

(1955) 12 BOM CK 0016
In the Bombay High Court
Case No : C.R.A. No. 1584 of 1954

Ambalal Harjivandas

APPELLANT

Vs

Jani Chandulal Vidyaram

RESPONDENT

Date of Decision : 20-12-1955

Acts Referred:

Limitation Act, 1908 — Section 19, 20, 31, 31(1), 4

Citation : AIR 1956 Bom 347 : (1956) 58 BOMLR 399 : (1956) ILR (Bom) 458(2)

Hon'ble Judges : Gajendragadkar, J

Bench : Single Bench

Advocate : C.C. Shastri, for the Appellant;

Judgement

1. This Revisional application raised a short point of limitation which is of some importance for similar claims in the district of Baroda, The petitioner filed a suit in the Court, of the Civil Judge, Junior Division, Kadi, to recover Rs. 449/- on a promissory note.

The promissory note had been executed in favour of the petitioner on 18-5-1918. On 23-6-1951 there was an acknowledgment by part-payment of the principal amount and so the petitioner's case was that the suit filed by him on 18-6-1954 was within time. The learned trial Judge has held that the suit is barred by limitation and so the petitioner's claim has been dismissed. Mr. Shastri for the petitioner contends that, in coming to the conclusion that the suit was barred by limitation, the learned Judge has misconstrued the effect of the provisions contained in Clause 12 of the Baroda State (Application of Laws) Order, 1949.

2. It is common ground that a suit on a promissory note under the law of limitation prevailing in Baroda prior to its merger was governed by a rule of six years, though the corresponding law in the rest of the State of Bombay prescribes a period of three years for such a suit.

After the State of Baroda merged with Bombay, the Baroda State (Application of Laws) Order 1949, was promulgated and Clause 12 of this Order has provided

that,

"notwithstanding anything contained in this Order, if the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), for any suit, appeal or application is less than the period prescribed by any corresponding law in force in the Baroda State Immediately before the commencement of this Order, such suit, appeal or application may be instituted within two years next after the date of the commencement of this Order or within the period prescribed by such corresponding law, whichever period first expires".

The object of enacting this clause obviously was to protect claims based on promissory note from being extinguished by limitation by the application of the Bombay law of limitation. Legislature knew that in the State of Baroda a longer period of limitation had been prescribed for suing on promissory notes and it was apprehended that if the rule of three years was immediately made applicable to the State of Baroda, it would adversely affect several claims on promissory notes which were hi time under the Baroda law, but which would be barred by time under the Bombay law. That is why Clause 12 provides that claims made on promissory notes should be enforced by a suit within two years next after the commencement of this Order or within the period prescribed by such corresponding law in Baroda, whichever period first expires.

In regard to the promissory note In question under the Baroda law the last date to file a suit would have been. 8-5-1954, whereas the two years commencing next after the coming into force of this Order would expire on 1-8-1951. Since Clause 12 prescribes that a suit on a promissory note must be brought within such of the two periods as would first expire, it must be held that the present suit had to be filed on or before 1-8-1951.

Before this period of two years expired, on 23-6-1951 a part-payment of the principal has been made and the creditor relies upon this part-payment as amounting to an acknowledgment within the meaning of Section 20, Limitation Act. If the part-payment in question amounts to a valid acknowledgment u/s 20 the present suit would be in time. If, on the other hand, the said part payment does not amount to a valid acknowledgment, the suit would be beyond time.

3. Section 20 of the Limitation Act deals with the effect of payment on account of debt or interest on legacy and it provides that where payment on account of a debt is made before the expiration of the prescribed period by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made.

The learned trial Judge has held that the payment in question had been made, in the present case, after the expiration of the prescribed period, but within the extended period allowed for the institution of the present suit. That is why he came to the conclusion that the part-payment does not satisfy the requirements of Section 20, Limitation Act.

In other words the view taken by the learned Judge appears to be that Clause 12 of the Order does not prescribe the period of limitation for suits on promissory notes but nearly gives an extended period of grace within which the promisees can sue their promisors. If Clause 12 was intended merely to afford relief to the promisees by giving them an extended period of grace, then the acknowledgment on which the petitioner relies cannot be said to satisfy the requirements of Section 20.

On the other hand, if it is held that Clause 12 of the Order prescribes a period, of limitation for suits on promissory notes, then the part-payment in question would amount to a valid acknowledgment u/s 20.

4. The word "prescribed" is not defined in the Indian Limitation Act; but the expression "Extension of period" would be fairly clear in Its denotation if we examine some of the relevant provisions of this Act using the said expression. Section 4 of the Limitation Act, for instance, provides that, where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed the suit, appeal or application may be instituted, preferred or made on the day that the Court reopens.

Now, where a party sues his debtors on the reopening of the Court the suit is really instituted after the period of limitation has expired put nevertheless it is held to be in time because of the extended period which, in effect, has been provided for by Section 4.

Similarly Section 5 provides that any appeal or application for a review of judgment or for leave to appeal or any other application to which this 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 therefor, when the appellant or applicant satisfied the Court that he had sufficient cause for not preferring the appeal or making the application within such period. Here again an appeal or an application is entertained even after the period prescribed for" it have expired on the ground that the extension of period is justified by the proof of sufficient cause.

The usual cases where the doctrine of extended period comes into operation are cases where the limitation expires during the period when the Civil Courts are closed for vacations and suits are allowed to be filed on the day of reopening of the Court. If an acknowledgment is made during the vacation, the question has often been raised before Court as to whether the said acknowledgment can be set to be valid and there appears to be consensus of judicial opinion on the point.

If an acknowledgment is executed after the prescribed period has expired, taut before the day of reopening of the Courts when a suit can be filed u/s 4, Limitation Act, it has been held. that the acknowledgment having been made after the expiration of the period, it is invalid u/s 19 or Section 20 even, though the time when the acknowledgment has been made is a part of the time which can be described as the extended period for the purpose of bringing the suit.

In "Bai Hemkore v. Masamali" 26 Bom 182 (A), Jenkins C.J. and Aston J. had occasion to consider this question. The suit from which the revisional application arose before the Court has been filed by the plaintiff in 1900 to recover money due under a bond dated 10-10-1894.

The plaintiff had relied upon, an acknowledgment made to him by the defendant on 28-10-1897 for the purpose of saving limitation, and it was urged on his behalf that, though the acknowledgment has been made more than three years after the execution of the documents the acknowledgment was valid because it was given on 28-10-1897 and he had still a right to sue for the debt u/s 5 of the earlier Limitation Act, as the Courts were then closed for the October vacation and had been closed when the period of three years from the date of the bond expired.

This plea was rejected and it was held that the suit was barred inasmuch as the acknowledgment was passed after the three years had expired, although the right to sue might have been subsisting on the date of the acknowledgment owing to the intervention of the vacation u/s 5, Limitation Act.

In other words the fact that the creditor's right to bring a suit is alive would not necessarily make the acknowledgment made in his favour valid unless the acknowledgment has been made within the period of limitation prescribed for a suit. Jenkins C.J. in dealing with this point has observed that Section 19, Limitation Act, requires that an acknowledgment should be made before the expiration of the period prescribed for the institution of the suit and that, in the case before the Court, though the rights of the suit may have been subsisting on 28-10-1897, in the sense that the suit could under the circumstances have been instituted on 29-10-1897, that was not because the period of limitation prescribed for the suit had not expired, but because notwithstanding the expiration of that period there was a special right under the provisions of Section 5 to institute the suit on, the day on which the Court reopened.

The same view has been taken by the Madras and the Allahabad High Courts in "Chidambaram Chettiar v. Venkatasubba Naik" AIR 1937 Mad 367 (B) and. Puran Chand and Another Vs. Abdullah and Another, .

5. In view of this legal position it is necessary to decide whether Clause 12, Baroda State (Application of Laws) Order, 1949, can be said to have prescribed the period of limitation for a suit like the present, or it could be said that by Clause 12 only a period of grace has been granted so that the additional period during which the suit can be brought is only an extended period and it does not amount to the period of limitation prescribed. On a fair and reasonable construction, Clause 12 appears to me to prescribe a period of limitation for the suit mentioned in that clause.

It is not a period of grace which Clause 12 intends to provide to the creditors. In view of the anomalies that would have resulted if the Bombay law of limitation had been applied to claims which until the date of merger of the Baroda State

were governed by the larger period of limitation prevailing in Baroda until then, Legislature thought it necessary to provide a special period of limitation for this claim; and the most expedient way of prescribing such a period of limitation was adopted by requiring the creditors to bring their suits either within 2 years next after the commencement of the order or within the period prescribed by a corresponding law of the Baroda State, whichever period first expires.

If Clause 12 is held to have prescribed a period of limitation for suits under promissory notes, then there would be no difficulty in coming to the conclusion that the part-payment of principal made on 23-6-1951 was made before the period prescribed had expired and so the present suit must be held to be in time.

6. In construing the provisions of Clause 12 it would be useful to derive assistance from judicial decisions which have construed; Section 31 of the Limitation Act of 1908. The genesis of this section is well-known. Before the enactment of this section there was a sharp difference of opinion in judicial decisions in respect of the period during which a simple mortgagee could enforce his right against his mortgagor. Some High Courts including the Allahabad High Court had held that the period of limitation available to such a claim was 60 years, while some other High Courts had taken the view that the period was of 12 years.

Ultimately the matter went to the Privy Council in the case of "Vasudeva Mudliar v. Srinivasa Pillai" 30 Mad 426 (PC) (D), and the Privy Council affirmed the view that the period prescribed for suits by simple mortgagees was not 60 years but was 12 years. As seen as this judgment was pronounced it exposed a large number of mortgagees, particularly in the United Provinces to the grave risks of having their claims barred by limitation.

These mortgagees had not thought of suing their debtors earlier under the impression that they were entitled to a period of 60 years as had been decided by the Allahabad High Court. In order to avoid hardship of this kind to a large number of creditors, when the Limitation Act 01 1908 was enacted Section 31 was included in the statute. This section has subsequently been repealed by Act 8 of 1930.

As it stood when enacted, Sub-section (1) of Section 31 provided that notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877, a suit for sale by a mortgagee may be instituted within 2 years from the date of the passing of this Act or within 60 years from the date when the money secured by the mortgage became due whichever period expires first; and no such suit in the territories mentioned by Sub-section (1) instituted within the said period of 60 years & pending at the date of the passing of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that 12 years" rule of limitation is applicable.

It would be noticed that the scheme adopted by Section 31 is precisely similar to the scheme of Clause 12 of the Order with which I am concerned. It prescribed

an alternative period of limitation and laid down that between the two alternative periods mentioned whichever period expires first should be regarded as the period prescribed for the suit or action. In many cases, acknowledgments were made during the period thus laid down by Section 31 and Courts had to consider whether these acknowledgments were valid.

The decision of these questions naturally depended on the view that the Courts were likely to take as to the effect of Section 31. Did Section 31 prescribe a period of limitation or did it merely give a period of grace by way of extending the period of limitation in the interests of natural justice? The answer given was in favour of the construction that Section 31 prescribed a period of limitation and so an acknowledgment made in favour of the creditor within the period permitted by Section 31 was held to be valid acknowledgment.

7. In "Suryanarayana v. Venkataraju" AIR 1935 Mad 64 (E), a Full Bench of the Madras High Court had held that with reference to the special class of cases dealt with in Section 31 that section must be interpreted as prescribing a period of limitation even for the purposes of the application of Sections 19 and 20 of the Act.

Varadachariar J. who delivered the judgment for the Full Bench rejected the argument that the word "prescribed" in Sections 19 & 20 must be understood as only meaning prescribed in Schedule II, Limitation Act, as not warranted by the language of those sections and as being opposed to the weight of authority. Then the learned Judge construed Section 31 as prescribing the period of limitation for suits falling within its ambit.

Mr. Justice Varadachariar rejected the narrower construction sought to be put on Section 31 and observed that there was no reason why a provision introduced for the purpose Of meeting justice should be unnecessarily restricted in its scope or why the Legislature should be assumed to have intended that all persons holding such mortgages should immediately rush to Court, even though the mortgagors were prepared to make part-payments or execute renewals. The same view has been taken by Mears, C.J., and King J. of the Allahabad High Court in Sheo Partab Singh and Another Vs. Tajammul Husain and Others, .

8. It would thus appear that the authority of these decisions on the question of construing Section 31 which is very similar in its words and phraseology to Clause 12 of the Baroda State (Application of Laws) Order with which I am concerned Is in favour of the view which I am disposed to take. If Clause 12 prescribes a period of limitation for suits like the present, then it must be held that the part payment on which the petitioner relies is a valid acknowledgment and the suit filed on 18-6-1954 is in time.

9. There is another point which must be incidentally considered. The learned trial Judge appears to have taken the view that, though the part-payment of Rs. 15/- has been otherwise proved since it does not appear in the handwriting of the debtor that the payment had been made either for interest or for principal as

such, the said part payment cannot amount to a valid acknowledgment.

In coming to this conclusion, the learned Judge had, through error, relied upon the unamended provisions of Section 20, Limitation Act. The words "as such" which were found in the corresponding provisions of Section 20 of the unamended section have now been deleted and the circumstances on which the learned Judge relied can no longer be regarded as introducing any infirmity in the part-payment of the principal.

10. In the result the revisional application must be allowed, the decree passed by the learned trial Judge set aside and the suit sent back to his Court for disposal in accordance with law. Since the Opponent has not appeared in this Court I propose to make no order as to the Petitioner's costs.

11. Revision allowed.