

## APPELLATE CIVIL

*Before Falshaw and Dua, JJ.*

THE UNION OF INDIA,—*Defendant-Appellant*

*versus*

RAJ KUMAR,—*Plaintiff-Respondent*

**Regular First Appeal No. 56 of 1950  
with Cross-Objections**

*Indian Independence (Rights, Property and Liabilities) Order, 1947—Article 8—Consignments of goods entrusted to Railway at a station now in Pakistan for despatch to a station in India—Contract whether for the purposes of the Dominion of Pakistan—Government of India—Whether liable for non-delivery of goods in India.*

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*Held*, that contracts for the carriage of goods from a station now in Pakistan to a station in India by the Railway before the appointed day are contracts covered by Article 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1947. A contract for the carriage of goods over a journey less than one-fourth of which was over what became the Pakistan Railway System, to a place in India, cannot be said to be a contract exclusively for the purposes of Pakistan. In fact even if the contract had been for the delivery of the goods at the nearest city to the border, the contract would still not have been one exclusively for the purposes of Pakistan. The proportion of the journey to be performed over what became Pakistan Railways and what became Indian Railways is not even relevant as long as the goods were to be delivered at a place which was within the boundaries of India after the 15th of August, 1947. It must accordingly be held that the rights and liabilities which accrued under the contracts in suit became the liabilities of the Dominion of India after the 15th of August, 1947 to the extent to which they would have been rights or liabilities of the Governor-General in Council before that date, and the liability for damages for non-delivery must be held to be one of these liabilities.

*Held*, that the failure to move the goods beyond the border into India can only be held to be due to wilful neglect

amounting to misconduct on the part of the Pakistan Railway servants concerned. This misconduct would certainly have been a liability of the Governor-General-in-council, and it must, therefore, become a liability of the Dominion of India in the case of a contract which does not fall in the excluded category of contracts exclusively for the purposes of Pakistan.

*Regular First Appeal from the decree of Shri Jawala Das, Sub-Judge, Ist Class, Ambala, dated the 31st January, 1950, granting the plaintiff a decree for the recovery of Rs. 5,373 as claimed for and leaving the parties to bear their own costs.*

N. L. SALOOJA, H. S. GUJRAL, M. M. PUNCHI and H. R. SODHI, for Appellant.

H. L. SIBAL and N. N. GOSWAMI, for Respondent.

#### JUDGMENT

Falshaw, J.

FALSHAW, J.—These are two appeals by the Union of India (Regular First Appeals Nos. 56 and 69 of 1950) against decrees for Rs. 5,373 and Rs. 5,400 passed by a Court at Ambala in favour of the respondent Raj Kumar.

Both the suits were instituted by Raj Kumar on the 1st of October, 1948 claiming the above sums as damages for the non-delivery of the two consignments of 46 and 47 ingots of brass respectively, which the plaintiff had booked under separate railway receipts on the 28th of July, 1947, for carriage by the North Western Railway from Gujranwala to Jagadhri, the consignee in each case being the plaintiff himself. The fact that the goods never reached their destination is not in dispute. In fact it was admitted in the written statement filed on behalf of the Dominion of India, as it then was, that the goods were still lying at Gujranwala. The defence taken, apart from certain technical pleas regarding notices under section 77 of the Indian Railways Act and section 80,

Civil Procedure Code, with which we are no longer concerned, was that owing to the actions of the Government of Pakistan it was no longer possible to export the goods in question to India without an export permit, and the contract had become impossible of fulfilment by the Government of India in consequence of the failure of the plaintiff to obtain any such export permits. The liability of the Government of India was in any case denied.

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The lower Court has accepted the position that the goods remained lying at the station of despatch, Gujranwala, from the date of booking, the 28th of July, 1947, until after orders in some form or other had been issued by the Pakistan Government banning the export of goods including goods of the kind now in suit. Although the Government failed to produce any copies of such orders and could not prove the date on which they were issued, nevertheless the lower Court held the Government of India liable for damages for non-delivery on the ground that even if the ban on the exports was imposed soon after the date of the creation of the two Dominions, the 15th of August, 1947, no attempt had been made to explain why the goods had not been despatched from Gujranwala and at least crossed the border into India in the seventeen days which elapsed after the date of booking. It was, accordingly, held that the plea raised by the Government that it had been prevented from fulfilling the contract by forces outside its control, or in other words a plea of frustration, could not suffice to absolve it from liability.

Since these suits were decided by the lower Court in 1950, many cases have come before the Courts involving points of this kind and involving the interpretation of Article 8 of the Indian

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Independence (Rights, Property and Liabilities) Order of 1947 and the appeal has been argued before us on somewhat different lines from the way the case was presented in the lower Court.

The relevant portion of Article 8 of the above Order reads—

“8(1) Any contract made on behalf of the Governor-General in Council before the appointed day shall, as from that day,—

(a) If the contract is for purposes which as from that day are exclusively purposes of the Dominion of Pakistan, be deemed to have been made on behalf of the Dominion of Pakistan instead of the Governor-General-in-Council; and

(b) in any other case, be deemed to have been made on behalf of the Dominion of India instead of the Governor-General-in-Council; and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights or liabilities of the Governor-General-in-Council, be rights or liabilities of the Dominion of Pakistan or the Dominion of India, as the case may be.”

There can be no doubt that the contracts in this case are contracts covered by this Article and, therefore, the first question to be decided is whether the contracts could be said to be for purposes which as from that day (i.e., the 15th of August, 1947), were exclusively purposes of the Dominion

of Pakistan. In these cases the contracts were for the carriage of goods from Gujranwala (now in Pakistan) to Jagadhri (in India). The distance of Gujranwala from Lahore is about 45 miles and the distance from Lahore to the border is 17 or 18 miles, while the journey from the border to Jagadhri over the portion of the Railway which fell within the boundaries of India after the separation is about 200 miles. I do not think it can possibly be contended that a contract for the carriage of goods over a journey, less than one-fourth of which was over what became the Pakistan Railway system, to a place in India, was a contract exclusively for the purposes of Pakistan. In fact I would go so far as to say that even if the contract had been for the delivery of goods at Amritsar, the nearest large city to the border, the contract would still not have been one exclusively for the purposes of Pakistan, and I do not consider that the proportion of the journey to be performed over what became Pakistan Railways and what became Indian Railways is even relevant as long as the goods were to be delivered at a place which was within the boundaries of India after the 15th of August, 1947. It must accordingly be held that the rights and liabilities which accrued under the contracts in suit became the liabilities of the Dominion of India after the 15th of August, 1947, to the extent to which they would have been rights or liabilities of the Governor-General in Council before that date, and the liability for damages for non-delivery must be held to be one of these liabilities.

As I have mentioned above the Government in this case, although it produced some correspondence containing reference to the ban on exports without a permit from the Pakistan Government, has not proved (though it should not have been a very difficult matter to obtain a copy of the

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Official Gazette of Pakistan) the date on which this ban was imposed. It has, however, come to our notice in another appeal relating to damages for non-delivery, in which the goods were detained in Pakistan, that the ban on the export of the goods in that case was imposed in February, 1948 and it seems probable that a general ban on goods of all kinds was imposed about the same time. No attempt has been made on the part of the defendant to explain why, even if the goods could not have been moved from Gujranwala past the border before the 15th of August, 1947, they could not have been moved during the period of six months or so which elapsed before the ban was imposed. I myself find it difficult to understand why the goods could not have been moved a sufficient distance even before the 15th of August, 1947, when the Railway was being run by its undivided staff, but even allowing for the disturbances which subsequently took place and priorities which may have been given for sometime after partition to refugee traffic, the failure to move the goods beyond the border into India long before February, 1948, can only be held to be due to wilful neglect amounting to misconduct on the part of the Pakistan Railway servants concerned. This misconduct would certainly have been a liability of the Governor-General in Council, and, as I interpret clause (1) of Article 8 of the Order of 1947, it must, therefore, become a liability of the Dominion of India in the case of a contract which does not fall in the excluded category of contracts exclusively for the purposes of Pakistan.

I am, therefore, of the opinion that in view of these reasons as well as the reasons given by the lower Court, which appear to me to be correct as far as they go, the plea of the defendant that it was absolved from liability because the

goods could only later have been transported under an export permit, must be overruled, and the defendant must be held liable. I would accordingly dismiss the appeals, but in view of the fact that the non-delivery of the plaintiff's goods is to a considerable extent due to the misconduct of Railway servants in Pakistan, whom the Government of India could not control, although it has been made liable under clause (1) of Article 8 of the Order of 1947, I would leave the parties to bear their own costs in the appeals as was done in the lower Court. The cross objections are dismissed with no order as to costs.

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DUA, J.—I agree.

Dua, J.

B.R.T.

SUPREME COURT

*Before Sudhi Ranjan Das, C. J., N. H. Bhagwati,  
Bhuvaneshwar Prasad Sinha, K. Subba Rao  
and K.N. Wanchoo, JJ.*

MESSRS GHAIO MAL AND SONS,—Appellant

*versus*

THE STATE OF DELHI,—Respondents

Civil Appeal No. 481 of 1957.

*Constitution of India (1950)—Article 226—Writ of Certiorari—Object of—Duty of the inferior Court or tribunal when a rule is issued on an application for certiorari—Document conveying sanction—Whether can be construed as sanction.*

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*Held*, that the whole object of a writ of certiorari is to bring up the records of the inferior court or other quasi-judicial body for examination by the Superior Court so that the latter may be satisfied that the inferior court or the quasi-judicial body has not gone beyond its jurisdiction and has exercised its jurisdiction within the limits fixed by the law. Non-production of the records completely defeats the purpose for which such writs are issued.