
(1934) 12 AHC CK 0031
In the Allahabad High Court

Gajadhar Prasad

APPELLANT

Vs

Dharma Nand

RESPONDENT

Date of Decision : 21-12-1934

Acts Referred:

Citation : AIR 1935 All 716

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Bennet, J.—This is an application in civil revision by a defendant against a Small Cause Court decree. The plaintiff sued for arrears of salary at Rupees. 20 per mensem from 10th April 1930 to 31st August 1931. The defendant admitted that the plaintiff was in his service for this period at this salary, but he pleaded payment to the plaintiff, and further that the claim would be time-barred. The lower Court held, that payment had not been made and that the suit was not time-barred. It held that the suit was governed by Article 102, Limitation Act, that the period of limitation ran from the date when the wages accrued, that the plaintiff was not paid regularly, hence it cannot be said that the wages accrued on any particular date, and that following a ruling in E. Young v. D. MacCorkindale (1871) 19 W.R. 159, plaintiff's wages would be due on the date on which he left the defendant's service, and that the period of limitation - three years - ran from that date. That ruling was given at a time when a former Limitation Act (9 of 1871) was in force. In the schedule of that. Act there is no article corresponding to Article 102. Consequently the Court had to go to other consideration for limitation. The suit was in regard to> various matters for partnership and accounts and at the end of the judgment there was the observation:

Any wages that might be due by MacCorkindale to the plaintiff would be due to him when he left the service on 15th May 1868, and any suit for these wages must, in the absence, of any subsequent accounts stated and settled between

the parties, have been brought within three years from 15th May 1868. Therefore,, taking it that the plaint was presented, and properly presented, on 29th July 1871, we still think that the suit is barred by limitation.

2. This ruling did not hold that the claim for wages was within time, but it held that it was time-barred in any case because the service had terminated more than three years before the suit. I am clearly of opinion that under the present Limitation Act, Article 102 lays down that wages not otherwise expressly provided for in the schedule must be taken to be subject to a time which begins to run from the time when the wages accrue due. In the present case the plaint admits that the wages are monthly wages and therefore in law the wages accrue and become due on the final day of the month. The suit was brought on 30th June 1934. The earliest period within limitation would be 30th June 1931, and wages for the month of June 1931 are within time, but not any previous wages. Similarly the wages for July due on 31st July, and the wages for August due on 31st August 1931, are within time. A period therefore of three months' wages at Rs. 20 per mensem total Rs. 60 is within time. The remainder of the claim of Rs. 120 wages was not within time. The argument was made that as the point urged in revision is one of limitation there should be no interference by this Court. For the plaintiff reference was made to *Sarman Lal v. Khuban* (1895) 17 All. 422, where the head-note says:

It is no ground for revision u/s 25 of Act 9 of 1887, that the Court whose order it is sought to revise may have come to an erroneous decision on a point of limitation.

3. But the final sentence in the ruling is:

We therefore in our discretion refuse to try in revision, and to re-open the questions of law and fact which have in the exercise of its jurisdiction been decided upon evidence by a Court whose decision upon such a point has been made final by law.

4. This shows that in that case the point of revision had been decided as a mixed question of law and fact. In the present case the point of revision is one of law only as the facts are not in dispute. I consider that the principle of this ruling does not bar the revision in the present case. Reference was also made to *Muhammad Bakar v. Bahal Singh* (1891) 13 All. 277, in which it was held that revisional powers should not be exercised unless there was substantial injustice to a party. I consider that in the present case there was substantial injustice to the defendant by decreeing three months' wages which was barred by limitation. For these reasons I allow this revision in part to the extent of the claim for Rs. 60 wages instead of Rs. 120, and proportionate interest will be allowed on the amount which is within time. Proportionate costs are allowed on the result and proportionate costs in the Court below.