IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

333

FAO No.602 of 1992 (O&M)
Date of Decision: September 30, 2015

National Textile Corporation

...Appellant

Versus

Union of India

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. H.N. Mehtani, Advocate for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment passed by the Railway Claims Tribunal, Chandigarh Bench, dated 28.11.1991 by which the suit/application filed by the appellant-National Textile Corporation (Panipat Unit) on 28.10.1987, was dismissed on the ground that the same is barred by limitation and that the applicant-plaintiff has failed to establish the claim regarding excess freight charge.

2. It is the contention of learned counsel for the appellant that the appellant-plaintiff had served a notice dated 28.08.1984 under Section 78(B) of the Indian Railways Act, 1890, with respect to 73 railway receipts which according to it were pertaining to excessive charge of freights. Thereafter, a letter dated 21.04.1986 was issued with respect to 299 railway receipts including the 73 railway receipts qua which the notice has already been served on 28.08.1984. This notice was issued after more than of six months from the date of booking of goods. He contends that although the claim qua the 226 railway receipts may be said to be barred under Section 80 CPC but with regard to the remaining 73 railway receipts, where the

notice was duly served on 28.08.1984, the same cannot be held to be barred. He contends that once the notice has been served and the same has been admitted to have been received by the respondent, the claim qua these 73 consignments should have been entertained by the Tribunal and proceeded to be decided on merits. He, thus, contends that the impugned judgment cannot sustain.

3. Having considered the submissions made by the counsel for the appellant and on going through the impugned judgment passed by the Railway Claims Tribunal, I am unable to accept the contentions of the counsel. The claim with regard to the 73 consignments also cannot be said to be within limitation, specially in the light of the fact that the date on which the freight was paid, has not been mentioned or proved on record. In the absence of the dates of the receipts, which were received by the appellant, but not produced before the Tribunal, the conclusion, as has been drawn by the Tribunal, cannot be said to be not in accordance with the pleadings and the evidence on record. The findings, thus, recorded by the Railway Claims Tribunal, cannot be faulted with.

4. Finding no merit in the present appeal, the same stands dismissed.

September 30, 2015 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**