

(1972) 04 KAR CK 0003

In the Karnataka High Court

Case No : Civil Revision Petition No. 1827 of 1971

Bando Banaji Mutalik

APPELLANT

Vs

Bhaskar Balaji Kulkarni

RESPONDENT

Date of Decision : 12-04-1972

Acts Referred:

Limitation Act, 1963 — Section 10, 20, 24, 29 (2), 4

Citation : AIR 1972 Kar 311 : (1972) 1 MysLJ 649

Hon'ble Judges : Venkataswami, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : M. Rama Bhat, for the Appellant; R.U. Goulay, for the Respondent

Final Decision : Allowed

Judgement

1. This petition u/s 115, Civil P. C. has been brought up before us by way of a reference made by a learned Single Judge of this Court. It is by a tenant and is directed against an order made by the Principal Munsiff, Gadag in Misc. Case 1 of 1970.

2. The few relevant facts are as follows:-- The respondent herein, who is the owner of R. S. No, 332/2 in Huilgol Village, sued the petitioner herein, by an application filed before the Land Tribunal, constituted under the Mysore Land Reforms Act, 1961 (hereinafter referred to as the Act) for a declaration that the petitioner was not a tenant. The said petition has been filed on 24-12-1966 u/s 112 of the Act. Since the application of the respondent had been filed beyond the time specified under the proviso to Section 4 of the Act, an application u/s 5 of the Limitation Act, 1963, for condonation of delay involved in its presentation, was also filed. According to the proviso to Section 4 of the Act such an application ought to have been filed within one year from the appointed day, namely 2-10-1965, the date on which the Act came into force. On behalf of the petitioner herein, it was pleaded, inter alia, that the provisions of Section 5 of the Limitation Act would not be applicable to proceedings before a Tribunal under the Act and therefore, the application in question ought to be dismissed as not

having been made in time.

The learned Munsiff came to the conclusion, that the provisions of Section 5 of the Limitation Act were applicable to the case and posted the case for further hearing on other points arising therein. Hence this petition.

3. On behalf of the petitioner, Sri M. Rama Bhat, the learned counsel urged a two-fold contention. It is : the provisions of Section 5 of the Limitation Act would be inapplicable to the present proceeding as the Tribunal was not a Court and there was nothing in the Act which makes them expressly applicable to such a proceeding; and the provisions of Section 29(2) of the Limitation Act cannot also be of any assistance, as the time limit specified in the proviso to Section 4 of the Act is not a period of limitation prescribed for the filing of applications as the one in question.

On behalf of the respondent, Sri R. U. Goulay, learned counsel depending principally on the provisions of Section 29(2) of the Limitation Act contended that the Act being a special law and there being no words expressly providing for the exclusion from operation of Sections 4 to 24 of the Limitation Act, in the "Act" itself, the provisions of Section 5 of the Limitation Act would be applicable to the proceedings in question.

4. We are of opinion that the petition has to succeed on one of the two grounds, if not both, urged on behalf of the petitioner, and, in that view it would be unnecessary to consider the other ground.

It is not disputed that on the day the present proceedings were initiated by the respondent, the forum for adjudication of such dispute was the Land Tribunal constituted under the Act. There is also no dispute that such a forum was not a Court in the sense it is taken to mean under the Limitation Act, 1963. It is further plain from the language of Section 5 of the Limitation Act itself that it is expressly made applicable to appeal and application before a Court. Section 29(2) of the Limitation Act, on which strong reliance was placed on behalf of the respondent, merely envisages provision being made in any special or local law for a period of limitation different from the one prescribed in the Schedule to that Act. It also provides that in such a contingency, two consequences should follow. They are :-- (1) for the purpose of Section 3 of the Limitation Act the period prescribed under such special or local law should prevail over the period prescribed in the Schedule to such Act; (2) the provisions of Sections 4 to 24 of the Limitation Act should apply to such suits, appeals or applications, so far as their application is not expressly excluded by such special or local law. One thing is clear from the above provision having been made in any special or local law in that behalf would have been governed by the period of limitation prescribed in the Schedule to the Limitation Act. In other words, the suits, appeals and applications contemplated under the special or local law must be of the same nature as those contemplated in the Schedule to the Limitation Act, except for the different prescription as regards periods of limitation under any such special

or local law. It follows from this that if the proceedings contemplated under the Limitation Act are only those that could be initiated before a Court within the meaning of that Act, the proceedings initiated under a special or a local law in order to attract the application of Section 29(2) thereof, should also be those which are legally capable of being instituted only before a Court. Shortly put if the special or local law provides for a special forum for adjudication of disputes arising under it, although with a period of limitation different from the one prescribed under the Limitation Act it would not attract the provisions of Section 29(2) or any other provisions of the Limitation Act, in the absence of any specific provision having been made as to their applicability.

An instance of such a provision can be seen from the provisions of Section 122 of the Act wherein special provision has been made as regards the application of some of the provisions of the Limitation Act to certain proceedings specified therein.

5. The question that still remains for consideration is whether the provisions of the Limitation Act are confined in their operation to proceedings before Courts. This question, in our opinion, is no longer *res integra*. The Supreme Court, in the case of *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, was concerned with a question whether the period of limitation prescribed under Article 137 of the Schedule to the Limitation Act would be applicable to proceedings u/s 33-C (2) the Court held that it was only applications to Court that were intended to be covered by Article 137 of the Limitation Act. 1963.

Following the above decision, the Supreme Court, in *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, in disposing of a question similar to the one in the earlier case, in paragraph 3 of the above report, has stated the position thus :--

"In our view Article 137 only contemplates application to Courts. In the Third Division of the Schedule to the Limitation Act. 1963, all the other applications mentioned in the various articles are applications filed in a court, Further Section 4 of the Limitation Act, 1963 provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the Court is closed". Again u/s 5 it is only a Court which is enabled to admit an application after the prescribed period has expired if the Court is satisfied that the applicant had sufficient cause for not preferring the applications. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to Courts and that the Labour Court is not a Court within the Indian Limitation Act. 1963". (Underlining (*italics*) ours).

It is, therefore, clear from the above enunciation that provisions of the Limitation Act are only applicable to proceedings before courts. We have earlier observed that the fact that the Land Tribunal constituted under the Act was not a Court is not in dispute. Indeed, the very basis of the argument of Sri Gou-lay for the

respondent, in the context of the applicability of Section 29(2) of Limitation Act, was founded on such an assumption. We have also no hesitation in holding that such a Tribunal was not a Court within the meaning of that expression in the Limitation Act. Such was also the view of this Court in a matter relating to the exercise of jurisdiction by a Munsiff, functioning as an Election Tribunal under the Mysore Village Panchayats (Election of Chairman and Vice-Chairman) Rules, in the case of Nagreddy v. Khandappa. (1970) 1 Mys LJ 134 : (AIR 1970 Mys 166).

6. We are therefore, clearly of the view that the application filed by the respondent would not attract the provisions of Section 5 of the Limitation Act and having been preferred after the last day fixed in the proviso to Section 4 of the Act, is clearly not maintainable.

Since the above conclusion of ours is sufficient to dispose of the petition, we do not propose to consider the other contention urged on behalf of the petitioner that the period fixed in the proviso to Section 4 of the Act is not a period of limitation at all which can be said to be on a par with those prescribed under the Limitation Act. It may however be mentioned that in support of this contention, reliance was placed on the decision of the Bombay High Court in Shankar Sadu Kamathe Vs. Chunilal Rupchand Dakale and Another,

7. In the result, this petition succeeds and is allowed. Since the order impugned is one made on a preliminary question and the main matter is still pending before the lower Court for disposal in accordance with law and in the light of the observations made herein, in the circumstances, no costs.