

12.8.2011, 17.8.2011 and 31.8.2011 respectively and the instant suit was filed on 19.1.2014 and hence it is barred on the basis of two years limitation prescribed in the aforesaid rule. He has relied upon the judgment reported in PLD 2002 Karachi 434 (Riaz-ur-Rahm,an Khan versus Lufthansa Gereman Airliens, Quaid-e-Azam International Airport, Karachi) , PLD 1976 Karachi 184 (Pakistan International Airline Corporation, Karachi versus Shaikh Muhammad Younus and 2000 MLD 1454 (Shehanshah Hussain versus Messer Thai Airways International Limited).

Learned Counsel for the plaintiff on the other hand has refuted the contention of the defendant and submits that the instant case of plaintiff is beyond scope of Rule 29 as it is not the case of loss of cargo. It is a case of purposeful and meaningful misappropriation of goods and a deliberate attempt to cause losses to the plaintiff. He has relied upon the Rules 1, 13, 18, 24(1) and 29 of the first schedule provided in section 2 of the Act of 1966. He submits that it is a case of deliberate breach of contract and hence beyond the scope of the applicability of the provisions as relied upon by the learned Counsel for the defendant.

I have heard the learned Counsels and perused the material available on record.

In order to see the applicability of the relevant provisions of the Carriage by (International Convention) Act, 1966 it is necessary for the convenience to go through the provisions of the Act and Rules available in the first schedule to the Act.

"2. **(3)** *Notwithstanding anything contained in the Fatal Accidents Act, 1855, or any other law for the time being in force, the rules contained in the First Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Second Schedule shall determine the persons by whom and for whose benefit and the manner in which such liability may be enforced.*

3. (1) Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any suit brought in a Court in Pakistan in accordance with the provisions of rule 28 of the First Schedule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of the Code of Civil Procedure, 1908.

"5.- (1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of rule 9, be none the less, governed by these rules.

6. (1) The air waybill shall be made out by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier," and shall be signed by the consignor. The second part shall be marked "for the consignee; "it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

8. The air waybill shall contain:

(a) -----;

(b)-----;

(c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the convention governs and in most cases limits the liability of carriers in respect of loss of or damage to goods.

11. (1) The air waybill is prima facie evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

13.- (1) Except in the circumstances set out in rule 12, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

CHAPTER III.-Liability of the Carrier

17.-----.

- 18.** *(1) The carrier is liable for damage sustained in the event of the destruction or loss of or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.*
- 24.** *(1) In the cases covered by rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.*
- 29.** *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.---*

Subsection (3) of Section 2 deals with the applicability of convention notwithstanding contained in Fatal Accident Act, 1855 and that the rules framed as available in the first schedule of the Act shall apply to determine the liability of a carrier in respect of death of passenger and the second schedule determines the person by whom and for whose benefit and the manner in which such liability may enforced. I would score off the applicability of this non obstante cause since it relates to Fatal Accident Act, 1855. The scope of the first schedule which are in fact rules applicable to all international carriage of persons, baggage or goods by aircraft. Part-3 of the Rules which relates to airway bill is relevant and important. It provides that every carrier of goods has the right to require the consignor to make out hand over to him a document called an air waybill. In the same breath it provides that every consignor has right to require the carrier to accept this document. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which are governed under these rules. This airway bill consists of three leaves. The first part is for the carrier duly signed by the consignor. The second part marked for consignee duly signed by the consignor and by the carrier and has to accompany the goods. The third part was required to be signed by the carrier and handed by him to consignor after the goods have been accepted. The airway bill in terms of Rule 8 contains the places of departure and destination. Rule 8(c) relates to a notice to the consignor

to the effect that if the carriage involves the ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss or damage to the goods. The airway bill in terms of Rule 11 prima facie is evidence of the conclusion of contract, of the receipt of the goods and of the conditions of carriage. Rule 13 to me is relevant and crucial as far as the facts of the case in hand are concerned. It provides that consignee is entitled on the arrival of goods at the place of destination, to require the carrier to hand over to him the airway bill and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the airway bill. Chapter-3 of the Rules relates to the liability of the carrier. Rule 18 is also very relevant as far as the facts of the instant case are concerned. It provides that the carrier is liable for damage sustained in the event of the destruction or loss or damage to any registered luggage or any goods if the occurrence which caused the damage so sustained took place during the carriage by air. Rule 24 provides that the cases covered by Rules 18 and 19 the action for damages may be brought, however subject to the conditions and limits set out in this schedule hence reliance is placed on Rule 29 which provides a period of two years from the occurrence of causes. The causes set out in the plaint are beyond the scope of Rule 29 as relied upon by the defendant. The last airway bill provides date of flight as 31.8.2011 and perhaps the expected date of delivery could be within the following 2/3 days.

In terms of annexure-H at page 13 and onwards the plaintiff is perhaps informed of the fact that the consignee has taken the delivery according to Oman Airline Carrier. The letters were continuously written on behalf of the plaintiff and it seems that no response as to the query raised was provided and query was that how and in what way the delivery was given to another person despite the fact that the airway bill

was still with the plaintiff. To whom the airway bill and the goods were delivered is still a mystery.

There are liabilities arising out of a statute and liabilities arising out of a contract which are different and distinct. It is claimed that the goods were delivered to a person and hence it is not a case of loss and thus Carrier's liability is limited in the event of destruction or loss or damage to any registered luggage but not on account of deliberate and meaningful misappropriation.

It is neither the case of destruction nor loss or damage. It is prima facie a case of misappropriation as an attempt was made to deliver the goods without acknowledging the receipt and airway bill. Thus the case is not covered under Rule 18 and Rule 29 insofar as the limitation prescribed therein is concerned.

The judgments cited by the learned Counsel are distinguishable on the ground that it is a breach of contract and a case of deliberate misappropriation of goods. It is not a case of loss or damage to the cargo that statutory limits can be imposed.

In view of the above facts and circumstances, I am not inclined to reject the plaint or dismiss the suit on account of it being barred by limitation in terms of Rule 29. The application is accordingly dismissed.

Judge