fails to take not of the imperative mandate prescribed in Section 80, C.P.C. which prescribes two clear calendar months after the service of notice thereunder. If a fraction of a day is also reckoned basing the problem as purely a mathematical one, it would be to by-pass the clear language of Section 80, C.P.C. The common sense perception of time if circumscribed by a special statutory procedure thereto, then the latter has to prevail. Mr. V. C. Veeraraghavan's contention that the fraction of the day also ought to be considered while dealing with this aspect appears to me to be one which cannot be accepted having regard to the judicial precedents which interpreted in the age long past, Section 80, C.P.C. and also because of the clear language of the section.

6. Reference may usefully be made to the two decisions cited by Mr. Ratan on this aspect, which are fairly apposite, Grant M. R. in Lester v. Garland, (1808) 10 RR 68 observed:--

'I rather think, it would be more easy to maintain, that the day of an act done, or an event happening, ought in all cases to be excluded, than that it should in all cases be included. Our law rejects fractions of a day.....'.

Reviewing the above principle and quoting with approval Lord Tenderden, Parke B, said in Webb v. Fairmaner, 1838 7 LJ E 140 that-

'Lord Tenderden laid down a very reasonable mode of determining the computation, which appears to be applicable to the present case, that is, to reduce the whole period to one day, and try when it would necessarily end, if so reduced.'

The absurdity is apparent if that single day also is included. The principle is the same where a number of days are provided. Having thus found that the fragmentation the day, on which the two months expire, is not possible, it has to be found, as the lower

courts did that the suit was prematurely laid.

7. The second contention of Mr. V. C. Veeraraghavan is that the suit is not barred by limitation. Though it was hesitantly urged that this point was conceded in favour of the plaintiff, I allowed Mr. Ratan to raise the same, as it related to a question of limitation. It is not in dispute that Art. 30 of the Limitation Act of 1908 applies to the proceedings in the case. That Article provided that a suit against a carrier for compensation for loss or injury to goods had to be instituted within one year from the date when the loss or injury occurs. No doubt it is now well settled that the burden of proof is on the railway, as a carrier, to prove that the loss or injury occurred more than one year before the date of suit. The point however is, when is the plaintiff said to have known such injury to the goods. The language of Art. 30 of the Limitation Act 1908, which is the same in the new Act of 1963, which ought to be grammatically interpreted and no by extraneous or equitable considerations, is plain. It envisages the common sense rule that the period begins to run from the knowledge of damage or injury. In this case the plaintiff was aware of the damage to the goods on 3-8-1962. It is such a discovery as to damage to the consignment which prompted the plaintiff to request the railway administration for an open delivery and for assessment of damage, which indeed was done on 8-8-1962. But can the plaintiff rely upon the date of quantification of ascertainment of the nature of the damage as the date from which the limitation would start under Art. 30.

I am of the view, he cannot. Knowledge of damage essentially brings home to the aggrieved party that the goods which are the subject-matter of the contract of carriage are damaged. Thus he is aware that the loss or injury to the goods has occurred. The supervening process adopted to reckon the damage or quantify it or ascertain its nature are all matters which are irrelevant, whilst finding the date when the injury or loss was caused. When was the damage caused is one thing. How much is the damage is another. It is not the date when the quantum or extent of damages is ascertained that is relevant. It is only the date when the damage was caused has to be ascertained. Here also it is difficult in the nature of things to know the actual time when the damage was caused, because it is invariably during transit. Hence it is, that the knowledge of such loss or damage to the aggrieved party plays a prominent role and assumes great importance and the date of reckoning of such damage becomes subsidiary and irrelevant.

As pointed out by a Division Bench of this court in Appeal No. 38 of 1962 (Mad), Union of India v Syeadu Beedi Co. and Appeal No. 401 of 1962 (Mad), General Manager, Southern Railway, Madras v. Gama Beedi Co., the time will start to run only from the date on which the consignee became aware of the injury to the goods--see also Sultan Pillai and Sons v. Union of India, : AIR1963Mad365 . Therefore the date when open delivery of the goods was secured fades into insignificance in the discussion if the consignee was aware of the damage anterior to such open delivery. In fact, in this case the plaintiff knew of the damage on 3-8-1963. The suit for compensation having been filed on 8-10-1963, it is clearly barred by limitation.

8. Ordinarily it may not be necessary to consider the third contention of Mr. V. C. Veeraraghavan, which revolves round the merits of the case. But in view of the interesting nature of the contentions urged, I am constrained to deal with it as well.

9. The plaintiff's contention that since the railway has failed to adduce acceptable evidence about the existence of two independent rates, such as the 'railway risk rate'

and the 'owner's risk rate', it cannot be assumed as a fact that the goods were carried at owner's risk. Section 74 of the Railways Act enumerates such rates and raises a fiction that ordinarily the presumption is that the goods should have been tendered to be carried at owner's risk unless three is an election by the sender in writing to pay the railway risk rate. It appears however from the language of the section that it is for the railway administration to establish that there were two rates as above available at the station of despatch. No doubt, the contention of the counsel in that behalf is well founded and has to be accepted. This is also the view of the Patna High Court in Union of India v. Sadhu ram, : AIR1967Pat425 .

In the instant case, however, the contention purely academic. Here the plaintiff has filed Ex. A-6 purporting to be the copy of the railway receipt which clearly indicates that the goods were tendered for carriage at owner's risk rate Mr. V. C. Veeraraghavan however says that Ex. A-6 is only a copy band the original not having been produced cannot be acted upon. This overlooks the fact that Ex. A-6 was filed by the plaintiff as dominus litis and he cannot escape its beneficial consequences having himself been responsible for its filing.

10. All the three contentions of the learned counsel for the petitioner fail. The order of the lower appellate court is correct. This civil revision petition is dismissed, but there will be no order as to costs,

11. Petition dismissed.