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March 27.

BOOTAMAL

v.

UNION OF INDIA

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Limitation—Suit against carrier for compensation for non-delivery—Starting point—If limitation starts from final refusal—Correspondence between parties, relevance of—Indian Limitation Act, 1908 (9 of 1908) Art. 31.,

On August 5, 1947, the appellant booked two consigments by the N. W. Railway from Gujranwala, now in Pakistan, to Jagadhari. The consignments were not delivered and, on January 22, 1948, the appellant gave a notice to the railway under s. 80 of the Code of Civil Procedure claiming the value of the goods by way of compensation. It was stated in the notice that the cause of action had arisen on August 21 and 30, 1947, when delivery was refused. On December 1, 1948, the railway informed the appellant that the consignments were still lying at Gujranwala and could be despatched on the appellant obtaining the necessary permits from the Pakistan authorities. On December 13, 1949, the appellant brought a suit for compensation for non-delivery of the goods. The respondent contended that the suit was beyond time as it was not filed within one year from the time "when the goods ought to be delivered" as prescribed by art. 31 of the Limitation Act.

Held, that the suit was barred by time. The words "when the goods ought to be delivered" in art. 31 had to be given their strict grammatical meaning and equitable considerations were out of place. Under art. 31 limitation started on the expiry of the time fixed between the parties for delivery of the goods and in the absence of any such agreement the limitation started after reasonable time had elapsed on the expiry of which the delivery ought to have been made. The reasonable time was to be determined according to the circumstances of each case. The view taken by some High Courts that time began to run from the date when the railway finally refused to deliver was not correct; where the legislature intended that time should run from the date of refusal it had used appropriate words in that connection. The starting point of limitation could not generally be affected by the conduct of the parties or by the correspondance between them, unless it contained an acknowledgment of liability by the carrier or showed something affecting the reasonable time In the present case delivery ought to have been made within five or six months, as is also indicated by the s. 80 notice given

by the appellant and the suit was filed more than a year after tha expiry of that time.

Dominion of India v. *Firm Aminchand Bholanath* (F. B.) decided by Punjab High Court on May 2, 1956, approved.

Jugal Kishore v. *The Great Indian Peninsular Railway* (1923) I. L. R. 45 All. 43 ; *Bengal and North Western Railway Company* v. *Maharajadhiraj Kameshwar Singh Bahadur*, (1933) I. L. R. 12 Pat. 67, 77 ; *Jai Narain* v. *The Governor-General of India*, A. I. R. (1951) Cal. 462 ; and *Governor-General in Council* v. *S. G. Ahmed*, A. I. R. (1952) Nag. 77, disapproved.

Nagendranath v. *Suresh*, A. I. R. (1932) P. C. 165 and *General Accident Fire and Life Issurance Corporation Limited* v. *Janmahomed Abdul Rahim*, A. I. R. (1941) P. C. 6, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 507 of 1960.

Appeal from the judgment and decree dated March 19, 1958, of the Punjab High Court (Circuit Bench) at Delhi in R. F. A. No. 299 of 1951.

K. L. Gosain, R. Ganapathy Iyer and *G. Gopalakrishnan*, for the appellant.

B. Sen and *P. D. Menon*, for the respondent.

1962. March 27. The Judgment of the Court was delivered by

anchoo J.

WANCHOO, J.—This appeal on a certificate granted by the Punjab High Court raises a question as to the interpretation of Art. 31 of the Limitation Act. The appellant had brought a suit in *forma pauperis* for recovery of a sum of over Rs. 24,000/- from the Union of India in connection with non-delivery of certain goods booked with the railway. The appellant was trading in Gujranwala, which is now in Pakistan, under the name and style of G. M. Bootamal and Company and also under the name and style of Gopal Metal Rolling Mills and Company he being the sole proprietor of both. On August 5, 1947, just before the partition the appellant handed over two consignments to the North Western

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Railway at Gujranwala for carriage to Jagadhari and these consignments were booked on the same day by two railway receipts. The consignments however did not reach Jagadhari. The appellant made inquiries and when no delivery was made he made a claim on the railway on November 30, 1947, for the price of the goods not delivered. Later, on January 22, 1948, the appellant gave notice to the railway under s. 80 of the Code of Civil Procedure in which it was said that the goods booked under the two railway receipts had not been delivered in spite of repeated reminders and demands from the officials concerned. It was further said that the value of the goods booked was Rs. 24,189/4/- and that the railway was liable for this loss which was due to the negligence of the railway. It was further stated that the cause of action arose on August 21 and 30, 1947 and on subsequent dates when the appellant met with refusal. It was finally said that if the amount was not paid a suit would be brought against the railway. It seems however that in spite of this notice correspondence went on between the appellant and the railway and on December 1, 1948, the railway informed the appellant that the two consignments were still lying at Gujranwala and that their despatch had been withheld by the North Western Railway due to restrictions imposed by the Pakistan Government on export. The railway therefore requested the appellant to secure a permit from the Chief Controller, Exports and Imports, Karachi and also from the Custodian of Evacues Property West Punjab and to send the same to the Station Master Gujranwala to enable the goods being sent to Jagadhari. The appellant was also told that in case he failed to produce the requisite permits the consignments would be disposed of in accordance with the law in force in Pakistan, and the railway administration would not be responsible for any loss, damage or destruction to the goods. This seems to have been the end of the correspon-

dence between the railway and the appellant, and the appellant brought the present suit on December 13, 1949.

The suit was resisted by the Union of India and a number of defences were raised with which we are however not concerned in the present appeal. As many as seven issues were framed by the trial court, the most important being of limitation. The trial court found in favour of the appellant on all the issues including limitation and gave him a decree for Rs. 24,189/4/-. It however ordered the parties to bear their own costs.

Thereupon there was an appeal by the respondent to the High Court, and the main point pressed there was that the suit as filed on December 13, 1949, was barred by limitation. Under Art. 31 of the Limitation Act time begins to run against a carrier for compensation for non-delivery of or delay in delivering goods from the time "when the goods ought to be delivered". The question canvassed in the High Court was the interpretation of these words in Art. 31. It appears that there had been difference of opinion in the High Court as to the meaning to be attached to these words in Art.31 and a reference had been made to a Full Bench in another case, namely, *Dominion of India* v. *Firm Aminchand Bholanath* (C.A. 97 of 1949, decided on May 2, 1956). In that reference the Full Bench held that "the limitation under Art. 31 starts on the expiry of the time fixed between the parties and in the absence of such agreement, the limitation starts on the expiry of reasonable time which is to be decided according to the circumstances of each case." The High Court therefore followed the view taken in that case and held after taking into account the circumstances prevailing in August 1947 that the goods ought to have been delivered at the most within five or six months of the booking and

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therefore the suit was barred by limitation as it was brought in December 1949, the period of limitation being only one year. The High Court therefore allowed the appeal, set aside the decree of the trial court and dismissed the suit. It however ordered the parties to bear their costs. As the case involved a substantial question of law the High Court granted a certificate to the appellant; and that is how the matter has come up before us.

Article 31 reads as follows :—

Description of suit	Period of limitation	Time from which period beings to run.
x x x	x x x	x x x
31. Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	One year	When the goods ought to be delivered.

Its interpretation has been the subject of a number of decisions by various High Courts in India and the question that has been considered in these decisions is as to the time from which the period begins to run. Under the Article, the time begins to run "when the goods ought to be delivered" and one should have thought that there would be no difficulty in finding out the meaning of these words. Ordinarily, the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or legal proceedings. This was laid down by the Privy Council in two decisions in

Nagendranath v.*Suresh*(1)and *General Accident Fire and Life Assurance Corporation Limited* v. *Janmahomed Abdul Rahim* (2). In the first case the Privy Council observed that "the fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide". In the latter case it was observed that "a limitation Act ought to receive such a construction as the language in its plain meaning imports.....Great hardship may occasionally be caused by statutes of limitation in cases of poverty, distress and ignorance of rights, yet the statutory rules must be enforced according to their ordinary meaning in these and in other like cases."

Two lines of reasoning seem to have governed the decisions of various High Courts on the interpretation of these words in the third column of Art. 31. The first is based on the consideration that it was for the railway to prove what time ought to be taken for the delivery of the goods and therefore limitation can only start when the railway says finally that it cannot deliver the goods. The second line of reasoning seems to be based on the principle of estoppel and is to the effect that where the railway enters into correspondence and says that efforts are being made to trace the goods the railway would be estopped from pleading that the time began to run from sometime anterior to the period before the correspondence on the question came to an end. It may however be noted that though the majority of the decisions follow these two lines of reasoning and hold that time begins to run only when the railway finally refuses to deliver the goods, here and there a dissentient note has also been struck. We shall consider some of these cases later.

(1) A.I.R. (1932) P.C. 165. (2) A.I.R. (1941) P.C. 6.

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Let us first see what these words in Art. 31 mean on a plain grammatical construction. It would be noticed that Art. 31 as it now stands after the Limitation Act of 1877 and 1908, governs two class of cases, namely, (i) where there has been no delivery of goods and (ii) where there has been delay in delivering goods. In both class of cases the time begins to run from the date when the goods ought to be delivered. These words therefore in column three of the Article must have a meaning which will apply equally to the two situations envisaged in column one. Whether there has been non-delivery or there has been delay in delivery, in either case limitation would run from the date when the goods ought to be delivered. Now it is not in dispute that if there is a term in a contract of carriage fixing when the goods have to be delivered that would be the time "when the goods ought to be delivered" within the meaning of the words used in the third column of Art. 31. The difficulty however arises in that class of cases where there is no term in the contract of carriage, whether express or implied, from which the date on which the goods have to be delivered, can be inferred. It is in these cases that the question of interpretation of the words in the third column of Art. 31 seriously arises. But these words can only mean one thing whether it is a case of late delivery or of non-delivery. Reading the words in their plain grammatical meaning they are in our opinion capable of only one interpretation, namely, that they contemplate that the time would begin to run after a reasonable period has elapsed on the expiry of which the delivery ought to have been made. The words "when the goods ought to be delivered" can only mean the reasonable time taken (in the absence of any term in the contract from which the time can be inferred expressly or impliedly) in the carriage of the goods from the place of despatch to the place of destination. Take the case, where the cause of action is

based on delay in delivering the goods. In such a case the goods have been delivered and the claim is based on the delay caused in the delivery. Obviously the question of delay can only be decided on the basis of what would be the reasonable time for the carriage of goods from the place of despatch to the place of destination. Any time taken over and above that would be a case of delay. Therefore, when we consider the interpretation of these words in the third column with respect to the case of non-delivery, they must mean the samething, namely, the reasonable time taken for the carriage af goods from the place of despatch to the place of destination. The view therefore taken by some of the High Courts that the time begins from the date when the railway finally refuses to deliver cannot be correct, for the words in the third column of Art. 31 are incapable of being interpreted as meaning the final refusal of the carrier to deliver. We may in this connection compare the language used in the third column of Art. 31 with certain other articles of the Limitation Act which will show that where the legislature intended that time should run from the date of refusal it has used appropriate words in that connection. For example, in Art. 18, which provides for a suit for compensation against Government when the acquisition is not completed, the time begins to run from "the date of the refusal to complete". Similarly, in Art. 78 which provides for a suit by the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance, time begins to run from "the date of the refusal to accept". Again in Art. 131 which provides for a suit to establish a periodically recurring right, the limitation begins to run "when the plaintiff is first refused the enjoyment of the right". Therefore, if the legislature intended that in case of non-delivery, the limitation would start on the final refusal of the carrier to deliver, such a case would have been provided for by a separate article and we

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would have found appropriate words in the third column thereof. The very fact that Art. 31 deals with both cases of non-delivery of goods and delay in delivering the goods shows that in either case the starting point of limitation is after reasonable time has elapsed for the carriage of goods from the place of despatch to the place of destination. 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 Art. 31. Nor do we think that their could be generally speaking any question of estoppel in the matter of the starting point of limitation because of any correspondence carried on between the carrier and the person whose goods are carried. But, undoubtedly, if the correspondence discloses anything which may amount to an acknowledgement of liability of the carrier that will give a fresh starting point of limitation. As we have said already, the words in the third column refer to reasonable time taken for the carriage of goods from the place of despatch to the place of destination and this reasonable time generally speaking cannot be affected by the subsequent conduct of the parties. We are therefore of opinion that the answer given by the Full Bench in the case of *Aminchand Bholanath* (*supra*) that "the limitation in such cases starts on the expiry of the time fixed between the parties and in the absence of any such agreement the limitation starts of the expiry of reasonable time which is to be decided according to the circumstances of each case," is correct.

We shall now consider some of the representative cases decided by High Courts in this connection. In *Jugal Kishore* v. *The Great Indian Peninsula Railway* (1) it was observed that "when the X.I. Railway Company, by its own conduct made the

(1) (1923) I.L.R. 45 All. 43.

plaintiff await the result of the inquiry, it is rather startling to find the plea of limitation raised in defence on its behalf". It was further observed that "the correspondence between the parties shows that the matter was being inquired into and that there was no refusal to deliver, up to well within a year of the suit ; in the circumstances of the case we are unable to hold that the suit was instituted more than a year from the expiry of a reasonable time within which the goods should have been delivered."

This decision seems to suggest that the meaning of the relevant words in the third column is that limitation starts from the expiry of the reasonable time within which the goods should have been delivered. But it has taken into account the subsequent conduct of the railway and the fact that there was no refusal to deliver the goods till much later. It was therefore held that as the suit was brought within one year of the final refusal to deliver, it was within time. With respect, it is rather difficult to understand how the subsequent correspondence between the railway and the consignor or the consignee can make any difference to the starting point of limitation, when that correspondence only showed that the railway was trying to trace the goods. The period that might be taken in tracing the goods can have no relevance in determining the reasonable time that is required for the carriage of the goods from the place of despatch to the place of destination.

In *Bengal and North Western Railway Company* v. *Maharajadhiraj Rameshwar Singh Bahadur*(1) it was held that "the defendants (i.e. Railway) by a deliberate process of ignoring the plantiff's repeated requests for attention to his claim misled him into delaying his suit and it is not open to them

(1) (1933) I.L.R. 12 Pat. 67, 77.

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now to contend that the suit has been brought too late." This case seems to be based on estoppel. But here again we find it difficult to understand how the starting point of limitation under Art. 31 could be changed because the railway ignored the plaintiff's requests for attention to his claim.

In *Jai Narain* v. *The Governor-General of India* (1) it was held that "the time 'when the goods ought to be delivered' within the meaning of Art. 31 is not the time when they should have been delivered in the normal course, at least in a case where there is no time fixed for delivery, but the time when they ought to be delivered according to the subsequent promises by the railway which informs the parties that it is carrying on enquiries." With respect we, find it difficult to find how in the face of the clear words in the third column of Art. 31 the starting point of limitation can be changed because of the subsequent conduct of the railway, which informed. the consignor or consignee that it was making enquiries to trace the goods.

Finally in, *Governor-General in Council* v. *S. G. Ahmed*(2). it was held that "cannot be overlooked that for some time the railway authorities themselves were hoping to deliver the remaining packages and were making inquiries all along the route..... In such cases it is not fair to expect the plaintiff to rush to Court with a suit without waiting for the result of the inquiries. Limitation can therefore begin only when there was a definite statement by the railway authorities that they were not in a position to deliver the goods". With respect, this case seems to read in the third column as if the starting point of limitation is from the final refusal of the railway to deliver the goods, when the actual words say that limitation starts from the time when the goods ought to be delivered i.e. in the absence of any term fixing the time in the contract from

(1) A.I.R. (1951) Cal. 462.
(2) A.I.R. (1952) Nag. 77.

the expiry of the reasonable time taken for carriage from the place of despatch to the place of destination.

It was however urged for the appellant that even though the words in the third column plainly mean that the time starts when the reasonable period which may be taken for the carriage of the goods from the place of despatch to the place of destination expires, the subsequent conduct of the railway as disclosed in the correspondence that might pass between the railway and the consignor or the consignee, might have a bearing on this reasonable time. Now if the correspondence is only about tracing the goods that would not be meterial in considering the question as to when the goods ought to have been delivered. On the other hand if the correspondence discloses material which might throw light on the question of determining the reasonable time for the carriage of the goods from the place of despatch to the place of destination, then it may be open to the court to take into account the correspondence. Further, if there is anything in the correspondence which has a bearing on the question of reasonable time and the railway wants to go back on that, to that extent the railway may be estopped from denying that. But the correspondence can only be taken into account to determine what would be the reasonable time and not to show that because of the subsequent conduct of the railway the reasonable time got extended by the time taken by the railway in tracing the goods. Where however the correspondence provides material from which reasonable time in a particular case may be found out the correspondence would be relevant to that extent. For example, take a case where the correspondence shows that a certain bridge between the place of despatch and the place of destination has been destroyed on account of floods and that is the reason why the goods have not reached

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the place of destination. In such a case the correspondence may well be taken into account to find out the reasonable time for the carriage of the goods in the circumstances. This will show that reasonable time will depend upon the facts of each case and that in the absence of any special circumstances the reasonable time would practically be the same between two stations as would normally or usually or ordinarily be taken for the carriage of goods from the one station to the other. Further there may be no difficulty in finding out the reasonable time where bulk of the goods have been delivered and only a part has not been delivered, for in such a case in the absence of special circumstances it should be easy to see that the reasonable time is that within which the bulk of the goods have been delivered. We may in this connection refer to *Union of India* v. *Meghraj Agarwalla* (1) and *Gajanand Rajgoria* v. *Union of India* (2) where it has been held that where a part of the consignment has been delivered, that should, in spite of the correspondence regarding inquiries and in the absence of circumstances leading to the contrary view, be taken to be the date when the goods ought to have been delivered as a whole within the meaning of those words in Art. 31. The view taken therefore by the High Court in *Aminchand Bholanath's case* as to the interpretation of the words in the third column of Art. 31 is in our opinion correct.

Let us therefore see what was the reasonable time within which the goods ought to have reached Jagadhari from Gujranwala in the present case. The appellant himself in his replication stated that the goods in ordinary course should have reached Jagadhari before August 15, 1947. Further in the notice that he gave on January 22, 1948, he stated that the cause of action arose on August 21 and 30, 1947, and on subsequent dates when he met with

(1) A.I.R. (1958) Cal. 434. (2) A.I.R. (1955) Pat. 182.

refusal to deliver the goods. The fact that the appellant gave notice under s. 80 of the Code of Civil Procedure in January 1948 in our opinion shows that even taking into account the extra-ordinary conditions prevailing on account of the partition of India in August 1947; the appellant was satisfy that the goods ought to have been delivered before January 22, 1948 when he gave the notice. If that was not so and if the cause of action had not arisen, there was no reason why the appellant should have given the notice under s. 80 in January 1948. We can see no difficulty therefore on the facts of this case in agreeing with the High Court that the goods ought to have been delivered even taking into account the extraordinary circumstances prevailing on account of partition within five or six months of the date on which they were sent, namely, August 5, 1947. This is also borne out by the fact that the appellant gave notice on January 22, 1948 i.e. about 5-1/2 months after the goods had been consigned. In the circumstances the suit which was brought in December 1949 would be clearly barred by time, for we cannot take the reasonable time within which the goods ought to have been delivered in the circumstances of this case beyond January 22, 1948, when the notice under s. 80 was given. As to the correspondence between the parties it is enough to say that there is nothing in the correspondence which has any bearing on the reasonable time taken for the carriage of goods from Gujranwala to Jagadhari. It is true that on December 1, 1948, the appellant was informed by the Railway that the goods were still lying in Gujranwala because of the restrictions imposed by the Pakistan Government and he was asked to get the necessary permits from that Government; but that in our opinion has nothing to do with the question of reasonable time to be taken for the carriage of goods from Gujranwala to Jagadhari. In the circumstances, the High Court was right in holding that the suit was barred by limitation under Art. 31.

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Learned counsel for the appellant however drew our attention to the Displaced Persons (Institution of Suits) Act(No. XLVII of 1948) as amended by the Displaced Persons (Institution of suits and legal proceedings) amendment Act, (No. LXVIII of 1950) and contended that the appellant being a displaced person would be entitled to file this suit under s. 8 of this Act as amended upto March 31, 1952. It appears that in para. 9 of the plaint, the appellant relied on his being a displaced person in order to give jurisdiction to the court in Delhi where he filed the suit. But he does not seem to have relied on his being a displaced person on the question of limitation. The respondent in the written-statement denied that the appellant was a displaced person and nothing further happened with respect to this aspect of the matter. Learned counsel for the appellant urges that in fact the appellant is a displaced person and would be entitled to the benefit of the Act of 1948 as amended by the Act of 1950 and on that basis his suit would be within time and that the suit might be remanded to allow the appellant to bring his case under the Act of 1948 as amended. Ordinarily we would not have allowed such a prayer when the point was not raised in the plaint; but considering that the appellant claims to be a displaced person who is registered in Delhi and also considering that he had to file this suit in *forma pauperis* probably on account of the circumstances arising from the partition of India, we think that the appellant should be given a chance to prove his case under the Act of 1948 as amended by the Act of 1950. We express no opinion on the question whether the appellant is a displaced person or whether he is entitled to the benefit of the Act of 1948 as amended by the Act of 1950. But we think in the interest of justice he should be given a chance to bring his case under the Act of 1948 as amended by the Act of 1950 in the matter of limitation subject to his

paying all the costs incurred by the respondent upto date irrespective of the result of the suit.

We therefore allow the appeal and remand the case to the trial court for considering only the question of limitation on the basis of the Displaced Persons (Institution of Suits) Act, (No. XLVII of 1948) as amended by the Displaced Persons (Institution of suits and legal proceedings) Amendment Act (No. LXVIII of 1950) after giving parties a chance to lead evidence in this connection, if necessary. If the court comes to the conclusion that the suit is within time on the basis of these two Acts, a decree for the amount claimed minus the costs incurred upto this date by the respondent will be passed in favour of the appellant. If on the other hand the court comes to the conclusion that the suit is not within limitation even under these two acts the suit will be finally dismissed. Costs incurred hereinafter will be in the discretion of the court.

Appeal allowed.

CHEVALIER I. I. IYYAPPAN & ANOTHER

v.

THE DHARMODAYAM COMPANY

(J. L. KAPUR, K. C. DAS GUPTA and RAGHUBAR DAYAL, JJ.)

Company—Director a trustee and in a fiduciary position—Trust if could be created on anothers hand—License—of irrevocable where there has been change of purpose—Indian Easements Act 1882 (5 of 1882), ss. 60 (b), 62(f).

The respondent, a Company with charitable objects owned certain lands and the appellant who was the Chairman of the Board of Directors, was asked to construct a building on the said land. It was subsequently found that the cost would be more than the estimated amount, which probably the Company was not prepared to spend. At that stage the