**REPORTABLE**

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO. 4978 of 2022**
**ARISING OUT OF SLP (C) NO. 16767/2018**

M/S BHAGWANDAS B. RAMCHANDANI ...APPELLANT(S)

VERSUS

BRITISH AIRWAYS …RESPONDENT(S)

**JUDGMENT**

**PAMIDIGHANTAM SRI NARASIMHA, J**.

1. Leave granted.

2.1 Carriage by Air Act, 1972, incorporates international air traffic conventions of Warsaw, 1929, Hague Protocol, 1955, and Montréal Convention, 1999 in the *First, Second*, and the *Third Schedules* of the Act. Rule 30 of the *Second Schedule*, which incorporates the Hague Protocol, provides that the *right to damages* will be *extinguished* if an action is not brought within a period of two years from the dates mentioned in the Rule. Sub-rule (2) of Rule 30 provides that the method of calculating the period of limitation shall be determined by the law of the Court seized of the matter. As Limitation Act, 1963 is the law applicable to the Courts in India, it is contended on behalf of the consumers of the Airlines

that the exclusion of periods of limitation provided in the Limitation Act shall apply for computation of the period of two years mentioned in Rule 30 (1).

2.2 Two substantial questions of law have arisen for our consideration. The first relates to the applicability of the Limitation Act when the *right* itself is *extinguished*, as against a barring of remedy, as in the case of Section 3 of Limitation Act. The second question is whether the provisions of the Carriage by Air Act, 1972 expressly exclude the Limitation Act, 1963 as provided in Section 29.

2.3 On the first question, we have resolved the apparent conflict between Sub-rule (1) and Sub-rule (2) of Rule 30 by referring to the legislative history of the conventions as provided in the Vienna Convention on the Law of Treaties, 1969. The *travaux preparatoires* leading to the formation of the Convention establishes that the Convention sought to exclude any interruption in the period of two years specified in the Article. We have also followed the well-recognized principle that while interpreting municipal laws giving effect to International Conventions, Courts must endeavor to maintain uniformity in the interpretation in order to sub-serve the very purpose of the Conventions. Having examined the judgments of various jurisdictions, we are satisfied that they are in consonance with the interpretation that we have adopted in construing Sub-rule (2) of Rule 30. Sub-rule (2) in our opinion does not derogate from the intent of Sub-rule (1) excluding the applicability of the

Limitation Act but merely empowers the Court to determine the period of two years.

2.4 On the second question, after examining the provisions of the Carriage by Air Act, 1972, we have held that Rule 30 *expressly excludes* the Limitation Act as provided in Section 29.

***Facts and Proceedings:***

3. The Appellant is a sole proprietary concern engaged in the business of imports and exports. The Appellant sent a cargo containing fruits and vegetables from Mumbai to Canada via London by employing services of British Airways[1] on 04.01.2010. However, on 06.01.2010 due to bad weather conditions in London the flight could not depart to Canada, as a result the fruits and vegetables were damaged and were consequently destroyed. The Appellant lodged a claim for ₹1,70,221.56/- with the Respondent. On 30.06.2010, the Appellant once again sent a similar cargo containing fruits and vegetables from Mumbai to Canada. Yet again, the cargo could not be sent due to packaging and other issues and, as a consequence, the cargo had to be destroyed. The Appellant raised a claim dated 20.07.2010 for ₹4,27,922/-. Acknowledging the receipt of the notice, the Respondent sent a mail on 02.11.2010 offering to settle the matter at 50% of the claim amount.

[1] hereinafter referred to as the 'Respondent'.

4. It is in the above-referred background that the Appellant instituted a suit being OS No. 5164/2012 on 15.09.2012 before the City Civil Court, Mumbai for recovery of the amount of ₹9,17,642.56/-, with interest at the rate of 21% per annum[2]. The Respondent filed written statements stating *inter alia* that the suit is barred by limitation.

***Before the Trial Court:***

5. The Trial Court framed a preliminary issue on the ground of *limitation* and by its judgment dated 05.02.2014 held that the suit is not barred by limitation as the period prescribed in Rule 30 of the Second Schedule to the Carriage by Air Act, 1972[3] could be calculated from 28.10.2010, that is, the date when the Respondent had acknowledged a proposed settlement of the claim at 50% of the demand. For this purpose, the Trial Court relied on Section 18 of the Limitation Act by taking it for granted that the said Act is applicable to proceedings under the Air Act.

6. Aggrieved by the decision of the Trial Court on the preliminary issue, Appellant filed a Writ Petition No. 6647/2014 before the High Court of Bombay. By the judgment impugned herein, the High Court allowed the Writ Petition holding that the suit is barred by limitation. The reasoning adopted by the High Court is that the Air Act, 1972 being a later and a special statute,

[2] For completion of the narration, it may be stated that the appellant had initially approached the District Consumer Forum which took the view that the transaction is commercial in nature and therefore, it did not have the jurisdiction. The appeal and revision against that order were also dismissed, though on the ground of delay.
[3] hereinafter referred to as 'Air Act, 1972'.

will have an overriding effect over the earlier and the general statute, being the Limitation Act, 1963.

***Before the High Court:***

7.1 The High Court relied on the decisions of the High Court of Madras in *M.R.F. Ltd. v. M/s Singapore Airlines Ltd.*[4], *M/s Air India Bombay Airport and Another v. M/s Asia Tanning Co. and Anr.*[5], *The Shipping Corporation of India Ltd., Bombay and Anr. v. Union of India*[6], *The East and West Steamship Company, Georgetown, Madras v. S.K. Ramalingam Chettiar*[7], *Air India Ltd. v. Tej Shoe Exporters P. Ltd. and Anr.*[8] and *Gulf Air Company v. Nahar Spinning Mills Ltd. and Others*[9] which took the view that Carriage by Air Act, 1972 excludes the applicability of Limitation Act. The High Court observed that: -

> "30. *Thus, consistent view taken by the Apex Court and also by various High Courts is that the Carriage by Air Act 1972, being a special statute, enacted to give effect to the international convention, the provisions thereof will have an overriding effect. In view thereof, section 18 of the Limitation Act, which is a general enactment, cannot have any application in the present case to extend the period of limitation, which is prescribed in Rule 30 of Schedule II of the Act.*"

[4] 2014 SCC Online Mad 247.
[5] 2002 SCC Online Mad 802.
[6] 2004 SCC Online Mad 489.
[7] AIR 1960 SC 1058.
[8] 2013 SCC Online Del 3749.
[9] 1999 SCC Online P&H 915.

7.2 As a consequence of such a decision, the High Court set aside the decision of the Trial Court on the preliminary issue and held that the suit is barred by limitation and dismissed the same.

***Submissions:***

8.1 Shri Vinay Navare, Senior Advocate, appearing for the Appellant submitted that Section 29(2) of the Limitation Act provided that unless the Limitation Act is *expressly excluded*, its provision applies to any law prescribing a distinct period of limitation. He submitted that Rule 30 of the Second Schedule of the Air Act, 1972 has not expressly excluded the applicability of the Limitation Act. He further submitted that Rule 30 (2) explicitly enables "*method of calculating the period of limitation*" based on the law of the Court seized of the case. On this basis, he urged that the provisions of the statutes are complementary to each other and must be read harmoniously. He fairly brought to our notice the judgment of the Court of Appeal in the United Kingdom in *Laroche* v. *Spirit of Adventure (UK) Ltd.*[10] and the judgment of the Second Circuit of the United States Court of Appeals in *Fishman* v. *Delta Airlines*[11]. In these cases, the Courts have taken the view that the municipal laws governing the period of limitation are not to be applied for claims made under the statutes based on international conventions. Shri Navare distinguished these judgments on the ground that the statutory

[10] (2009) EWCA Civ 12.
[11] 938 F. Supp. 228 (1996)

position based on Section 29(2) of the Limitation Act read with correct interpretation of Rule 30 of Second Schedule of the Air Act,1972 would stand on a different footing, and therefore these judgments are distinguishable.

8.2 Ms. Ritu Singh Mann, Advocate for the Respondent-Airlines, primarily contended that the exclusion under Section 29(2) can be implied from the provisions of the Air Act,1972. The Learned Counsel relied on the judgment of this Court in *Hukumdev Narain Yadav* v. *Lalit Narain Mishra*[12]. In the written submissions, for the first time, the Respondent sought to argue that it is Rule 35 of the Third Schedule and not Rule 30 of the Second Schedule of the Air Act, 1972 which will be applicable to the case at hand[13]. Our attention was also drawn to the judgments of the Courts in United Kingdom (*Sidhu* v. *British Airways*[14], *Philips* v. *Air New Zealand*[15]), the United States of America (*Fishman* v. *Delta Airlines*[16], *Kahn* v. *Trans World Airlines*[17]) and Australia (*Bhatia* v. *Malaysian Airline System Berhad*[18]) to buttress the submissions.

***Issues:***

9. In view of the rival submissions, the following issues arise for consideration:

[12] (1974) 3 SCR 31.
[13] The submission of the Respondent, taken for the first time in the written submission that it is Section 4A and the Third Schedule of the Act, which is applicable need not detain us as there is virtually no difference between Rule 35 of the Third Schedule and Rule 30 of the Second Schedule. We will therefore proceed based on Second Schedule only.
[14] [1997] 1 All ER 193
[15] (2002) EWHC 800 (Commercial Court).
[16] *Supra no.* 11.
[17] 82 A.D. 2d 696: (1981) 443 NYS 2d 79.
[18] (2018) FCA 1471.

1. Does Limitation Act, 1963 apply to the period specified in Rule 30 of the Second Schedule of the Carriage by Air Act, 1972?
2. Whether the Air Act, 1972, particularly Rule 30 of the Second Schedule expressly excludes the applicability of the Limitation Act, 1963?

***Issue No.1:***

***Does Limitation Act, 1963 apply to the period specified in Rule 30 of the Second Schedule of the Carriage by Air Act, 1972?***

10. It is to be noticed that matters concerning the international carriage of persons, baggage, or cargo performed by aircraft for reward are the subject matter of International Conventions. These are incorporated into our laws through the Schedules to the Air Act, 1972. Section 3[19] of the Air Act, 1972 incorporates the Warsaw Convention, 1929[20] into the *First Schedule* and specifically provides that it shall have the *status of law* in India. Section 4[21] incorporates the Hague Protocol dated 28.09.1955 and provisions it in the *Second Schedule* and gives it the *status of law* in India. Similarly, Section 4A[22] brought into force in 2009 for giving effect to the Montréal Convention,

[19] **Section 3: Application of Convention to India**
*(1) The rules contained in the **First Schedule**, being the provisions of the Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees, and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.*

[20] *Convention for the Unification of Certain Rules Relating to International Carriage by Air,* Signed at Warsaw on 12 October 1929.

[21] **Section 4: Application of amended Convention to India**
*(1) The rules contained in the **Second Schedule**, being the provisions of the amended Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage."*

[22]**Section 4A: Application of Montreal Convention to India**
*(1) The rules contained in the Third Schedule, being the provisions of the Montreal Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees, and other persons, shall, subject to the*

1999[23] incorporates it in the *Third Schedule* to the Act and gives it the *status of law* in India.

11. Chapter III of the Second Schedule relates to, '*Liability of the Carrier'*, which recognizes the principle of International Law of *lex fori*, as per which suits and proceedings in the judicial fora of the member nations are to be governed by the law of the Court in which the proceeding is instituted[24]. This principle is recognized by Rule 29(2) of the Second Schedule itself;

> *"Rule 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 have jurisdiction at the place of destination.*
> *(2) Question of procedure shall be governed by the law of the Court seized of the case."*

12. The procedural law governing the institution and adjudication of civil suits in India includes the Civil Procedure Code,1908 as well as the Limitation Act, 1963. The Limitation Act is a branch of adjectival law, and applies to all proceedings which it governs from the date of its enactment. There is however a well-established principle, which states that when the *right* itself is extinguished, the provisions relating to limitation have no application. A

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*provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage*

[23] *Convention for the Unification of Certain Rules Relating to International Carriage by Air,* Signed at Montreal on 28 May, 1999.

[24] *Rukmaboye v. Lulloobhoy Motichand* (1935) 5 HIA 234.

direct example where the right itself is extinguished, can be evidenced in Section 11[25] as well as Section 27[26] of the Limitation Act, 1963. Section 11 deals with suits filed in India with respect to contracts entered in foreign countries. Following the Principle of *lex fori*, the Section provides that rules of limitation provided in a foreign jurisdiction are not applicable. However, the exception to this Rule is provided in Section 11 (2)(a), when the Contract i.e., the right itself expires. Similarly, Section 27 also recognizes the principle of *extinguishment* of Right to Property being an exception to the applicability of the Limitation Act, 1963.

13.1 The distinction between barring a remedy as exception is well established, as can be seen in the following precedents. The extinguishment of the right and its effect on limitation is well recognized by courts of law. We may refer to some of the important precedents.

13.2 A similar issue as in the present case, arose for consideration in *The East and West Steamship Company v. S.K. Ramalingam Chettiar*[27], where this Court had to consider 3rd Clause of Para 6 of Article III in Schedule to the

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[25]**Section 11. Suits on contracts entered into outside the territories to which the Act extends**
(*(1) Suits instituted in the territories to which this Act extends on contracts entered into in the State of Jammu and Kashmir or in a foreign country shall be subject to the rules of limitation contained in this Act.*
*(2) No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defence to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless-*
*(a) the rule has extinguished the contract; and*
*(b) the parties were domiciled in that State or in the foreign country during the period prescribed by such rule.*

[26]**Section 27. Extinguishment of right to property**
*At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.*

[27] *Supra no*. 7.

Indian Carriage of Goods by Sea Act, 1925[28] wherein, while interpreting the expression *discharge from the liability*, this Court held as under: -

> *"....The question we have to decide is whether in saying that the ship or the carrier will be "discharged from liability", only the remedy of the shipper or the consignee was being barred or the right was also being terminated. It is useful to remember in this connection the international character of these rules, as has been already emphasized above. Rules of limitation are likely to vary from country to country. Provisions for extension of periods prescribed for limitation would similarly vary. We should be slow therefore to put on the word "discharged from liability" an interpretation which would produce results varying in different countries and thus keeping the position uncertain for both the shipper and the shipowner. Quite apart from this consideration, however, we think that the ordinary grammatical sense of "discharged from liability" does not connote "free from the remedy as regards liability" but are more apt to mean a total extinction of the liability following upon an extinction of the right. We find it difficult to draw any reasonable distinction between the words "absolved from liability" and "discharged from liability" and think that these words "discharged from liability" were intended to mean and do mean that the liability has totally disappeared and not only that the remedy as regards the liability has disappeared. We cannot agree with the learned Judge of the Madras High Court that these words merely mean that "that even though the right may inhere in the person who is entitled to the benefits, still the liability in the opposite party is discharged by the impossibility of enforcement. "The distinction between the extinction of a right and the extinction of a remedy for the enforcement of that right, though fine, is of great importance. The Legislature could not but have been conscious of this distinction when using the words "discharged from all liability" in an article purporting to prescribe rights and immunities of the shipowners. The words are apt to express an intention of total extinction of the liability and should, specially in*

[28] *"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered."*

*view of the international character of the legislation, be construed in that sense. It is hardly necessary to add that once the liability is extinguished under this clause, there is no scope of any acknowledgment of liability thereafter."*

13.3 In *RM. AR. AR. RM. AR. Ramanathan Chkttiar and others v. K.M.CL.M. Somasundaram Chettiar and Ors.*[29], it was held as follows: -

> *"It is a well-accepted rule of International Law that all matters of procedure will be governed by the law of the country in which the Court where any legal proceeding is initiated is situate. Statutes of limitation in so far as they prescribe periods within which claim should be enforced, whereby the remedy alone is barred, are regarded as merely procedural.*
>
> *But there may be provisions in such statutes which extinguish the rights of the parties. S. 28 of the Indian Limitation Act is an instance where on the remedy being barred the right to property also stands extinguished. In such a case, that is, where there is no right alive by reason of its extinguishment by a statute there could obviously be nothing to be enforced in that country or in any foreign country. Provisions of that kind cannot be regarded as merely procedural as they create or destroy substantive rights of parties. This principle has been recognised in a statutory-form in S. 11 (2) of the Indian Limitation Act."*

13.4 In *Punjab National Bank and others v. Surendra Prasad Sinha*[30], this Court held:

> *"5. ...The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act 36 of 1963, for short "the Act" only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation is that the right itself is destroyed.*

[29] (1964) 77 LW 399.
[30] 1993 Supp (1) SCC 499.

> *For example, under Section 27 of the Act a suit for possession of any property becoming barred by limitation, the right to property itself is destroyed. Except in such cases which are specially provided under the right to which remedy relates in other case the right subsists. Though, the right to enforce the debt by judicial process is barred under Section 3 read with the relevant article in the schedule, the right to debt remains. The time barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What Section3 refers is only to the remedy but not to the right of the creditors. Such debt continues to subsist so long as it is not paid…."*

13.5 The principles laid down in the above referred precedents are consistently followed in decisions of this Court in *Khadi Gram Udyog Trust* v. *Ram Chandraji Virajman Mandir*[31], *State of Kerela and Ors. v. V.R. Kalliyanikutty and Anr.* [32] and also in *Prem Singh and Ors. v. Birbal and Ors.*[33].

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[31](1978) 1 SCC44.
"*4. ……There is ample authority for the proposition that though a debt is time-barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's Laws of England (Third Edn.) Vol. 24 at p. 205, Article 369, it is stated "except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set-off; it leaves the right otherwise untouched and if a creditor whose debt is statute-barred has any means of enforcing his claim other than by action or set-off, the Act does not prevent him from recovering by those means". The Court of appeal in Curwen v. Milburn [(1889) 42 Ch D 424] Cotton, LJ said: "Statute-barred debts are dues, though payment of them cannot be enforced by action." The same view was expressed by the Supreme Court in Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay [AIR 1958 SC 328: 1958 SCR1122 : (1958) 1 Lab LJ 778] where it held that the statute limitation only bars the remedy but does not extinguish the debt, except in cases provided for by Section 28 of the Limitation Act, which does not apply to a debt."*

[32](1999) 3 SCC 657
"*15. It has been submitted before us that the statute of limitation merely bars the remedy without touching the right. Therefore, the right to recover the loan would remain even though the remedy by way of a suit would be time-barred. Reliance was placed on Khadi Gram Udyog Trust v. Ram Chandraji Virajman Mandir, (1978) 1 SCC 44 in this connection. The Court there observed that though a debt may be time-barred, it would still be a debt due. The right remains untouched and if a creditor has any means of enforcing his right other than by action or set-off, he is not prevented from doing so. In Punjab National Bank v. Surendra Prasad Sinha [1993 Supp (1) SCC 499] this Court held that the rules of limitation are not meant to destroy the rights of parties. Section 3 of the Limitation Act only bars the remedy but does not destroy the right which the remedy relates to. Excepting cases which are specifically provided for, as for example, under Section 27 of the Limitation Act, the right to which the remedy relates subsists. Though the right to enforce the debt by judicial process is barred, that right can be exercised in any manner other than by means of a suit. For example, a creditor's right to make adjustment against time-barred debts exists*."

[33]*(2006) 5 SCC 353.*

14. In view of the well-established position of law relating to *Lex Fori* in International Law, with the equally well-established exception arising out of the extinguishment of the right or the liability itself, we will now examine the position in India as per Rule 30 in the Second Schedule of the Air Act, 1972 relating to liability of the carrier. Rule 30 is of the Air Act, 1972 is extracted as under: -

> "*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.*
> *(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.*"

***Analysis of Sub-Rule (1) of Rule 30*:**

15.1 While Rule 29 speaks about judicial *remedy* for initiating an action for damages, Rule 30 uses the expression *right to damages.* It is in the context of *right* as against a *remedy* that the purpose, object and meaning of Rule 30 is to be understood. Further, Rule 30 also uses the expression *"extinguishment"* as against "*bar*", which is generally used in the context of a remedy. Therefore, the *extinguishment* is of right, that is, the *right to damages* is the subject matter of Sub-Rule (1) of Rule 30. The expressions, '*right*' and '*extinguished*' employed by the Convention as adopted and incorporated by the Parliament in Rule 30 of

*"11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."*

the Second Schedule clearly establishes the intention of the law-giver that the *right to damages* would not subsist after the expiry of the period mentioned therein.

15.2 Once the right to damages is extinguished upon the expiry of two years reckoned from the three alternative dates mentioned in the Rule itself, nothing would remain for enforcement. Section 3 of the Limitation Act only bars the remedy, but when the right itself is extinguished, provisions of the Limitation Act have no application. For this reason, in *The East and West Steamship Co.*[34], this Court held that once the right of liability is extinguished under the clause, there is no scope of acknowledging the liability thereafter.

15.3 This is the position of law is obtained from the plain language of Sub-Rule (1) of Rule 30. The position is however very different when we proceed further to consider Sub-Rule (2) of Rule 30.

***Sub-Rule (2) of Rule 30*:**

16.1 Sub-Rule (2) is extracted as under: -

> "*(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case."*

16.2 In its plain and simple language, Sub-Rule (2) seems to adopt the applicability of the Limitation Act, 1963 as Courts in India exercise jurisdiction. '*The method of calculating the period specified in Sub-rule (2)*

[34] *Supra no.* 7.

*naturally relates to the period*' specified in Sub-rule (1). Sub-Rule (1) identifies and fixes two incidents. The period of limitation and the date of commencement of the said period (the three specified dates). Therefore, when the period of limitation, as well as the date of commencement of the said period, are already given, *the method of calculation of the period of limitation* contemplated under Sub-Rule (2) must relate to some other factor. However, without specifying the variable to which the method of calculating the period, is to apply, Sub-rule (2) merely provides that it *"shall be determined by the law applicable to the Court seized of the case."* This has caused uncertainty about the intent of the lawmakers, be it the Convention or Rule 30 of the Second Schedule of the Act.

16.3 Further, the expression in Rule 30(2) *calculating the period of limitation* is synonymous to the expression computation of period of limitation provided in Part-III of the Limitation Act, 1963. Part-III which relates to the exclusion of certain time periods is to sub-serve a just cause based on public policy which recognizes human vulnerabilities. Broadly, these periods relate to (i) the date from which the period is to be reckoned (Section 12); (ii) the time taken for seeking to contest as a pauper, (Section 13); (iii) the *bona fide* period involved in the perusal of a remedying the wrong Court (Section 14); (iv) fraud (Section 17); (v) acknowledgment of debt (Section 18); (vi) admitted payments on account of debt (Section 19); (vii)

continuous breach etc. These are the periods that can be excluded while computing the period of limitation under the Limitation Act, 1963.

17.1 It is in the above-referred context that Shri Navare, learned counsel appearing on behalf of the Appellant has emphasized the affirmation of the Limitation Act to proceedings under the Air Act, 1972 as per the plain language of Rule 30(2) and submitted that the expression, *'method of calculating limitation period'* in Rule 30(2) is akin to the expression '*for the purpose of determining any period of limitation'* provided in Section 29(2) of the Limitation Act. He contends that the Sub-Rule (2) of Rule 30 specifically incorporates Limitation Act into the legal regime of the Air Act, 1972.

17.2 On the other hand, Ms. Ritu Singh Mann, relied on Section 29(2) of the Limitation Act to submit that the provisions of the Limitation Act are expressly excluded by the special law of the Air Act, 1972. The written submissions emphasized the purpose and object of the International Conventions, which provided for '*collective State action for further harmonization and codification of certain rules governing international carriage by Air'*. It is then submitted that if courts of every signatory state were to interpret the provisions of the Convention in their own way, then the very purpose of achieving uniformity in application of the Conventions would be lost. For the first time in the written submissions, the Respondent has taken a plea that it is Rule 35 of the Third Schedule and not Rule 30 which will be applicable. However, on consideration we do not find any notable difference

between the two and hence, we would proceed to refer Rule 30 of the Second Schedule in our further analysis.

18. The rival submissions surface due to an apparent conflict between Sub-Rule (1) and Sub-Rule (2) of Rule 30 of the Second Schedule. *While Sub-Rule (1) extinguishes the right itself upon the expiry of the period of two years, after which nothing would remain for enforcement, Sub-Rule (2) seems to suggest that the Court seized of the case can apply the law of limitation* applicable to its proceedings and entertain the suit of the proceedings. We will now analyze and interpret Rule 30 of the Second Schedule.

19.1 However, before we proceed to interpret Rule 30, it is necessary to clear certain doubts about the applicability of the correct Schedule. While the suit was instituted on the assumption that it is Rule 30 of the Second Schedule adopting the Warsaw Convention, 1929 as amended by the Hague Protocol, 1955 would be applicable to the proceedings, the Trial as well as the High Court and even the parties assumed that this is the correct Rule that would apply to the facts of the case. It is for the first time in the written submission that the Respondent stated that it is Rule 35 of the Third Schedule of the Montréal Convention, 1999 that will apply to the facts of the case. The change in the stand is apparently due to the deletion of two words "*of limitation*" occurring in Sub-Rule (2) of the Second Schedule from the same provision introduced under Rule 35 of the Third Schedule. Based on this minor change the Appellant advanced an argument in the written submission that the

conscious deletion of the expression *"of limitation"* clarifies the position that Sub-Rule (2) only relates to a period of two years and has got nothing to do with "a period of limitation" and therefore, the Limitation Act has no application.

19.2 A comparative statement of the Third Schedule relatable to the Warsaw Convention, 1929, Warsaw Convention as amended by Hague Protocol, 1955, and the Montréal Convention of 1999 is reproduced herein for ready reference: -

| ***Rule 29 Schedule I*** *(Article 29 of the Warsaw Convention, 1929)* | ***Rule 30 Schedule II*** *(Article 29 of the Warsaw Convention as amended by Hague Protocol, 1955)* | ***Rule 35 Schedule III*** *(Article 35 of the Montreal Convention, 1999)* |
|---|---|---|
| *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.* | *(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.* | *(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 the period* ***of limitation*** *shall be determined by the law of the Court seized of the case.* | *(2) The method of calculating the period shall be determined by the law of the Court seized of the case.* |

19.3 It would be apparent from the above that even after the deletion of the expression "of limitation" in the Montréal Convention of 1999, the difficulty

persists in as much as Sub-Rule (2) talks about the method of "calculating the period" and as such a period must necessarily relate to the period of two years as specified in Sub-Rule (1) of Rule 30. Calculation of the period for an action for damages would necessarily involve law of Limitation as that is an adjective statute governing suits and other proceedings instituted in India. Even assuming that the deletion of the expression brings more clarity to the scope and ambit of the Rule, that will be confined to Rule 35(2) of the Third Schedule and the difficulty would continue to prevail with respect to the period during which Rule 30 of the Second Schedule operates. It is, therefore, compelling and the primary duty of the Court to analyze, interpret and declare the true and correct meaning of the said provision.

***Interpretation***

20. Our task is to decipher and declare the correct meaning and purport of Rule 30 of the Second Schedule of the Act. Schedule Two of the Act merely incorporates the Warsaw Convention, as amended by the Hague Protocol, 1955. It is well known that incorporation of a Convention or a treaty into municipal laws is normally carried out in three ways and the status that it enjoys depends on the nature of incorporation. Referring to the *Use of International treaties* in Part XIV under Section 221, Francis Bennion[35] observed as under:

[35]See, Bennion on Statutory Interpretation, 6th Edition, 2013. [Part XIV: The Informed Interpretation Rule (Legislative History), pg. 632.]

*"(1) An international treaty may have three different kinds of status, considered as a source of law-*

*(a) an Act may embody, whether or not in the same words, provisions having the effect of the treaty (in this Code referred to as direct enactment of the treaty);*

*(b) an Act may say that the treaty is itself to have effect as law, leaving the treaty's provisions to apply with or without modification (in this Code referred to as indirect enactment of the treaty);*

*(c) the treaty may be left simply as an international obligation, being referred to in the construction of a relevant enactment only so far as called for by the presumption that Parliament intends to comply with public international law.*

*(2) Whichever status a treaty has, its provisions may be referred to as an aid in the interpretation of a relevant enactment. So too may its preparatory work (travaux preparatoires), the decision on it of foreign courts (la jurisprudence) and the views on it of foreign jurists (la doctrine)."*

21. Vienna Convention on Law of Treaties, 1969 can be referred to as a "*treaty on treaties"*. It establishes comprehensive rules, procedures, and guidelines for how treaties are defined, drafted, amended, interpreted, and generally operated. Section 3 of Vienna Convention relates to *interpretation of treaties*, of which Articles 31 and 32 are relevant for our purposes and are extracted herein below for ready reference.

*"SECTION 3. INTERPRETATION OF TREATIES*

*Article 31: General rule of interpretation*
*1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

*2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:*

*(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;*

*(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.*

*3. There shall be taken into account, together with the context:*

*(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*

*(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;*

*(c) any relevant rules of international law applicable in the relations between the parties.*

*4. A special meaning shall be given to a term if it is established that the parties so intended."*

22. Apart from Article 31, it is also important for us to note Article 32 which relates to "Supplementary means of Interpretation".

*"Article 32: Supplementary means of interpretation*

*Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:*

*(a) leaves the meaning ambiguous or obscure; or*

*(b) leads to a result which is manifestly absurd or unreasonable."*

23. When statutes are enacted to give effect to a treaty or convention, Articles 31 and 32 of the Vienna Convention becomes relevant for interpretation of such

statutes[36]. The court must be untrammeled by notions of its national legal culture, for the true, autonomous and international meaning of the treaty. And, there can only be one true meaning.[37] One event of adaptation of this method occurred in the case of *Fothergill* v. *Monarch Airlines*[38], in construing the Carriage by Air Act, 1961[39] in the United Kingdom which was enacted to give effect to the Warsaw Convention. The House of Lords held that in dealing with such an Act, a purposive construction should be applied and reference could be made to the opinion of international jurists as also to *travaux preparatoires* of the convention in a limited sense.[40]

24. Following Article 32 authorizing recourse to supplementary means of interpretation, including preparatory works of a treaty, we will now proceed to examine the legislative history of Article 29 of the Warsaw Convention, 1929 which eventually was modified in 1955 in the Hauge Protocol and thereafter by the Montréal Convention in 1999. The original draft of this clause as of 1929 occurred as Article 28 was as under:

> "28. *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.*

[36] *R v. Secretary of State for the Home Department exparte Adan*, (1999) 4 All ER 774. p. 785 (CA);
[37] *R. (on the application of Mullen) v. Secretary of State for the Home Department* (2004) 1 All ER 65, p. 84) See further, Justice G.P. Singh, Principles of Statutory Interpretation. 14th Edition, pg 693.
[38](1980) 2 All ER 696.
[39]The Act sets out the convention in a schedule in two parts. Part I sets out the English text and Part II, the French text. In case of inconsistency, the Act says that the French text is to prevail.
[40](1980) 2 All ER 696: (1981) AC 251.

> *(2)"the manner of calculating the period of limitation, as well as the causes for suspension and interruption of the period of limitation, shall be determined by the law of the forum court."*

25.1 The above draft fell for consideration before it was adopted in the convention as Article 29. The member States deliberated on the proposed Articles of the Carriage by Air Convention between 4th to 12th October, 1929 in Warsaw. During the process, the members deliberated on Article 28 on 07.10.1929. At that time, Republic of Italy raised the following objection with respect to the draft Article:

> "*The period of time, in order that there be interruption of the period of limitation, varies with the country, and it is very difficult for the shipper, the consignor to know when the interruption or the suspension begins. Despite the period of two years fixed for the period of limitation, he must always wait until this period of limitation runs and this period of two years which is necessary to give some kind of tranquility is modified.*
> *Moreover, the system which we have proposed becomes very simple; if two years after the accident no action has been brought, all actions are extinguished. As a consequence, the second paragraph would disappear, and it would be necessary to modify the first paragraph in adding some words to better render the formula. We get across the meaning, but, from the French point of view, perhaps the wording needs to be reexamined.*"[41]

It was further elaborated in their memo that:

> "*If one considers that the period of limitation is long enough and that, particularly taking into account the causes of suspension, it may, according to the law of several countries, be prolonged indefinitely, it's not a good idea to refer the determination of the*

[41]Robert C.; Legrez Horner, Didier, Translators. Second International Conference on Private Aeronautical Law, October 4-12, 1929, Warsaw: Minutes (1975) at p.110.

> *aforementioned causes to the law of the court chosen by the plaintiff. Perhaps the law of the aircraft's nationality could constitute a surer and more just element of determination vis a vis the carrier. The above-cited disadvantages could be eliminated in a more radical fashion in substituting for the period of limitation a period of forfeiture. This would render the second paragraph useless. Moreover, one must add, after the word 'instituted' the phrase 'under penalty of forfeiture'*[42]."

25.2 Their objection stemmed from the concerns expressed by shippers, who would be subjected to multiple jurisdictions without any clarity with respect to the position of law in each jurisdiction. It is in this context, that the Italian Delegation sought amendment of Article 29 seeking immunity from interference on the ground of limitation, which varies from jurisdiction to jurisdiction, causing great amount of uncertainty. In reply, the Delegation from France stated:

> *"MR. RIPERT (France): I am not at all opposed to the Italian proposal, but it is aimed, in the final analysis, only at the causes of suspension of the period of limitation, which must disappear. It must, all the same, be indicated that it's the law of the forum court which will fix how, within the period of two years, the court will be seized, because in all the countries of the world suits are not brought in the same way.*
> ***One has to act within two years; who will fix the beginning of the suit? A text is necessary which says that it will be the forum court which will say if the suit was properly begun. In France, there is the pretrial conference; in other countries referral to the civil court is indispensable; but I am very much of the opinion that we must eliminate the interruption of the period of limitation, and I ally myself with the Italian proposal.***

[42] *Ibid*. Pg 112-113.

> *MR. MOTONO (Japan): I'd like to point out one question of wording. The liability action means interruption of the period of limitation.*
> *MR. RIPERT (France): Exactly, it's because the suit is not introduced in all countries in the same way that it has to be, that the forum court will indicate how it must be introduced.*"[43]

25.3 After the deliberations, Sub-Article (2) was modified and in its place, the following clause was inserted and the Convention was brought into force. Thus, Article 29 in its present form is as under:

> *"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."*

26. We must at this stage mention a minor fact, which has no bearing on the issue that we are concerned with but it is necessary to make a reference to it. We have noticed that sub-article (2) of Article 29 of the Warsaw Convention, 1929 does not find place in Rule 29 as incorporated in Schedule I of the Indian Carriage by Air Act, 1934. After independence, when the Parliament enacted the Carriage by Air Act, 1972, after repealing the 1934 Act and incorporated the Warsaw Convention, 1929 in First Schedule. Here also sub-article (2) of the Warsaw Convention is missing in Rule 29. However, Second Schedule incorporating the Warsaw Convention, as

[43] *Ibid* pg 111.

amended by the Hague Protocol, 1955 consisting of the Article 29 (1) and (2) is fully incorporated in Rules 30 (1) and (2) in the Second Schedule. We need not say anything more than this after noting the minor variation.

27. The legislative history of the Warsaw Convention coupled with the deliberations at the International Conferences as a result of which the draft got modified and took the shape as it stood in Article 29 of the Convention, lends sufficient clarity to the purpose and object of introducing sub-article (2) to Article 29, which is to exclude the suspension of any period of limitation. As noticed in the conference, suits are not brought in the same way across jurisdictions and therefore this deliberation is specifically left to the forum Court to fix and determine the beginning of the suit or the proceeding.

28. This position is well articulated in the judgment of the Appellate Division of the Supreme Court of New York in *Kahn v. Trans World Airlines*[44].

> *"Moreover, it is equally clear from the delegates' discussion that the only matter to be referred to the forum court by paragraph 2 of the present article 29 was the determination of whether the plaintiff had taken the necessary measures within the two year period to invoke that particular court's jurisdiction over the action. An obvious example of the need for such a provision is the difference between the method of commencing an action in the New York State courts as opposed to the Federal courts. Thus, in New York, depending upon the forum chosen, the plaintiff in an action governed by the Warsaw Convention must either effect service upon the defendant (CPLR 304) or file a complaint in the Federal District Court (Fed Rules Civ*

[44] *Supra no.* 17.

> *Pro, rule 3 [in US Code, tit 28, Appendix] within the time limited by article 29, i.e., two years.*
> *Accordingly, regardless of whether or not the Convention itself "creates" any causes of action, it is readily apparent that the time limitation incorporated in article 29 was intended to be in the nature of a condition precedent to suit, and that it was never intended to be extended or tolled by infancy or other incapacity. In addition, such an intent on the part of the draftsmen is fully consistent with one of the Convention's over-all purposes-that of establishing "a uniform body of world-wide liability rules to govern international aviation."*

29. In view of the uncertainty in the language of sub-article (2) of Article 29, as in the case of Sub-Rule (2) of Rule 30 for India, courts of law across jurisdictions were called upon to consider the rival submissions on the construct of the said provision. Learned counsels appearing for both the parties have placed before us the decisions of foreign courts that have ruled upon Article 29 and interpreted the said provision, more or less consistently taking a view that the domestic laws of limitation will have no bearing on the period of two years. Before we consider these judgments, it is important to restate a well-recognized principle that courts of law must endeavor to maintain a uniformity of interpretation with courts of other jurisdictions while interpreting international treaties and conventions.

30. The need for a uniform policy and a global approach has been underlined by the House of Lords in *Morris v. KLM Royal Dutch Airlines*[45] and in a number of other decisions.[46]

> *"81. In an ideal world the Convention should be accorded the same meaning by all who are party to it. So, case law provides a further potential source of evidence. Careful consideration needs to be given to the reasoning of courts of other jurisdictions which have been called upon to deal with the point at issue, particularly those which are of high standing. Considerable weight should be given to an interpretation which has received general acceptance in other jurisdictions. On the other hand, a discriminating approach is required if the decisions conflict, or if there is no clear agreement between them."*

31. Having said so, we will now refer to some leading judgments on the issue from the jurisdictions of the United Kingdom, United States of America and Australia which examined Article 29 of the Warsaw Convention.

***United Kingdom***

32. The Supreme Court of the United Kingdom passed a judgment in *Laroche* v. *Spirit of Adventure*[47] where it examined the history of Article 29 of the Warsaw Convention and held that it provided a substantive time bar and not a procedural time bar. It further held that the Warsaw Convention provides a code that is exclusive of any resort to the Articles of domestic law. The Court traced the history of the provision as above and ultimately held

[45] [2001] 3 WLR 351
[46] *Zicherman v. Korean Air Lines Co. Ltd.*,516 US 217, (1996), *EI AI Israel Airlines Ltd. V. T.Y.Tseng* 525 U.S. 155 (1999).
[47] *Supra no.* 10.

that the Warsaw Convention sought to adopt the position suggested by the Republic of Italy. It was held,

> "*70. The judge was in my view, right to hold at [48] to [51] that article 29(2) does not permit the 2 year period to be suspended, interrupted or extended by reference to domestic law. The only thing that it leaves for determination by the court seized of the case is the calculation of the precise dates of the beginning and end of the relevant two year period and the determination of whether the action has been brought within that two year period.*
>
> *71. In reaching his conclusion on this issue, the judge had regard to what was said in the travaux preparatoires to the Warsaw Convention in relation to what became article 29. The first draft of what became article 29(2) was in these terms:*
>
> > *"The method of calculating the period of limitation, as well as the causes of suspension and interruption of the period of limitation, shall be determined by the law of the court having taken jurisdiction" (emphasis added).*
>
> *72. The Italian delegation objected that the words in italics made "the legal situation of the carrier too uncertain". The Italians later proposed deleting the second paragraph so that "after two years any action dies and is no longer admissible". Their reasoning was that "the period of time, in order that there be interruption of the period of limitation, varies with the country, and it is very difficult for the shipper, the consignor to know when the interruption or the suspension begins". Their proposal was "very simple; if two years after the accident no action has been brought, all actions are extinguished". After further discussion, the Italian proposal was adopted. These discussions were in plenary session. It seems that the matter was raised again in committee, when it was decided to accept the modified Italian proposal to adopt the wording "the liability action must be instituted under pain of forfeiture within a period of two years". Despite the puzzling French contribution at that stage that "one determines at the same time the periods of interruption and*

*of limitation. We are in agreement in substance", the Italian proposal was adopted. There was then yet further discussion which led to the adoption of article 29 in the form in which it was finally signed.*

73. *Although it is difficult to follow the minutiae of these negotiations, in my view it is clear that the signatories to the Warsaw Convention intended to adopt the Italian proposal that, in the interests of certainty, at the expiry of the two-year period, all claims under the Convention would be "extinguished" and that the only matters for determination by the court seized of the matter would be determination of the dates and whether the action was brought within the two-year period. This is a powerful indicator that the words of article 29(1) mean what they say and that the two-year period is not subject to suspension, interruption or extension in any circumstances.*

*74. So to interpret article 29(1) would also further the object of the Convention that it was to be "a uniform international code, which could be applied by the courts of all the high contracting parties without reference to the rules of their own domestic law": see per Lord Hope in Sidhu v British Airways Plc [1997] AC 430, 453C-D.*

*75. I also accept the submission of Mr Lawson that this interpretation is consistent with the rule that a general provision (such as article 29(2)) cannot give validity to a rule of procedure of the court seized of the case that is in conflict with an express provision of the Convention. As Phillips LJ said in Milor S.R.L v British Airways Plc [1996] QB 702, 707E: "by way of example, if the procedural law of the chosen forum imposed a 12 month limitation period, it does not seem to me that this could displace the two year period of limitation laid down by article 29 of the Convention.*

*76. As regards US jurisprudence, the decision of New Pentax v Trans World relied on by Mr Davey is a first instance decision. In the subsequent decision of Fishman v Delta Air Lines Inc 132 F 3d 138, the Court of Appeal of the same circuit rejected the proposition that article 29(2) permitted the limitation period to be determined in*

> *accordance with the lex fori. In reaching this conclusion, the court had regard to the travaux preparatoires to the Warsaw Convention and reached the same conclusion on their meaning and effect as I have done at [73] above. Although New Pentax does not appear to have been cited in Fishman, the latter is a decision of a superior court."*

33. A similar view has been taken in a number of other judgments[48] in the United Kingdom.

***United States of America***

34. The Second Circuit of the Court of Appeals in the United States of America in *Fishman* v. *Delta Air Lines Inc*[49], a burn injury was inflicted on an infant by an air hostess. The infant, through her mother, brought an action against the airline after a period of 2 years, claiming that the local limitation law suspends limitation for infants. The Court of Appeals also traced the history of the provision in the Warsaw Convention to find that:

> "*Almost every court that has reviewed the drafting minutes of the Convention, including the district court in this case, has rejected the contention that Article 29(2) incorporates the tolling provisions otherwise applicable in the forum. See, e.g., Castro v. Hinson, 959 F. Supp. 160, 163 (E.D.N.Y. 1997); Fishman, 938 F. Supp. at 230; Royal Ins. Co., 834 F. Supp. at 636; Kahn, 443 N.Y.S.2d at 87. The minutes reveal that the drafters of the Convention specifically considered and rejected a proposed provision that would have allowed the limitations period to be tolled according to the law of the forum court. See R.C. Horner and D. Legrez, Minutes of the Second International Conference on Private Aeronautical Law, 110-13 (1975); Kahn, 443 N.Y.S.2d at 86-87; Royal Ins. Co., 834 F. Supp. at 636.*

[48]See, *Sidhu v. British Airways* (1997) 2 WLR 26*; Philips v. Air New Zealand* (2002) EWHC 800 (Commercial Court).
[49] *Supra no.* 11.

> *As the district court recognized, the main concern of the drafters in rejecting the tolling proposal was "to remove those actions governed by the Convention from the uncertainty which would attach were they to be subjected to the various tolling provisions of the laws of the member states." Kahn, 443 N.Y.S.2d at 87. Moreover, the debates over the language ultimately adopted in Article 29 indicate that the only matter to be referred to the forum court by subsection 2 of Article 29 was "the determination of whether the plaintiff had taken the necessary measures within the two-year period to invoke that particular court's jurisdiction over the action."*

35. Similarly, the Court of Appeals for the Ninth Circuit of the United States of America in *Narayanan v. British Airways*[50] affirmed the position under the Warsaw Convention and found that the Montreal Convention also envisages the same position. It was held,

> *"The drafting history of the Warsaw Convention also reveals that the drafters intended Article 29 to operate as a statute of repose, which, "like a jurisdictional prerequisite, extinguishes a cause of action after a fixed period of time ... regardless of when the cause of action accrued." Albillo-De Leon v. Gonzales 410 F.3d 1090, 1097 n.5 (9th Cir. 2005). The drafters considered – and rejected – a proposal that would have allowed the limitations period to be tolled in accordance with the law of the forum court. See R.C. Horner and D. Legrez, Minutes of the Second International Conference on Private Aeronautical Law, 110-13 (1975); see also Fishman, 132 F.3d at 144 (observing that "[a]lmost every court that has reviewed the drafting minutes of the [Warsaw] Convention ... has rejected the contention that Article 29(2) incorporates the tolling provisions otherwise applicable in [a] forum [state]". Instead, the Warsaw Convention's drafters adopted a "very simple" proposal advanced by the Italian*

[50] 2014 U.S. App. LEXIS 5173: 747 F.3d 1125

> *delegation: "if two years after the accident no action has been brought, all actions are extinguished."*
> *...*
> *Consistent with this history, the prevailing view among courts across jurisdictions is that the Montreal Convention's limitation period operates as a condition precedent to suit and, as such, is not subject to equitable tolling.*"

36. The Supreme Court of New York also came to a similar conclusion in *Kahn* v. *Trans World Airlines Inc.*[51] In this case, the Court had occasion to examine the history of the provision once again. It looked into the *travaux preparatoires* and found that the provision was debated and based on the debates, it held that:

> "*Based upon the foregoing, it is abundantly clear that the delegates to the Warsaw Convention expressly desired to remove those actions governed by the Convention from the uncertainty which would attach were they to be subjected to the various tolling provisions of the laws of the member States, and that the two-year time limitation specified in article 29 was intended to be absolute — barring any action which had not been commenced within the two-year period. Moreover, it is equally clear from the delegates' discussion that the only matter to be referred to the forum court by paragraph 2 of the present article 29 was the determination of whether the plaintiff had taken the necessary measures within the two-year period to invoke that particular court's jurisdiction over the action. An obvious example of the need for such a provision is the difference between the method of commencing an action in the New York State courts as opposed to the Federal courts. Thus, in New York, depending upon the forum chosen, the plaintiff in an action governed by the Warsaw Convention must either effect service upon the defendant (CPLR 304) or file a complaint in the Federal District Court (Fed Articles*

[51] *Supra no.* 17.

> *Civ Pro, Article 3 [in US Code, tit 28, Appendix]) within the time limited by article 29, i.e., two years.*"

***Australia***

37. The Federal Court of Australia, in *Bhatia* v. *Malaysian Airline System Berhad*[52] followed the judgments in *Laroche* and *Kahn* and held that the local limitation law will not apply in view of Article 29(1) of the Warsaw Convention. It was held in Para 34:

> "*34. The Convention has as its purpose the uniformity and certainty of the law, among its signatories, in relation to (relevantly) personal injury suffered by passengers in the course of international air carriage to which it applies. The rights created by the Convention (given the force of law in Australia) are rights enjoyed by persons referred to as "passengers". The corresponding liabilities are imposed upon persons referred to as "carriers". The word "action" in Art 35 must be given a construction that advances the object of providing certainty in the legal relationship between these two persons. The "right to damages" subject to extinguishment under Art 35, may naturally be understood as referring to the right possessed by one person that is enforceable against another person having a corresponding liability. It follows that the steps necessary to bring an "action" must include steps sufficient to invoke the jurisdiction of a court to determine the controversy concerning the respective rights and liabilities of the first person in relation to the second. Thus, the words "brought" and "action" must be understood as referring to a process by which the disputed rights and liabilities of the two persons come before a court for adjudication.*"

[52] *Supra no.* 18.

38. We have come across one decision of France's Cour de Cassation in *Lorans v. Air France*[53] which has taken a different view of the matter. However, the decisions that we have referred have considered the issue from all perspectives including the decision of the French Court, and did not accept the reasoning adopted therein. It is also important to mention that there are some decisions of the US Courts in the case of *Joseph v. Syrian Arab Airlines*[54] and *Flanagan v. McDonnell Douglas Corp*[55] which have also not deliberated the issue in detail on arriving at the interpretation as is done in the cases that we have referred to hereinabove. Excluding these minor variations, an overwhelming majority of the decisions have taken an informed view that Article 29 excludes and is intended to exclude the application of municipal legislations, excluding the periods of limitation.

39. So far as India is concerned there is no direct decision of this Court on the Air Act, 1972. The closest we get is the decision of this Court under the Indian Carriage of Goods by Sea Act, 1925, which fell for interpretation in *East and West Steamship Co. v. S.K. Ramalingam Chettiar*[56], where this Court had observed that "*Rules of limitation are likely to vary from country to country. Provisions for extension of periods prescribed for limitation would similarly vary. We should be slow therefore to put on the word "discharged from liability" an interpretation which would produce results varying in different*

[53] (1977) 31 RFDA 268: *(Cour de Cassation [Assemblee Pleniere] Jan,14, 1997).*
[54] 88 F.R.D. 530 (S.D.N.Y. 1980).
[55] 428 F.Supp. 770 (C.D. Calf. 1977).
[56] *Supra no*. 7.

*countries and thus keeping the position uncertain for both the shipper and the shipowner…It is hardly necessary to add that once the liability is extinguished under this clause there is no scope of acknowledgment of liability thereafter*. Apart from this, we have certain decisions of the High Courts that have interpreted Rule 30 of the Second Schedule of the Act.

***Decisions of our High Courts on Rule 30, Second Schedule:***

40. The High Courts across the country have also taken a similar view that the Limitation Act, 1963 will be excluded from operation for a claim under the Air Act. The High Courts have reasoned that the Air Act is a special statute and would thus prevail over the Limitation Act, 1963, which is a general statute. The High Court of Delhi in *Air India Ltd. v. Tej Shoe Exports P. Ltd.*[57], *Sailesh Textile Industries v. British Airways & Anr.*[58], *Indian Airlines* v. *Angelique International Ltd. & Anr.*[59], *Ethopian Airlines* v. *Federal Chemical Works Ltd.*[60], the High Court of Madras in *M/s M.R.F Ltd. v. Singapore Airlines*[61] and *Air India, Bombay Airport v. Asia Tanning Co.*,[62] and the High Court of Bombay, in the judgment impugned before us, have all taken this view.

41. There is only one decision that has taken a different view of the matter, and that is the decision of the High Court of Gujarat in *National Aviation*

[57] *Supra no.* 8.
[58] 2003 SCC Online Del 318 (at paras 10 to 15).
[59] 2014 SCC Online Del 6825 (at para 16).
[60] 2004 SCC Online Del 862 (at para 15).
[61] *Supra no.* 4.
[62] 2002 SCC Online Mad 802 (at para 7).

*Company of India Ltd. v. Jatnadevi Tejraj Jain*,[63]. The High Court reasoned that Article 30(2) of Schedule II makes the law of the Court seized of the matter applicable and the law of the Court seized of the matter in India is the Limitation Act, 1963. It was held:

> *"10. The aforesaid Rule provides that right to damages shall be extinguished if the action is not brought within two years from the date on which the aircraft ought to have arrived at or stopped. However, sub-rule (2) expressly provides that the calculation of the period of limitation shall be as per the method determined by the law of the Court seized with the case. Therefore, it is apparent that after applying the method as provided by the law of the Court, the period of 2 years is to be counted, and thereafter, the right to damages shall get extinguished if the action is not brought within the said period of 2 years. The law of the Court seized with the case is the Limitation Act, 1963. Part III of the Limitation Act provides for computation of the period of limitation, which can be said as at par with the method of calculation of the period of limitation. Section 14 of the Act provides for exclusion of the time of proceeding bona fide in Court without jurisdiction. Therefore, while computing the period of limitation of two years, in our view, section 14 of the Limitation Act would apply.*"

42. We have already considered the true and correct meaning of Rule 30 (2), or as the case may be Rule 35 (2) of the Third Schedule by referring to the Conventions, coupled with *travaux preparatoires.* The Gujarat High Court has not considered the matter in the right perspective while interpreting Rule 35 (2).

[63] 2011 SCC Online Guj 7601 (at para 10).

43. In the ultimate analysis, keeping in view the legislative history of the Convention and in view of the consistent interpretation of Article 29 of the Convention adopted in different jurisdictions, for the purpose of uniformity and also to subserve the purpose and object of the Convention, we are of the view that Rule 30 (2) does not enable applicability of exclusion of periods for the purpose of reckoning the period of two years.

***Issue No. 2***

***Whether the Air Act, 1972, particularly Rule 30 of the Second Schedule expressly excludes the applicability of the Limitation Act, 1963?***

44.1 On this issue Shri Navare made a two-prong submission. Rule 30 of Second Schedule in terms reiterates the applicability of Section 29 of the Limitation Act and at the same time the Air Act, 1972 being a special law, the provisions of Limitation Act apply as there is no express exclusion.

44.2 Shri Navare submits that firstly, there is no provision whatsoever in the Air Act expressly excluding the applicability of the Limitation Act. For this reason, the provisions of the Limitation Act must apply as a matter of public policy. Secondly, Rule 30 (2) of the Air Act in terms reiterates the applicability of the Limitation Act. In the written submissions he has highlighted the fact that Section 29 of the Limitation Act is very different from Section 39 of the Limitation Act, 1980 of the United Kingdom.

44.3 On the other hand Ms. Ritu Singh Mann has submitted that the Air Act, 1972 excludes the applicability of the Limitation Act.

45. While dealing with Issue No.1, we have held that the right to damages itself is extinguished after the expiry of the period of two years and therefore the provisions of the Limitation Act have no application as there is no right subsisting for enforcement. In this context we have referred to Section 3 of the Limitation Act which merely bars the remedy and not the right itself, but when the statute extinguishes the right itself the position is very different. We will however consider the present argument of Shri Navare as an alternative plea and proceed forthwith to deal with the same.

46. Where a period of Limitation is prescribed in a special law, by virtue of Section 29 of the Limitation Act, such period will apply *as if* it was provided in the Schedule of the Limitation Act. Consequently, the provisions of Sections 4 to 24 will apply for the purpose of computation of period of limitation. This provision is subject to a bright exception that the Limitation Act will not apply if it is *"expressly excluded"* by the Special Act. Section 29 of the Limitation Act to the extent that is necessary is as under: -

> *"29. Savings*
> *(1)……*
> *(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."*

47. The statutory requirement of express exclusion is considered by this Court in a number of decisions.[64] Express empowerment is not to be understood in a pedantic manner. Express empowerment is to be gathered from the provisions of the statute. In *Shanmugam v. Commissioner for Registration*[65], the Privy Council held that:

> "*It is argued that the Act does not contain the "express provision" required by the Interpretation Ordinance to make it applicable. Their Lordships do not agree. Upon the meaning of the words "express provision" counsel relied upon in re Meredith and stated that it must be provision the applicability of which did not arise by inference. He argued that there was no "express provision" as no reference had been made to pending proceedings. Their Lordships are of the view that it is correct to state that express provision is provision the applicability of which does not arise by inference. The applicability, however, of the provision under discussion to the present case does not arise by inference; it arises directly from the language used. The Fact that the language used is wide and comprehensive and covers many points other than the one immediately under discussion does not make it possible to say that its application can arise by inference only. To be "express provision" with regard to something it is not necessary that that thing should be specially mentioned; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom. The argument fails."*

48. In *Hukumdev Narain Yadav v. Lalit Narain Mishra*[66], the Court held as under: -

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[64] *Needle Industries (India) Ltd. and Anr.* v. *Needle Industries Newey (India) Holding Ltd. and Ors* (1981) 3 SCC 333.
[65] [1962] 2 All E.R. 609.
[66] (1974) 2 SCC 133.

> "*17. ……..Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."*

49. Following the principle laid down in *Hukumdev*[67], we will now examine the relevant provisions of the Air Act, 1972, its Schedules, and Rule 30, in particular, to see if these provisions have the effect of expressly excluding the applicability of the Limitation Act.

[67] *Supra no.* 66.

***Carriage by Air Act, 1972***

50. The Air Act, 1972 is an Act to *give effect to various International Conventions for the unification of certain Articles relating to international carriage by air*. The Preamble of the Act states:

> "*An Act to give effect to the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929 and to the said Convention as amended by the Hague Protocol on the 28th day of September, 1955 1 [and also to the Montreal Convention signed on the 28th day of May, 1999 and to make provision for] applying the rules contained in the said Convention in its original form and in the amended form (subject to exceptions, adaptations and modifications) to non-international carriage by air and for matters connected therewith.*"

51. The International Conventions incorporated in the Act are the (i) Warsaw Convention, 1929; (ii) The Warsaw Convention, 1929 as amended by the Hague Protocol on 28.09.1955 and (iii) the Montréal Convention, 1999. Section 3 of the Act incorporates the Warsaw Convention into the Act as the First Schedule and specifically provides it the status of law in India. Section 4 incorporates the Hague Protocol and provisions it in The Second Schedule. Section 4A for giving effect to Montréal convention, provides The Third Schedule to the Act and specifically provides the status of law to these provisions.

52. The Warsaw Convention as amended by the Hague Protocol is a complete code within itself for all questions relating to carriage by air by international carriages. Rule 1(1) provides that the Hague Protocol shall

apply to "*all international carriage of persons, baggage or cargo performed by aircraft for reward*". Rule 2 provides that the Convention will apply to carriage performed by the State or by legally constituted public bodies. Chapter II of the Convention (Rules 3 to 16) is entitled "*Documents of Carriage*". Rule 3 relates to the documents that a carriage of passengers must deliver. Rule 4 prescribes a mechanism for baggage check. Rule 5 to 11 relates to the air waybill in cases of cargo carriages. Rule 12 relates to the right of the consignor to dispose of the goods in a manner that is not prejudicial to the carrier. Rule 13 pertains to the rights of the consignee upon the arrival of the goods. Rule 13(3) provides that where there is a loss of goods, the consignee shall be entitled to enforce the rights which 'flow from the contract of carriage'. Rule 14 provides for the consequences of non-compliance of Rule 12 and 13.

53. The Chapter with which we are presently concerned with is Chapter III which is titled '*Liability of the Carrier*'. Rule 17 provides for the liability of a carrier for damages in the event of death or wounding or other injuries caused to a passenger while onboard the aircraft. Rule 18 envisages the liability of a carrier in the event of destruction, loss, damage etc. of cargo. Similarly, Rule 19 concerns the liability of a carrier upon delay in the carriage of passengers, baggage or cargo. Rule 20 provides for an equitable exemption to the carrier if he proves that he had taken all necessary measures to negate the delay or damage. Rule 21 is yet another equitable provision that protects

the carrier in cases of contributory negligence. Rule 22 specifies the minimum liability of the carrier. Rule 23 nullifies all limits which are lower than those provided in Rule 22.

54. Rule 24 stipulates that any action for damages "*can only be brought subject to the conditions and limits set out in these rules*". Rule 25 relates to the vicarious liability of the carrier. Rule 26 provides that a servant/agent of a carrier shall be exempted from liability if he proves that he acted within the scope of his employment. Rule 27(1) specifies that receipt of baggage or cargo is *prima facie* proof of its good condition. Rule 27(2) provides that where the goods are damaged, a complaint must be made within 7 days of the date of receipt of baggage and 14 days from the date of receipt of cargo. Rule 27(3) provides that a complaint shall be made in writing. Rule 27(4) further provides that if no complaint is made within the period specified, no action shall lie against the carrier except in cases of fraud. Rule 28 stipulates that the legal representatives of a deceased person can bring an action for damages. Rule 29 is the jurisdictional clause, and provides that the action may be brought in the territory of one of the State Parties, either before the court of the domicile of the carrier or of its principal place of business or where it has a place of business through which the contract has been made, or before the court at the place of destination. Rule 29(2) stipulates that the 'questions of procedure shall be governed by the law of the court seized of the case.'

55. Rule 30, which is the fulcrum of the case, may be extracted in full:

> "*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.*
> *(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.*"

56. Chapters IV, and V are not of much relevance to the case at hand. Suffice it to say that they are machinery provisions that do not affect the interpretation of Rule 30.

57. The Convention certainly incorporated two variables in the context of reckoning the period specified in Rule 30 (1) of limitation. The first event relates to the time, which is a fixed period of two years. The second event relates to the commencement of cause of action which has been specified as any of the three events being (i) arrival at the destination; or (ii) date on which the aircraft ought to have arrived; or (iii) the date on which the carriage stopped. Now, the only event that remains is the date on which the action for damages is initiated as this would depend upon the law of the Court seized of the case. Rule 30(2) specifically provides that "*the method of calculating the period will be determined by the law of the Court seized of the case*." This should necessarily follow for the reason that the period of two years for enforcing the right would be extinguished if an action is not brought within the said period.

58. We may also note that giving effect to the meaning of the words the '*law of the court seized of the case*' would lead to an anomalous situation where the law of every country would be incorporated into the Convention, thereby defeating the purpose of an International Convention which is to bring about uniformity across the globe in the laws applicable to carriage by air.

59. Sub-Rule (2) must therefore be interpreted harmoniously keeping in mind not only the content of Sub-Rule (1) but also the purpose and object of the Convention which is to bring about the unification of Rules relating to International Carriage by Air. The intention behind Article 35(2) was merely to fix the date on which the suit (or action) has '*begun*' and the date on which limitation expires, as per the laws of the country. The example given by the French Delegation makes this position clear as it was to accommodate provisions such as pre-trial conferences. As stated above, in India, such a position could possibly arise if the legislature envisages mandatory pre-trial mediation. It is in order to accommodate for this eventuality that the law-makers left some room for the domestic law to operate.

60. Having considered the matter in detail, we are of the opinion that Rule 30 of the Carriage by Air Act 1972, expressly excludes the applicability of the Limitation Act,1963. Issue No.2 is answered accordingly.

61. For the reasons stated above, the Appeal arising out of SLP No. 16767 of 2018, from the judgment of the High Court of Judicature at Bombay in WP

No. 6647 of 2014 is accordingly dismissed. The parties shall bear their own cost.

62. We place on record the valuable assistance given by Shri Vinay Navare, assisted by Shri Pravartak Pathak, Advocate, Ms. Gwen Karthika, Advocate and Ms. Abha R. Sharma, AOR for the Appellants and Ms. Ritu Singh Mann for Respondent assisted by Shri Dheeraj K. Garg, Advocate and Shri Rajan K. Chourasia, AOR.

…….J.
[K.M. JOSEPH]

…….J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
JULY 29, 2022