Issue No. (4).

(8) In view of my finding on issue No. (1), this claim fails as barred by time, and is accordingly dismissed though without any order as to costs.

N. K. S.

REVISIONAL CIVIL

Before Harbans Singh, Chief Justice.

Messrs Mul Chand Chuni Lal,—*Petitioner.*

versus.

THE UNION OF INDIA,—*Respondent.*

Civil Revision No. 709 of 1971.

February 18, 1972.

Sale of Goods Act (IX of 1930)—Section 2(4)—Railway receipt for despatch of goods in the name and possession of the consignee—Goods lost in transit due to negligence of the Railways—Suit by the consignee for damages—Whether maintainable.

Held, that sub-section (4) of section 2 of the Indian Sale of Goods Act, 1930, gives the definition of "document of title to goods" and it includes "railway receipt". In view of this definition a consignee, in whose name the railway receipt is and who is also in possession of it, will be entitled to the goods despatched as owner. However, that may not be conclusive and the consignee in such a case may be only an agent taking the delivery of goods. But in the absence of any such evidence and in the presence of the clear evidence of the consignee that he is the owner, he is entitled to maintain a suit for damages against the Railways if the goods are lost in transit due to the negligence of the Railways.

Petition under Section 25 of the Provincial Small Cause Courts Act for revision of the order of Shri K. K. Sethi, Judge, Small Cause Court, Amritsar, dated 30th December, 1970, dismissing the suit with costs.

Bhagirth Dass, Senior Advocate with B. K. Jhingan, Advocate, *for the petitioners.*

Harbans Lal, Advocate, *for the respondent.*

JUDGMENT

HARBANS SINGH, C.J.,—(1) This is a revision under section 25 of the Provincial Small Cause Courts Act against the dismissal of a suit for the recovery of Rs. 1206-50 filed by the petitioner-firm in respect of the damage done to the four consignments of tea which got wet.

(2) The finding of the Judge, Small Cause Courts, was that the damage had been done due to the negligence of the Railway. So far as the amount of damage is concerned, that was assessed in accordance with the assessment report made by the railway which was in the form of percentage of loss. The sole ground on which the suit was dismissed was that the petitioner-firm, which was the consignee of the railway receipts covering the various consignments, has not been able to prove by producing documents relating to the contract that it had become owner of the consignment, and hence this revision.

(3) The facts are not in dispute. The petitioner-firm was mentioned as the consignee in the railway receipts covering various consignments. The firm endorsed them in the name of Kundan Lal P.W. 1 who came into the witness-box and stated that he took delivery of the goods as a clearing agent on behalf of the firm which was the owner of the goods.

(4) The sole question for determination, therefore, is whether, in view of the evidence on the record, the firm was the owner of the goods and, therefore, entitled to maintain the suit.

(5) Sub-section (4) of section 2 of the Indian Sale of Goods Act, 1930, gives the definition of "document of title to goods" and it includes "railway receipt". Now if the consignor and consignee are two different persons and the consignee is in possession of the document of title, namely, the railway receipt showing him as the consignee, then this document of title would *prima facie* entitle the holder, namely, the consignee, to claim the goods as an owner.

(6) In the present case, not only Kundan Lal P.W. 1, the clearing agent, had categorically stated that the firm was the owner, but Inder Raj P.W. 2, an employee of the firm and Chuni Lal P.W. 3, partner of the firm, have come into the witness-box and stated that

they are the owners of the goods. Chuni Lal stated in clear words that the price of the goods had been paid. He also stated that he had brought his books of account like cash-book, Khata, journal, etc. In cross-examination he was not asked to refer to these books and show the relevant entries with regard to the payment of the price. In fact, he was questioned whether any copies of these relevant entries have been put on the record or not, and the reply being in the negative, no further question was put. On general principles, one would be of the view that if the railway receipt, as the document of title, is in possession of the consignee and he makes a categorical statement that he is the owner and the consignor, at no time, disputes his right to be the owner, then the consignee should be taken to be entitled to maintain the suit as the owner for short delivery or damage to the goods.

(7) We have a Division Bench judgment in support of this. This is *Jallan and Sons Limited* v. *The Governor-General in Council and others* (1). It is a judgment of a Bench of East Punjab High Court consisting of Mehar Chand Mahajan and Teja Singh, JJ. (as they then were). The headnote runs as follows:—

> "A Railway Receipt is a mercantile document of title. The endorsement of it transfers the ownership in the goods covered by it to the endorsee. The endorsee of a railway receipt can maintain a suit against the railway for non-delivery or short delivery of the consignment."

(8) On behalf of the Railway reliance is being placed on a judgment of the Supreme Court in *The Union of India* v. *The West Punjab Factories, Ltd.* (2). That judgment dealt with two cases, but we are concerned here with the facts of one case. In that case, the consignee was J. C. Mills whereas the consignor was the West Punjab Factories Limited (hereinafter referred to as the Factory). Due to the negligence of the railway, the goods were destroyed by fire before they could be taken delivery of. The consignor brought the suit. The objection taken was that as the railway receipts show J. C. Mills as the consignee, therefore no suit could be brought by the consignor. Evidence had been led in that case showing that according to the contract between the Factory and the J. C. Mills

(1) 1948 P.L.R. 290.
(2) A.I.R. 1966 S.C. 395.

delivery was to be made by the seller at the godowns of the J. C. Mills and the despatch by the railway was to be on the seller's risk up to the godowns of the J. C. Mills. Ordinarily the consignment would have been booked in the name of self but there being some legal difficulty in the name of self, the J. C. Mills had agreed that the consignments be made in the name of J. C. Mills, but it was the consignor who would take the risk and responsibility regarding the consignments till the goods were delivered at the godowns of the J. C. Mills. In these circumstances, the Supreme Court came to the conclusion that the consignor was entitled to maintain the suit. Reliance is placed on the observations made in paragraph 10 of the report, which are to the following effect:—

> "* * * * * * *
>
> Ordinarily, it is the consignor who can sue if there is damage to the consignment, for the contract of carriage is between the consignor and the railway administration. Where the property in the goods carried has passed from the consignor to someone else, that other person may be able to sue."

After referring to section 2(4) of the Indian Sale of Goods Act, 1930, their Lordships observed as fallows :—

> "It is true that a railway receipt is a document of title to goods covered by it, but from that alone it does not follow, where the consignor and consignee are different, that the consignee is *necessarily* the owner of the goods and the consignor in such circumstances can never be the owner of the goods. The *mere fact* that the consignee is different from the consignor *does not necessarily* pass title to the goods from the consignor to the consignee, and the question whether title to goods has passed to the consignee will have to be decided on other evidene * * * * * * * * *
>
> Take a simple case where a consignment is booked by the owner and the consignee is the owner's servant, the intention being that the servant will take delivery at the place of destination. In such a case the title to the goods would not pass from the owner to the consignee and would still remain with the owner, the consignee being

merely a servant or agent of the owner or consignor for purposes of taking delivery at the place of destination. It cannot, therefore, be accepted *simply* because a consignee in a railway receipt is different from a consignor that the *consignee must be held to be the owner of the goods* and he alone can sue and not the consignor * * * * * * * * * * * *." (Underlines mine) (*Italics in this report*).

(9) That was a case where the contention of the opposite party was that the mere fact that the consignee is a different person from the consignor conclusively establishes that the suit must be brought by the consignee. It was this argument which was being repelled and the words underlined make it amply clear and over and over again emphasise that the mere fact that the consignee is a different person by itself may not necessarily be, in all cases, a proof of the fact that the title has passed to the consignee and that is the reason why in that case ample proof was given to indicate that the title in the goods remained in the consignor notwithstanding the fact that the goods were booked in the name of a different consignee.

(10) This is a far cry from saying that where the consignee is a different person, lives at a different place and he takes delivery of the goods and makes a definite statement, that he is the owner of the goods and that claim is not denied by the consignor, the consignee is not entitled to maintain a suit.

(11) The decision in the *The Union of India* v. *The West Punjab Factories* (2) (supra), in no way derogates from the correctness of the decision in *Jallan's case* (1) (supra). In view of the definition of 'document of title to goods' as given in sub-section (4) of section 2 of the Indian Sale of Goods Act, a consignee would be entitled to the goods as the owner. However, that may not be conclusive and the consignee may, as illustrated by their Lordships of the Supreme Court, be only an agent for taking the delivery of the goods. But in the absence of any such evidence and in the presence of the clear evidence of the consignee, that he is the owner, and without there being any suggestion in cross-examination that it was not the consignee, but the consignor who was the real owner and that the consignee was a mere agent or servant, there was no justification whatever for coming to the finding that the plaintiff-consignee was

not entitled to maintain the suit. I would, therefore, set aside the finding of the Court below on this point and hold that, in the circumstances of the present case, the plaintiff was entitled to maintain the suit.

(12) The learned counsel for the respondent urged that the finding with regard to the quantum of damage requires consideration. His argument is simple. The damaged tea was taken over by the plaintiff-firm. Neither the employee Inder Raj nor the partner Chuni Lal has been able to tell us as to how much money they recovered by the sale of the damaged tea. The assessment report in one consignment gave the damage in terms of percentage and it was to the following effect:—

> "Water penetrated inside the bags and damaged the part contents. Effected contents changed colour and are giving bad smell. Damages assessed jointly as under:—
>
> 8 Bags assessed at 25 per cent (twenty-five per cent)
>
> 26 Bags assessed at 4 per cent (four per cent)."

There is a note underneath as follows:—

> "It is subject to verification of sale proceeds. Each bag 30 kg. gross * * *."

With regard to the other consignments similar assessment reports are on the record. The learned Judge, Small Cause Court, has mentioned that the damage claimed by the plaintiff was in accordance with these assessment reports and, consequently, there was no necessity for the price which the damaged goods fetched to be bothered about. In the assessment reports it is clearly mentioned that the damaged goods had changed colour and were emitting bad smell. *Prima facie* such a stuff could not possibly be sold. A suggestion made in this respect to Inder Raj, the employee, was repelled and he stated as follows:—

> "It is wrong to suggest that the plaintiff had sold the damaged portion of the suit consignment and recovered their price."

Similarly, Chuni Lal stated in cross-examination :

> "It is wrong to suggest that the damaged goods were also sold by our firm * * * * * *."

(13) Apparently, this part has been accepted by the learned Judge, Small Cause Court, and there appears to be no reason to interfere in that finding. Details were given with regard to each consignment and Inder Raj gave the prevailing rates of the tea on the date of taking the delivery of each one of the consignments. These rates are much higher than the rates at which the damages are claimed, apparently because the firm sold the tea at the retail rates. Consequently, I find no reason to interfere with the finding with regard to the quantum either.

(14) For the reasons given above, I accept this revision and grant a decree in favour of the plaintiff-firm, as prayed. The plaintiff-firm will have its costs in the Court below as well as in this Court.

N.K.S.

FULL BENCH

Before D. K. Mahajan, C.J., Pritam Singh Pattar and M. R. Sharma, JJ.

JAGJIT RAI VOHRA, ETC.—*Petitioners.*

versus

THE STATE OF HARYANA, ETC.,—*Respondents.*

Civil Writ No. 3314 of 1973.

April 24, 1974.

Punjab Civil Secretariat (State Service Class III) Rules (1952)—*Rules* 2(*d*), 2(*g*), 5 *and* 6—*Administrative instructions issued by the State Government requiring the Clerks to qualify in a departmental test for being eligible for promotion to the posts of Assistants—Whether violative of the Rules.*