

PETITIONER:

M/S. BHAGWAN DASS RAMA SHANKER (DEAD) THROUGH L.RS.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 25/02/2000

BENCH:

U.C.Banerjee, S.S.M.Quadri

JUDGMENT:

D E R

The plaintiff in O.S. No. 4 of 1960 on the file of the Civil Judge, Ballia, is the appellant herein. It laid the suit for recovery of damages for non-delivery of the goods entrusted to the Railways. The plaintiff consigned the goods at the Tata Freight Railway Station for delivery at Ballia on 29th September, 1958 vide RR No. 026790 Invoice No.502. As the goods were not delivered to the plaintiff, it filed the suit for recovery of damages etc. of Rs.15,477/-. The trial court decreed the suit in a sum of Rs.13,347/-. The respondents carried the matter in appeal. The first appellate court confirmed the findings of the trial court so far as damages were concerned but found that the suit was barred by limitation in view of Article 31 of the Indian Limitation Act, 1908 (Article 11 of 1963 Act) and accordingly dismissed the suit. The plaintiff filed the second appeal in the High Court of Allahabad, aggrieved by the judgment of the first appellate court dated 20th March, 1972. The High Court agreed with the first appellate court and dismissed the second appeal of the plaintiff. That is how the plaintiff is before us in this appeal. Mr. Manoj Swarup, learned counsel for the appellants, submits that the statement of P.W.1, ought not to have been taken for reckoning the period of limitation and the date on which the goods ought to be delivered to the appellant and that the High Court ought to have taken into consideration the special circumstances that the goods had arrived at Ballia but on verification the goods were not found to be the same as were consigned by the appellant. To appreciate the contention of the learned counsel, it would be necessary to refer to Article 31 of the Limitation Act, 1908, which reads as follows: Description of Suit Period of Limitation Time for which period begins to run

Against a carrier for compensation for non-delivery of, or delay in delivering, goods. One year when the goods ought to be delivered.

From a perusal of column 3 of the extract of the Schedule to the Limitation Act, it is clear that in a suit against a carrier for compensation for non-delivery of or delay in delivering goods, the period of limitation is one year and time from which the period begins to run, the starting point of limitation, is when the goods ought to be delivered. The period of limitation under the 1908 Act was one year which is enhanced to three years in Article 11 of the Limitation Act of 1963. The period of limitation

prescribed in Article 31 of 1908 Act alone will apply in this case. The limitation starts from the time when the goods ought to be delivered. The time of delivery of goods to the consignee has to be ascertained from the terms of the contract between the consignor/consignee and the carrier. In the absence of any contract, express or implied, the normal time of delivery of goods will have to be determined having regard to nature of carrier, distance and other relevant factors on the facts of each case. The phrase when the goods ought to be delivered fell for consideration of this Court in *Boota Mal vs. Union of India* [AIR 1962 SC 1716]. It was laid down that it contemplated that the time would begin to run after reasonable time had elapsed on the expiry of which the delivery ought to have been made. It was observed: The word 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 implied) in the carriage of the goods from the place of despatch to the place of destination.

It is pointed out that this should depend on the facts and circumstances of each case and that the carrier may have to show eventually what is the reasonable time for carriage of goods. In this case, though there is no evidence by the carrier-respondent on the question of reasonable time which would be necessary to carry the goods from the Tata Freight Railway Station, place of consignment, to Ballia, the place of destination. However, the plaintiff-appellant placed on record evidence of P.W.1 which suggests that it would take 10 to 15 days. Taking that period as the reasonable time, the first appellate court and the second appellate court have worked out the period of limitation and found that the suit was filed beyond the period one year. In view of the fact that there is no other evidence before the court to dislodge the statement of P.W.1, in our view, the first appellate court and the High Court have not committed any error of law warranting interference by this Court. We find no merit in this appeal. It is accordingly dismissed, but in the circumstances of the case we make no order as to costs.