

(1937) 10 AHC CK 0010
In the Allahabad High Court

B. Chhuttan Lall

APPELLANT

Vs

B. Dwarka Prasad

RESPONDENT

Date of Decision : 27-10-1937

Acts Referred:

Citation : (1937) 10 AHC CK 0010

Hon'ble Judges : Bennet, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a first appeal by the defendant against an order of the lower Appellate Court remanding the suit for decision. The facts are that the plaintiff and defendant had a partnership ending on 31st March 1928, and on 30th March 1931 the plaintiff brought a suit in the Court of the Subordinate Judge of Lansdowne for accounts. The defendant pleaded want of jurisdiction and on 9th May 1932 the Court ordered the plaint to be returned to the plaintiff for presentation to the proper Court. An appeal was filed in the Court of the District Judge by the plaintiff and on 17th May 1933 this appeal was dismissed and on 2nd June 1933 there was an order of the District Judge for return of the plaint to the plaintiff for presentation to the proper Court. The plaintiff would have been well advised if he had done so but he did not do so. He filed a revision against the District Judge's order in the High Court. Now there was no reason why he should not have filed his plaint in the proper Court in Meerut while his revision was pending and asked the Meerut Court to stay the plaint until the revision was decided. The revision was dismissed on 2nd November 1934. The plaintiff then filed his plaint in the proper Court in Meerut on 19th January 1934. The defendant pleaded bar of limitation and the issue was framed : "is the suit for account time-barred?" The trial Court decided that it was not time barred on the presumption that the periods of appeal and revision were to be tasked on to the period during which the proceedings actually remained pending in the Courts, and that

regard being had to the common course of events, a period of 17 days does not appear to be excessive for getting back the plaint from the High Court and filing it here.

2. On appeal the lower Appellate Court considered that the finding was unsound and vague but held that the plaintiff should be given an opportunity to say how he spent the period of 17 days before filing the suit in a Court in Meerut, and has remanded the case on that ground. Against that order a revision has been taken on the ground that the lower Appellate Court has erred in law in not dismissing the suit. Learned Counsel based his argument on three points. The first point was that u/s 14, Lim. Act, the period during which the revision was pending in the High Court could not be excluded. This argument is based on the fact that in the second reference to the time,

the time during which the plaintiff has been prosecuting with due diligence another civil proceedings whether in a Court of first instance or in a Court of Appeal against the defendant shall be excluded,

a Court of revision is not mentioned and it is therefore argued that the time taken during revision will not come u/s 14. This view has been held in 14 I C 2591 by a single Judge of the Madras High Court, and in Narayan Ambaji Chavan Vs. Hari Ganesh Navare, by a single Judge of the Bombay High Court. On the other hand a wider view has been taken and it has been held that the words "Court of Appeal" merely indicate the Court whose order is in question and the words "civil proceedings" are wide enough to include not merely an appeal but also a revision and that therefore the time taken in a civil revision in a High Court may be : excluded u/s 14, Lim. Act. This view was held by a Bench of the Madras High Court in Venkatrangayya Appa Row v. Mural Sriramulu (1912) 17 IC. 593 and also in a ruling: of a Bench of this Court in Seth Mulchand v. Seth Samir Mal (1882) A.W.N. 59. It is not shown that this ruling of a Bench of the Allahabad High Court has been dissented from in any later ruling. The point arose but was not decided in Hamida Bibi Vs. Fatima Bibi, Following the Allahabad ruling, I hold that the time of the civil revision in the High Court may be excluded u/s 14.

3. The second point of learned Counsel was that no explanation had been given for the period between the dismissal of the appeal on 17th May 1933 by the lower Appellate Court and the filing of the revision in the High Court on 29th August 1933. His third point was that no explanation has been given for the period, 2nd November 1934, when the revision was dismissed in the High Court, and 19th November 1934, when the plaint was filed in the lower Court. Learned Counsel argued that these periods do not count under any section of the Limitation Act. He pointed out that Expl. 1 of Section 14 states that in excluding the time during which a former suit or application is pending, the day on which that suit was instituted or application made and the day on which the proceedings therein ended shall both be counted. He argued in my opinion correctly that this section means that the period between 29th August 1933 and 2nd November 1934 when the revision was dismissed in the High Court is the

only period which can be deducted u/s 14, Lim. Act, after the appeal was dismissed on 17th May 1933. This view has been held in Ramgopal Mondal v. Kamala Ranjan Roy AIR (1919) Cal. 4, a Bench ruling, and also in Hari Das Roy v. Sarat Chandra Dey 17 C.W.N. 515 and in Firm Jiwan Ram Ramchandra Vs. Jagernath Sahu and Another, (Patna High Court). No ruling to the contrary was shown on behalf of the respondent. I consider therefore that the order of remand by the lower Court is incorrect, as there is no section of the Limitation Act which can be applied to cover the periods in question. Some of these rulings pointed out that the law requires that when the revision was dismissed by the High Court on 2nd November 1934, the plaint should have been filed in the Court in Meerut on 3rd November 1934 at the latest. This may seem to be rather a hardship as no interval of time is allowed by the Act, but a plaintiff has the remedy of taking the precaution of filing his plaint in the proper Court during the period when his revision is pending in the High Court. If the plaintiff gambles on the chance of his revision succeeding, he cannot expect the law to allow him a further period in which he can take time to take his plaint to the proper Court. For these reasons I consider that the suit filed in the Court of Meerut on 19th November 1934 was beyond time as the suit related to a partnership which began on 1st April 1927 and terminated on 31st March 1928 and for which the period of limitation is three years. The Courts below therefore should have held that the suit was time-barred and the suit should have been dismissed. Accordingly I allow the appeal and I order the dismissal of the suit on the ground of limitation with costs in all Courts in favour of the defendant.