

**Hindustan Steel Ltd. Vs. Union of India (Uoi)**

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**Court :** Jammu and Kashmir

**Decided On :** Jul-18-1980

**Reported in :** AIR1981J& K13

**Judge :** G.M. Mir, J.

**Acts :** Jammu and Kashmir Limitation Act, 1995 - Section 3 - Schedule - Article 31; ;Jammu and Kashmir Limitation (Amendment) Act, 1979; ;[Limitation Act, 1963](#) - Schedule - Article 11

**Appeal No. :** Civil Original Suit No. 69 of 1978

**Appellant :** Hindustan Steel Ltd.

**Respondent :** Union of India (Uoi)

**Advocate for Def. :** K.N. Raina, Adv.

**Advocate for Pet/Ap. :** L. Misri, Adv.

**Disposition :** Suit dismissed

**Judgement :**

ORDER

G.M. Mir, J.

1. In a suit for the recovery of Rs. 1,14,723.62 the plaintiff-company has alleged that a consignment consisting of 22.360 MTS GC Sheets loaded in Wagon No. WR 23556 was consigned by the plaintiff from Rurkella Steel Plant, a station on the South Eastern Railway and was booked under R/R No. 330053 on 9-7-75 to be delivered through the Northern Railway. The railway accepted the said consignment and agreed and undertook to carry through its railway the said consignment and deliver to the plaintiffs at Srinagar Northern Railway, but the said Northern Railway failed to deliver the total contents of the consignment. A notice of claim under Section 78-B of the Indian Railways Act was served upon the defendant for the payment of the abovesaid amount. The notice was delivered and acknowledged by the defendants vide postal receipts Nos. 119 and 120 dated 24-10-75. By reasons of such non-delivery, the plaintiffs suffered a loss amounting to Rs. 1,14,723.62. It has been alleged that the said loss and damage was caused due to the negligence of the Railway Administration since the goods were throughout in the possession of the defendants from the time of booking. In spite of repeated demands and requests made in this behalf the defdts. failed to make the compensation for nondelivery of the

above mentioned goods. A notice Under Section 80 C. P. C. dated 3-1-76 was served on the General Manager, Northern Railway, New Delhi and Chief Commercial Supdt. (Claims) South Eastern Railway Calcutta and M/s. ND Radha Krishen & Co. Northern Railway Out-Agents, Srinagar. The defendants, however, failed to make the payment and, therefore, the present suit,

2. In their written statement the defendants have stated that the goods were loaded inside the factory siding without being supervised by Railway staff. The consignment, however, was delivered to the consignee under clear receipt at the destination without any shortage being found therein at that time. It has been denied by the defendants that any valid and legal notice has been served on the defdts. as alleged. The defendants have besides other objections raised two objections which are to the effect that the suit of the plaintiff was hopelessly barred by time, and secondly, that the suit is also barred by Section 78 (b) of the Indian Railways Act.

3. The following issues were framed on 21-9-79

(1) Whether the suit is barred by limitation OPD

(2) Whether the suit is not maintainable for want of notice Under Sections 77 & 78 of Railways Act.

4. Both the issue were treated as preliminary issues and learned counsel for the parties submitted their arguments with regard to these two issues.

5. According to the defendants, the suit of the plaintiff was barred because it was presented beyond time. The contention was that under Article 31 of the Limitation Act, 1955 of J. & K. State, only one year was the period of limitation during which a claim could be brought against a carrier for compensation for non-delivery or delay in delivering the goods. The time from which the period in this case under this Article would begin to run was from the date, in the words of the Article, 'when the goods are to be delivered.' According to the learned counsel for the defendants, the goods were booked for Jammu on 9-7-75 and had to be delivered within reasonable time at their destination. According to him it would hardly take about a month for the Railways to deliver the goods in Jammu so as to be despatched to Srinagar Out-Agency and as such the learned counsel contended that in case of non-delivery the suit must have been brought, if the goods were not delivered in total within a month or so, immediately thereafter and in no case beyond last day of August 1976. He further contended that according to their own showing, the plaintiffs have issued a notice to the defendants informing them about the non-delivery of the goods and their intention to file a suit in the court of law vide a communication dated 3-1-76. He contended that even if this date is taken as the date when the goods ought to have been delivered, the suit should have been filed by 3-1-1977 while the suit has been presented on 24-10-1978. According to the Provisions of Article 31, the suit according to him, appears to have been filed beyond time. Even the notice of claim sent to the defendants by the plaintiff was dated 24-10-75 and the suit under these circumstances was hopelessly beyond time.

6. Mr. Misri, appearing for the plaintiffs, has conceded that the suit though not filed within one year yet the same has been filed within 3 years of the date 'when the goods ought to have been delivered.' He contended that previous to amendment in the Central Act, the same Article, i. e. Article 31, appeared in the Central Act, and the

period to bring an action provided was only one year but the same was amended in 1963 or 1964 and the period of limitation during which a claim against a carrier for compensation for losing or injuring the goods could be lodged was raised from 1 year to 3 years. He also submitted that the State Limitation Act has also been amended in the year 1979 in this regard and the period of limitation under Article 31 has been raised from 1 to 3 years. His submission was that as the law of limitation was a procedural law, it was, therefore, applicable to such cases also which were pending at the time the amendment to the Limitation Act came into force. He, therefore, contended that the suit being still pending in 1980 the amendment in the State Limitation Act raising the period of limitation in Article 31 from one to three years was applicable to the suit at hand and if it was so, within time, because it has been brought within three years of the date 'when the goods ought to have been delivered. 'This contention of the learned counsel for the plaintiff's has been, however, hotly contested by the learned counsel for the defendants who has cited at the bar a number of judgments of the Supreme Court and some of the High Courts in support of his contention. He contended that an amendment made even in a procedural law that would have the effect, or would likely to have the effect, of taking away a right created and vested in a party to the proceedings, the party in whom the right has been so vested could not be deprived of the benefits already accrued to him under the unamended enactment. The learned counsel for the plaintiffs on the other hand has relied on two judgments, one of the Calcutta High Court and the other that of Hyderabad High Court supporting his contention that the law of limitation being procedural it was retrospective and applicable to pending actions also.

7. Under Article 31 of the Unamended Central Limitation Act, the period for bringing a claim against a carrier was one year from the date 'when the goods ought to have been delivered. 'The words of the Article 'when the goods ought to have been delivered' have come up for consideration and interpretation in a case reported in AIR 1962 SC 1716. The following passage appears in this judgment :-

'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 is the reasonable time for carriage of goods would in our opinion make no difference to the interpretation of the words used in the third column of Article 31. .... The words in the 3rd column refer to reasonable time taken for the carriage of goods from the place of despatch to the place of destination and reasonable time generally speaking cannot be affected by the subsequent conduct of the parties.....'.

8. This shows that reasonable time depends upon the facts of each case and that in the absence of any special circumstance reasonable time would practically be the same between the two stations as would normally or usually or ordinarily be taken for the carriage of goods from one station to the other.

9. In AIR 1963 SC 1356, the question as to whether Income Tax Act, 1922 as amended in 1955 carried out an amendment in Section 34 (1) fa) with regard to substantial law or only procedural law and whether even if the amendment was procedural could it be given retrospective effect or not, came up for consideration. Kapoor and Dass. JJ. were of the view that the proposition of law is settled beyond any doubt that although law of limitation is a procedural law and although it is open to the Legislature to extend the period of limitation, yet an important right accrued to a party when the remedy against him was barred by the existing law of limitation and conferred a vested right in him cannot be affected except by express terms used by

the Statute or could be deduced from the clearest implications flowing therefrom. Both the distinguished Judges were of the opinion that if the action had become barred under the law of limitation in force, subsequent enlargement of the period of time would not revive the remedy to enforce the rights already barred. Their Lordships were also of the opinion that :--

'Change in the law as to the period in which a suit can be brought to recover a debt or action can be taken by the Income-tax Officer to commence an assessment or reassessment does not impair the rights already acquired by the power of limitation or revive the power of Income Tax Officer which has already become incapable of being exercised by the lapse of time.'

10. In AIR 1966 Ker 121, the matter has been very convincingly and thoroughly examined and discussed and it has been held that the law of limitation to apply to a particular proceedings was the law in force at the time the proceeding in question was instituted. In a very lucid judgment the learned Judge in para 13 has stated as below :--

'The third proposition is that the law of limitation to apply is the law in force at the time the proceeding in question is instituted. This, I think, is because limitation is something which fastens on the exercise of the remedy; not on the substantive right or on the cause of action, although the accrual of the latter, in other words of the right to sue, is (rather, should be, for that is not always the case, the attempt made in the third column of the Schedule to the Limitation Act to apply the general principle, stated against Article 120 for example and specify for each particular case the date when the right to sue accrues, is not always successful) its starting point. It is on this principle that Section 3 of the Limitation Act, which says that, subject to certain qualifications, every proceeding instituted after the period of limitation prescribed therefor shall be dismissed is based. What attracts the injunction is the institution of the proceeding. If that is after the period of limitation prescribed therefor, the proceeding shall be dismissed and it necessarily follows that the period of limitation is that prescribed at the time of the institution. What is relevant, therefore, is the law of limitation in force at the time the proceeding is instituted; the law in force at an earlier (or later) point of time is irrelevant except for purposes of ascertaining whether the substantive right itself has been extinguished under provisions like Section 28 of the Limitation Act, or whether the particular remedial right sought to be exercised had already become barred under the previous law before the current law came into force. It is not as if the birth of substantive right, or the accrual of a cause of action to a party, attracts the law of limitation in force at the time so as to give a party under liability a vested immunity from action once time in accordance with that law has run out. Subject to the qualifications already mentioned, the only question is whether the proceeding, when it is instituted, is within time, or out of time, in accordance with the law then in force.'

11. I find myself in humble agreement with the view expressed by the Kerala High Court in this regard.

12. In this context it will be profitable to refer to Section 3 of the State Limitation Act, which is reproduced below :--

'Subject to the provisions contained in Sections 4 to 25 'inclusive' every suit instituted appeal preferred and application made after the period of limitation

prescribed therefor by the 1st Schedule shall be dismissed although limitation has not been set up as defence,'

13. No amendment is claimed to have been made in this section of the Limitation Act, It was obvious that every suit instituted beyond the time prescribed in the 1st Schedule has necessarily to be dismissed even though no such plea been raised by any party to the suit. The article of limitation, which is applicable to the suit at hand is Article 31 as it stood before the amendment and the period of limitation for bringing the suit was not more than one year. The mention of the words 'institution of the suit' are material so far as the present suit is concerned. Section 3 of the Act does not admit any exceptions except those mentioned therein and the instant suit is not shown to fall under any of the exceptions mentioned in Sections 4 to 25 of the Act.

14. The present suit has been instituted on 24-10-78 while the plaintiff admits in the plaint that the goods were entrusted to defendant on 9-7-75 to be carried to Srinagar. The reasonable period within which the delivery at Srinagar should have been effected would normally be the period that would ordinarily be taken by the Railways to reach Jammu from Rurkella and then therefrom by the Railway Out-Agency to carry goods to Srinagar in trucks and other vehicles. The reasonable period could not ordinarily be more than say, two months, but even in absence of a special circumstance if six months are also allowed in this case, the suit even then should have been brought in March 1977. But as mentioned it has been instituted on 24-10-78 which clearly shows that under Article 31 of the Limitation Act, as the same stood before the Amendment, the suit was hopelessly time-barred.

15. In support of his contention that the Limitation Act was a procedural law and has to be given retrospective effect and that it would be applicable to all matters pendine at the time of amendment the L. C. for the plaintiff has cited AIR 1980 Cal 1 (FB) and AIR 1957 Hyd 21 and also AIR 1967 Cal 14.

16. The facts in these judgments, however, are distinguishable from the facts appearing in the instant case. In AIR 1980 Cal 1, (FB) it has been laid down as follows :--

'The law of limitation being procedural whenever amended, should be retrospective in operation unless there are strong reasons to the contrary. In the Marriage Laws Amendment Act, 1976, however, there is an express provision in this behalf in Section 139 (1).'

17. It was obvious that the Marriage Laws Amendment Act, 1976 with which the Calcutta High Court was dealing in the case, contained an express provision that the amendment would be operative retrospectively and under the circumstances the scope of the provision that fell for consideration before the Calcutta High Court was limited. All the same even if it is assumed that the Calcutta High Court was of the view that the law of limitation was procedural and that it should be taken as retrospective in operation, yet the court has been cautious enough to lay down that retrospective effect could not be given in every and each case to an amended period of limitation 'if there are strong reasons to the contrary. 'In the instant case, the right to the plaintiff to file the suit for compensation was one year and when the suit was not brought within that period a valuable right had accrued to the defendants who could not be deprived to reap the benefit of that right by an amendment in the law, during the pendency of the suit as no amendment in law could be considered to

have taken away a vested right accrued to a party in a pending proceedings unless the amended act expressly says so or the intention of the Legislative could be reasonably deduced thereby.

18. In AIR 1957 Hyd 21, the learned Judge is of the opinion :

'In the case of an enactment relating to procedure its provisions would apply to already commenced actions for the obvious reason that none can be said to have a vested right in any form of procedure.'

19. With respects, I feel myself unable to accept this view as it is not only in contrast to the views expressed by the two learned Judges of the Supreme Court but is also against the principles of natural justice. If a right has vested in any party to a suit that could not be taken away by the amendment unless the amendment itself categorically enacts that such vested rights would not be considered to have been vested at all.

20. In AIR 1967 Cal 14, the view expressed in the earlier Calcutta case has been repeated and it has been laid down that the procedural law when amended is retrospective in operation meaning thereby that pending cases though instituted under the unamended Act would be governed by the new procedure under the Amended law.

21. This was a case under the Income Tax Act. I however, feel myself, with respects, unable to agree with such a general type of declaration, because as I have said above, even though the Limitation Act may be procedural law, but that would not mean that a right accrued to a person under the Act could be taken away by a change in the period of limitation in every case as that would deprive the party from a right already accrued to him.

22. With regard to issue No. 2 as to whether the suit is barred by Section 78(b) of the Indian Railways Act, I am of the view or that the plaintiffs have made the claim within the period Under Section 78 (b) of the Indian Railways Act. According to the provision of law a person shall not be entitled to a refund for destruction, damage, deterioration or non-delivery of animals or goods delivered to the Railways for being carried unless the claim to the refund or compensation has been preferred within 6 months from the date of the delivery of the animals or goods for carriage by railway. In para 2 of the plaint it has been stated that the goods were delivered to the Railways at Rurkella on 9-10-75. In para 3 of the plaint it has been alleged that notice of claim Under Section 78-B Railways Act was issued to the General Manager Northern Railways and others on 24-10-75. It was obvious that the notice was issued within 8 months from the date of the delivery of the goods for being carried by railway. The contention of the learned counsel for the plaintiff that the notice was issued within six months of the delivery of the goods at Rurkella, therefore, appears to be sound on the facts of the case. The issue, therefore, is decided in favour of the plaintiffs.

23. The suit, however, being time-barred it is dismissed but no order as to costs is made in view of the special circumstances of the case.