
(1961) 09 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Ref. No. 19 of 1961 in Civil Exn. First Appeal No's. 8 of 1958 and 33 of 1960

Government of Rajasthan and Another

APPELLANT

Vs

Sangram Singh and Others

RESPONDENT

Date of Decision : 01-09-1961

Acts Referred:

Bikaner State Limitation Act, 1920 — Article 165
General Clauses Act, 1897 — Section 6
Limitation Act, 1908 — Article 182, 183
Rajasthan Limitation (Adaptation) Ordinance, 1950 — Section 11, 3, 9

Citation : AIR 1962 Raj 43 : (1961) RLW 664

Hon'ble Judges : Sarjoo Prosad, C.J;D.M. Bhandari, J;C.B. Bhargava, J

Bench : Full Bench

Advocate : Kan Singh, Government, Roshan Lal, for Ghanshiamdas, for the Appellant; C.L. Agarwal, for Thakur Sangram Singh and Sumer Chand, for Hiralal etc., for the Respondent

Judgement

Bhandari, J.—These two appeals involve important questions relating to the law of limitation and have been referred by a Division Bench to a Full Bench.

2. In Appeal No. 8 of 1958, a decree Was passed by the then High Court of Bikaner on the 28th of July 1941 in exercise of its original civil jurisdiction in favour of the former Bikaner State against Thakur Sangram Singh of Ghuala. On the 30th of July 1941, an application for the enforcement of the decree by means of arrest of the judgment-debtor was filed in the. Bikaner High Court. This application was consigned to record at the request of the decree-holder On the 27th of February 1942. as a result of the constitutional changes, the assets and liabilities of the former Bikaner State devolved on the State of Rajasthan under Article 295 of the Constitution and the State of Rajasthan applied for enforcement of the aforesaid decree against the judgment-debtor in this Court on the 13th of July 1953 and it was sent to the District Judge, Bikaner, for execution. Later on, by the order of this Court dated the 4th of November 1955,

the case was transferred to the District Judge, Jhunjhunu for execution in accordance with law. From that court it was transferred to the Civil Judge's Court. In that court an objection application u/s 47, C.P.C. was filed by the judgment-debtor raising various pleas against execution of the decree, one of which was that the execution application was barred by time. The learned Civil Judge decided this question first and held that the application for enforcement of the decree was barred by time and dismissed it and against that order this appeal has been filed by the State.

3. In order to appreciate the contentions of the parties it is necessary to refer to the provisions of law of limitation bearing on this point. At the time when the decree was passed, the Bikaner State Limitation Act, 1920 (II of 1920) (hereinafter called the Bikaner Limitation Act) was in force. This law was practically on the same lines as the Indian Limitation Act, 1908. The relevant portion of Art. 165 of the First Schedule to that Act ran, as follows :

Description of application.

Period of limitation.

Time from which period begins to run.

165. To enforce a judgment, decree or order of the High Court in the exercise of its ordinary original civil jurisdiction, or an order of His Highness the Maharajah.

Twelve years

Where a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right.

On the integration of the former State of Bikaner into the State of Rajasthan on the 6th of April 1949, His Highness the Rajpramukh promulgated the Rajasthan Limitation Act (Adaptation) Ordinance, 1950 (No. VI of 1950) (hereinafter called the Rajasthan Ordinance) which came into force at once. By Section 3 of this Ordinance the Indian Limitation Act, 1908 was brought in force in the whole of Rajasthan with effect from the date on which the Ordinance came into force. By Section 4 read with the Schedule, Article 183 of the Indian Act was omitted. By Section 12 of the Indian Limitation Act, all limitation Acts or Ordinances in force in any part of Rajasthan were repealed. Section 9 which runs as follows made special provisions for certain suits etc. :

"Special provisions for certain suits etc.--(1) Notwithstanding anything contained in this Ordinance and in the Indian Act thereby adapted to Rajasthan--

(a) any suit for which the period of limitation prescribed by the said Act is shorter than the period of limitation prescribed by any law relating to limitation of suits in force in any part of Rajasthan on the date of the commencement of this Ordinance and repealed by Section 12 thereof may be instituted within the period of two years next after such date or within the period prescribed for such suit by the aforesaid law, whichever period expires first, and

(b) any suit, application or proceeding for which a period of limitation is prescribed by the said Act but for which no period is prescribed by any such law as is referred to in Clause (a) may be instituted, made or initiated within the period prescribed by the said Act computed from the date of the commencement of this Ordinance.

2. Notwithstanding anything contained in Article 149 of the First Schedule to the Indian Act, any suit by or on behalf of the Government in respect of which the cause of action had arisen before the date of the commencement of this Ordinance may be instituted within the period of twelve years next after such date or within the period prescribed by the said Article, whichever expires later." Section 11 laid down a rule of interpretation for the Rajasthan Ordinance and it is as follows :

"Rule of construction.--Notwithstanding the fact that this Ordinance makes no provision or makes insufficient provision in any respect for the adaptation of the Indian Act to Rajasthan, any Court, Tribunal or authority, when required to administer the provisions thereof in Rajasthan, may construe the same mutatis mutandis subject to such further adaptations and modifications not affecting the substance as may be necessary and proper in the circumstances".

Section 13 made the provisions of the General Clauses Act, 1897, of the Central Legislature applicable to the said Ordinance and the Indian Act in the same manner as they applied to a Central Act of Indian Legislature.

4. The Rajasthan Ordinance was repealed by the Part "B" States (Laws) Act, 1951, enacted by the Parliament on the 22nd of February 1951. This Act came into force on the 1st of April, 1951. Section 6 of this Act provided for, repeals and savings. The relevant portion of this section for the purposes of this appeal is, as follow:

"If immediately before the appointed day, there is in force in any Part B State any law corresponding to any of the Acts or Ordinances now extended to that State, that law shall, save as otherwise expressly provided in the Act, stand repealed :

Provided that the repeal shall not affect--

(a) the previous operation of any law so repealed of anything duly done or suffered thereunder, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed."

5. Now, I proceed to take notice of the contentions raised by the parties before the learned Civil Judge, Sikar. It was contended on behalf of the State that Article 183 of the Indian Limitation Act will apply in this case and under that Article the application for the enforcement of the decree passed by the former High Court of Bikaner was within limitation. This contention was rejected by the lower court on the ground that the former High Court of the Bikaner State was not a High Court established by Royal Charter. The learned Civil Judge took support for this view from the fact that Article 183 of the Indian Limitation Act was not made applicable to the State of Rajasthan by the Rajasthan Ordinance as the High Court of Bikaner was not a court established by a Royal Charter. It was also observed by the learned Civil Judge that the decree-holder could not get benefit of Article 165 of the Bikaner Limitation Act as the present application for enforcement of the decree was filed in 1953 when the Bikaner Limitation Act had been repealed. It was also held by the learned Civil Judge that the present application of the decree-holder was not an application for the revival of the former application for execution which was disposed of on the 27th of February, 1942.

6. In this appeal it has been urged on behalf of the decree-holder that the ruler of the former State of Bikaner enjoyed sovereign powers in all matters and constitutionally he was the king within the domain of the former State of Bikaner enjoying untrammelled powers of legislation and of issuing royal proclamations, letters patent and charters which acquired the force of law as and when they were issued. It is also pointed out that the High Court of Bikaner was established by the proclamation dated the 3rd of May 1922 by His Highness Maharaja Ganga Singhji of Bikaner. Later on a fresh proclamation was issued on the 28th of August 1940 revoking the proclamation dated the 3rd of May, 1922 and making some changes in the constitution of the High Court. After the integration of the former State of Bikaner, His Highness Sri Sardul Singhji, the then ruler of Bikaner, issued another proclamation on the 28th of February, 1948 making further changes in the constitution of the said High Court. It is urged that these proclamations are in the nature of letters patent and are also drawn up on the lines of letters patent establishing the various High Courts in India under the India High Courts Act, 1861. It is contended on behalf of the State that these proclamations were issued by a sovereign authority and were for all practical purposes in the form of Royal Charter and the former Bikaner High Court should be treated as a court established by a Royal Charter. It is also urged that under the aforesaid proclamations the High Court of Bikaner enjoyed original civil jurisdiction and the decree under consideration was passed by the said High Court in its ordinary civil jurisdiction. It is therefore contended that the said decree could be enforced within 12 years of the passing of that decree under Article 183 of the Indian Limitation Act which had come into force when the application for the enforcement of the decree was made on the 13th of July, 1953.

This argument is met by the respondent by pointing out that when the Part "B"

States (Laws) Act was enacted, the application of the decree-holder for execution was barred by time under Article 182 and Article 183 of the Indian Limitation Act which re-appeared by virtue of the Part B States (Laws) Act cannot revive the barred decree. Then it is contended that Art. 183 applied only to the decree of a court established by a Royal Charter issued by His Majesty the King of England.

The learned counsel for the respondent has traced before us the history of the establishment of the chartered High Courts in India and has urged that Article 183 was a special Article providing for the enforcement of a judgment, decree or order of a chartered High Court and not of any other High Court though such a court might have been established: by a sovereign authority. He has emphasised the use of the words "Royal Charter" and has traced the history how charters are issued by His Majesty the King of England. He has laid emphasis on this historical background and has vehemently contended that Article 183 had received judicial interpretation since a long time by which only the decrees issued by the chartered High Court could be held to fall within the scope of Article 183 and not any other decree. His argument is that it would be a violation of principle of interpretation, if the scope of Article 183 was so widened as to include within it a decree of the former High Court of Bikaner which was established not by any charter but only by a proclamation of His Highness of Bikaner. He has also tried to support this part of his case on the ground that the Rajasthan Ordinance expressly omitted Article 183 for the specific reason that it had no applicability to the State of Rajasthan when it was enacted there being no High Court for the State of Rajasthan established by a Royal Charter. He has urged that Article 183 has re-appeared when the Indian Limitation Act was brought into force by Act No. 36 of 1951 for the reason that by that time the decrees of the chartered High Court could be executed by courts in Rajasthan. He has contended that after the repeal of the Bikaner Limitation Act, Article 165 could not be applied for enforcement of the decree passed by the former High Court of Bikaner. In this connection he has urged that it was a well established proposition that the law of limitation was a procedural law and the law in force at the time when the suit or application was filed is to govern all proceedings taken thereafter and not the repealed provisions of any other law. He has also contended that Section 11 of the Ordinance cannot empower a court of law to make a change in the substantive provision of law and that it would be going contrary to the express enactment u/s 4 of the Ordinance whereby Article 183 had been omitted in the Ordinance to utilize that very Article for enforcing a decree of the former State of Bikaner. He has further contended that if any saving in respect of application for execution is to be made by virtue of a power conferred by law u/s 11 of the Ordinance, the principle for providing such savings should be derived from Section 9(a) of the said Ordinance which has made provision for suits and should not be extended any further. For this proposition he has relied on the authority of this Court in *Karan Singh v. Mst. Saraswati*, ILR (1960) Raj 913.

7. Learned counsel for the appellant has also contended that the present application of the decree-holder should be treated as an application for revival of

the previous application for the enforcement of the decree consigned to record. Learned counsel for the respondents has controverted this argument by pointing out that the previous application was consigned to record at the instance of the decree-holder himself.

8. For the sake of clarity I may set out at this stage the points which call for consideration and decision in this appeal. These are:

1. Whether in spite of the repeal of the Bikaner State Limitation Act by the Rajasthan Limitation Act (Adaptation) Ordinance, Article 165 of the Bikaner State Limitation Act will continue to govern an application for the enforcement of a decree passed by the former Bikaner High Court?

2. Whether after the enactment of Part B States (Laws) Act, 1951, Article 183 would apply to an application for enforcement of a decree passed by the former Bikaner High Court?

3. If not, whether Article 165 of the Bikaner State Limitation Act shall continue to govern such application even after the repeal of the said Ordinance by Part "B" States (Laws) Act (III of, 1951) ?

4. Whether the present application by the decree-holder can be considered to be an application for revival of the execution application disposed of by the order of the former Bikaner High Court on the 27th of February, 1941?

9. I take up the first point for consideration. There is no room for doubt that till the Bikaner Limitation Act remained in force i.e. before the 24th of January, 1950, when the Rajasthan Ordinance came into force, the Bikaner Limitation Act governed an application for the enforcement of the decree as the decree was passed by the former High Court of Bikaner in exercise of its original civil jurisdiction. The Rajasthan Ordinance came into force without providing any time between the dates of its enactment and coming into force. By Section 12 it repealed the Bikaner Limitation Act. It retained Article 182 in its present form while it omitted Article 183. Now it may be pointed out that Article 182 has also reference to Article 183 but this reference to Article 183 in Article 182 was not omitted. This may be taken to be an instance of bad draftsmanship and no special inference for or against may be drawn on account of this mistake. Section 12(2) and Section 9 contain provisions which are in the nature of savings to Section 12(1). The question that arises is whether it would be proper for a court of law to import any further saving in the Ordinance on the rules of interpretation laid down in Sections 11, 12 and 13 or on the general principles of interpretation and hold that right of the decree-holder to enforce his decree continued to be governed by Article 165 of the Bikaner Limitation Act not by Article 182 of the Indian Limitation Act even after the repeal of the Bikaner law.

10. It has been laid down in a number of cases that the law of limitation is a law relating to procedure and has retrospective effect. Ordinarily when the law repealing the previous law of limitation provides for some breathing time for a

litigant to adjust himself in accordance with the provisions of the new law, courts have held that the law of Limitation in force at the time of the institution of suit or a proceeding shall govern it and not the old law. Difficulty arises in a case like the present where no breathing time has been allowed. In such a case it is usual for the Legislature to insert certain provisions which grant some time to a litigant to enforce his existing right by appropriate proceedings. The new law may itself provide that in respect of a suit or a legal proceeding for which cause of action had accrued before the new Act came into operation, the old law shall continue to govern. Such a proposition may be spelt out by virtue of Section 6 of the General Clauses Act when the same is made applicable for the interpretation of the new Act. If all these accepted modes of interpretation fail, a court of law may refuse to give retrospective effect to the law of limitation in respect of a suit or an application on the ground that no remedy is left to a litigant who had a right recognised by law and his right is destroyed by giving retrospective, effect. This matter has been considered in a number of cases. Case law on this point has been reviewed by the Calcutta High Court in *Manjurj Bibi v. Akkel Mahmud*, 19 Ind Cas 793 at p. 813 (Cal). There was a difference of opinion on this point in the Division Bench and the matter was referred to a third Judge, Sir Asutosh Mookerjee, who was one of our most eminent and learned Judges. As was usual with him, he surveyed whole of the case law on the subject and expressed thus:

"No doubt, we find it frequently asserted in judicial decisions that a Statute of Limitation embothes merely a rule of procedure; but this statement is only generally and not universally true. The essence of the matter is that when a new Statute of Limitation which shortens the period for institution of suits and comes into force the moment it becomes law is sought to be made retrospectively applicable to causes of action which have accrued earlier than the length of time prescribed, it ceases to be a statute of mere procedure and serves to destroy pre-existing and enforceable rights. Under circumstances like these, the Court, when invited to hold that the new statute has retrospective operation, will struggle against the acceptance of such interpretation, unless there is the clearest indication that the Legislature intended to destroy existing rights without notice and thus to penalise innocent litigants".

A Full Bench of this Court considered this aspect of the matter in *Jethmal v. Ambsingh*, ILR (1955) Raj 334 at p. 362: (AIR 1955 Raj 97 at p. 106). Modi, J. took the view in consonance with the observations of Mookerjee, J. Wanchoo, C.J. also expressed the same view and observed, as follows :

"It is only in rare cases that the law shortening the period of limitation neither provides a saving clause, nor is there an interval between the publication of the law, and its coming into force. Where this happens it has generally been held by the courts that suits or applications, which are barred before the new law comes into force, are governed by the old law of limitation, for the new law, under these circumstances, does not remain a mere procedural law, but destroys the substantive right to file a suit or make an application".

Dave, J. did not express any opinion on this point. This view was also approved by a Division Bench of this Court consisting of Sarjoo Prosad, C. J. and Chhangani, J. in ILR (1960) Raj 913. It was, however, laid down in that case that so far as the Rajasthan Ordinance is concerned, Section 11 of the Ordinance granted sufficient power to the court to meet such a situation and in the case of an execution application, the same period of limitation should be deemed to be available as was available for filing a suit u/s 9(a) of the Ordinance.

11. I am in agreement with the view expressed by Mookerjee J. in Manjuri Bibi's case, 19 Ind Cas 793 (Cal). In that case the learned Judges have exhaustively taken notice of the Indian and English cases on this point available to them up to the date of their judgment. In this High Court, Modi, J. in Jeth Mal's case, ILR (1955) Raj 334 : (AIR 1955 Raj 97) (FB), has also dealt with the subject elaborately and has taken into consideration several important decisions bearing on the point. I do not propose to repeat what is contained in those judgments. I may, however, refer to Joshi Manganlal Kunverji v. Thacker Mulji Budha, AIR 1951 Kut 15 at p. 16. In that case, the suit was filed on the 7th March 1950, after the Merged States (Laws) Act, 1950 had come in force. That Act applied the Indian Limitation Act of 1908 and repealed as from the date of its application the corresponding law of limitation in force immediately before the application of the Act. The suit of the plaintiff was within limitation under the repealed law but was barred by limitation under the Merged States (Laws) Act by which the Indian Limitation Act came into force. Baxi J.C. held that the suit was within limitation and that the new Limitation Act could not apply as it would destroy the vested right of the plaintiff. He observed, as follows :

"In the present case the plaintiff had a vested right under the repealed Limitation Act to bring his suit when the new Limitation Act was applied. The effect of the new Limitation Act was to destroy it outright. In such circumstances unless the legislature has stated in unequivocal terms that the new enactment should destroy the vested right it cannot be applied retrospectively so as to prevent the plaintiff from exercising his right to bring a suit which he had under the repealed Act."

12. On a survey of the authorities referred to above, I am of the view that it is not always true to say that the law of limitation is only a law of procedure and does not bar the remedy altogether so as to destroy the right. It is a well settled proposition of law that the new law of limitation would not revive a barred right. Similarly, it may, be taken to be equally well settled that the new law of limitation cannot be construed retrospectively so as to destroy altogether the remedy of litigant to enforce his right in a court of law. The law may be taken to be more accurately stated in the following passage in Corpus Juris--quoted in the "Interpretation of Statutes" by Bindra--1961 Third Edition, on page 586:

"While it has been said that statutes relating to remedies or procedure may be given a retroactive operation, a more accurate statement of the principle intended is that, unless expressly prohibited by statute, and in the absence of

directions to the contrary, or unless in doing so some contract obligation is violated or some vested right divested, statutes merely affecting the remedy or law of procedure apply to actions thereafter, whether the right of action accrued before or after the change in the law. The Legislature has full control over the mode, time, and manner of prosecuting suits, and whenever, upon consideration of an entire statute relating to those matters, it appears to have been the legislative intent to make it retroactive, it will be given this effect. . . "

To this I may further add that in case the remedy to enforce a vested right is altogether barred on the date when the new law comes into force without providing any breathing time to a litigant, that remedy must continue to be governed by the old law of limitation. I may, however, point out that the Legislature has full power to make a law retrospective so as to destroy a right or a remedy altogether but this must be expressly laid down or this result must flow by necessary implication. A court of law is not justified in drawing such inference merely from the fact that the new enactment deals mainly with procedure.

13. The provisions of the Rajasthan Ordinance when examined carefully lead to the same conclusion. I have already pointed out that in Sections 9 and 12 savings have been inserted by laying down certain special provisions relating to matters which may be affected by the repeal of the old laws. The maker of the Ordinance did not stop short after laying down these savings. By the last section of the Ordinance, the General Clauses Act, 1897 of the Central Legislature was made applicable *mutatis mutandis*. Now it is well known that Section 6 contains provisions which would moderate the effect of wholesale repeal. These provisions are based on principles which have been crystallised into statutory form after long series of judicial pronouncements. Under Clause (c) of Section 6, it has been laid down that unless a different intention appears,

"the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed."

Clause (e) provides that the

"repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid".

Section 6 of the General Clauses Act is made applicable to the Rajasthan Ordinance. It follows at once that the remedy of a decree-holder to enforce his decree should not be affected adversely to him unless there is a different intention. For the present we are concerned with a case where there is no gap of time between the enactment of the new law of limitation and its coming into force. If there is some gap of time, a question may arise whether a different intention as is mentioned in the opening part of Section 6 is discernible on account of that circumstance. I shall take up that question into consideration at a later stage but when there is no gap of time between the date of enactment and the date of coming into force of the new law of limitation nullifying the old law on

a particular subject, I cannot find any ground to say that the right of party to enforce his claim or execute his decree during the old period of limitation is affected by the impact of the new law. In such a case I feel justified in taking the view that the foregoing conclusion to which I have arrived by applying the general principle of interpretation also flows directly from Section 13 of the Ordinance which has made the General Clauses Act, 1897 of the Central Legislature applicable to the Ordinance. In this connection, I may observe that I am reluctant to draw any inference of a different intention from the circumstances that certain special provisions had been made in Section 9 and Section 12 which provide for the repeal of the old enactments containing certain savings. There may be cases where it may be said that such provisions should be taken to be exhaustive in the matter of savings and no further savings were contemplated but here the legislator is providing one safeguard after another to save a vested right.

In Karan Singh's case, ILR (1960) Raj 913 it was held that the effect of enactment of Sections 9 and 11 was that the Rajasthan Ordinance was to operate retrospectively to the extent that even suits or applications which were within limitation at the time of the commencement of the Ordinance but were barred if the provisions of the Rajasthan Ordinance applied, should be taken to be governed by the provisions of the Ordinance and in suitable cases of injustice and difficulty the Court should make special provision by virtue of the power conferred u/s 11. The enactment of Section 9(a) makes a special provision with regard to suits for which the period prescribed by the Indian Limitation Act is shorter than the period of limitation prescribed by any law relating to limitation of suit in force at the time of the commencement of the Ordinance in any part of Rajasthan.

For suits for which limitation as computed under the Rajasthan Ordinance has the effect of making them barred after the Ordinance had come into force, a period of two years has been provided as the maximum period within which such suits must be brought; otherwise the old law of limitation continues to govern them.

It may be inferred from this that the Rajasthan Ordinance applied even to suits, which were within limitation under the old law of limitation but which become barred under the provisions of the Rajasthan Ordinance. But whether such an inference shall be drawn by enactment of Section 9(a) of the Rajasthan Ordinance for applications is a matter which is not free from difficulty. Section 9(a) speaks only of suits and does not mention applications and it may be inferred that the maker of the Ordinance did not intend to lay down any such maximum period for applications and intended that they should continue to be decided on the general principle relating to the retrospective operation of the statute and they thus continued to be governed by the old law if they were barred at the time of the commencement of the Ordinance by applying its provisions.

This argument may find further support from the fact that Section 9(b) also

provides for applications and other proceedings, and not only for suits. After giving my earnest consideration to these two lines of arguments, I consider it proper to take the view that the enactment of Sections 9 and 11, the first making special provision for certain suits, etc., and the second empowering the court to make suitable adaptations and modifications to relieve injustice, does not necessarily lead to the inference that the maker of the Rajasthan Ordinance intended to lay down that the said Ordinance should operate retrospectively to the extent that the application for execution which was within limitation under the repealed law at the time of the commencement of the Ordinance should become barred under the Ordinance by applying the provisions of the Ordinance to such application and then the court is to relieve this injustice by making adaptation in the said Ordinance u/s 11, When the language of an enactment does not expressly provide for retrospective operation and the retrospective operation is to be inferred by necessary intendment the court should always lean to the interpretation that the existing rights are not affected and impaired and existing rights must include the right of action.

The inference to be drawn on the basis of Subsections (a) and (b) of Section 9 read together is that the Rajasthan Ordinance laid down this maximum period of limitation for suits, but did not make any provision with respect to applications and they were left to be governed by the old law, in case under the new law, they were beyond limitation.

14. No doubt, in the Ordinance Section 11 has been inserted to empower the court of law to relieve any injustice but in a case in which injustice results on account of giving retrospective effect to the Ordinance contrary to the accepted principles of interpretation, I am humbly of the opinion with due deference to the view expressed in Karansingh's case, ILR (1960) Raj 913 that it would be better not to construe the Ordinance retrospectively to that extent rather than seek the remedy for the injustice thus occasioned u/s 11.

15. I may also point out that in Karan Singh's case, ILR (1960) Raj 913 the difficulty of the decree-holder was surmounted by making an adaptation that the application for execution shall stand on the same level as a suit and the provisions of Section 9(a) available for a suit were extended to the case of an execution application and hence the application of the decree-holder in that case was held within limitation. Here there is a decree passed by the Bikaner High Court in its original jurisdiction to which Article 165 of the Bikaner Limitation Act, wherein a special period of limitation was given for the enforcement of such a decree, was applicable. Such a decree was treated in a different manner from the decree passed by other courts in the former State of Bikaner.

If I have to make any adaptation or modification to the Ordinance by virtue of the power vested u/s 11 of the Ordinance, I shall have recourse to the insertion of a special saving by virtue of which the decree passed by the former High Court of Bikaner should continue to be governed by the same period of limitation as provided under Article 165 of the Bikaner Limitation Act on the ground that the

Ordinance had made insufficient provision on an important point. This, however, would mean re-enactment of Article 183 of the Indian Limitation Act in a modified form by virtue of the power vested in a court of law u/s 11.

It is true that Article 183 was omitted by Section 4 of the Rajasthan Ordinance. But this omission in my view was due to a lapse on the part of authority making the Ordinance. It is contended that this would mean making a modification affecting the substance of the Ordinance which is not permissible u/s 11. Section 11 contemplates supplying omissions in case the courts are of the view that there is insufficient provision in the Ordinance on a particular point. I would not hesitate to rectify the mistake on the part of the Legislative authority in the manner pointed out above. However, I need not go so far as in my humble opinion on a proper construction of all the provisions of the Ordinance, the application of the decree-holder for enforcement of the decree continued to be governed by Article 165 of the Bikaner Limitation Act in spite of its repeal and was not governed by Article 182 of the Indian Limitation Act which was brought in force with modification by the Ordinance.

16. This continued to be the position in law till the Part "B" States (Laws) Act, 1951 came into force. By this Act the Indian Limitation Act, 1908 was extended by suitably amending the extant clause of the said Act. Part B States (Laws) Act, 1951 was enacted on the 22nd of February 1951 and it came into force from the 1st of April 1951. Section 30 which is on the same lines as Section 9(a) of the Ordinance was inserted in the Indian Limitation Act to provide some time for filing suits in cases where the period of limitation was shorter under the Indian Limitation Act but was longer under any law corresponding to that Act. The Rajasthan Ordinance was repealed u/s 6 but the repeal left intact any right, or privilege acquired or accrued under any law to repeal any legal proceeding or remedy in respect of such right or privilege. It is to be noticed that Article 183 which was omitted by the Rajasthan Ordinance reappeared on the Part B States (Laws) Act coming into force. Two questions therefore arise for consideration, (1) whether Article 183 would apply for enforcement of a decree passed by the former Bikaner High Court (2) if not, whether Article 165 of the Bikaner Limitation Act would not continue to govern an application for enforcement of such decree as aforesaid. These are Points Nos. (2) and (3) formulated by me.

17. It is vehemently contended on behalf of the judgment-debtor that Article 183 provided for the enforcement of a judgment, decree or order of any court established by the Royal Charter and that the former Bikaner High Court cannot be deemed to have been established by the Royal Charter. There is little room for doubt that Article 183 had been enacted to apply to the judgment, decree or order of any court established by letters patent. In the year 1861 the Indian High Courts Act was passed by the Parliament of England empowering the Crown to establish by letters patent High Courts at Calcutta, Madras, Bombay in which the Supreme Court as well as the Sadar Divani Adalat and Sadar Nizamat Adalat were all merged and the jurisdiction and appeals were transferred to the High

Courts and these courts were established by letters patent. Thereafter by appropriate Charters High Courts at Allahabad, Lahore, Patna and Nagpur were established. Reference in this connection may be made to Indian Constitutional Documents by Mukherjee, Vol. 1.

18. In the Native States in Rajputana, Maharajah Ganga Singh of Bikaner, who was an enlightened ruler, established first a Chief Court and later on a High Court in the former Bikaner State by proclamations to which reference has been made in the opening part of the judgment. These proclamations run on the same lines as the letters patent of the various High Courts established in the then British India by letters patent by the Crown. Later on after independence in the year 1948 another proclamation was issued by his son.

19. The rulers of the former State of Bikaner had all the attributes of a king so far as the territory of Bikaner State was concerned. It cannot also be denied that their proclamations had the effect of law. The question, therefore, is that today when we apply Article 183 under altogether changed political set-up, would it be worthwhile to construe the words "Royal Charter" in the same sense in which it was intended to be construed when Article 183 was enacted and construing thus to hold that Article 183 is limited to the decrees of the chartered High Courts in the former British India and could not apply to a decree of the former Bikaner High Court established by the ruler of the Bikaner State by proclamation. The leading case furnishing guidance on this point is *Bank of England v. Vagliano Brothers*, 1891 AC 107 at pp. 144 and 145. Lord Herschell in that case observed, as follows:

""I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.

If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated."

Lord Watson has also expressed much in the same manner in the *Administrator General of Bengal v. Prem Lal Mullick*, 22 Ind App 107 at p. 116 (PC) :

"The Respondent maintained this singular proposition, that, in dealing with a consolidating Statute each enactment must be traced to its original source, and, when that is discovered, must be construed according to the state of circumstances which existed when it first became law. The proposition has neither reason nor authority to recommend it. The very object of consolidation is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may form a useful code applicable to the circumstances existing at the time when the consolidating Act is passed."

I have therefore to consider whether on the language of Article 183 it is possible to hold that the decrees of the former High Court of Bikaner in exercise of its original jurisdiction can fall within Article 183.

20 "Royal charter" means "a charter proceeding from a sovereign". (See the Oxford English Dictionary). "Charter" in the same dictionary has been given the meaning "A written document delivered by the sovereign or Legislature granting privileges to or recognising rights of the people or of certain classes or individuals." In Webster's Dictionary "Charter" has been given the meaning. "An instrument in writing, from the sovereign power of a state or country, executed in due form, granting or guaranteeing rights, franchises or privileges.""

If for a moment I brush aside the historical aspect of the matter, "Royal Charter" in Article 183 is perfectly capable of application to a written document delivered by the sovereign of a State establishing a High Court. The rulers of the former State of Bikaner had all the attributes of a king in the constitutional sense and had full power to establish a High Court. No other authority, except the ruler, could do so. It has been argued that the former ruler of the State of Bikaner could not claim royalty inasmuch as there was a paramount power above him. Without entering into a detailed discussion on this point, I may point out that the former rulers of Bikaner State enjoyed full powers in the internal administration of the State. In *Ameer-un-Nissa Begum and Others Vs. Mahboob Begum and Others*, their Lordships of the Supreme Court observed, as follows while discussing the meaning and effect to be given to the various "Firmans" of the Nizam of Hyderabad :

"It cannot be disputed that prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The Firmans were the expressions of the sovereign will of the Nizam and they were binding in the same way as any other law;--nay, they would override all other laws which were in conflict with them."

The same is true with respect to the proclamations issued by the rulers of the Bikaner State. It may further be pointed out that the last proclamation was issued by His Highness the Maharaja of Bikaner in the year 1948 after the British power had withdrawn from India and there was no paramount power over the ruler of Bikaner.

21. The language of the proclamation of the 3rd of May 1922 is closely similar to the language of the letters patent of the various High Courts. I may for example refer to the preamble and the first clause of that proclamation in order to emphasise the close similarity between the said proclamation and the letters patent. It may also be pointed out that all the proclamations were signed and sealed by the Maharajas of Bikaner. Thus, the aforesaid proclamations of the

former rulers of Bikaner State establishing the High Court in the former Bikaner State may fall within the meaning of "Royal Charter" and the High Court established by them may be treated as a High Court established by a Royal Charter.

22. In this connection it may further be mentioned that the Part B States (Laws) Act was enacted "for placing the Part B States as far as possible on par with Part A States. u/s 4, it has been provided that

"Any reference in any Act or Ordinance specified in the Schedule to a law which is not in force in a Part B State shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State."

23. Now there is a reference to "Royal Charter in Article 183 of the Indian Limitation Act. In the Part B States, there was no court established by a Royal Charter of the King of England. While construing Article 183 it would be only proper to find out whether this has a reference to the corresponding law, if any, in force in any of Part B States. Indeed Section 4 says so. I would therefore be adopting the rule of interpretation laid down in Section 4 in holding that a High Court established by a royal proclamation in the former State of Bikaner must be taken to be established by a Royal Charter.

24. The same result follows if we examine the matter from another aspect. At the time the Part B States (Laws) Act was extended to the Part B States, it cannot be said that the Parliament took into consideration every piece of legislation bearing on the law of limitation prevalent in all the Part B States but it clearly showed its intention to respect the existing rights while providing u/s 6 Savings to the effect that such rights shall be respected and legal proceeding or remedy in respect of such rights may be instituted, continued or enforced.

There is no provision in the Indian Limitation Act parallel to Article 165 of the Bikaner Act except Article 183 for the enforcement of a decree of the former High Court of Bikaner. The absence of such provision may be treated as an inadvertent omission or Article 183 may be liberally construed. The latter course is more in consonance with the whole tenor of legislation on this point. As observed by Cleasby B. in *Scott v. Legg*, (1877)2 Ex D 39 at p. 42 :

"It seldom happens that the framer of an Act of Parliament or the legislature has in contemplation all the cases which are likely to arise, and the language therefore seldom fits every possible case. Whenever the case is clearly within the mischief, the words must be read so as to cover the case if by any reasonable construction they can be read so as to cover it, though the words may point more exactly to another case; this must be done rather than make such a case *cassus omisus* under the statute."

25. There is yet another reason for adopting such an interpretation. The Rajasthan Ordinance and the Part B States (Laws) Act are pieces of legislation drawn up in haste to bring about changes in law in a large part of the territory of

India in a short time. There is a sort of assumption that the Legislature is an ideal person which does not make mistakes but such assumption sometimes has its own limitations. It is too much to expect that in the short time in which these laws were framed by the legislative authorities they had devoted the same care and attention in drafting these enactments as would have been necessary and desirable. If I may say so, this legislation partakes of the nature of an emergency legislation, and it would not be proper to construe law with the same amount of strictness as in construing the statutes which have come out after considerable thought and attention on the part of the legislature.

26. I am, therefore, of the view that Article 183 of the Indian Limitation Act is applicable for enforcement of the decree in this case. Such an interpretation would promote the object in the mind of the legislature to save a vested right from being destroyed and will be in consonance with the provisions of law prevailing at the time the decree was passed and at the time when the Act was enacted.

27. If Article 183 is to apply the question of application of Article 165 of the Bikaner Limitation Act does not arise. However, if Article 183 does not apply, then the question is whether Article 182 will govern the application of the decree-holder or the old Article 165 of the Bikaner Limitation Act. Much the same considerations arise in the examination of this problem as we have already faced when examining" the question of the repeal of the Bikaner Limitation Act by the Rajasthan Ordinance. There is, however, one aspect of the matter which requires further consideration.

The Part "B" States (Laws) Act was enacted on the 22nd of February, 1951, but this Act was brought into force on the 1st of April, 1951. Thus there was a period of one month and some days between the date when the law was enacted and the date when it was brought in force. With respect to the law of limitation, it has been said in a number of cases that if there is a gap between the dates of enactment and enforcement of the new law of limitation repealing the old law, it should be taken that all suits and applications must be filed within the period prescribed under the new law. This is based on the rule that when the operation of a new law is postponed for some time, the hardship due to retrospective operation of the law may be said to have been met by the postponement of the operation of the Act after its enactment. In *R. v. Leeds and Bradford Ry. Co.*, (1852) 18 QB 343 there was a gap of six weeks between the date of the enactment of the new law and the date when it was brought into force. Lord Cambell. C. J. observed, as follows :

"If the Act had come into operation immediately after the time of its being passed, the hardship would have been so great that they might have inferred an intention on the part of the Legislature not to give it a retrospective operation..... A certain time was allowed before the Act was to come into force and that removed all difficulties."

Cases may arise where this gap of time is so small that it will be practically denying to a litigant the right to enforce his claim within that time. For such a case reference may be made to *Raja of Pittapur v. G. Venkata Subba Row*, ILR 39 Mad 645: (AIR 1916 Mad 912). The question primarily before a court of law is whether by postponing the operation of an Act, the Legislature should be deemed to have provided for a party which is to become time barred by applying the new law must be enforced before the new law comes into force. To determine this, the court of law has to examine the provisions of the old law, the suddenness with which they are repealed and the period of time which remains available to a litigant to enforce his claim. After taking all the relevant material into consideration a court of law may hold that the postponement of the operation of a law for a short time does not afford sufficient opportunity to a litigant to enforce his claim and his rights must continue to be governed by the old law. In the case before me, there is a gap of 36 days. This period is no doubt short but cannot be said to be so inadequate that I may be persuaded to hold that the same principles should apply in interpreting this law as I have adopted in construing, the Rajasthan Ordinance and the Bikaner Limitation Act should continue to govern the application of the decree-holder.

28. The fourth point for consideration in this appeal is whether the present application by the decree-holder can be considered to be in continuation of the previous execution application disposed of by the order of the former Bikaner High Court on the 27th of February 1941. The order of the 27th of February 1941 clearly shows that the counsel appearing on behalf of the decree-holder did not want to continue his execution proceeding and that on his request it was consigned to record. It has been rightly pointed out by the Senior Civil Judge, Sikar that operative part of the order is that the application of the decree-holder be dismissed as the decree-holder did not want to proceed with the case. The first application of the decree-holder cannot be said to have been consigned to the record by the order of the court. No question therefore of the revival of the application arises in this case.

29. As a result of the aforesaid discussion, I am of the opinion that the learned Senior Civil Judge was wrong in dismissing the execution application of the decree-holder as time barred. I would, therefore, set aside the order of the Senior Civil Judge, Sikar dated the 8th of February 1958 and direct him to proceed to decide the other objections of judgment debtor in accordance with law.

30. Now I take up for consideration Civil Execution First Appeal No. 33 of 1960--*Ghanshyam Das v. Hira Lal*.

31. *Hiralal and Hans Raj* decree-holder-respondents filed a suit for the recovery of money against the predecessor in title of representatives in the former High Court of Bikaner in its original jurisdiction. This was dismissed but on appeal the suit was decreed on the 7th Of June, 1937 for Rs. 13,932/2/-. On the 20th of April 1943 the decree-holders filed the first execution application for the

enforcement of the decree which was dismissed on the 30th of November 1943. Thereafter they filed another application for the enforcement of the decree the date of which has not been brought on record as the record of the execution case is said to be missing. But this application was consigned to Record Room on the 19th of February, 1952. On the 28th of January 1957 third application was made for the enforcement of the decree in which certain objections were taken one of which was that the application was barred by time. This objection application was dismissed By the Senior Civil Judge, Churu.

32. In this appeal on behalf of the judgment-debtors the same contentions are raised on the point of limitation as I have taken notice of in Appeal No. 8 of 1958. It has been held by the executing court that Article 188 applies to this case and I am in agreement with the view taken by that court for tile reasons which I have already given in the other appeal.

On behalf of the decree-holder, it is further contended that the present application for the enforcement of the decree is an application for revival of the application for enforcement of the decree which has not been finally disposed of as yet and was merely consigned to Record Room by the order of the executing court on the 19th of February 1952. In the previous application for the enforcement of the decree one house and half share in another house belonging to the judgment-debtor were attached. On this some third parties tiled a suit praying for a declaration of then title in respect of all the properties attached except 1/4th share in one house and obtained an injunction that till the disposal of that suit the proceedings in execution of the decree obtained by the decree-holder be stayed. This suit was decreed by the trial court but on appeal to this Court, the suit was dismissed. (See Heera Lal v. Mahadeo. ILR (1954) Raj 608).

It is admitted by the judgment-debtors in the memorandum of appeal filed by them that this second application was consigned to record on the 19th of February, 1952. It is urged on behalf of the decree-holders that their application for enforcement of the decree was consigned to record by the order of the court as the court found that there was some impediment in executing the decree. This impediment has now been removed by the judgment of this Court in ILR (1954) Raj 608 referred to above and they are entitled to get their execution application revived.

On behalf of the judgment-debtors it is urged that the decree-holders could have proceeded with the execution of their decree to the extent of one- fourth's share in one house and as they did not proceed with that execution for the enforcement of the decree, it must be taken that their application was dismissed. As the judgment-debtors have themselves admitted that the application for enforcement of the decree was consigned to record, I take it that the executing court thought it proper to con sign the case to the record room to be taken up later on after the decision in the other suit. The present application for the enforcement of the decree prays for the attachment and sale of the very same property the attachment and sale of which was stayed in the previous application

for the enforcement of the decree.

33. Thus, in the present case, I find that the record of the previous application for the enforcement of the decree was consigned to record room by the order of the court. The previous application for enforcement of the decree was not dismissed at the instance of the decree-holder. In considering whether an application is for the revival of the previous application or not there is no question of partial or total stay, What is to be considered is whether the previous execution application was disposed of or was kept pending. If it was kept pending, it automatically follows that it can be revived either suo motu by the court or being invited to do so by the decree-holder. This point should be borne in mind while applying the principles of revival. Consigning of a case to record without properly disposing it off is an act of the court and a decree-holder cannot be penalised by treating such application as disposed of and not pending. I am, therefore, of the opinion that the present application of the decree-holder for the enforcement of the decree is an application for the revival of their old execution application which was not disposed of but was only consigned to record. In this view of the matter, I would dismiss the appeal with costs.

C.B. Bhargawa, J.

34. I agree.

Sarjoo Prosad, C.J.

35. I substantially concur in the judgment which is about to be pronounced by my brother Bhandari, as the leading judgment of this Bench. I would, however, like to make a few observations about our decision in Karan Singh's case, ILR (1960) Raj 913 to which I was a party, since in the course of the arguments the learned counsel for the judgment-debtor respondent sought to rely upon some passages in that judgment. It is true that in the case in question we held that Sections 9 and 11 of the Ordinance were pointers to the intention of the legislature to give retrospective effect to the Ordinance.

But even in Karan Singh's case, ILR (1960) Raj 913 we pointed out that it would be hardly fair and proper to impute an intention to the legislature to destroy vested rights in respect of applications or proceedings for which there was a longer period of limitation provided under the old law. Of course, in the circumstances of the case in question we fell back upon Section 11 of the Ordinance and on the strength of that section adapted the provisions of Section 9(b) in order to save limitation; but we obviously did so being conscious of the principle for which there is overwhelming authority that, where a subsequent law of procedure comes into force at once without giving any opportunity to parties affected thereby to seek their remedies under the old law, since curtailed or repealed by the new legislation, it should not be allowed to have retrospective operation, because in that event that legislation would destroy preexisting vested rights of parties. Giving retrospective effect to such a case legislation does not amount merely to a change in the rule of procedure but it leads to forfeiture of

the very right to which the procedure is meant to apply. It would be, therefore, inappropriate to extend our observation in Karan Singh's case beyond the demand of the situation there.

36. In the present instance, there is a decree passed by the Bikaner High Court in its original jurisdiction to which Article 165 of the Bikaner Limitation Act applied, which provided a special period of limitation for the enforcement of such a decree. Such a decree was treated in a different manner and stood, for purposes of limitation, entirely on a different footing from the decrees passed by other subordinate Courts in the then State of Bikaner. In a case of this kind, I agree that it is safer to depend upon the general principle that the provisions of the Ordinance will not affect the right of the decree-holder and that the decree would continue to be governed by Article 165 of the Bikaner Limitation Act, in spite of its repeal by the Ordinance.

Speaking for myself, I am still inclined to hold that where the Ordinance has not specifically or inadequately provided for a certain remedy, we would be justified on the strength of Section 11 of the Ordinance, which we call the residuary provision, to re-enact Article 183 of the Indian Limitation Act in its application to such decrees and thereby save limitation. Section 11 provides ample scope for an adaptation of this nature, specially when it has been noticed that Article 183 appears to have been inadvertently omitted by Section 4 of the Rajasthan Ordinance. Even if the inadvertence is attributed to bad draftmanship, the lacuna is such that the Court would be competent on the strength of Section 11 of the Ordinance to adapt Section 183 of the Limitation Act to meet the justice of a case. After all, these provisions were transitory in nature and are capable of a flexible interpretation so as to avoid, a manifest injustice.

I, however, agree that we can with equal and even greater confidence rest our decision in this case upon the general principles of interpretation of procedural statutes to which I have already adverted earlier and which have been so carefully brought out in the decision of my learned brother.

37. Incidentally the question arises whether Article 183 of the Limitation Act can be said to apply to the decrees with which we are at present concerned. Article 183 applies to original decrees of High Courts, established by Royal Charter. To the extent that the Limitation Act operated in the then British India the reference to the "Royal Charter" must necessarily be confined to High Courts created under the Letters Patent granted by his Majesty the King of England. But the words "Royal Charter" have no technical meaning and have not been defined in the Limitation Act. They only mean a Charter emanating from the sovereign. Therefore, when the Act came to be applied to territories which were erstwhile under the sovereign domain of the Indian Rulers, we see no reason why High Courts established by, proclamation or by Charter granted by such Rulers, who had all the Kingly attributes, should not be also treated as High Courts established by Royal Charter for the application of Article 183 of the Limitation Act.

The historical background of the High Courts in British India need not necessarily continue to haunt us in attributing the ordinary meaning to the expression "established by Royal Charter". These Rulers were also sovereigns in their own rights, competent to establish High Courts in the dominions by a royal proclamation. No other authority or power could establish such High Courts. The mere presence or absence of a formal ceremony presenting the grant of the Charter to the High Court in question would not affect the legal position if in substance the High Court was created by a royal proclamation under the royal sign manual.

38. For the above reasons I agree that the appeals should be disposed of in the manner indicated by my learned Brother.

39. BY ORDER OF THE COURT : F.B. Civil Reference No. 19 of 1961 in D.B. Civil Execution First Appeal No. 8 of 1958 is allowed.

D. B. Civil Execution First Appeal No. 33 of 1960 is dismissed.