

(1914) 06 AHC CK 0019

Allahabad High Court

Case No: None

Deokinahdan Prasad

APPELLANT

Vs

The Municipal Board of Ghazipur

RESPONDENT

Date of Decision: June 8, 1914

Citation: (1914) ILR (All) 555

Hon'ble Judges: Muhahammad Rafiq, J; Chamier, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Chamier and Muhammad Rafiq, JJ.

This appeal arises out of a suit by the respondent for recovery of Rs. 689-5-3 paid by him to the appellant Board on account of octroi upon some logs of wood imported by him into the municipality.

2. The first court dismissed the suit as barred by limitation under article 62, schedule I, to the Limitation Act. On appeal the District Judge held that the suit was governed, not by article 62, but by article 120, and, having been brought within six years of the accrual of the cause of action, was within time. Accordingly he remanded the suit for trial on the merits. The Board has appealed, contending that the suit is barred by limitation, either under article 2 or under article 62.

3. No evidence having been taken the question must be decided for the present on the plaint.

4. In paragraph 3 of the plaint the respondent says that the Board's officials demanded octroi on the logs; in paragraph 4 that he informed them that the logs were being imported for the use of the Government at the opium godown, and in paragraph 5 that he paid the sum demanded and a few days later produced a certificate from the Public Works department that the logs had been used for Government, but the Board improperly refused to refund the money.

5. If the respondent had alleged that the Board was wrong in demanding and baking octroi in the first instance, the suit would have been governed by article 62, schedule I, to the Limitation Act. See *Rajputana Malwa Railway Stores v, Ajmere Municipal Board* I. L. R. (1910) All. 491. But the appellant does not seem to allege that the Board was wrong in taking octroi in the first instance. He says that the Board was wrong in refusing a refund, and in paragraph 6 of the plaint he gives the date of the refusal as the date on which the cause of action arose. The decisions of their Lordships of the Privy Council in *Guru Das v. Earn Narain* ILR (1884) Cal. 860. and *Hanuman v. Hanuman* ILR (1993) Cal. 128 and other cases decided by courts in India seem to lay down that article 62 applies only when the money at the time of receipt can be said to have been received by the defendant for the plaintiff's use. According to the respondent's allegation as we understand them the sum in question cannot at the time of receipt be said to have been received by the Board for the respondent's use. His learned vakil says that the respondent takes his stand upon explanation II to Rule 27 of the Municipal Account Code, That explanation, which is really an entirely distinct rule, is as follows:

Goods, the property in which is not vested in the Government at the time they pass the barrier but which are imported with, a view to the fulfilment of a Government contract, shall, on passing the barrier, be declared in writing as intended for the use of the Government., e. g. in fulfilment of a certain specified contract. The duty on them shall then be paid, and subsequently, if they do become the property of Government, the duty shall be refunded on a certificate to the effect signed by the departmental officer concerned; provided that, the application be made within fourteen days of the date of that certificate.

6. It is doubtful whether the respondent can bring the case within this rule, for it is nowhere stated that he made the requisite declaration in writing when the logs were at the octroi barrier, but this question is not now before us. His case being that the demand of octroi was rightful and that the refusal to refund was wrongful we must hold that article 62 is not applicable. For the reasons given in the case first above cited we hold that article 2 also is not applicable. The suit is governed by article 120 and having been brought within six years of the refusal to refund the money is within time. The appeal is, therefore, dismissed. Costs will be costs in the cause and abide the result.