

Indian Airlines Vs. Angelique International Limited and Anr

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SooperKanoon Citation : sooperkanoon.com/992

Court : Delhi

Decided On : Dec-01-2014

Judge : A. K. Pathak

Appellant : Indian Airlines

Respondent : Angelique International Limited and Anr

Judgement :

\$~R-101 * IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA5692005 Reserved on 21st November, 2014 Delivered on 1st December, 2014 INDIAN AIRLINES Through Appellant : Mr. Amit K. Pateria, Adv. Versus ANGELIQUE INTERNATIONAL LIMITED & ANR..... Through : None Respondents CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.

1. During the course of hearing, learned counsel for the appellant has canvassed that wrong delivery of goods will fall within the ambit and scope of Clause 18 of the Carriage by Air Act, 1972 (the Act, for short), thus, suit for recovery of `6,46,800/- filed by the respondent No.1 against appellant was barred by time, having been filed after two years of loss of goods, in view of Rule 29 of the first Schedule and Rule 30 of the second Schedule to the Act.

2. By placing reliance on M/s. Vij Sales Corporation vs. Lufthansa Airlines, 1981 2 ILR (Del) 749, which was later on followed in Old Village Ind. Vs. British Airways 1991 RLR443 trial court, in the context of Rule 18 read with Rule 29 of first

Schedule to the Act, has held that the said provisions would come into play only when the consignment is either lost, destroyed partly or wholly damaged in transit and not the wrong delivery of consignment. In case goods are not covered by the Rule 18, then the special limitation given in Rule 29 of first schedule to the Act would not govern the case and the relevant provisions of the Limitation Act, 1963, that is, Articles 10 or 11 would be applicable. Trial court has held that the case in hand was with regard to the wrong delivery of goods and did not fall within the ambit and scope of loss of baggage, thus, action of appellant did not fall within the Rule 18, therefore, Rule 29 was not attracted and Article 11 of the Limitation Act, 1963, was applicable, which envisages period of three years for bringing a suit against the carrier for compensation for non-delivery, which period is to commence from the date when goods ought to have been delivered. Thus, the suit having been filed within three years, was within limitation.

3. Short point, which needs to be considered in this appeal is Whether wrong delivery of the goods by appellant would amount to loss of goods, within the meaning of Rule 18 of the first schedule of the Act, thereby attracting the provisions of Rule 29 of the first Schedule of the Act.

4. Briefly stated, facts of the case are that respondent No.1 was engaged in the business of manufacture, sale, export and import of all kinds of apparels. Respondent No.1 received an export order from the respondent No.2 for supply of knitted fabrics. Accordingly, respondent No.1 booked the consignments with the appellant for transporting it to respondent No.2 in Nepal, vide airways bills numbers and AWB0583369-8512 dated 2nd February, 1996 and AWB0583477-0551 dated 5th February, 1996. Original documents like bill of exchange, invoice, packing list, airway bill, certificate of origin, beneficiary's statement, insurance policy (cover note) etc. were negotiated by respondent No.1 through its banker, that is, Central Bank of India, Parliament Street, New Delhi which in turn forwarded these documents to the banker of respondent No.2, namely, Rashtriya Banijya Bank, Baneshwor, Kathmandu, Nepal vide covering letter dated 9th February, 1996. The said documents were to be handed over by the Rashtriya Banijya Bank to respondent No.2 against payments and then to remit the funds to the banker of respondent No.1, as per the trade practice. The consignments were to be

delivered to respondent No.2 by the appellant on production of original documents. However, appellant delivered the consignments to respondent No.2 without insisting for production of aforesaid documents. Later on, the Rashtriya Banijya Bank returned the said documents to the banker of respondent no.1 with the remark the party do not appear to retire the same. Documents were returned after a gap of about five months. Respondent No.1 requested respondent No.2 to make payment in respect of aforesaid consignment but to no effect. Instead respondent No.2 represented that it had not received the consignments from appellant. Accordingly, respondent No.1 filed the suit for recovery of `6,46,800/-, that is, principal amount of `4,20,000/- and interest of `2,26,800/- @ 18% per annum from the date of invoices, that is, 19th January, 1996 till realization against the appellant.

5. In the written statement, appellant alleged that suit was bad for non- joinder of necessary parties, since bank/cargo agents and insurance company were not impleaded. Suit was barred by limitation. Goods were booked on 2nd February, 1996 and 5th February, 1996 respectively. Terms of booking were printed on the back of airway bills, which clearly gave right to respondent No.1 to proceed with action within two years. Suit was filed on 16th January, 1999, that is, after two years, thus, was barred by limitation. Appellant alleged that it had received three shipments for transportation to Nepal. One shipment was received on 2nd February, 1996; whereas two shipments were received on 5th February, 1996. Shipments reached Nepal on 4th February, 1996, 7th February, 1996 and 8th February, 1996. Thereafter, shipments were delivered on 5th February, 1996 and 13th February, 1996 to the consignees, named in the airway bills. Airway bills did not carry any other document and as per terms and conditions of the contract printed on the reverse side of airway bills, appellant was to comply with specific conditions of informing the consignee of the cargo arrival and delivering the same to the consignee or his duly authorized person. Both these conditions, as contained in the airway bills, were duly complied with; thus, appellant was not liable to pay any amount towards the loss of any baggage.

6. In the replication, respondent No.1 denied the averments made in the written statement and reiterated what was stated in the plaint. Respondent No.2 did not

appear despite service and was proceeded against ex-parte.

7. Following issues were framed by the trial court: i) Whether the suit is bad for non-joinder of parties as alleged in preliminary objection 1 of WS?. OPD ii) Whether the suit is barred by time as alleged in preliminary objection No.2 of the WS?. OPD iii) To what amount, if any is the plaintiff entitled against the defendant as principal amount?. OPP iv) Whether the plaintiff is entitled to any interest?. If so, at what rate and for which period and to what amount?. OPP v) RFA5692005 Relief. Page 5 of 12 8. Respondent No.1 examined Ms. Surabhi Tekriwal as PW1. As against this, appellant examined its Traffic Officer Shri J.K. Gambhir as DW1. Upon scrutiny of evidence adduced by the parties, trial Court has returned issue-wise findings. As already stated in the preceding paras hereinabove that only point pressed during the course of hearing is with regard to the limitation. Thus, findings on this issue alone have been considered and delved upon.

9. Section 2(2) of the Act defines Convention as the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929.

Section 2(1) defines amended Convention as the Convention as amended by the Hague Protocol on the 28 th day of September, 1995.

10. Section 3(1) of the Act reads as under:

3. Application of Convention to India (1) The rules contained in the First Schedule, being the provisions of the Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

11. Similarly, Section 4(1) of the Act reads as under:

4. Application of amended Convention to India (1) The rules contained in the Second Schedule, being the provisions of the amended Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other

persons shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

12. At this stage, it would also be relevant to refer to relevant provision of first Schedule of the Act, which reads as under:

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air. (2) The carriage by air within the meaning of sub-rule (1) comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or in the case of a landing outside an aerodrome, in any place whatsoever. (3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If however, such a carriage takes place in the performance of a contract for carriage by air for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

13. Rule 29 of the first schedule of the Act prescribes the period of limitation for bringing an action for damages, which reads as under:

29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

14. A perusal of preamble to the Act indicates that it is a special law, having been enacted to give effect to the Warsaw Convention of 1929 for unification of rules relating to International Carriage, to which India is signatory and further to give effect to the Hague Protocol, 1955. The period of limitation as prescribed under

Rule 30 in second Schedule of the Act is pari materia in Rule 29 in first Schedule of the Act. In *Air India Ltd. vs. Tej Shoe Exporters P. Ltd. and Anr.*, MANU/DE/3321/2013, a Division Bench of this Court, in the context of above referred provisions, more particularly, Rule 18 of first schedule of the Act held that loss due to failure to deliver the goods would fall within the ambit and scope of the said rule. In the said case also, the consignment was delivered to the consignee without obtaining the necessary bank release, inasmuch as the said mistake was admitted by the carrier. The Division Bench held as under:

In the present case, the Carriage by Air Act provides for relief through Rule 18 (in both the First and Second Schedule). That is the only provision which prescribes or visualizes the kind of situations which Parliament had in contemplation while dealing with compensation. The expression is "damage sustained in the event of the destruction or loss of, or of damage to" the goods. In *East and West Steamship (supra)* the Supreme Court had to deal with a provision under the Carriage by Sea Act, limiting liability in respect of "loss or damage" to the goods. The court decisively rejected that "loss or damage" contemplated was in respect of loss or damage to the goods and did not cover loss or damage of the goods:

the loss or damage in this paragraph is a wide expression used by the Legislature to include any loss or damage caused to shipper or consignee in respect of which he makes a grievance and in respect, of which he claims compensation from the shipping company. The argument that loss due to failure to deliver the goods is not covered by this clause is merely to be mentioned to deserve rejection. The very use of the words "the date on which the goods should have been delivered" clearly contemplates a case where the goods have not been delivered.

15. Section 29 of the Limitation Act, 1963, reads as under: 29. Savings. (1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872 (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in

Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law. (4) Sections 25 and 26 and the definition of easement in Section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, may for the time being extend.

16. A perusal of Section 29 (2) makes it clear that if any special or local law prescribes a period of limitation in any suit, appeal or application different than the period prescribed by the Schedule to the Limitation Act, such period of limitation, as prescribed under the special or local law would be applicable. The Division Bench in *Air India* (supra) held thus:

likewise, the period of limitation prescribed under Articles 29 (of the first schedule) and 30 (of the second schedule) are contrary stipulations, which amount to period of limitation different from the period under the Limitation Act (Section 29(2)), which would exclude application of the Limitation Act itself. Those stipulations under the 1972 Act are under a special statute and are absolute in terms; they would prevail over the general provisions of the Limitation Act.

In *Air India* (supra), the view taken in *Vij Sales* (supra) by the learned Single Judge, has been overruled.

17. In this case, wrong delivery was effected in the month of February, 1996 and consignment was delivered by appellant to consignee on 5th February, 1996 and 13th February, 1996 respectively; whereas suit has been filed on 16th January, 1999, that is, after a period of two years, thus, suit is barred by time. Trial court has taken an erroneous view that Article 11 of the Limitation Act, 1963 was applicable, thus, suit was not within the period of limitation qua the appellant.

18. For the forgoing reasons, appeal is allowed. Impugned decree is set aside qua the appellant. No order as to costs. A.K. PATHAK, J.

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