

## B.R. Ram Dayal and Co. Vs Ruldu Ram Jain etc.

**Court:** Delhi High Court

**Date of Decision:** Jan. 6, 1993

**Citation:** (1993) 25 DRJ 323

**Hon'ble Judges:** P.N. Nag, J

**Bench:** Single Bench

**Advocate:** G.N. Aggarwal and Girish Aggarwal, for the Appellant;

### Judgement

P.N. Nag, J.

(1) This is a revision petition filed against the order of Mr. D.K. Malhotra, Subordinate Judge, Delhi dated 20th July, 1989, whereby he has

dismissed the suit against respondent No.2.

(2) The facts giving rise to the civil revision are that the petitioner/plaintiff filed a suit for the recovery of Rs.3,975.00 (Rupees three thousand, nine

hundred and seventy five only) against respondent No. 1 in the court of the learned Subordinate Judge on the ground that the defendant firm i.e.

defendant no. I approached the plaintiff and purchased goods worth R.s.2,771.30 (Rupees two thousand, seven hundred seventy one and paise

thirty only) vide Bill No.4141 dated 20th December, 1977 at Delhi and the -goods were sent to the defendant by the plaintiff by G.R.No-7143

dated 20th December, 1977 through Montgomery Transport and the said goods were delivered to defendant No. I at Bathinda through the

Montgomery Transport.

(3) The petitioner filed two applications; (1) under Order 6 Rule 17 for amendment of the plaint by adding paragraph No.4A; and (2) under order

I Rule 10 read with Section 151 of the CPC for impleading the respondent No.2 as defendant no.2. It was added by way of amendment that the

goods were sent to defendant No.1 through defendant No.2 and the defendant No.2 was liable to deliver the goods to defendant No.1 and

informed the plaintiff that the goods had been delivered to defendant No.1.

(4) Admittedly, issues have not been framed in the suit. It appears that the written statement was also filed. The learned Subordinate Judge,

however, without framing of any issue on the question of limitation has dismissed the suit against defendant No.2 on the ground that it was barred

by time against defendant No.2. Being aggrieved against this order, this revision petition has been filed.

(5) Notice to show cause was given in this revision petition on 5th March, 1990 and the respondents have been served by substituted service

under Order 5 Rule 20 by publication. But in spite of service, nobody appears for the respondents.

(6) MR.GOPAL Narain Aggarwal, learned counsel for the petitioner, contended that without framing of any issue on the question of limitation,

such a finding could not have been given by the learned trial court, which has resulted into a grave injustice to the plaintiff and as such the trial court

has exercised jurisdiction with material irregularity. Further, no evidence has been produced by any party as the stage of producing the evidence in

support of or against such an issue has not yet reached. There is substance in the submission of Mr. Aggarwal. The question of limitation is not a

pure question of law. But it also depends on the determination of certain facts and which could be determined only after the parties are allowed to

produce the evidence.

(7) Since the issues have not been framed and no evidence was allowed to be produced, such a finding should not have been given by the trial

court. Therefore, the trial court has fallen in grave error by having dismissed the suit against the defendant No.2. The impugned judgment is,

Therefore, set aside and the case is sent back to the trial court. The parties are directed to appear before the trial court on 25th January, 1993 and

the trial court is directed to proceed with the case in accordance with law. There will be no order as to costs. The civil revision stands disposed of.