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Although the point was not raised either before the Controller or the Rent Control Tribunal or even in the grounds of appeal in this Court it has been argued that the exclusion of sub-tenants of a tenant ejected under section 22 from the protection afforded to lawful sub-tenants under section 18 offends the provisions of Article 14 of the Constitution. It seems to me, however, that there is a clear distinction between premises governed by section 22, and in particular residential quarters provided by companies for the housing of their employees, which naturally are required for the housing of other employees when the occupants of such quarters leave the service of the company, and premises in general, and the recognition of this distinction does not in any way run counter to the general purpose of the Act for the protection of tenants. The result is that I dismiss the appeals, but leave the parties to bear their own costs.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J.

KARSON AGENCY (INDIA) AND ANOTHER,—*Appellants*

versus

M/S BHAJAN SINGH-HARDIT SINGH AND CO,—
Respondents

Regular Second Appeal No. 93-D of 1957

1962

Jan., 17th

Limitation Act (IX of 1908)—Articles 115 and 120—Article applicable to a suit for damages arising out of the failure of the buyer to take delivery of the goods—Whether Article 115 or 120—Starting point of limitation—Whether the date on which breach occurred or the date on which the goods were sold.

Held, that the suit by a seller to recover damages from the buyer consequent upon his failure to take delivery of the goods falls under Article 115 of the Limitation Act, 1908, since it cannot possibly be denied that it is a suit for compensation for breach of contract.

Held further, that in deciding the starting point of limitation it is only the words of the relevant Article which have to be construed, and, since there is no question in the present case of either successive breaches or a continuing breach, the starting point is the date when the contract was broken, and that date occurred when the defendants failed or refused to take delivery of the goods. The ascertainment of the amount to be claimed in a suit for damages for breach of contract is something separate and distinct from the occasion of such ascertainment, which is the real cause of action. When the goods are resold after the buyer has failed to comply with a notice to take delivery, the resulting resale either may obviate the necessity for filing a suit at all if the price realised equals or exceeds the contract price or else it may determine the amount for which the suit is to be brought, but this does not alter the fact that the cause of action is the breach of the contract and these are the words used in Article 115.

Regular Second Appeal from the decree of the Court of Shri P. D. Sharma, Additional District Judge, Delhi, dated the 8th day of April, 1957, affirming with costs that of Shri Muni Lal Jain, Sub-Judge, Ist Class, Delhi, dated the 1st day of November, 1955, passing a decree for Rs. 3,392-9-6 with costs in favour of the plaintiffs against the defendants.

A. R. WHIG, ADVOCATE, for the Appellant.

GURBACHAN SINGH AND ANOOP SINGH, ADVOCATES, for the Respondents.

JUDGMENT.

FALSHAW, C.J.—This is a second appeal by a defendant firm, Messrs Karson Agency (India) and its proprietor B. L. Kaura against a decree for Rs. 3,392-9-6 passed by the trial Court and affirmed in first appeal. Falshaw, C. J.

The suit was instituted on the 19th of November, 1954, by a firm Messrs Bhajan Singh-Hardial Singh and Co., claiming the above sum as compensation for breach of contract. The facts are that on the 14th of February, 1951, the appellants agreed to purchase from the plaintiffs 500 yards of worsted of India Woollen Mills, steel colour, to

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be delivered in June or July at Rs. 23-4-0 per yard, and they paid Rs. 1,000 in advance. The plaintiff firm sent a bill for 500 yards of the specified worsted on the 25th of July, 1951, stating that they would deliver the worsted on payment of the balance of Rs. 10,625 after allowing for the sum paid in advance. The defendants, however, did not take delivery and early in August, 1951, the plaintiff sent a notice to the defendants that unless they paid the price and took delivery within four days the cloth would be resold at the defendant's risk. Even then no delivery was taken and the cloth was sold in smaller quantities on various rates between the 8th and 20th of November, 1951, the total sum realised being Rs. 7,349-1-9, and the plaintiffs accordingly claimed Rs. 3,392-9-6 on account of loss suffered by the defendants' breach of the contract.

These facts have been found by the Courts below to be established, and the only point argued before me in second appeal was the question of limitation. The point involved in this question is whether the suit is governed by Article 115 of the schedule to the Limitation Act or the residuary Article 120. The Courts below have found that Article 120 applied, and that the suit was, therefore, in time as it was filed well within six years from the date when the right to sue accrued. Article 115 fixes the limitation for a suit for compensation for the breach of any contract, express or implied, not in writing registered, and not herein specially provided, as three years from the date when the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or where the breach is continuing, when it ceases. The Courts below appear to have taken the view that this Article did not apply at all since the plaintiff, to whom two remedies were open, namely, either to sue for the price of the goods leaving it to the purchaser to take delivery of the goods lying with him at his own convenience, or else the remedy under section 54(2) of the Sale of Goods Act, i.e., stoppage in transit and resale after notice, chose

the latter remedy. It was held that such a case was not covered by Article 115 and that the starting point of limitation was the date on which the last item of the goods in dispute was resold by the seller. It does not appear to have been explained by either of the lower Courts exactly why the choice of this remedy by the seller took the suit out of the scope of Article 115, and no authority has been cited.

In my opinion there is no doubt that the suit falls under Article 115, since it cannot possibly be denied that it is a suit for compensation for breach of contract. It has, however, been argued on behalf of the plaintiffs that even if Article 115 applies, the suit was still within time as it was brought within three years of the date on which the last part of the cloth was resold, and it is argued that even under Article 115 this is the starting point of limitation.

On the other hand the case of *Soundararajan & Co. Ltd.* v. *K. P. A. T. Annamalai Nadar* (1), has been cited, which appears to support the contention of the learned counsel for the appellants that under Article 115 the starting point of limitation is the date on which the defendants refused or failed to take delivery of the goods tendered to them within the time specified in the contract. That case arose out of a suit brought by a purchaser for damages for breach of contract against a seller. We are not concerned with the plaintiff's suit which was dismissed in appeal by Ramaswami and Anantanarayanan, JJ., but only with a counter-claim made by the defendant. This is dealt with in paragraph 12 of the judgment on page 482 as follows:—

> "The defendant-firm has advanced a claim on further appeal upon which separate court-fee has been paid, and which is really in the nature of a cross-suit. This relates to a sum of Rs. 6,390 representing

(1) A.I.R. 1960 Mad. 480.

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the loss sustained by the defendant-firm after resale of the goods, adjusting the advances already paid by the plaintiff. There is no doubt a condition in the contract by which the defendant-firm could effect the resale at the buyer's risk, in case the buyer rejected delivery. But we find, upon a scrutiny of the relevant dates, that this claim is definitely out of time. It ought to have been instituted within three years of the date of the breach of the contract, and it is no defence to this objection to urge that it was only the occasion of resale which enabled the defendant-firm to ascertain exactly the degree of damages, or the precise amount which could represent the injury suffered by them. The occasion for ascertainment will have to be distinguished from the date upon which the cause of action arose and from which limitation began to run".

On behalf of the plaintiffs it is argued that the cause of action could really only be said to arise when the last of the goods were resold, and on this point reliance is placed on the terms of section 54(2) which reads—

> "Where the goods are of a perishable nature or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to resell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, resell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the resale. If such notice is not given, the unpaid seller shall not

be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the resale."

It is thus argued that a suit for damages regarding loss on resale can only be brought if notice has been issued to the buyer and not complied with within reasonable time, and that, therefore, the cause of action can only be said to arise after the resale of the goods is completed.

It appears to me, however, that in deciding the starting point of limitation it is only the words of the relevant Article which have to be construed, and, since there is no question in the present case of either successive breaches or a continuing breach, the starting point is the date when the contract was broken, and that date occurred when the defendants failed or refused to take delivery of the goods. This is precisely the point made by the learned Judges in the Madras case cited above, that the ascertainment of the amount to be claimed in a suit for damages for breach of contract is something separate and distinct from the occasion of such ascertainment, which is the real cause of action. When the goods are resold after the buyer has failed to comply with a notice to take delivery, the resulting resale either may obviate the necessity for filing a suit at all if the price realised equals or exceeds the contract price or else it may determine the amount for which the suit is to be brought, but I am in respectful agreement with the view of the learned Judges of the Madras High Court that this does not alter the fact that the cause of action is the breach of the contract and these are the words used in Article 115.

The result is that, holding the plaintiffs' suit to be barred by time I accept the appeal and dismiss the suit, but I consider that it is a fit case for ordering that the parties should bear their own costs throughout.

B.R.T.