(1957) 06 BOM CK 0009

In the Bombay High Court

Case No : O.C.J. Appeal No. 89 of 1956 and Suit No. 184 of 1953

Chotmal Ganeshram Bharadia APPELLANT

Vs

Ramchand Tarachand RESPONDENT

Date of Decision : 24-06-1957

Acts Referred:

Limitation (Amendment) Act, 1951 — Section 13, 2(6), 30

Citation : AIR 1958 Bom 137 : (1957) 59 BOMLR 828 : (1958) ILR (Bom) 165

Hon'ble Judges : Chagla, C.J;S.T. Desai, J

Bench : Division Bench

Advocate : R.H. Pandya and V.T. Sadvani, for the Appellant; G.D. Dave and Surti, for the Respondent

Judgement

Chagla, C.J.—This is an appeal from a Judgment of Mr. Justice Coyajee who dismissed the plaintiff''s suit on the preliminary issue of limitation.

2. The plaintiff alleged in the plaint that the defendants employed him as their commission agent to enter into transactions in various commodities in the Samvat Year 1993-1994 (i.e. 1936-37) and that he acted as their commission agent upto 1938-39. The accounts between the plaintiff and the defendants upto Samvat Year 1994 were according to the plaintiff made up and adjusted on the 4th August, 1937. There were further transactions between the parties and the suit is in respect both of the adjustment and the subsequent transactions.

3. Now, there is no dispute that prima facie the suit is barred. The suit was filed on the 24th January, 1953 in respect of transactions which were completed in 1939. The plaintiff sought to bring the suit within time by relying on Section 13 of the Limitation Act and his averment in para 9 or the plaint was that the defendants were residing and carrying on business at Madhavpur in Jaipur State, a foreign territory upto 26th January, 1950. It is also not disputed that if this period was to be excluded, then the suit filed on the 24th January, 1953 would be within time. Therefore, the whole Question turns round the controversy as to whether the plaintiff is entitled to exclude this particular period and what was

urged by the defendant was that looking to the law which was in operation at the date the suit was filed, viz., the 24th January, 1953, the plaintiff was not entitled to exclude the period during which the defendants resided in the Jaipur State. Now, the law that was in force on the 24th January, 1953 permitted by S. 13 exclusion of time in computing the period of limitation prescribed for any suit during which the defendant had been absent from India and from the territories beyond India under the administration of the Government. It is undoubtedly true that if one were to contemplate "India" from the point of time of the 24th January, 1953, the defendants had not been absent from India at any time prior to the 24th January. 1953 because on the 24th January, 1953 India included the Jaipur State as an integral part of the country and it could not be said of the defendants that they had lived and carried on business outside India -- that India which was in existence and which was a political and geographical entity in 1953. It is also urged on behalf of the defendants by Mr. Dave that the law of limitation is a procedural law and it is well settled that no party has a vested right in procedure, and Mr. Dave asked us to ignore whatever the provisions of the Limitation Act were prior to the 24th January, 1953 and to give effect to the law in force on that day, even if in doing so a retrospective effect was given to the law and the right of the parties was affected.

4. The principle underlying Section 13 is that absence of a defendant in a foreign country should be excluded in computing the period of limitation, if the defendant resides in any part of India, no question of exclusion can arise, and therefore it is undoubtedly true that when Jaipur became part of India, residence in Jaipur could not be looked upon as residence in a foreign territory and it could not be said of a person residing in Jaipur that he was absent, from India. But what we Have to consider is whether residence of the defendants in Jaipur during the period that Jaipur was admittedly a foreign country should or should not be excluded, or whether a proper interpretation of the Limitation Act compels us to give a meaning to "India" which meaning that expression never bore prior 1951. In order to understand this contention it is necessary to look at the various legislative changes Section 13 has undergone in recent times. Originally the absence that was required was from British India. We will exclude from the consideration of this question the other expression about territories under the administration of Central Government. "Foreign country'' was defined as any country other than British India. Therefore, when we had Indian States and when Jaipur was an Indian State for the purpose of Section 13 Jaipur was looked upon as a foreign country. After Independence the Adaptation of Laws Order of 1948 brought about a change and in place of "British India", the British connection having come to an end, the express-on "Provinces" was substituted and "foreign country" was defined as any country other than India but included also any acceding state. Therefore, Jaipur which acceded to India would still be a foreign country for the purpose of this definition. There was a further alteration by Adaptation of Laws Order of 1950 and in place of "Provinces" the expression "States" was substituted and "foreign country" was defined as any country other

than India but includes also any Part B State. Therefore, for the purpose of Section 13, Part B State was bill a foreign country and the plaintiff was entitled to exclusion of time if the defendant resided in a Part B State. By this Adaptation Order the expression "States" was also defined as all tile territories for the time being comprised within Part A States and Part O States. Therefore, India was what was constituted by Part A and Part C States excluding Part B States. Then we come to the final legislative change which amended the Act and brought it into the shape and form which it now possesses and which it possessed at the date of the filing of the suit. and that is Act III of 1951. That Act was passed to provide for the extension of certain taws to Part B States and in the Schedule we have various Acts set out which have been adapted and which have been extended to Part B States. Among these laws is the Limitation Act and the change that was brought about was that the expression "India" was substituted for "States" and "foreign country" was defined as any country other than'' India but including also the States of Jammu and Kashmir, and "India" was defined as the territory of India excluding the States of Jammu and Kashmir. Therefore, it will be immediately noticed that Section 13 has been altered and amended from time to time in order that it should march with political and geographical changes that have been brought about in India. We started with a British dependency, we became independent, we had Indian States which had not completely integrated with India, and then we had complete integration, and this historical development of the country is fully reflected in the varying definitions that have been given to the expression "India" and to the expression "foreign country." Therefore, till Act III of 1951 was passed, according to the definition of "foreign country" in the Limitation Act and according to the clear language used in Section 13, the defendants did reside and carry on business outside India as it then was and their residence in that part of the country was looked upon by the law as residence in a foreign country. Therefore the plaintiff was entitled to the exclusion of time by reason of this residence in foreign country. The question that has been mooted is whether the plaintiff, should be deprived of this exclusion of time because Act III of 1951 by amending Section 13 has used the expression "India" which admittedly includes the Part B State of Jaipur.

5. Now, the principles of law on which Mr. Dave strongly relies are well settled and not in doubt. Reference was made to a judgment of this Court reported in District School Board of Belgaum v. Mohamed Mulla, 47 Bom LR 323 : AIR 1945 Born 377, where the authorities are reviewed and the principles are set out and it is stated in this judgment at P 327 (of Bom LR) : (at p. 380 of AIR) that:

".....it is clear that as a rule Statutes of limitation being procedural laws must be given a retrospective effect in the sense that they must be applied to all suits filed after they came into force."

And an important qualification to this rule is pointed out that if the Statute of limitation, if given a retrospective effect, destroys a cause of action which was vested in a party or makes it impossible for that party to exercise his vested right of action, then the Courts would not give retrospective effect to the Statute of limitation. It is pointed out that this qualification does not apply to this case because Act III of 1951 was published in the Gazette of India (Extraordinary) on the 23rd February, 1951 and it only came into force on the 1st of April, 1951. It is therefore said that in the light of that authority sufficient time was given to the plaintiff to file a suit between the 23rd February, 1951 and the 1st April, 1951. This is not a case where the right of suit was destroyed and injustice was caused to the plaintiff. Even if the effect of Act III of 1951 was to rob the plaintiff of the exclusion of time which he had obtained by reason of the old provisions of the law, sufficient time was given to him to save his right of suit and if the plaintiff chose to file the suit after the 1st April, 1951 he must suffer the consequences and he cannot be heard to say that injustice has been caused to him and therefore retrospective effect should not be given to the provisions of Act III of 1951 now, in putting forward this argument what is overlooked is the nature of the amendment brought about by Act III 1951. The principles which are enunciated in District School Board of belgaum Vs. Mohamad Mulla, apply to amendments of the Limitation Act which are in the nature of substantial alterations in the law of limitation. You may have an alteration which cuts down the period of limitation; you may have an alteration which may change the nature or the definition of a particular exclusion permissible under the Act; for instance, as has happened, the nature of acknowledgment which starts a new period of limitation may be altered by the definition, and when that happens the principle which we have just set out would come into force. But when we look at the nature of the amendment brought about by the Act in question, Act III of 1951, it Is not ah alteration of the law of limitation at all. This Act merely takes cognizance of the territorial alteration brought about in the country by the various political changes which were effected. It does not in the slightest degree either alter the principle underlying Section 13 or the period of exclusion permissible u/s 13. The principle that when a defendant resides in a foreign country the period of his absence should be excluded in computing the period of limitation remains unaltered and unaffected and with regard to the period of exclusion the whole of that period has to be excluded, whether under the law as it stood or under the amended law. Therefore, what the Legislature did by the amendment was that it defined or redefined "India" so as to bring that definition into conformity with the existing geographical and political situation. What it said was that inasmuch as Part B States have ceased to be foreign country and have become part and parcel of India, residence in the former Part B States can no longer be looked upon as residence in a foreign country and therefore the law must be brought into line with actual existing facts.

6. It is, therefore, impossible to take the view that when the Legislature amended Section 13, it intended retrospectively to deprive the plaintiff of the benefit he had obtained u/s 13 by being entitled to exclude the time during which the defendants resided in a part of India which at that time was admittedly foreign country. In coming to this conclusion we are not in any way departing

from the principles which are clearly laid down and which are well established. All that we are laying down is that the amendment is not an amendment of the Limitation Act in the strict sense of the term: it is an amendment which takes notice of changed and altered geographical and political circumstances; and to the extent that that is the nature of the amendment we must construe it so as to give effect to the notice taken by the Legislature of the changed political and geographical circumstances, and when we take notice of that we must come to the conclusion that the amendment of Section 13 is prospective and what the Legislature intended was that from the 1st April 1951 no time should be excluded if the defendant resides in a part of India which at one time was foreign country" and had ceased to be foreign country. But the Legislature equally wanted us to recognise the fact that prior to the 1st April 1951 the part of India in which the defendant had resided was foreign country and that the period during which he had so resided came within the purview of Section 13 as it then was, and the plaintiff was entitled to exclude that time in computing the period of limitation.

7. Our attention has been drawn to Section 30 which was enacted by Act III of 1951, and there the Legislature has expressly dealt with cases where the period of limitation prescribed by Act III of 1951 was shorter than the period prescribed by a corresponding law applicable to a Part B State, and in such cases Section 30 provides that a suit may be instituted within a period of two years next after the coming into force of Act III of 1951 in a Part B State or within the period prescribed for such suit by such corresponding law whichever period expires first, and Mr. Dave says that where the Legislature wanted to save the retrospective operation of an Act or to provide for it, it has expressly legislated to that effect. But the simple answer to this contention is that Section 30 deals with cases where there is alteration of the law of limitation. But the provision of law with which we are dealing, as already pointed out, does not alter or affect the law of limitation and therefore there was no necessity for the Legislature expressly to provide for a case where the plaintiff had already become entitled to exclude the period of limitation by reason of the defendant residing in a Part of India which was foreign country.

8. In our opinion, therefore, the learned Judge below, with very great respect, was in error when he applied the principle of law enunciated in District School Board of belgaum Vs. Mohamad Mulla, , to the facts of this case. We are not quarrelling with the principle, but in our opinion, again with respect, that principle is not applicable to the particular amendment which calls for interpretation at our hands.

9. The result is that the appeal must succeed, the order of dismissal passed by the learned trial Judge will be set aside, and the suit will go back for trial on merits. The respondents must pay the costs of the appeal. The respondents must also pay the costs of the hearing of the issue re: limitation trial in the Court below.

10. Liberty to the appellant''s attorneys to withdraw the sum of Rs. 500/-

deposited in Court.

11. Appeal allowed.

