
(1965) 12 GUJ CK 0020
In the Gujarat High Court

Acharya Shri Devendraprasadji Vasudeoprasadji Maharaj
Pande

APPELLANT

Vs

"Sadhu Muktajivandasji" Guru Ishwardasji

RESPONDENT

Date of Decision : 03-12-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1908 — Section 3, 5
Limitation Act, 1963 — Section 3

Citation : (1966) 7 GLR 645

Hon'ble Judges : B.J. Divan, J

Bench : Single Bench

Judgement

B.J. Divan, J.—In each of these four Civil Revision Applications, the petitioner is the same individual and the respondent is also the same individual. These four Civil Revision Applications arise out of virtually the same order which was passed in two suits, which were consolidated before the trial Court and hence I will dispose of all these four Civil Revision Applications by this common judgment.

2. In order to understand and appreciate the points involved in this group of matters, it is necessary to set out certain facts. One suit was filed as far back as March 1941, being Civil Suit No. 549 of 1941 in the Court of the Civil Judge, Sr. Dn., Ahmedabad. The present opponent who is the plaintiff in that suit filed the suit challenging an order passed by the defendant, the present petitioner, in each of these four matters. The order that was passed by the defendant was in his capacity as the Acharya of the particular sect to which the plaintiff and the defendant belonged declaring that the defendant was "Vimukh". By this suit, the plaintiff challenged the order of "Vimukh" and claimed damages, declaration etc. A second suit was thereafter filed on November 22, 1943, based on the same cause of action, viz., regarding the order of "Vimukh" passed by the Acharya but claiming damages that according to the plaintiff had arisen during the period between 1941 and 1943, i. e., during the period that had elapsed since the filing of the first suit. These two suits were consolidated by the trial Court. On

February 3, 1953, these consolidated suits were on board of the joint Civil Judge, Jr.Dn., he being one of the Joint Civil Judges, Jr.Dn., at Ahmedabad, for the purpose of recording further evidence of "the plaintiff. By this time the evidence of the defendant was over and closed and some evidence for the plaintiff had already been recorded. Some part of the deposition of the plaintiff had also been recorded and on this particular day i.e. February 3, 1953, the plaintiff was absent as he had gone to Africa and his evidence had been recorded de bene esse on commission. The advocates for both the parties were present on February 3, 1953 and on that day some more witnesses on behalf of the plaintiff were to be examined but no witnesses were brought to the Court. The learned Judge trying the suit waited for some time and thereafter the learned Advocate for the plaintiff applied for time. This application for time was rejected and the Advocate applied orally for leave to withdraw his appearance on behalf of the plaintiff. The learned trial Judge granted this application on the basis that a written pursis would be filed by the Advocate later on in the course of the day. No written pursis applying for leave to withdraw his appearance in each of these two suits were ever filed and the learned trial Judge dismissed both the suits on February 3, 1953; and from that time onwards till today the plaintiff has been agitating in one Court or another asking for restoration of the suit and for setting aside the order of dismissal passed on February 3, 1953. On the Same day i.e. on February 3, 1953, two applications were presented under Order 9, Rule 9 C.P.C. for restoration. One application was filed for restoration in Suit No. 549/1941 and the other in suit No. 1354/1943. two applications for restoration were filed by the same Advocate; had earlier in the course of the day applied for leave to withdraw his appearance on behalf of the plaintiff and whose application for withdrawal of the appearance had been granted by the learned trial Judge. The applications were not signed by the plaintiff, obviously as the plaintiff was in Africa on that day. These two applications were dismissed by the learned Judge on the ground that the Advocate who had withdrawn his appearance earlier in the course of the day had not secured a fresh Vakalatnama from the plaintiff and, therefore, had no authority to present the two applications for restoration. Apart from preferring the applications for restoration, the plaintiff's Advocate filed appeals, being Nos. 144/1953 and 145/1953, in the District Court at Ahmedabad the orders of dismissal for default. Those two appeals were filed on March 21, 1953. The same Advocate who had been representing the plaintiff in the two suits till February 3, 1953, had also presented the appeals. On July 27, 1955, both the appeals were dismissed and later on when Second Appeals against the decision of the District Court were filed to the High Court of Bombay, the Second Appeals were also dismissed summarily. After the summary dismissal, by the High Court of those two Second Appeals on July 10, 1956, the trial Court dismissed the two applications for restoration, which were preferred by the Advocate on February 3, 1953, and they were dismissed, as I have stated above, on the ground that the authority of the Advocate to represent the plaintiff had come to an end on February 3, 1953, before the two applications for restoration were filed. On August 8, 1956, two fresh applications for restoration and two applications for

condonation of delay were filed and the present four Civil Revision Applications arise out of those fresh applications for restoration. In the mean while, the plaintiff appears to have pursued the earlier restoration applications by way of appeal against the decisions passed by the trial Court on July 10, 1956. He had presented two appeals Nos. 74/1956 and 75/1956 to the District Court. Again the same Advocate filed those two appeals without obtaining a fresh Vakalatnama. On April 2, 1957 fresh Vakalatnamas were filed in favour of the same Advocate and thereafter on April 22, 1957, the two appeals were dismissed and again they were dismissed on the ground that the authority of the Advocate to represent the plaintiff had come to an end on February 3, 1953, when the leave was granted to the Advocate to withdraw his appearance on behalf of the plaintiff.

3. To take up the matters which rested with the presentation of fresh applications of August 8, 1956, no fresh Vakalatnama was filed at the time when they were presented but on April 2, 1957, fresh Vakalat-namas were filed. On January 3, 1957, the defendant filed his replies in the form of affidavits or written statements to these fresh applications for restoration. In each of the two restoration applications, the plaintiff has also filed condonation application u/s 5 of the Limitation Act, Ex. 3, and by these delay condonation applications the plaintiff applied that the time taken between February 3, 1956 and July 10, 1956 should be condoned. On February 22, 1958, all the four applications, viz., the two restoration applications and the two condonation applications were dismissed by the Civil Judge, Jr.Dn., Ahmedabad, on the ground that no sufficient cause had been shown by the plaintiff for condonation of delay and, therefore, the delay could not be condoned and hence the two restoration applications were held to be time barred. Thus all the four applications were dismissed on February 22, 1958. On April 3, 1958, two appeals were filed, being Appeals Nos. 32 and 33 of 1958 to the District Court, Ahmedabad, against the orders dismissing the four application October 28, 1959, both these appeals 32 and 33 of 1958 were Sometime in 1960, two Civil Revision Applications, being Nos. 560/1960 and 623/1960, were filed in the High Court. These two Civil Revision Applications came to be disposed of by this High Court and Raju J. on March 10, 1962, allowed both the Civil Revision Applications and remanded all the four applications, the two restoration applications and the two condonation applications to the trial Court. By this time the Court of the Joint Civil Judge, Jr.Dn. Ahmedabad had been abolished and the City Civil Court has been set up in its place and the matters went back after remand to one of the Judges in the City Civil Court at Ahmedabad. By his judgment and order, dated July 30, 1964, the learned Judge in the City Civil Court allowed all the four applications. He held on the delay condonation applications that there was sufficient cause for condoning the delay and he, therefore, condoned the delay and then held that the restoration applications were not time-barred and on merits he held that the applications for restoration should be granted and he, therefore, granted those two restoration applications also. It is against the judgments and orders

pronounced on July 30, 1964, in these four applications that the present four Civil Revision Applications have been filed.

4. The principal point which the learned Judge in the City Civil Court has made clear in his judgment and order on the condonation applications was that the applications for condonation, Ex. 3, in each of the two restoration applications were filed u/s 5 of the Limitation Act and the learned Judge in the City Civil Court was called upon to exclude the time taken between February 3, 1953 and July 10, 1956. It be borne in mind that the two restoration applications were filed on 1956. It is clear that if the entire period that had elapsed between February 3, 1953 and July 10, 1956, were to be excluded the provisions of Section 14, then the restoration applications presented within a period of 30 days from July 10, 1956, would be within time, they having been filed within a period of 30 days from July 10, 1956. But the learned Judge in the trial Court has clearly pointed out, and in my view rightly, that Section 14 of the Limitation Act of 1908 does not apply to the present case. Since these were the applications for restoration, the provisions that would apply would be Section 14(2) of the Limitation Act, and it has been there provided that in computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. The learned Judge in the City Civil Court has construed this sub-section by stating that the words "other cause of a like nature" must be construed ejusdem generis. But with respect to him he was in error when he applied the principle of ejusdem generis because there was no genus with respect to which this principle can be applied. The defect of jurisdiction is the only preceding clause and hence it is not possible to say that there is a genus established by that one single type of defect indicated in Section 14(2). The real guiding words in that section are that the Court before which the previous proceedings were prosecuted was unable to entertain the same either for want of jurisdiction or other cause of a like nature. Thus what is emphasized in Section 14(2) is the inability of the Court in which the previous proceedings were prosecuted to entertain those previous proceedings and this inability might have, arisen from want of jurisdiction or other cause of a like nature. Therefore, the conclusion arrived at by the learned trial Judge that Section 14 of the Limitation Act, 1908, had no application to the facts of the present case appears to be correct because the Courts before which the earlier restoration applications were tried had come to the conclusion that the applications were bad because the Advocate who presented these applications on February 3, 1953, had no authority to present these two restoration applications. Under these circumstances, it cannot be said that the two earlier restoration applications had failed because of the inability of the Court to entertain those two restoration applications either from defect of jurisdiction

or any other cause of a like nature. The narration of the facts set out above makes it clear that the earlier two restoration applications were held not to have been validly presented and it not held that the Court before which those two applications were presented was unable to entertain the restoration applications. In fact, the two restoration applications having been made without authority and having been presented by the Advocate without the authority of the plaintiff were no applications in law at all. Under these circumstances, it is obvious that Section 14(2) of the Limitation Act would not apply and there is no question of exclusion of the time between February 8, 1953 and July 10, 1956 and the parties have correctly understood this legal position and, therefore, applications for condonation of delay u/s 5 were presented and were prosecuted before the trial Court.

5. The distinction between exclusion of time u/s 14 or any other similar provision of the Limitation Act on the one hand and condonation of delay u/s 5 or similar other provision of any other statutes on the other hand is this. If the period to be excluded is say "X" days and "Y" is the period of limitation, then in the case of exclusion of time the party concerned can get the benefit of X+Y. However in the case of condonation of delay, what the applicant has to do is to explain every day's delay after Y period is over and to show sufficient cause why he could not file his application, appeal etc, from the last day of Y to the actual day of the filing of the petition. If this distinction between the exclusion of time u/s 14 or similar provision of the Limitation Act and condonation of delay u/s 5 of the same Act is not borne in mind, a confusion is likely to arise; and with respect to the learned trial Judge, he has fallen into an error in this matter by failing to observe the distinction between exclusion of time and condonation of delay.

6. In para 20 of his elaborate judgment, the learned trial Judge in connection with the condonation applications has stated as follows:

This will now lead us to consider the main question in these petitions, and that is whether the petitioner has shown sufficient cause for the condonation of the delay in filing the applications for restoration. There is no dispute that if the time taken in prosecuting the applications for restorations filed on the very day, when the suits were dismissed, by Mr. Vyas, under his signature, is excluded, the present applications would be in time. The applications for condonation of delay were filed by Mr. Vyas under his signature on the 3rd of February 1953 and these applications were dismissed on the 10th July 1956, mainly on the ground that Mr. Vyas having retired from the suit his authority had come to an end and the applications filed by him, therefore, were without any authority, and the present applications were then filed Under the signature of the petitioner himself on the 8th of August 1956 and they would, therefore, be in time of the period of three years, five months and seven days from the 3rd of February 1953 to the 10th of July 1956 is excluded, and in that case, the present applications would be in time.

The learned Judge has overlooked the point in para 20 of his judgment that by merely condoning the delay upto July 10, 1956, the bar of limitation could not be

saved; because that still left the period between July 10, 1956 and August 8, 1956 unaccounted for and as I will explain just now in the light of a Supreme Court judgment it is the delay of every day from the last day of limitation till the filing of the application that has to be explained by the plaintiff and condoned by the Court.

7. The two suits which were consolidated were dismissed on February 3, 1953, and, therefore, the applications for restoration should have been presented within 30 days of the date of dismissal because Article 163 in the First Schedule to the Limitation Act, 1908, provides that an application by a plaintiff for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs has to be made within 30 days from the date of the dismissal. The dismissal being on February 3, 1953, the last date for filing the application for restoration was March 5, 1953 and what the plaintiff had to explain was the delay in applying for restoration between March 5, 1953, that being the last day of limitation for presenting the applications for restoration, and August 8, 1956, when the two fresh restoration applications in question came to be filed. However, the learned Judge in the Court below has proceeded on the footing that the only delay which was to be explained away was between February 3, 1953 and July 10, 1956.

8. In *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, the Supreme Court has explained the meaning of Section 5 of the Limitation Act, 1908, and the Supreme Court has also pointed out in that decision as to how the condonation of delay has to be calculated and sufficient cause should be considered by the Court concerned when an application, u/s 5 is dealt with. Section 5 of the Limitation Act provides that any appeal or application for a review of judgment or for leave to appeal or any other application to which the said section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. The matter came to the Supreme Court from a decision of the learned Judicial Commissioner, Vindhya Pradesh and the Judicial Commissioner took the view that the words "within such period" occurring at the end of Section 5 of the Limitation Act meant during the period prescribed for making the appeal. This view of the learned Judicial Commissioner, Vindhya Pradesh, was not accepted by the Supreme Court and in para 8 at page 364, of the report, Gajendragadkar J. (as he then was), who delivered the judgment of the Supreme Court, has observed as follows:

Now, what do the words "within such period" denote? It is possible that the expression "within such period" may sometimes mean during such period. But the question is: Does the context in which the expression occurs in Section 5 justify the said interpretation? If the Limitation Act or any other appropriate statute prescribes different periods of limitation either for appeals or applications to which Section 5 applies that normally means that liberty is given to the party

intending to make the, appeal or to file an application to act within the period prescribed in that behalf. It would not be reasonable to require a party to take the necessary action on the very first day after the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period; and so prima facie it appears unreasonable that when delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the whole of the period of limitation prescribed. In our opinion, it would be immaterial and even irrelevant to invoke general considerations of diligence of parties in Construing the words of Section 5. The context seems to suggest that "within such period" means within the period which ends with, the last day of limitation prescribed. In other words, in all cases falling u/s 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain the whole of the delay covered by the period between the last day prescribed for filing an appeal and the day on which the appeal is filed. To hold that the exprewion: "within such period" means during such period would, in our opinion be repugent in the context.

In view of this decision of the Supreme Court, it is clear that when any application for condonation of delay is made u/s 5 what the applicant has to show is sufficient cause for the delay which has elapsed between the last day of limitation and the day on which the appeal or application is filed; and secondly he has to show sufficient cause not only for not filing the appeal or application on the last day of limitation but has to explain this entire period between the last day of limitation and the day on which the appeal or application is filed, day by day.

9. In the instant case by each of the two applications, Ex. 3, in the repective restoration applications, the plaintiff asked for condonation of the delay of the period between February 3, 1953 and July 10, 1956, and the application was that the restoration applications concerned presented on August 8, 1956 should be deemed to be in the time after condoning the delay between February 3, 1953 and July 10, 1956. Thus the plaintiff himself who signed the restoration application presented on August 8, 1956, and the learned Advocate who was advising him at that stage have both proceeded on the footing that the condonation of delay and exclusion of time are both one and the same thing. Not only that but the entire matter appears to have been argued before the learned trial Judge on the footing that condonation of delay and exclusion of time are one and the same thing. In para 25 of his judgment, the learned trial Judge has observed as follows:

I, therefore, hold that he has shown sufficient cause for condonation of the delay occasioned by prosecuting those applications for a period of over three years and

that it was after the said applications were dismissed on the ground that they were not validly filed, as the Advocates concerned had no authority, that he realized the position that his lawyer had no authority to prefer and prosecute such applications on his behalf and immediately thereafter he has preferred the restoration applications being C.M.A. Nos. 276 and 277 of 1962, accompanied by these two applications at Ex. 3 for condonation of delay. In my opinion, therefore, it will be just and equitable to condone the delay caused in prosecuting the said two applications from the 3rd February 1953 to the 10th of July 1956 and hence to pass the following order:

The delay in preferring the applications for restoration of the suits to file, in both the Civil Miscellaneous Applications is condoned. No order as to costs.

With respect to the learned trial Judge, he was obviously in error when he decided that by holding that there was sufficient cause for not filing the two restoration applications before July 10, 1956, the requirements of Section 5 were met. The only delay that the learned trial Judge has condoned is the delay upto July 10, 1956; and that is clear both from the application, Ex. 3, in each of the two restoration applications and also from the discussion in the learned trial Judge's judgment in para 25. Under these circumstances, it is clear that even if the learned trial Judge correctly condoned the delay u/s 5 of the Limitation Act upto July 10, 1956, that still left unexplained delay from July 11, 1956 to August 8, 1956, the later being the date on which the two restoration applications were actually filed in Court.

10. The question then arises as to whether the High Court scips u/s 115 of the CPC can interfere with the orders that the learned trial Judge has passed in each of the these two condonation applications and in each of the two restoration applications. It is obvious from what I have stated above that by overlooking the distinction between the condonation of delay u/s 5 of the Limitation Act and exclusion of time u/s 14 of the same Act, the learned Judge has committed an obvious error of law so far as the point of bur of limitation regarding the two restoration applications was concerned.

11. In *Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others*, the Supreme Court dealt with powers of the High Court u/s 115 C.P.C. and the points of limitation decided by the subordinate Court. In this case, the Supreme Court has considered the powers of the High Court to interfere u/s 115 C.P.C. with points of limitation decided by the subordinate Courts. In para 8 of the judgment at page 1338 of the report, the decisions in *Joy Chand's case* 76 I.A. 131 and *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, were considered and passages from the judgment of the Privy Council have been set out and thereafter the Supreme Court has observed at page 1330 as follows:

These remarks are not applicable to the facts of the present case. They apply to cases in which the law definitely ousts the jurisdiction of the Court to try a certain dispute between the parties and not to cases in which there is no such

ouster of jurisdiction under the provisions of any law, but where it is left to the Court itself" to determine certain matters as a result of which determination the Court has. to pass a certain order and may, if necessary, proceed to decide the dispute between the parties The distinction between the two classes of cases is this. In one the Court decides a question of law pertaining to jurisdiction-by a wrong decision it clutches at jurisdiction or refuses to exercise jurisdiction. In the other, it decides a question within its jurisdiction. In the present case, the question whether there was a sufficient cause was exclusively within the jurisdiction of the Court and the Court could decide it rightly or wrongly.

Section 3 of the Limitation Act enjoins a Court to dismiss any suit instituted, appeal preferred and application made after the period of limitation prescribed, therefore by Schedule irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the Court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court has no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate Court comes to an erroneous decision, it is open to the Court in revision to interfere with that conclusion as that conclusion led the Court to assume or not to assume the jurisdiction to proceed with the determination of that matter.

Section 5 of the Limitation Act on the other hand empowers the Court to admit an application, to which its provisions are made applicable, even when presented after the expiry of the specified period of limitation if it is satisfied that the applicant had sufficient cause for not presenting it within time. The Court therefore had jurisdiction to determine whether there was sufficient cause for the appellants not making the application for the setting aside of the abatement of the suit in and, if so satisfied to admit it.

This passage from the judgment of the Supreme Court makes it that in the subordinate Court in the exercise of its discretion vested u/s 5 of the Limitation Act holds that a particular period of delay be condoned, then the High Court u/s 115 C.P.C. cannot with that exercise of discretion by the subordinate Court. If, without interfering with the exercise of that discretion regarding sufficient cause being shown, the High Court comes to the conclusion that the subordinate Court has still erred in admitting the applications in question and not dismissing them as barred by limitation, then it would mean, that Section 3 of the Limitation Act has not been observed and to that extent the subordinate Court has assumed or failed to assume jurisdiction to proceed with the determination of the matter.

12. Applying the principle of *M.L. & B. Corporation's case* (supra) to the instant case, it is clear that it is not open to me to interfere with the discretion of the learned trial Judge when he found that there was Sufficient cause for the delay during the entire period between February 3, and July 10, 1956. For the purposes of this judgment I am proceeding on the footing that the delay upto July 10, 1956, has been properly explained and sufficient cause to the satisfaction of the Court concerned has been shown for the delay in not filing the application for

restoration Upto July 10, 1956. If the trial Court found that the delay in not pre-Moting the restoration applications was explained only upto July 10, 1956, it was incumbent upon it by virtue of Section 3 of the Limitation Act to dismiss the restoration applications because the delay of day to day for the entire period which elapsed between March 5, 1953 and August 8, 1956, they being the two relevant dates in the light of the judgment of the Supreme Court in Ramlal's case (supra) has not been explained away. As explained by the Supreme Court in M.L. & B. Corporation's case (supra), Once it is found that the subordinate Court has not paid attention to Section 3 of the Limitation Act, the High Court can interfere in revision and to that extent the Supreme Court has accepted the principle in Joy Chand's case 76 I.A. 131, as the correct principle.

13. Under these circumstances, it is clear that the learned trial Judge, with respect to him was in error when he held that the two restoration applications were not barred by limitation. It was obligatory on the plaintiff, in the light of the decision in Ramlal's case (supra), to have explained the entire delay between March 5, 1953 and August 8, 1956 and that too to explain the delay day by day. The application for condonation of delay, Ex. 3, in each of the two restoration applications, which were originally in Gujarati, have been shown to me and I have been taken through the entire application and nowhere in that application has an attempt been made to explain the delay right upto August 8, 1956, when the application for condonation of delay came to be filed. Under these circumstances, it is clear that even if the trial Court was right in condoning the delay between February 3, 1953 and July 10, 1956, still on August 8, 1956, the applications were barred by time and that being the case, this is a clear case of a subordinate Court assuming jurisdiction to decide the restoration application on merits in clear violation of Section 3 of the Limitation Act. Under these circumstances, it is clear that the learned trial Judge, with respect to him, was in error when he held these restoration applications were filed in time and then proceeded to deal with the restoration applications and after deciding the restoration applications, on merits, allowed those restoration applications. In view, of what has been stated above, it was obligatory on the learned trial Judge to dismiss application for condonation of delay because no sufficient cause was shown for, the entire period between the expiry of the last day of limitation prescribed for presenting the application and August 8, 1956, on which date the applications were actually filed. It was also obligatory on the learned Judge to hold that the restoration applications were, therefore, barred by time and he ought to have dismissed all the four applications, viz., the two applications for condonation of delay and the two restoration applications.

14. Mr. Vakil on behalf of the opponent drew my attention to two decisions. One of these two decisions is Kishandas v. The Municipal Corporation of the City of Ahmedabad 60 Bom. i.L.R. 1357 ; and there Chagla C.J. has held that commonsense view of the matter should be taken and the procedure should not be permitted to defeat the ends of, justice. These are general observations which have no applicability to the facts of the present case because if the Legislature

has prescribed; a period of limitation and has laid down that the Court cannot hear any matter or entertain any matter after the prescribed period of limitation is over, then there is no scope for the Court to take a commonsense view regarding the procedure. In the same manner, the other decision on which Mr. Vakil relied, viz., Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, also cannot help the opponent. There it has been laid down in paragraphs 16 and 17 at page 429 of the report as follows:

Now a code of procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room-for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to "both" sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them, of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the right of that principle.

Again, these observations do not help the opponent because in clear unmistakable terms the law of procedure in question viz., "the Limitation Act, 1908, has provided that if an application is beyond the time prescribed therefore in the Limitation Act, the Court, has got to dismiss it and the Court cannot proceed to entertain it or to try it on merits. That law of the procedure being clear and unambiguous, it cannot be said that I am taking too technical a view or that I am allowing; law-of procedure to be turned into a thing designed to trip people up! and I am unable to accept the contention that I have taken too technical a view regarding the provisions of this procedural law.

14.1 Under these circumstances, the learned trial Judge, with respect to him, I was in error when he condoned the delay between February 3, 1953 and August 8, 1956, Section 5 of the Limitation Act, and held that the bar of limitation u/s 3 was saved. With respect to him it was obligatory on him to hold that the restoration applications having been presented on August 8, 1956, and the sufficient cause having been shown only for the delay upto July 10, 1956, the applications were barred by limitation and he should have dismissed the restoration applications and should have also dismissed the condonation applications.

15. In the result, I allow all the four Civil Revision Applications and set aside the

judgments and orders passed by the learned trial Judge on the two applications for condonation of delay and two applications for restoration of the suits. The proper order that the learned trial Judge should have passed on each of the four applications was to dismiss each of them, and that order will be substituted for the order of the learned trial Judge on each of those four applications. Rule is made absolute in each of the four Civil Revision Applications. Mr. Desai, appearing on behalf of the petitioner in each of the four Civil Revision Applications; does not press for costs and, therefore, there will be no order as to costs in each of the four matters.