
CASE COMMENT: BHAGWANDAS B. RAMCHANDANI V. BRITISH AIRWAYS [2022] 11 S.C.R. 539

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ABSTRACT

In 2022, the Supreme Court in the case of *Bhagwandas B. Ramchandani v. British Airways*³ ruled that the *Limitation Act 1963* does not apply to questions of limitation to be determined under the *Carriage by Air Act 1972* since the three Schedules to the *Carriage by Air Act* – being based on international conventions governing carriage by air – represents the international law on the matter and the same cannot be undermined when incorporated domestically by applying the municipal law to those conventions to get different results. Thus, a strict interpretation to the period of limitation as mentioned under 'Rule 30 of Schedule II to the *Carriage by Air Act*' was given by the Supreme Court. By this case comment, the author intends to pose a challenge to that strict interpretation of the limitation period under the *Carriage by Air Act* and make a case for flexible rules of interpretation to be adopted while interpreting sub-rule (2) of Rule 30. Further, it is also suggested that the *Limitation Act* should be applied while interpreting 'Rule 30 of the *Carriage by Air Act*' so that the procedural aspects on which the latter is silent can be covered by the former.

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The Carriage by Air Act of 1972:

The Carriage by Air Act of 1972 incorporated the Warsaw Convention of 1929⁴ (Schedule I to the Carriage by Air Act), the ‘Warsaw Convention as amended by the Hague Protocol of 1955’ (Schedule II the Carriage by Air Act), and the Montreal Convention of 1999⁵ (Schedule III the Carriage by Air Act), and warrants their application to international and national carriage. All the Conventions have the status of law in India.⁶

The Warsaw Convention is a code on ‘carriage by air by international carriages or carriages by State of by legally constituted public bodies, and applies to all international carriage of persons, baggage or cargo performed by an aircraft for reward.’⁷ Chapter III of the Warsaw Convention pertains to liability of the carrier and the extent of compensation to be given for damages along with the limitation for filing suits. The limitation period as prescribed in Schedule I, II and II to the Carriage by Air Act applies where there is destruction, loss or physical damage to the cargo.⁸ Rule 18 of Schedule II to the Carriage by Air Act, delimits the ‘liability of the carrier in the event of destruction, loss, or damage of cargo, and Rule 19 lays down the liability of the carrier for delay in carriage of passengers, baggage or cargo’. Further, Rule 24 of the Schedule II categorically states that any action for damages brought under Rules 18 and 19 should be subject to the Rules as set out in the Schedule II, thereby also limitation, as set out under Rule 30.

Period of Limitation under the Carriage by Air Act:

Rule 30 of the Schedule II, which is a modified adaptation of ‘Article 29 of the Warsaw Convention’, provides the period of limitation. The Rule has been reproduced hereunder.

“Rule 30. (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.”

⁴ ‘Convention for the Unification of Certain Rules relating to International Carriage by Air (with Additional Protocol), Oct. 12, 1929, 137 L.N.T.S. 11.’

⁵ ‘Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, 2242 U.N.T.S. 309.’

⁶ The Carriage by Air Act, 1972, No. 69, §3, 4 & 4A.

⁷ ‘Convention for the Unification of Certain Rules relating to International Carriage by Air (with Additional Protocol), art. 1, Oct. 12, 1929, 137 L.N.T.S. 11.’

⁸ ‘Tej Shoe Exporters (P) Ltd. v. Air India’, 2006 SCC On Line Del 1294 ¶38-39.

“(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.”

‘Article 29 of the Warsaw Convention as amended by The Hague Protocol of 1955’ incorporates limitation provision as stated hereunder.

“Article 29. 1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.”

“2. The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.”

Article 35 of the Montreal Convention as incorporated in Schedule III also includes similar provision on limitation and the same is reproduced hereunder.

“35. – Limitation of Actions. 1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.”

“2. The method of calculating that period shall be determined by the law of the court seized of the case.”

Rule 30 of the Schedule II and Rule 35 of Schedule III of the *Carriage by Air Act* specifically provides the time of two years within which any cause of action should be initiated for claims. ‘Such time period may be calculated from the date of arrival at the destination; the date on which the aircraft ought to have arrived; or the date on which the carriage stopped’. Further, it is left upon the “court seized of the case” to determine the method of calculating the period. However, the challenge of interpretation comes up when the words “law of the court seized of the case” have to be interpreted in view of the strict limitation as provided in sub-rule (1) of Rule 30. The recent judgement passed by the Supreme Court in the case of *Bhagwandas B. Ramchandani v. British Airways* only adds to the concern around the viability of strict interpretation of Rule 30 at the cost of justice for the aggrieved parties.

The Case of Bhagwandas B. Ramchandani v. British Airways:

The appellant Bhagwandas Ramchandani was engaged in the business of exports and imports and on 4th January 2010 sent a 'cargo containing fruits and vegetables from Mumbai to Canada via London by employing the services of British Airways, the respondent'. However, on 6th January 2010, the aeroplane could not depart from London due to bad weather and the cargo of the appellant perished. On 30th June 2010, the appellant sent another cargo from Mumbai to Canada which yet again perished due to some issues. On 20th July 2010, the appellant raised a claim, and acknowledging the same, the respondent sent a mail on 2nd November 2010, offering to settle the matter. When the settlement did not come through, on 15th September 2012, the appellant instituted a suit before the 'City Civil Court, Mumbai for recovery of damages'. The respondent strongly argued that the suit was barred by limitation.

"The City Civil Court held that the suit was not barred by limitation since the period of limitation as prescribed under Rule 30 of the Second Schedule to the *Carriage by Air Act* could be calculated from 28th October 2010, the day when the respondent had acknowledged the proposed settlement of the claim. The court relied on the application of Section 18 of the *Limitation Act* for that purpose. The High Court of Bombay reversed the findings and held that the suit was barred by limitation as the *Carriage by Air Act* was a special statute enacted to give effect to the obligations under an international convention and would have an overriding effect over the *Limitation Act* which was a general statute. Aggrieved, the appellant approached the Supreme Court. Substantial arguments were placed before the apex court around the applicability of the *Limitation Act* to the case when the right to file a suit itself had been extinguished by virtue of the limitation period mentioned under Rule 30 of the Second Schedule to the *Carriage by Air Act* coming to end. Another question to be looked into was whether the *Carriage by Air Act* expressly excluded the application of the *Limitation Act*".

"After looking at 'sub-rule (1) of Rule 30 of Schedule II to the *Carriage by Air Act*', the Supreme Court observed that when a right itself was extinguished, the law of limitation would have no application since there was a distinction of great importance between the extinguishment of a right and the extinguishment of a remedy for the enforcement of that right. Once extinguished, there was no scope to acknowledge that liability later on.⁹ Hence, as Rule 30 used words like "right" and "extinguished" in place of words like "remedy" and "bar", the intention was clear that the right to damages would stand extinguished once the period of two

⁹ 'Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp (1) SCC 499'.

years had expired. Contrastingly, the *Limitation Act* only bars the remedy but does not extinguish it, leaving the scope for it to be acknowledged later, if required.”

However, trouble is faced while understanding sub-rule (2) of Rule 30 which mentions that the method of calculating the period of limitation should be determined by “the law of the court seized of the case”. A plain reading of the words quoted would suggest that the application of the *Limitation Act* is acknowledged. The apex court looked into the *travaux preparatoires* (official records of negotiation; or preparatory work of the treaty) of the Warsaw Convention and remarked that the only matters of which “the law of the court seized of the case” may have to decide, on the true construction of sub-rule (2) of Rule 30, was whether the aggrieved party had approached the court within two years. The same firmly established the intention behind the convention – that is, to bring world-wide uniformity and certainty among the laws governing international aviation. Further, in the jurisdictions of the United Kingdom (UK), the United State of America (USA) and Australia, while interpreting the Warsaw Convention, it had been categorically established that it provided a code which was exclusive of any resort to the domestic law, and the Montreal Convention too envisaged the same position.

It was a well-recognised principle to give effect to municipal law in a manner which was uniform with the international convention. Hence, ‘Rule 30 of Schedule II to the Carriage by Air Act’ expressly excluded the applicability of the *Limitation Act* on claims made in the former. Consequently, the claim of the appellant was held to be barred by limitation under the *Carriage by Air Act*.

“By the Law of the Court Seized of the Case” and its Interpretation:

Apart from Rule 30, sub-rule (2) of Rule 29 of the *Carriage by Air Act*, for that matter, also states that the procedure to be followed while bringing an action for damages should be governed by the law of the court seized of the case. Hence, the procedural law applied in India, that is, the *Code of Civil Procedure of 1908* (CPC) comes into force for the purpose of Rule 29.

For instance, in “*Nahar Spinning Mills Ltd. v. Vijay Hosiery Co. Ltd.*”¹⁰, the suit was filed for

¹⁰ ‘Nahar Spinning Mills Ltd. v. Vijay Hosiery Co. Ltd., 2006 SCC OnLine Del 17; (2006) 129 DLT 50’.

rejection of the plaint under Order VII Rule 11 of the CPC on two grounds, one of them being that the suit was barred by limitation. The suit had been filed on 1st October 1993. However, it went for appeal and was ultimately returned to the trial court on 12th October 2000. Hence, the same was beyond limitation as given under Rule 30 of the Schedule II of the *Carriage by Air Act*". The complainant argued that the time for which the suit was before the appeal court should be excluded for the purpose of calculating the limitation period. The same was provided for in Section 14 of the *Limitation Act*. Moreover, since the question of limitation was itself a contentious issue, it could not be the subject-matter of an application under Order VII Rule 11 of the CPC. The Delhi High Court observed that the suit was filed on 1st October 1993 and returned to that court on 12th October 2000. "Sub-rule (2) of Rule 30 provides for the method of calculating the period of limitation to be determined by the law of the court seized of the case". Part three of the *Limitation Act* has the heading "computation of period of limitation" and indicates the method of calculating the period of limitation as stated in sub-rule (2) of Rule 30. Therefore, Section 14 of the *Limitation Act* would apply to the present case. However, since limitation was itself a contentious issue between the parties, it was not considered proper to deal with it at the stage of suit for rejection of plaint under Order VII Rule 11.

Another case that can be noted is *Indian Airlines v. D.P. Hazra*.¹¹ In that case, an accident occurred with the plane of Indian Airlines on 14th February 1990, and the complainant who was injured in the same filed a suit for compensation on 22nd March 1993. The Airline claimed that the limitation period of two years as provided in 'Rule 30 of Schedule II to the Carriage by Air Act' had ended. However, the complainant argued that since there was an acknowledgement on the part of the airline of the damages caused, the period of limitation would begin from that date, that is, 23rd March 1991 and Section 18 of the *Limitation Act* would get attracted while computing the limitation period under the *Carriage by Air Act*. The court observed that no doubt Section 18 of the Limitation Act provides that if acknowledgement in writing is given before the expiry of limitation period, limitation should be computed from that date. However, there was no express acknowledgement on the part of the airline in this case. Therefore, the court did not look into the application of the said Section 18 of the *Limitation Act* to Rule 30 of the *Carriage by Air Act*, although it held that the

¹¹ Indian Airlines v. D.P. Hazra, 2002 SCC OnLine NCDRC 12; [2002] NCDRC 12.

calculation of period of limitation as mentioned under sub-Rule (2) of Rule 30 would be done in accordance with part three of the *Limitation Act*.

Further, in *VIJ Sales Corporation v. Lufthansa, German Airlines*¹², the case was instituted more than two years after the incident took place. The liability for damage under Schedule II of the *Carriage by Air Act* arises if there has been any destruction, loss or damage to the goods during carriage by air. The goods were lost, but not within the plain meaning of the word “loss” since the consignment was not lost or damaged while transit, but was unauthorisedly delivered to the wrong person. Hence, the case was not one of destruction, loss or damage to the cargo as required under Rule 18 of Schedule II. Therefore, since the case of the complainant was not covered by the *Carriage by Air Act*, the same having been brought within three years was held to be within limitation as per Section 10 and 11 of the *Limitation Act*.

In the case of *Ethopian Airlines v. Federal Chemical Works Ltd.*¹³, it was vehemently argued that loss includes loss of mis-delivery and hence the period of limitation applicable would be two years. Since the suit was filed beyond the period of two years, it was barred by Rule 30 of Schedule II of the *Carriage by Air Act*. The Delhi High Court relied on *Sidhu v. British Airways*¹⁴ and remarked that the Warsaw Convention may not deal with all matters relating to international carriage, however, the matters with which the Convention expressly deals, it seeks to establish a uniform and exclusive rule of law. Consequently, it was held that sub-rule (2) of Rule 30 cannot be said to be in conflict with the main objectives of the law of limitation which differs from country-to-country as leaving the determination of limitation to the Warsaw Convention alone might lead to many difficulties. Therefore, it was held that the suit was not barred by limitation.

The Gujarat High Court, in the case of “*National Aviation Company of India Ltd. v. Jatnadevi Tejraj Jain*”¹⁵ held that the method of calculation of the period of limitation as mentioned in sub-rule (2) of ‘Rule 30 of Schedule II to the Carriage by Air Act’ was to be read in accordance with the *Limitation Act*. Part three of the *Limitation Act* provides for the calculation of period of limitation and the same can be taken to be at par with the method of calculation of the period of limitation under the Schedule II to the *Carriage by Air Act*”. Section 14 of the

¹² ‘VIJ Sales Corporation v. Lufthansa, German Airlines, ILR (1981) 2 Del 749’.

¹³ ‘Ethopian Airlines v. Federal Chemical Works Ltd., AIR 2005 Del 158’.

¹⁴ ‘Sidhu and Others v. British Airways plc; Abnett (known as Sykes) v British Airways plc, [1997] 1 All ER 193’.

¹⁵ ‘National Aviation Company of India Ltd. v. Jatnadevi Tejraj Jain, AIR 2012 Guj 37’.

Limitation Act provides for the exclusion of period for which bona fide proceedings were conducted in a court without jurisdiction. Hence, Section 14 of the *Limitation Act* applies while computing the period of limitation under Rule 30 of the *Carriage by Air Act*.

While examining the history of drafting of the Warsaw Convention, Dyson LJ in “*Laroche v. Spirit of Adventure*”¹⁶ held that Article 29 of the Warsaw Convention as amended by the Hague Protocol of 1955 did not permit the two-year limitation period to be suspended, interrupted or extended by reference to the domestic law. However, by virtue of sub-rule (2), the court seized of the case could determine the precise dates of the beginning and the end of the two-year limitation period and also determine whether the claim was brought within the period of limitation.”

The intention of the drafters of the convention to keep intact the uniformity in the world-wide application of the Warsaw Convention is not challenged since it is understood that the limitation law varies from country-to-country and general application of municipal law of limitation would make it burdensome for the carrier to determine when the limitation period for a claim is suspended, interrupted, or begins to run. It is also understood that the domestic courts are not free to provide own remedies in light of the Convention as doing the same would be akin to undermining the Convention.¹⁷ However, when the Convention is silent on integral procedural aspects, there is no choice left but to take assistance of domestic law.

For instance, in the case of *M.R.F. Limited v. Singapore Airlines Limited*¹⁸, the plaintiff had entrusted cargo to the defendant for import. On arrival of the cargo, it was found to be wet and damaged. A notice was sent to the defendant seeking damages. The plaintiff filed a suit before the consumer forum on 18th September 1998, but the same was dismissed on 24th May 2000 holding that insurance companies do not fall under the definition of “consumer” under the *Consumer Protection Act of 1986*, and liberty was given to file a case before the civil court. The plaintiff, under “Section 14 of the *Limitation Act*, sought for the exclusion of time spent before the consumer forum and contended that the suit was filed within limitation. The defendant contested the same, arguing that it was not filed within two years as is the requirement under Rule 30 of Schedule II of the *Carriage by Air Act*. The Madras High Court,

¹⁶ *Laroche v. Spirit of Adventure*, [2009] 2 All ER 175.

¹⁷ ‘*Sidhu v. British Airways plc*, [1997] 1 All ER 193’.

¹⁸ ‘*M.R.F. Limited v. Singapore Airlines Limited*, 2014 SCC OnLine Mad 247; (2014) 5 CTC 296; (2014) 1 LW 921’.

on the above facts, held that the *Carriage by Air Act* was a special law incorporating an international convention and would hence prevail over the general law, that is, the *Limitation Act*. Therefore, the suit was held to be time-barred as per Rule 30 of Schedule II to the *Carriage by Air Act*, the plaintiff having chosen the wrong forum to make claim, they could not take advantage of their wrong afterwards.

Here, if in good faith, as is provided in Section 14 of the *Limitation Act*, the complainant approached the wrong forum for adjudication of the dispute and later reached the correct forum, if the complainant is made to suffer for an unintentional misjudgement, it would amount to injustice towards the complainant since their right is extinguished. The same cannot be the purport of sub-rule (2) of 'Rule 30 of Schedule II to the Carriage by Air Act' when it seeks to include words like the limitation period should be determined by the law of the court seized of the case. The principle *bonum partem* – the words are prima facie taken to be in their rightful and lawful sense – should be applied to understand the real underlying meaning of Rule 30.¹⁹

If it was not the intention of including sub-rule (2) in Rule 30 to provide flexibility to remedy injustice and do justice whenever required or deemed necessary by the courts seized of the case in accordance with the law of limitation for which the courts would rely on for calculating the period of limitation so as to determine when the limitation period began, then what was the purpose of incorporating such a rule. In *New Pentax Film Inc. v. Trans World Airlines Inc.*²⁰, the plaintiff was allowed to proceed with their claim against the defendant airline even after the two years limitation period mentioned in the Warsaw Convention had ended since the defendant had filed for bankruptcy and all suits had been stayed. Sub-rule (2) of Rule 29 of the Warsaw Convention on limitation simply allow the courts to determine in accordance with the local law when an action is "brought".²¹

It is also important to note that the Parliament has adopted Article 35 of the Montreal Convention in a modified manner. The limitation clauses, that is, Article 35 of the Montreal Convention and Article 29 of the Warsaw Convention as amended by the Hague Protocol of 1955, are worded similarly. However, sub-rule (2) of Rule 35 of Schedule III uses the words "method of *calculating the period of limitation* shall be determined by the law of the court

¹⁹ *Air India v. Development Services (India) Pvt. Ltd.*, (2008) 6 Mad LJ 979.

²⁰ *New Pentax Film Inc. v. Trans World Airlines Inc.* (1996) 936 F Supp 142.

²¹ '*Royal Ins. Co. v. Emery Air Freight Corp.*, (1993) 834 F. Supp. 633'.

seized of the case” whereas Article 35 of the Montreal Convention uses the words “method of *calculating that period* shall be determined by the law of the court seized of the case.” The sub-clause (2) of Article 35 of the Montreal Convention is making a clear reference to the period mentioned in its sub-clause (1) to be calculated by the law of the court seized of the case. The same has been modified while being adopted domestically.

When under sub-rule (2) of Rule 29²² to Schedule II of the *Carriage by Air Act*, where reference is made for action to be brought for damages before courts, it is stated that the question of procedure should be governed by the law of the court seized of the case, and the CPC is actively applied to determine the procedure governing the suit as can be seen from the case of *Nahar Spinning Mills Ltd. v. Vijay Hosiery Co. Ltd.*²³ as discussed before; it is difficult to understand why the same cannot be imported to sub-rule (2) of Rule 30 which incorporates a similar provision. In no way is the need for uniform application of international conventions as established in *Bhagwandas B. Ramchandani v. British Airways*²⁴ doubted. However, it is suggested that the construction of sub-rule (2) of Rule 30 of Schedule II or Rule 35 of Schedule III, for that matter, must not be strict but flexible to do complete justice.²⁵

Suggestions:

In *Bhagwandas B. Ramchandani v. British Airways*²⁶, the British Airways had made an acknowledgement of the proposed settlement of the claim on 28th October 2010, thereby putting the Appellant Ramchandani under the impression that the matter would be settled and removing the prospects of filing a suit for the time being. However, when the settlement did not come through, on the belief of which the Appellant had acted, the Appellant had to approached the court for relief. Not recognising the application of the Limitation Act over the Carriage by Air Act in such procedural matters for the sole reason that the period of limitation must be strictly interpreted seems anomalous when sub-rule (2) of ‘Rule 30 of Schedule II to the Carriage by Air Act’ itself provides from the method of calculation period of limitation to

²² ‘Rule 29 of Schedule II to the Carriage by Air Act, 1972 is reproduced hereunder’,

“29. (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

(2) Questions of procedure shall be governed by the law of the Court seized of the case.”

²³ ‘Nahar Spinning Mills Ltd. v. Vijay Hosiery Co. Ltd., 2006 SCC OnLine Del 17; (2006) 129 DLT 50’.

²⁴ ‘Bhagwandas B. Ramchandani v. British Airways, 2022 SCC OnLine SC 939’.

²⁵ ‘Ninad Laud, *Rationalising "Complete Justice" Under Article 142*, 1 SCC J-30 (2021)’.

²⁶ *Bhagwandas B. Ramchandani v. British Airways*, 2022 SCC OnLine SC 939.

be determined by the law of the court seized of the case. Interpretations of the Warsaw Convention as rendered in many cases²⁷ call for the law of the court to be applied in order to determine the beginning and ending of limitation period. When the CPC can be applied to determine the procedure governing the courts to which cases covered by the *Carriage by Air Act* are sent, by the same token, the *Limitation Act* can also be applied to resolve anomalies that may arise by strict application of the *Carriage by Air Act*.

For instance, if the day on which the two-year limitation period as provided under ‘Rule 30 of Schedule II to the Carriage by Air Act’ is ending on a Sunday, or on a National Holiday, when the courts are closed, and the complainant is left with no choice but to institute the suit on the next day, would the suit of the complainant be barred simply because they are a day late due to one technical aspect. Should the *Limitation Act* not be applied to remedy the situation? Should the complainant lose their right to remedy when they are not at wrong and come with bona fide claims? It is high time that the procedural questions on which the *Carriage by Air Act* is silent are dealt with effectively by the courts by the application of the *Limitation Act*. This in no way implies that the period of limitation as provided in the *Carriage by Air Act* should be extended. All that is intended is for the courts to determine the beginning and the ending of the limitation period in accordance with the principles as enumerated in the *Limitation Act* to do complete justice to the parties.

Is it not the duty of the apex court of the country to step in at such times and provide remedy to the genuine aggrieved complainants. The Supreme Court actively came to the aid of borrowers and granted them exemption on paying interest on loans during moratorium period when the COVID-19 pandemic was ravaging the country.²⁸ In cases like that of *Bhagwandas B. Ramchandani* too, where the aggrieved complainant is left remediless due to promises and written acknowledgements on the part the carrier, the duty falls upon the court to determine the time when the limitation period should ideally be said to begin and end, and the courts have the power to do so under sub-rule (2) of Rule 30 of Schedule II or sub-rule (2) of Rule 35 of Schedule III where the words used are “*method of calculating the period of limitation shall be determined by the law of the Court seized of the case.*”

²⁷ ‘Royal Ins. Co. v. Emery Air Freight Corp., (1993) 834 F. Supp. 633; Sidhu v. British Airways plc, [1997] 1 All ER 193’;

²⁸ *Small Scale Industrial Manufacturers Assn. v. Union of India*, (2021) 8 SCC 511.