

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.166 of 2021

Appellant : Mrs. Parveen Mahmood W/o Shaikh
Mahmood Sultan through M/s. Khaleeq
Ahmed and Muhaymin Aizaz, Advocates

Respondent : Thai Airways International Public
through Dr. Adeel Abid, Advocate

Date of Hearing : 25.08.2026

Date of Judgment: 25.08.2026

J U D G M E N T

Amjad Ali Sahito, J.- This High Court Appeal is directed against the Judgment dated 02.08.2021 and Decree dated 09.08.2021, passed by the learned Single Judge of this Court in Suit No.133 of 1998, whereby the suit instituted by the appellant for recovery of US\$658,650/- along with markup was dismissed on the ground that the claim was barred under Rule 29 of the First Schedule to the Carriage by Air (International Convention) Act, 1966 (**hereinafter referred to as “the Act”**).

2. Briefly stated, the facts giving rise to the instant appeal are that the appellant, a sole proprietor carrying on business under the name and style of “Kashmiri Carpet Weavers”, was engaged in the manufacture and export of hand-knotted carpets. Pursuant to an order placed by a buyer in Australia, the appellant entrusted 43 bales of hand-knotted woolen carpets to the respondent-airline for carriage from Karachi to Melbourne under Airway Bill No.217-5584-3686 dated 20.03.1993. ANZ Australia New Zealand Bank Limited was designated as the consignee Bank, whereas Cecina Pty Ltd., Melbourne, was named as the party to be notified.

3. The appellant's case is that, upon arrival of the consignment at Melbourne, the respondent delivered 11 bales to Cecina Pty Ltd. on 18.06.1993, purportedly in accordance with the instructions of the consignee Bank; however, the remaining 32 bales were not delivered. According to the appellant, the said 32 bales continued to remain in the custody and control of the respondent and, despite repeated inquiries, no satisfactory information was furnished regarding their whereabouts. The appellant eventually served a legal notice dated 07.05.1996, whereafter correspondence ensued between the parties and their respective counsel. The appellant asserts that the respondent initially represented that the matter was under investigation at Melbourne and subsequently, through its letter dated 15.06.1996, took the position that the entire consignment had been delivered to an alleged agent of the consignee.

4. Thereafter, the appellant lodged a formal claim on 17.08.1996 and continued to pursue the matter with the respondent. According to the appellant, the respondent ultimately, through fax dated 11.12.1997, offered a sum of US\$59,180/- as an "ex-gratia" settlement, representing 50% of the claimed value of the 32 missing bales. The appellant declined the said offer and demanded payment of the entire claimed amount. The alleged offer was subsequently withdrawn by the respondent through fax dated 24.12.1997. Consequently, the appellant instituted the suit in the year 1998, claiming US\$658,650/- under various heads, including the value of the goods, markup, duties, rebates, freight, loss of turnover and alleged loss of profit.

5. The respondent contested the suit and, inter alia, invoked the statutory bar contained in Rule 29 of the First Schedule to the Act. The learned Single Judge framed ten issues, including the issue relating to limitation. After recording the evidence and hearing the learned counsel for the parties, the learned Single Judge concluded that the appellant's right to claim damages stood extinguished by operation of Rule 29 of the First Schedule to the Act and, consequently, dismissed the suit without

adjudicating upon the merits of the remaining issues. Hence, the instant High Court Appeal.

6. Learned counsel for the appellant has assailed the impugned Judgment primarily on the ground that the learned Single Judge adopted an overly technical approach in applying Rule 29 of the First Schedule to the Act, without properly appreciating the peculiar facts and circumstances of the case. It has been contended that the appellant could not reasonably have instituted proceedings within the prescribed period of two years, as the respondent itself had represented that the matter was under investigation and had failed to disclose the fate or whereabouts of the remaining 32 bales. According to learned counsel, the appellant remained in continuous correspondence with the respondent and was led to believe that the missing goods were still being traced. It is further contended that the cause of action could not, in the circumstances of the case, be treated as having finally accrued on 18.06.1993, the date on which the consignment arrived at Melbourne, since the appellant's specific case was that the remaining 32 bales continued to remain in the respondent's custody and that it was not informed of their alleged delivery to any other person until the correspondence exchanged in 1996. Learned counsel submits that the respondent's own conduct, particularly its representation that the matter was under investigation, effectively prevented the appellant from instituting proceedings at an earlier stage.

7. Learned counsel for the appellant has further contended that the respondent subsequently acknowledged its liability by offering US\$59,180/-, being 50% of the value claimed in respect of the missing 32 bales. According to learned counsel, such offer amounted to an acknowledgment of liability and, therefore, furnished a fresh starting point for limitation. It is argued that the respondent could not, after acknowledging its liability and offering compensation, subsequently withdraw the offer and seek protection under the statutory bar of limitation. Learned counsel has also submitted that the respondent's alleged delivery of the entire consignment of 43 bales was unauthorized, as the

consignee Bank had instructed delivery of only 11 bales. It is contended that the alleged subsequent delivery of the remaining 32 bales to an unauthorized person constituted negligence, misconduct and misappropriation on the part of the respondent, and that the respondent ought not to be permitted to derive any advantage from its own wrongful act.

8. Conversely, learned counsel for the respondent has supported the impugned Judgment and submitted that the appeal is devoid of merit, as the claim arises out of international carriage by air and is, therefore, governed by the special statutory regime prescribed under the Act. He has contended that Rule 29 of the First Schedule does not merely prescribe a period of limitation; rather, it expressly provides that the “right of damages shall be extinguished” if an action is not brought within two years. Learned counsel submits that, even according to the appellant’s own pleadings, the consignment had arrived at Melbourne and 11 bales had been delivered on 18.06.1993. Thus, reckoning the period from the said date, the statutory period of two years expired in June 1995. The legal notice dated 07.05.1996 and the correspondence that followed were, therefore, initiated after expiry of the statutory period, whereas the suit itself was instituted in 1998. Consequently, by the time the appellant sought judicial enforcement of its claim, the right to recover damages had already stood extinguished by operation of law.

9. Learned counsel for the respondent has further argued that the plea of a continuing cause of action is legally untenable. According to him, subsequent correspondence between the parties, an internal investigation, refusal of the claim, settlement negotiations, or an alleged ex-gratia offer cannot enlarge, extend or revive a right which has already been extinguished by virtue of Rule 29 of the First Schedule to the Act. It has lastly been submitted that the alleged offer of US\$59,180/- was expressly made on an “ex-gratia” basis and in the course of an attempt to amicably settle the dispute. Such an offer, according to learned counsel, neither constituted an unequivocal acknowledgment of legal liability nor possessed the legal effect of reviving a right

which had already been extinguished by operation of the statutory provision. In support of his submissions, learned counsel has relied upon the cases reported as: (1) Kuwait Airways Corporation v. Messrs Union Surgical Company (1986 SCMR 890), (2) Shahanshah Hussain v. Messrs Thai Airways International Limited (2000 MLD 1454), (3) Pakistan International Airlines Corporation v. Shaikh Muhammad Younus (PLD 1976 Karachi 184) and Daoud Shami vs. Messrs Emirates Airline and another (PLD 2011 SC 282).

10. We have heard the learned counsel for the parties and have carefully examined the material available on record.

11. The controversy essentially revolves around the question whether the claim of the appellant, arising out of the alleged non-delivery of 32 bales of carpets, was instituted within the period prescribed under Rule 29 of the First Schedule to the Carriage by Air (International Convention) Act, 1966, and whether the subsequent correspondence between the parties, the investigation allegedly undertaken by the respondent, and the ex-gratia offer made by it could operate so as to extend or revive the statutory period prescribed thereunder. In our considered view, the answer must be determined in the light of the express and unambiguous language employed in Rule 29, which provides for extinguishment of the right to damages where an action is not brought within two years from the relevant date. For ready reference, the relevant provision is reproduced hereunder:

“The right of 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.”

12. A careful perusal of the record reveals that, according to the appellant’s own pleadings, the consignment arrived at Melbourne on 18.06.1993, on which date 11 bales were delivered to the notified party. Even if, for the purposes of determining the question of limitation, the appellant’s assertion regarding the non-delivery of the remaining 32 bales is accepted, the alleged loss arose in connection with the carriage and non-delivery of the

consignment and was, therefore, governed by the special statutory regime applicable to international carriage by air. The period of two years prescribed under Rule 29 consequently expired in June 1995. The appellant, however, admittedly issued the legal notice only on 07.05.1996, after the expiry of the prescribed period, and instituted the suit in the year 1998. The claim was thus instituted well beyond the period within which the right to damages could lawfully be enforced.

13. The contention that the cause of action remained alive merely because the respondent was allegedly investigating the whereabouts of the remaining 32 bales is equally untenable. Mere correspondence between the parties, inquiries made by a claimant, or an internal investigation undertaken by the carrier cannot suspend the operation of a statutory provision which expressly provides for extinguishment of the right itself. Once the period prescribed under Rule 29 expired without an action having been brought, the appellant's right to claim damages stood extinguished by operation of law, and subsequent correspondence could not revive a right which had ceased to exist.

14. More importantly, when confronted with the question whether the appellant had produced any documentary material demonstrating that, following arrival of the consignment on 18.06.1993, it had continuously pursued the matter with the respondent or made any contemporaneous complaint regarding the non-delivery of the remaining 32 bales, learned counsel for the appellant was unable to point to any such evidence on the record. On the contrary, the record indicates that the appellant raised the issue for the first time through letter dated 23.01.1996 (Exh. P/27), i.e. after the expiry of the statutory period prescribed under Rule 29. This circumstance further negates the plea that the appellant had been continuously pursuing its claim or that the respondent's alleged investigation had prevented the appellant from instituting proceedings within the prescribed period.

15. The same principle applies to the alleged ex-gratia offer of US\$59,180/-. The said offer was made in December 1997, considerably after the expiry of the statutory period, and was expressly characterized as an “ex-gratia” payment in the context of settlement discussions. In such circumstances, the offer could neither constitute a fresh cause of action nor have the effect of reviving a right which had already been extinguished by operation of law. The distinction between an ordinary period of limitation and the statutory scheme embodied in Rule 29 is material. Under an ordinary limitation provision, an acknowledgment of liability may, where the governing law so provides, affect the commencement or computation of the period within which a remedy may be pursued. Rule 29, however, goes further by expressly extinguishing the right to damages itself. Once such substantive right has stood extinguished, subsequent correspondence, acknowledgment or settlement proposal cannot restore it in the absence of an express statutory provision authorizing such revival. No such provision has been brought to our notice in the present case.

16. In view of the statutory bar, it is unnecessary for us to adjudicate upon the allegations concerning unauthorized delivery, negligence, misconduct, misappropriation, liability or the value of the allegedly missing bales. Those questions would have arisen for consideration only if the appellant’s claim had survived the statutory requirement prescribed under Rule 29. The mere existence of a dispute as to the manner in which the remaining 32 bales were dealt with cannot arrest or otherwise prevent the statutory extinguishment of the right to damages. Likewise, the plea that the respondent’s alleged wrongful conduct continued from day to day, or that the cause of action remained subsisting until the withdrawal of the settlement offer, cannot be accepted. Subsequent acts or correspondence pertaining to an existing claim do not, by themselves, constitute a fresh cause of action so as to circumvent an express statutory provision extinguishing the right to damages. Equitable considerations, or the alleged conduct of the carrier, cannot prevail over the mandatory language of the statute.

17. For the same reason, it is not necessary for us to determine whether the remaining 32 bales were negligently handled, delivered to an unauthorized person, misappropriated, lost, or otherwise dealt with by the respondent. These matters relate to the merits of the underlying claim and would have fallen for determination only if the appellant had approached the Court within the period prescribed by law. The fact that the appellant may have had an arguable claim on merits cannot defeat or neutralize an express statutory bar. Similarly, the amount allegedly recoverable, the alleged misconduct of the respondent and the question of its liability do not require adjudication once it is concluded that the substantive right to damages had already stood extinguished before institution of the suit.

18. The learned Single Judge was, therefore, not required to undertake a detailed examination of Issues Nos.2 to 10 after deciding Issue No.1 against the appellant. It is a settled principle that where a preliminary issue, going to the root of the proceedings, conclusively determines the enforceability of the claim, the Court is not required to adjudicate upon other issues which thereby become purely academic. In the present case, the finding that the claim was barred and the right to damages stood extinguished under Rule 29 rendered the determination of questions relating to liability, negligence, delivery, loss and quantum unnecessary. The approach adopted by the learned Single Judge, therefore, cannot be construed as a failure to adjudicate the matter on merits; rather, it constituted a proper application of the statutory scheme governing claims arising out of international carriage by air.

19. For the foregoing reasons, we find no error or illegality in the judgment of the learned Single Judge whereby the suit was dismissed on the ground that the appellant's right to claim damages stood extinguished under Rule 29 of the First Schedule to the Carriage by Air (International Convention) Act, 1966. The conclusion reached by the learned Single Judge is borne out by the appellant's own pleadings, the admitted dates and the mandatory language of the applicable statutory provision. The subsequent legal notice, correspondence, alleged investigation

and settlement efforts could neither extend the statutory period nor revive the right to damages after its extinguishment. Once the claim itself had ceased to be legally enforceable, consideration of the remaining issues on merits was wholly unnecessary.

20. Consequently, the impugned Judgment dated 02.08.2021 and Decree dated 09.08.2021 call for no interference. The instant High Court Appeal was accordingly **dismissed**, and the Judgment and Decree passed by the learned Single Judge were **maintained**, with no order as to costs, vide our short order dated 25.08.2026.

JUDGE

JUDGE

KAMRAN/PS