

**(1889) 07 CAL CK 0002**  
**In the Calcutta High Court**

Girija Nath Roy Bahadur

APPELLANT

Vs

Patani Bibee and Others

RESPONDENT

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**Date of Decision :** 22-07-1889

**Acts Referred:**

Limitation Act, 1963 — Section 6, 7

**Citation :** (1890) ILR (Cal) 263

**Hon'ble Judges :** Tottenham, J; Ghose, J

**Bench :** Division Bench

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**Judgement**

Tottenham and Ghose, JJ.—The question raised in this appeal is whether the plaintiff, suing for arrears of rent, and having been a minor at the time when one portion of the arrears accrued due, is entitled to the benefit of Section 7 of the Limitation Act; and to bring his suit to recover those arrears after the period prescribed by the law for such suits in general.

2. The lower Court has held that the plaintiff is not entitled to the benefit of Section 7. The Subordinate Judge was of opinion that Section 7 of the Limitation Act was not applicable to suits for rent under Bengal Act VIII of 1869, under which this suit was brought, because that Act provides a special period of limitation for suits brought to recover arrears of rent, and the schedule to the Limitation Act provides no period for such suits. Section 7 of that Act allows a minor such further time after he has attained his majority as would otherwise have been allowed from the time prescribed for such suit in the third column of the second schedule annexed to that Act. As suits for rent do not come within that schedule, the Court held that that section was not applicable: and it appears to us that it was correct in the view which it took.

3. There is one authority pointed out to us by the pleader for the appellant as being against him. That is a case of Dinonath Panday v. Roghoonath Panday 5 W.R. 41. On the other hand, the learned pleader relies upon later rulings of this Court, and upon a ruling of the Judicial Committee of the Privy Council, in which it was held that in certain other cases, not for arrears of rent, but still as to

which special limitation was provided by other Acts, the plaintiff was entitled to the benefits conferred upon plaintiffs by Sections 5 to 25 of the present Limitation Act. He also relied upon a Privy Council case, *Phoolbas Koonwur v. Lalla Joyeshur Sahoy* L.R. 3 IndAp 7 : ILR Cal. 226, in regard to Section 11 of Act XIV of 1859, the former Limitation Act.

4. The last case decided by the Privy Council was a suit brought by a minor to establish his right to property in respect of which his claim had been rejected u/s 246 of the old Code of Procedure, Act VIII of 1859. By that section one year's limitation was provided for the institution of a suit. This Court held, and the Judicial Committee affirmed the decision, that the principle of Section 11 of Act XIV, which is much the same as Section 7 of the present Act, would apply. In the cases of *Behari Loll Mookerjee v. Mungolanath Mookerjee* ILR Cal. 110 and *Golap Chand Nowluckha v. Krishto Chunder Das Biswas* ILR Cal. 314, cited to us, it was held that the plaintiff's, suing under special Acts providing special periods of limitation, were nevertheless entitled to the benefit of Section 5 of the Limitation Act, which provides that if the Court is closed when the period of limitation expires, a plaintiff may file his suit upon the first day the Court re-opens. And in the case of *Khoshelal Mahton v. Gonesh Butt* ILR Cal. 690, a similar doctrine was laid down. So also in the case of *Khetter Mohun Chuckerbutty v. Dinabashy Saha* ILR Cal. 265, the late Chief Justice applied the provisions of Section 14 of the Limitation Act to a suit brought under the provisions of the Registration Act, which provide a special limitation for such suits.

5. These decisions may at first sight appear to conflict with the provisions of Section 6 of the Limitation Act, which provides: "When, by any special or local law, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed." But so far as Section 5 is concerned, we think that the decisions cited do not conflict at all with Section 6, for those decisions did not extend the period of limitation. All they did was to prevent the period of limitation from being curtailed by the closing of the Court: and Mr. Justice Mitter observes in his judgment in *Khoshelal Mahton v. Gonesh Dutt* ILR Cal. 690 that the days the Court is closed must be considered as non-existent, or what are called *dies non*, and therefore they are not counted.

6. As regards the case of *Khetter Mohun Chuckerbutty v. Dinabashy Saha* ILR Cal. 265, the decision of this Court is not easily to be reconciled with Section 6, for the effect of that decision was undoubtedly to alter the period prescribed by the special Limitation Act. We do not, however, consider ourselves bound by that decision, for the present case is an entirely different one. And as regards the suit to establish the right of the unsuccessful claimant u/s 246 of the old Code of Procedure, we observe that since the decision in that case, new Limitation Acts have been passed, and also a new Code of Procedure, and now the corresponding section (280) does not prescribe a period of limitation, whereas the present Limitation Act does prescribe a period of limitation for such suits in

it's third schedule. On the other hand the present Limitation Act does not prescribe a period of limitation for suits brought under the old Rent Act of 1869, under which the present suit was brought. That Act still contains a special period of limitation for suits to recover arrears of rent as well as other matters.

7. It seems to us, therefore, that upon the strict construction of Section 7 put upon it by the lower Court, as well as upon the provisions of Section 6 of the same Act, it is right to hold that the plaintiff" in this suit was not entitled to a fresh period of limitation on his attaining majority.

8. Another argument was addressed to us in favour of the plaintiff based on these facts: that a former ex parte decree was obtained when there was no bar of limitation, but which ceased to have effect, it is said, because it was found after decree that the Court had no jurisdiction to pass it; and though the sale held under that decree was set aside or not confirmed, the defendant, it was argued, recovered his property saddled with a charge for the rent covered by that decree. We are unable to recognize the cogency of this argument, or the existence of any such charge, certainly not as existing after the rent had become barred by limitation.

9. We therefore think that the appellant has rightly failed to recover the rent of 1287, and must be content with the decree obtained for the rent of the subsequent years.

10. The appeal must be dismissed with costs.