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**(1938) 12 AHC CK 0017**

**Allahabad High Court**

**Case No:** None

Shri Bhagwan

APPELLANT

Vs

Secretary of State and Another

RESPONDENT

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**Date of Decision:** Dec. 19, 1938

**Citation:** AIR 1939 All 277

**Hon'ble Judges:** Ganga Nath, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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### **Judgement**

@JUDGMENTTAG-ORDER

Ganga Nath, J.

This is an application in revision by the plaintiff against the order of the learned Judge of the Small Cause Court, Fatehabad, at Agra, dismissing his suit. The plaintiff brought a suit for damages, for wrongful detention of 26 baskets of bangles sent by him from Firozabad to Zamania. The delivery of the goods was not taken by the consignee. After some correspondence between the parties, the defendant railway wrote to the plaintiff on. 8th April 1936 to take delivery of the goods within 15 days from the receipt of the letter. Within this period the plaintiff sent his man to Zamania on 21st April 1936 to take delivery. On reaching there the plaintiff's man found that the goods had been sent by the railway authorities to the Lost Property Office, Howrah. The plaintiff wrote to the Chief Commercial Manager, who asked him to pay the railway freight from Zamania to Howrah and back from Tlowrah to Zamania and take delivery. The plaintiff refused to do so. He thereafter filed the present suit. The Secretary of State, against whom the suit was filed, was described in the plaint as

Secretary of State for India in Council, through the Agent, E.R. Ry., Calcutta, upon whom the service of summons will be made.

2. The defendant contended inter alia that the suit had not been properly framed, that it was time barred "and that there was no negligence or misconduct on the part of the railway authorities at Zamania in sending the goods to the Lost Property Office, Calcutta. The learned Judge of the Small Cause Court has found that the railway authorities were negligent in sending the goods to the Lost Property Office, Calcutta, before 23rd April 1936. As regards the other two pleas, he found in favour of the defendant and dismissed the suit. He framed no less than issues, out of which he disposed of only 4. The dismissal of the suit is based on the findings that the suit has not been properly framed and that it was time barred. As regards the suit being time barred, he has relied on Article 31, Limitation Act. Even if this Article were applicable, the suit would not be time barred. The goods arrived Zamania on 30th December 1935, which could be the earliest date on which the goods could or ought to have been delivered. The suit was filed on 24th February 1937. As required by Section 80, Civil P.C., a notice was sent to the Secretary of State. The period of two months should be deducted from the period of limitation for the suit u/s 15, Clause (2), Limitation Act.

3. By deducting this two months" period the suit is within one year from 30th December 1935. The suit is therefore not time barred. As regards the frame of the suit there can be no doubt that the suit was filed against the Secretary of State for India in Council as it should have been. What has happened in the suit is that the summons of the suit has been served on the Agent, E.I. Railway, Calcutta. Under Order 27, Rule 4,

the Government Pleader in any Court, or such other person as the Local Government may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Secretary of State for India in Council issued by such Court.

4. The Government of India (Adaptation of Indian Laws) Order, 1937, has substituted the following rule for it:

The Crown pleader in any Court shall be the agent of the Crown for the purpose of receiving processes against the Crown issued by such Court.

5. The Crown pleader has been defined in Order 27, Rule 8-B as follows:

(a) in relation to any suit by or against the Secretary of State or the Central Government or against a public officer in the service of that Government, such pleader as that Government may appoint whether generally or specially for the purposes of this Order.

6. It has been stated by the learned Counsel for the appellant that no pleader has been appointed by the Central Government, as Crown pleader. In the absence of any Crown pleader appointed by the Central Government the provisions of Rules 9 and 10 of the Government of India (Adaptation of Indian Laws) Order, 1937, will

apply. Rule 9 lays down:

The provisions of this Order which adapt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement of this Order; and any such notification, order, commitment, attachment, bye-law rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this Order by the competent authority and under and in accordance with the provisions then applicable to such a case.

7. Rule 10 provides:

Save as provided by this order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III, Government of India Act, 1935, vested in, or exercisable by any person or authority, shall continue to be so vested or exercisable until other provision is made by some Legislature or authority empowered to regulate the matter in question.

8. The Notification No. 1084/VII-180, dated 26th August 1925, will therefore be deemed to be in force. It is as follows:

Under Rule 4 of Order 27, Civil P.C. (Act 5 of 1908), the Governor in Council is pleased to appoint the agent of the East Indian Railway, Calcutta, as the agent of the Government for the purpose of receiving processes issued from the Civil Courts of the United Provinces of Agra and Oudh against the Secretary of State for India in Council in connexion with all the oases concerning the East Indian and the Oudh and Rohilkhand Railways.

9. Under this notification the agent of the East Indian Railway, Calcutta, was the proper person on whom notices should have been served, as they have been done both in the case of the suit and of this application in revision. There is therefore no defect in the frame of the suit or the service of summons of the suit or notice of this application in revision. The lower Court has not disposed of the remaining issues and the case has to go back to the lower Court. It is therefore ordered that the application be allowed with costs, and the case be sent back to the lower Court to re-admit it under its original number and to dispose of it in accordance with law.