

(1910) 08 BOM CK 0021
In the Bombay High Court
Case No : First Appeal No. 104 of 1909

Chanmalapa Chenbasapa Tenguikai

APPELLANT

Vs

Abdul Vahab Muhamed Hussein

RESPONDENT

Date of Decision : 01-08-1910

Acts Referred:

Limitation Act, 1908 — Section 14

Citation : (1910) 12 BOMLR 977

Hon'ble Judges : N.G. Chandavarkar, J;Heaton, J

Bench : Division Bench

Judgement

N.G. Chandavarkar, Kt., J.—The only question argued on this appeal is one of limitation, and it is, whether the words "a Court of first instance" and "a Court of appeal," in Section 14 of the Indian Limitation Act, include a foreign Court, such as one in a Native State, falling within that description.

2. The question has arisen under the following circumstances. The appellant brought a suit and obtained a decree against the respondent in the Court of the District Judge of Shivmoga in the Native State of Mysore. On appeal to the Chief Court of that State, the decree was reversed and the suit dismissed, on the ground that the Court at Shivmoga had no jurisdiction, as the cause of action had arisen in British India.

3. The appellant then filed this suit in the Court of the First Class Subordinate Judge at Dharwar. The suit was on the face of it barred by limitation, but the appellant, relying on Section 14 of the Limitation Act, claimed to exclude, from the period prescribed by that Act for the suit, the time during which he had been prosecuting, with due diligence, the civil proceeding in the Courts in the Mysore State.

4. The Subordinate Judge has held that the word "Court" in that section means a Court in British India, and not a Court in a Native State.

5. Mr. Jayakar, appearing for the appellant, contends that, as there is no

definition of the word "Court" in the Limitation Act, it must be construed in the wide sense in which it is used in that section so as to include "a foreign Court"; and he relies on the judgment of Muttusamy Ayyer J. in *Parry and Co. v. Appasami Pillai* ILR (1880) Mad. 407. That judgment went up in appeal and was reversed on another ground, the appellate Court not thinking it necessary to decide the question arising u/s 14 of the Limitation Act.

6. All legislation is primarily territorial, and a limit must be placed upon the general sense of a word used in a statute with reference to that principle of law, unless there is something in the language or object of the statute which compels the Court to interpret the word in its wide sense : *Cooke v. Charles A. Vogeler Company* [1901] A. C. 109. As was said by this Court in *Shidlingapa v. Kansbasapa* ILR (1887) 11 Bom. 599, "the words of a statute, though to be given their grammatical sense, are to be construed also with reference to the general purpose of the statute." Following that canon of construction, our Court held in *Queen Empress v. Bapuji Dayaram* ILR (1886) 10 Bom, 288 that the words "any Court," in Section 258 of the CPC of 1882, meant only "any Civil Court."

7. Turning now to the Limitation Act, its preamble shows that the "Courts" to which it applies are Courts in British India, not foreign Courts. The word must be read in that restricted sense, or else the absurdity would follow that the Legislature intended to provide a "law relating to the limitation of suits, appeals and certain applications" for Courts outside its jurisdiction. And if that is the restricted meaning of the word as used in the preamble, the same meaning must be attached to the word where it occurs in the enacting portions of the Act, unless the enactment is itself so clear and unambiguous as to show that (the Legislature intended a departure from that meaning in the case of any particular section of the Act. Neither expressly nor by necessary implication has the Legislature made any such purpose apparent in the Limitation Act. The implication is rather the other way. Section 11 of the Act relates to a "suit on foreign contracts"; and Article 117 to Schedule I of the Act provides a period of limitation for a suit upon "a foreign judgment." Whenever, therefore, the Legislature intended anything relating to a foreign State to be brought in, it has provided for it by express language. It is a fair inference from it that, had the legislature intended to include a foreign Court in the word "Court" in Section 14, it would have said so.

8. In this connection we must examine the scheme of the CPC with reference to foreign Courts, because that Act and the Limitation Act are in *pari materia* ", both are laws of procedure. The Code does not define the word "Court", and that for the obvious reason that it applies primarily to the Courts on whom the Code is binding. But it defines "a foreign Court"; and wherever it intended that any section of the Code should apply to any judgment or proceeding of that Court, it has said so in distinct terms, as, for instance, in Sections 13 and 44.

9. By Section 13 of the Code, the judgment of a foreign Court is placed on the same footing as that of a Court to which the Code applies, not in all but only in

some cases and for a certain purpose. That judgment is conclusive as to any matter "directly adjudicated upon" but only upon certain conditions, one of which is that it must be a judgment "given on the merits of the case." Where it is not so given, the foreign Court is not recognised by the Code as being on the same footing with Courts in British India, to which the Code applies. A judgment of a foreign Court, dismissing a suit on the ground that it has no jurisdiction to try it, is not a judgment on the merits. If a foreign Court, which has dismissed a suit for want of jurisdiction, is not equivalent to a Court to which the Code applies, so far as its judgment dismissing the suit is concerned, it follows that the Legislature did not intend the word "Court" to include a foreign Court in cases to which such judgments relate. ?

10. Again, by Section 10 of the Code it is enacted that no Court shall try a suit, in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British] India established or continued by the Governor General in Council and having like jurisdiction, or before His Majesty in Council. Then there is an "explanation" added that " the pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action." There was, strictly speaking, no necessity for this explanation, because the words of the section restrict its scope in plain language to Courts which exclude a foreign Court. Therefore the fact that it is added as an "explanation" to the section is important. Had the Legislature intended the word "Court" to mean any Court, whether British Indian or foreign, it would have called that a proviso or an exception which it has called an " explanation"". The explanation must, therefore, be regarded as having been added *ex majore cantela*, and it throws light on the intention of the Legislature that the word " Court" should not include a " foreign Court " unless it has that meaning given to it expressly or by necessary implication in the Code.

11. Section 41 of the Indian Evidence Act, on which Mr. Jayakar relies in support of his argument, relates to judgments *in rem*, which are judgments of all competent Courts, including foreign, in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction. The word " competent Court" in that section includes a foreign Court, because of the well-known rule of law that such judgments are of "ubiquitous authority and universally conclusive": Story on the Conflict of Laws Ch. XV; and *Hukm Chand on Res Judicata*, pp. 603 to 606. This section in the Evidence Act supports the conclusion that the word "Court," occurring in a statute, excludes a foreign Court, unless by express language or by necessary implication the statute includes it, or some well-known rule of law warrants the wider sense.

12. For these reasons, we are of opinion that the word "Court" in Section 14 of the Limitation Act does not include a foreign Court. The decree must, therefore,

be confirmed with costs.