

(1959) 02 RAJ CK 0008
In the Rajasthan High Court
Case No : First Appeal No. 55 of 1951

Firm Ramnath Ramachandra	Vs	APPELLANT
Firm Bhagatram and Co., Madanganj		RESPONDENT

Date of Decision : 26-02-1959

Acts Referred:

Evidence Act, 1872 — Section 41
Limitation Act, 1908 — Section 13, 14

Citation : AIR 1959 Raj 149 : (1959) RLW 386

Hon'ble Judges : K.L. Bapna, Acting C.J.; Jagat Narayan, J; D.S. Dave, J

Bench : Full Bench

Advocate : M.D. Bhargava, for the Appellant; P.C. Bhandari, for the Respondent

Judgement

Dave, J.—This case comes on a reference made by learned Judges of a Division Bench of this Court in a first appeal filed by the defendants against the judgment and decree of the Civil Judge, Kishangarh, dated the 14th of August, 1951 decreeing the plaintiffs' suit for Rs. 9,500/37- with future interest at 6 per cent and costs.

2. The said reference is embodied in the following terms:

"Whether advantage can be taken u/s 15 OB the Kishangarh State Limitation Act, corresponding to Section 14 of the Indian Limitation Act, of the pendency of a suit in the courts of the erstwhile territory of the Ajmer-Merwara, in subsequent suit in Kishangarh Court in view of the accession of Kishangarh State to the Dominion of India and thereafter its becoming a part of the Union of India, and specially the merger of the erstwhile State of Ajmer with Rajasthan under the States Reorganization Act, 1956?"

3. In order to appreciate the full implication of the question raised before us, it would be proper to set out briefly the facts which have given rise to it.

4. The plaintiffs-respondents formed a partnership firm carrying on business at Madanganj in Kishangarh. The defendants-appellants constituted a Hindu joint

family firm carrying on business at Vijainagar. The plaintiffs' case was, that the defendants made several transactions relating to purchase and sale of silver and bales of cotton-yarn, at Kishangarh, through the commission agency of the plaintiffs, from Bhadaw Vad 12, Sarnwat 2000 to Kartik Sud 15, Samwat 2000.

These transactions resulted in an outstanding balance in favour of the plaintiffs against the defendants for an amount of Rs. 11,454/15/-. The plaintiffs instituted a suit for the said amount in the court of the Sub Judge, Beawar on the 17th of May, 1944 since the defendants were residing within the jurisdiction of that court. The defendants contested the suit and one of their several pleas was, that the court at Beawar had no jurisdiction to entertain and try that suit, since there was a specific agreement between the parties that every dispute between them would be referred to the courts at Kishangarh.

This objection found favour with the learned Sub Judge, Beawar and he ordered the plaint to be returned to the plaintiffs for presentation to the proper court. Against this order dated the 14th of January, 1947, the plaintiffs filed an appeal in the court of the Judicial Commissioner, Ajmer. The appellate court affirmed the decision of the trial court and dismissed the appeal on 24-1-1949. Thereafter, on 16-6-1949, the plaintiffs filed another suit, for the same amount, in the court of the learned District Judge, Kishangarh.

The defendants again contested the claim and this time, one of their objections was, that the suit had become time barred and the plaintiffs could not take advantage of the provisions of Section 15 of the Kishangarh State Limitation Act (corresponding to Section 14 of the Indian Limitation Act) as claimed by them. The trial court dismissed this objection holding that the plaintiffs were entitled to exclude that period of time during which they were prosecuting the earlier suit in the court of first instance and also in the court of appeal in the former State of Ajmer.

The trial court decreed the suit for Rs. 9,500/3/- on 14-8-1951, Aggrieved by this judgment and decree, the defendants filed an appeal in this Court. That appeal came before a Division Bench of this Court on 26-3-1958 and at that time it was urged by learned counsel for appellants that the trial court had committed an error in giving benefit of Section 14 of the Indian Limitation Act since the courts at Beawar and at Ajmer were "foreign courts" and S, 14 was not applicable to civil proceedings in foreign courts.

Learned counsel for respondents urged in reply that by the time the present suit was filed, the former Kishangarh State had acceded to the Dominion of India and thereafter it became a part of the Union of India. The State of Ajmer also merged into the State of Rajasthan under the States Reorganization Act, 1956, and therefore, the contention raised by the appellants was not tenable. In view of the said objections, the learned Judges of the Division Bench thought it proper to refer the question mentioned above.

5. Before proceeding to examine the arguments which have been raised by

learned counsel for both the parties, it would be proper to cover the small ground which is common between them. It has not been disputed before us that on 17-5-1944 when the suit was first instituted by the plaintiffs in the court of the Sub-Judge, Beawar, Kishangarh was an Indian State having separate political entity and had its own law of limitation which was embodied in the Kishangarh Limitation Act (No. II of 1944).

Section 15 of that Act was exactly in the same language as Section 14 of the Indian Limitation Act (No, IX of 1908) which is in force at present in this State of Rajasthan. Section 3(6) of the Kishangarh Limitation Act, 1944 (which will hereafter be referred to as the Kishangarh Act) defined "foreign country" as meaning "any country other than Kishangarh territory." The period of limitation for the present suit under the Kishangarh Act was three years from the date of accrual of the cause of action.

6. Now, the question, which has been referred to us, may be divided into two parts. The first part thereof is, "whether the plaintiffs could take advantage of Section 15 of the Kishangarh State Limitation Act (corresponding to Section 14 of the Indian Limitation Act) of the pendency of a suit in the courts of the erstwhile territory of Ajmer-Merwara, in a subsequent suit in Kishangarh court." The second part would be.

"whether such an advantage could be taken in view of the accession of Kishangarh State to the Dominion of India and thereafter its having become a part of the Union of India and specially the merger of the erstwhile State of Ajmer-Merwara with Rajasthan under the States Reorganization Act, 1956."

7. It would be proper to take up the first part of the question first.

8. Learned counsel for the appellants has urged that even if it be assumed that the cause of action to the respondents accrued on 14-9-1943 as asserted by them, the suit became time barred on 14-9-1946 and thus according to him, it was obviously beyond limitation on 16-6-1949 when it was filed in the court of Civil Judge, Kishangarh. It is contended that Kishangarh was a sovereign State in relation to British India, that the courts at Beawar and Ajmer were located in a "foreign country" within the meaning of that term as given in the Kishangarh Act, that Section 15 of the Kishangarh Act did not apply to civil proceedings taken out in the courts of a "foreign country" and hence the plaintiffs could not claim the benefit of that section.

9. Learned counsel for the respondents has urged, on the other hand, that u/s 15 of the Kishangarh Act, the terms "court of first instance" and "court of appeal" were used in a wider sense as including even foreign courts and a narrow interpretation should not be placed on the term "court." According to learned counsel, that section, just like Section 14 of the Indian Limitation Act, is based on principles of justice, equity and good conscience and there is no reason why a plaintiff, who has been prosecuting with due diligence another civil proceeding in good faith, should not be permitted to exclude the period spent therein, in case,

the court, (even though it is a foreign court) is unable to entertain it on account of a defect of jurisdiction or other cause of a like nature. According to him, this principle applied as much to foreign courts as to municipal courts and it is not proper to place a narrow interpretation on the word "court".

10. Learned counsel for the appellant relied on *Chanmalapa Chenbasapa v. Abdul Vahab* ILR 35 Bom 139 and contended that this case has been followed by the other High Courts also. In that case, the plaintiff had brought a "suit and obtained a decree against the defendant in the court of the District Judge of Shivmoga in the State of Mysore. On appeal to the Chief Court of that State, the suit was dismissed on the ground that the court at Shivmoga had no jurisdiction, the cause of action having arisen in British India. The plaintiff then filed another suit in the court of the First Class Subordinate Judge at Dharwar,

The suit was barred by limitation, on the day the plaint was presented, but the plaintiff relied on Section 14 of the Limitation Act and claimed to exclude the time during which he had been prosecuting the civil proceedings in the courts of the Mysore State with due diligence. It would thus appear that the facts of that case were similar to those in the present case. On behalf of the plaintiff, it was contended before the learned Judges of the Bombay High Court, where the case had gone on the plaintiff's appeal, that there being no definition of the word "court" in the Limitation Act, it should be construed in a wide sense so as to include a "foreign court."

This argument was repelled by the learned Judges and it was held that the word "court" in Section 14 of the Limitation Act did not include a "foreign court." This view was followed in *Rajanna v. Narayan* AIR 1923 Nag 321 in which it was held that a Berar court was not a court contemplated by Section 14 of the Limitation Act and that it only meant a court in British India. Both these cases were quoted with approval in *Harisingh v. Muhammad Said* AIR 1927 Lah 200 by a Division Bench of the Lahore High Court. A learned Judge of the Calcutta High Court has also taken the same view in *Mayadas Bhagat Vs. Commercial Union Assurance Co., Ltd.* . The same question arose in a case before a Division Bench of the Pepsu High Court in *Union of India v. Chanan Shah Mahesh Dass* AIR 1955 Pep 51 and they have also taken the same view.

11. Learned counsel for the respondents has referred to *H. H. Raja of Faridkote v. Sardar Gurdyal Singh*, 34 Pun Re 1898, p. 115 and urged that a contrary opinion was taken in that case. We have gone through this case and find that the plaintiff had sought to deduct the period in that case u/s 14 of the Limitation Act, and the learned Judges did not turn down that argument but at the sale time they did not examine in detail the point whether the word "court" included a "foreign court". The plaintiff's prayer for deduction of the period u/s 14, was rejected on the ground that his previous suit was not dismissed on account of defect of jurisdiction or other cause of a like nature and that he had himself committed a mistake in bringing a suit on a foreign judgment which was a mere nullity.

12. In a case which came up before the Madras High Court, Muttusami Ayyar J., did, however, take the view that there was nothing in the language of Section 14 which renders it inapplicable to proceedings instituted in a foreign court. The relevant portion of the judgment is reported at page 410 of ILR 2 Mad 408 Parry & Co. v. Appasami Pilial. The Division Bench before whom the case went up on appeal decided it on another point and expressly left open the question which is before us.

13. Our attention was also drawn to AIR 1930 103 (Privy Council) where the word "court" was widely interpreted by their Lordships of the Privy Council and it becomes necessary to re-examine the reasons given for the decision in Chanmalapa Chembasapa Tenginkai's case. ILR 35 Bom 139. The other courts have only followed this case and have not advanced any fresh arguments in support of the view taken in that case.

14. It was observed by the learned Judges in Chanmalapa Chembasapa Tenginkai's case ILR 35 Bom 139 that,

"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." They have further proceeded to observe after referring to the Limitation Act that "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."

We respectfully agree with the said observation to the extent that all legislation is primarily territorial and that the Limitation Act was enacted to be applied by the Courts of the country for which it was made and not by foreign courts. We, however, find ourselves unable to agree, with respect, that Section 14 would appear to contain extra-territorial law in case the word "Court" appearing therein is interpreted in its wider sense. We further think that it is not proper to say that simply because the word "Court" was used in the sense of the Courts of British India in the preamble, the same meaning must be attached to the word wherever it occurs in the enacting portions of the Act without looking to the subject or context in which it has been used.

The word "Court" has not been defined in Section 2 of the Act. Even when certain terms are defined in a certain Act, it is generally laid down that they would be understood in the sense in which they are defined, if there is nothing repugnant in the subject or context. Section 2 of the Limitation Act also which defines certain terms begins by saying that "in this Act unless there is anything repugnant in the subject or context" the words defined would be understood in

the meaning given to them. It follows, therefore, that the word "Court" need not necessarily be interpreted to mean "courts" of the country as shown in the preamble if a different meaning appears from the subject or context in which the word is used.

Let us now examine as to what is the subject of Section 14 of the Act. Section 14 of the Limitation Act lays down that in computing the period of limitation prescribed "for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding whether in a court of first instance or in a court of appeal against the defendant shall be excluded where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

A similar provision has been laid down with regard to applications. It is clear that this provision has been made to give relief to honest suitors or applicants who prosecute their suits or applications with due diligence in another court in good faith and then their suit or application is dismissed simply because the court is unable to entertain them on account of some defect in its jurisdiction or some other cause of a like nature. This law was to be applied by the courts of British India and not by foreign courts and therefore it cannot be said that it was a piece of extra territorial legislation.

15. It has been urged that if the legislature had thought it proper to exclude the time taken even in foreign courts, it could make its meaning clear by adding such an explanation. It is further urged that where the legislature wanted the law to be applied to foreign countries also such meaning was made clear, for instance, in Section 11 of the Act.

This argument does not appear to be very sound, because Section 11 of the Act specifically deals with the suits based on contracts entered into in a foreign country and therefore if it was absolutely necessary to use those words. Section 14 however contains a general principle which is based on justice, equity and good conscience, and in our opinion, it would not be proper to put a narrow interpretation on the meaning of the word "Court" appearing therein. We see no reason why the time spent bona fide only in municipal courts by honest suitors should be excluded and why the time spent in foreign courts should not be excluded.

The only argument against foreign courts can be that a dishonest suitor or an applicant may approach a foreign court just to gain some time and may thereafter try to take advantage of the same when he approaches the courts of this country. It would suffice to say that the section provides sufficient protection against an action of this type, because the period cannot be excluded unless the court comes to the conclusion that the previous civil proceeding was taken and prosecuted in good faith. The moment it is brought to the notice of the court that the previous civil proceeding was not taken in good faith, Section 14 would have

no application.

16. Another reason given by learned Judges in the above case of *Chanmalapa Chanbasapa Tcngin-kai v. Abdul Vahab* (ILR 35 Bom 139) was that "the CPC and the Limitation Act, are in pari materia since both contain laws of procedure." It was pointed out that the CPC did not define the word "Court," but a "foreign court" in Sections 10 and 13 was defined and so the word "Court" in Section 14* should not be taken to include a "foreign court," It is true that the word "foreign Court" alone has been defined by the CPC and the word "Court" has generally been used only for municipal courts, but Section 13 of the Code shows that a foreign judgment has been made conclusive as to any matter thereby directly adjudicated upon between the same parties or between the parties under whom they are or any of them claim litigating under the same title, unless such a judgment suffers from certain infirmities which have been mentioned in that section.

It is not easily understandable that the legislature should have, on one side, given recognition to a foreign judgment if it was given by a competent court on the merits of the case and if it did not suffer from any infirmity, and on the other hand, it should not allow that period of time to be excluded which is taken by an honest suitor in prosecuting a civil proceeding in good faith, even though he does not get any relief from that court, simply because of spine defect of jurisdiction or other cause of the like nature.

17. In the same case, it was pointed out by Mr. Jayakar who appeared for the opposite side that Section 41 of the Indian Evidence Act also contained the simple word "Court" and still it was understood to include foreign courts. That argument was repelled by the learned Judges by saying that "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." This means that the learned Judges gave a wider meaning to the word "Court" because of the subject and context in which it was used there.

We see no reason why a similar wider meaning should not be given to the word "Court" in Section 14 which lays down only a general principle of law based on justice, equity and good conscience. It may be further observed that on general principles also as the Limitation Act takes sway the right to sue, it does not seem proper to deprive the plaintiff of the benefit of the exemption contained in this section by unduly restricting the language used in it.

18. In 33 CWN 485 AIR 1930 103 (Privy Council) two questions were raised before their Lordships of the Privy Council. The first question was whether the Indian Limitation Act of 1908 applied to arbitration proceedings and the second question was, whether in the facts of that case, the Indian Limitation Act barred the respondents' claim under the arbitration award in their favour. Regarding the first point, it was observed by their Lordships that "although the Limitation Act

does not in terms apply to arbitrations, they think that in mercantile references of the kind in question it is an implied term of the contract that the arbitrator must decide the dispute according to the existing law of contract, and that every defence which would have been open in a Court of law can be equally propounded for the arbitrator's decision unless the parties have agreed to exclude that defence."

Their Lordships, therefore, answered the first question in the affirmative. Then adverted to the second question, it was observed that

"In their Lordships' opinion the analogy of the Indian Limitation Act requires that an arbitrator should exclude the time spent in prosecuting in good faith the same claim before an arbitrator who was without jurisdiction. The Limitation Act has no application in terms to arbitration proceedings and as Greaves J. has pointed out if the words "suit instituted, appeal preferred and application made" in Section 3 are to be applied to arbitration proceedings, it seems to follow that the same interpretation must be put upon them in Section 14, and that civil proceedings in a Court must be held to cover civil proceedings before arbitrators whom the parties have substituted for the courts of law to be the Judges of the dispute between them."

It would thus appear that the provisions of Section 14 were construed liberally by their Lordships and they were applied even to an award of the arbitrators. In our opinion, foreign courts do not stand on a worse footing than the domestic tribunals of arbitrators and we see no reason why the word "Court" should not be interpreted liberally so as to include foreign courts. In the present case, the plaintiffs had filed their suit in the court at Beawar, because the defendants were residing within the jurisdiction of that court and that suit was founded on the same cause of action on which the subsequent suit was filed at Kishangarh in 1949.

Even if they had got a decree from Kishangarh court, it would have been necessary for them to file another suit at Beawar and get another decree on the basis of the judgment of the Kishangarh court, because that decree could not be got executed in the State of Ajmer. To avoid this double litigation, they straightway filed their suit in the court at Beawar. It is not the defendants' case that they had sufficient property at Kishangarh to satisfy the decree-if it were passed by the Court of the Kishangarh State. There is therefore no doubt about the fact that the plaintiffs prosecuted the first suit in good faith.

Unfortunately, that suit was dismissed both by the original court and the appellate court on the ground that they had no jurisdiction to try the same. To us, it appears that the parties had agreed to submit to the courts at Kishangarh because the plaintiffs were residents of Kishangarh and they did not want to be dragged to courts outside Kishangarh State. The contract between the parties regarding submission to Kishangarh courts was made for the benefit of the plaintiffs and not for the defendants. Since the defendants were residing within

the jurisdiction of the court at Beawar, that, court had jurisdiction over the matter and it seems that the Ajmer Court was not quite correct in holding that it had no jurisdiction to entertain and try the suit.

We are not sitting in appeal over its judgment, but we have mentioned this here only to show that the plaintiffs were certainly prosecuting the previous civil proceedings in good faith. It has already been pointed out that Section 15 of the Kishangarh State Limitation Act was in the same language as sec. 14 of the Indian Limitation Act. We are of opinion that if the Kishangarh State had continued up to the time the present suit was filed, the plaintiffs could take advantage of sec. 15 of the Kishangarh State Limitation Act and exclude the period which they had spent in prosecuting their suit and appeal in the courts at Beawar and Ajmer. We, therefore, answer the first part of the reference in the affirmative.

19. In view of our decision on the first point, it is unnecessary to consider the second point.