

(1963) 06 CAL CK 0003
In the Calcutta High Court
Case No : Civil Rule No. 1900 (F) of 1962

Harendra Krishna Mookerjee	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 27-06-1963

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 29(2)

Citation : 67 CWN 953

Hon'ble Judges : P.N. Mookerjee, J;D. Basu, J

Bench : Division Bench

Advocate : Chittatosh Mukherjee, for the Appellant;Susil Kumar Biswas, for the Respondent

Judgement

P.N. Mookerjee, J.—This Rule was issued at the instance of the petitioner (who is the administrator pendente lite to the estate of late Debendra Nath Dass) against the opposite party, the State of West Bengal, calling upon the latter to show cause why the connected appeal should not be registered, after condoning the delay in the matter of filing of the same u/s 5 of the Indian Limitation Act. The application for the Rule was made under the following circumstances:

Premises No. 93, Ultadanga Main Road, belonging to the estate of late Debendra Nath Dass aforementioned, came to be acquired in connection with the Calcutta Improvement Trust Scheme No. VII-Manicktolla. The Collector made his award in respect of the said acquisition and the petitioner, feeling aggrieved by the said award, which was dated September 18, 1959, applied for and obtained two references--one on valuation and the other for apportionment--under sec. 18 of the Land Acquisition Act. The reference in respect of valuation was registered as Case No. 80 of 1960 (V). On September 26, 1961, the Calcutta Improvement Tribunal by its award of that date, allowed the said reference in part and enhanced the Collector's award by a total amount of Rs. 8,414,53 nP. The petitioner, however, was not satisfied and, for the purpose of filing an appeal to

this Court, he applied, on September 29, 1961, for a certified copy of the aforesaid award. The copy was, eventually, made ready on November 28, 1961. As under the law [Sec. 77A of the Calcutta Improvement Act,--sub-section (1) (b), to be more precise], a certificate from the President was necessary for filing the appeal to this Court, the same was applied for on January 2, 1962, and it was signed and made ready on the 12th April following and delivered to the petitioner on the 16th next. The instant appeal was filed in this Court on the very next day, namely, the 17th April, 1962.

There is no dispute that, in view, particularly, of section 77A(4) of the Calcutta Improvement Act, the instant appeal is to be governed by Art. 156 of the Indian Limitation Act, under which the period of limitation is 90 (ninety) days and the starting point of limitation is the date of the decree or order appealed from. Obviously, in the present case, the above time or period of limitation has expired long before the appeal was filed, as aforesaid, on April 17, 1962, in this Court and, accordingly, the Stamp Reporter of this Court made an endorsement on the Memorandum of Appeal that the same was in time up to February 21, 1962, taking into account the time, taken, as the time requisite, for obtaining the certified copy of the Tribunal's award, but that it was out of time on April 17, 1962, the date of presentation of the appeal to this Court, by 55 days and made a report that the Memorandum of Appeal was to be returned to the learned Advocate for presentation to Court with an application u/s 5 of the Indian Limitation Act.

2. The above report was endorsed on the back of the Memorandum of Appeal on April 18, 1962, and the Memorandum was actually re-presented to the Court on the very same day along with the present application u/s 5 of the Indian Limitation Act, on which the instant Rule was issued.

3. There is no dispute that, if the time, taken for the learned President's certificate, that is, from the date of the application therefor up till the date, on which it was signed and made ready, as aforesaid, be excluded, in addition to the time, taken for obtaining the certified copy of the award, for which the application was made, as aforesaid, on September 29, 1961, and which copy was made ready for delivery on November 28, 1961, the instant appeal would not be time-barred and would be well within the prescribed period of 90 (ninety) days, as required under the aforesaid relevant Article 156 of the Indian Limitation Act.

4. The point, however, is, whether the above period for obtaining the aforesaid certificate could and should be excluded.

5. If section 5 of the Indian Limitation Act applies to the instant case, there can be no question that, under the circumstances, mentioned hereinbefore, it would be a fit case for condoning the delay and granting necessary extension of time by excluding the time aforesaid required for obtaining the certificate in question, so that the instant appeal, filed on April 17, 1962, may be held to have been presented within the prescribed period of limitation. If, however, the said section

does not apply to the instant case, then, in that event, the Court will have no power to extend the time, there being no other provision in that behalf, and, whatever merits there may be in the petitioner's explanation that the delay, if any, was due to the time, taken by the Tribunal below for granting the necessary certificate, the present appeal must be held to be time-barred and the instant Rule must be discharged.

6. On the above question, whether section 5 of the Indian Limitation Act applies to a proceeding of this type, namely, to an appeal u/s 77A of the Calcutta Improvement Act, as amended in 1955 [Vide the Calcutta Improvement (Amendment) Act, 1955 (West Bengal Act XXXII of 1955)--Sec. 44], and permits extension of time by excluding the period, necessary for obtaining the President's certificate, as required thereunder, there is a Bench decision of this Court in the case of (1) Province of Bengal Vs. Amulya Dhon Addy and Others, , under the corresponding earlier provision [Vide section 3--see also Sections 4 and 6--of the Calcutta Improvement (Appeals) Act, repealed by the above Act of 1955 (Vide Sec. 73)], which supports the petitioner's contention that the said section would apply for affording him the relief, prayed for in this Rule. The point depends upon the construction and scope of section 29 (2) of the Indian Limitation Act. That section has been construed by this Court, in the above cited authority, as not excluding secs. 4 to 25 of the Indian Limitation Act to appeals under the above statutory provision [Sec. 3 of the Calcutta Improvement (Appeals) Act, corresponding to the above new sec. 77A, sub-secs. (1) and (2), of the Calcutta Improvement Act]. If, accordingly, the said view is correct, there can be no question that the present Rule should succeed and the delay in the filing of the instant appeal should be condoned and the said appeal should be directed to be registered, if otherwise in form, and to proceed thereafter in accordance with law. In the circumstances, the propriety of the above view of this Court in (1) Province of Bengal Vs. Amulya Dhon Addy and Others, , has to be closely and critically examined for a proper decision of this Rule.

7. The point, as we have said above, depends upon the true scope and construction of section 29(2) of the Indian Limitation Act. That section stands as follows:

Sec. 29 (2): Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law--

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

8. The section, as quoted above, has two parts. Its first part provides that

where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule (of the Indian Limitation Act), the provisions of section 3 (thereof) shall apply, as if such period were prescribed therefor in that schedule," and, in its second part, it says that "for the purpose of determining any period of limitation, prescribed for any suit, appeal or application by any special or local law--

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provision of this Act (the Indian Limitation Act) shall not apply.

9. That the section has two parts, as aforesaid, or, as set out above, has never been doubted and, indeed, it cannot be doubted on the wording of the statute and its structure. Controversies, however, have arisen as to whether the section, in both its above parts, deals with only one type of cases, namely, those, contemplated in the first part, that is, where the special or local law prescribes a period of limitation for the proceeding in question different from the period prescribed therefor by the first schedule of the Indian Limitation Act, or whether the section is wider and more comprehensive and comprehends, within it, other cases also; or, in other words, whether the section is confined, in its application, only to cases, covered by and otherwise coming within the said first schedule, for which periods of limitation, different from those, prescribed therefor in the said schedule, are prescribed by the special or local law or whether it extends also to other cases. Controversies have also arisen as to whether the second part of the section [Sec. 29(2)] at all applies to cases, which are covered by and come within its first part, that is, cases, for which periods of limitation are prescribed in the above first schedule but different periods are prescribed in the special or local law in question; or, in other words, whether the two parts of the aforesaid section [Sec. 29(2)] are separate and independent and deal with different cases with different results. Controversies have further arisen as to whether a case, for which a period of limitation is prescribed in the above first schedule, but the same period is also prescribed therefor in the special or local law in question, either expressly or by necessary implication, to wit, by reference to the particular or relative Article of the first schedule aforementioned, would come within the second part of the aforesaid section [Sec. 29(2)] so as to be liable to be dealt with under it. There is, however, no controversy that, where the case is one, for which no period of limitation is prescribed by the first schedule of the Indian Limitation Act but a period of limitation is prescribed by the special or local law, the second part of the above section [Sec. 29(2)] would apply to it, and there is no controversy also that, where the said special or local law is silent on the point and prescribes no period of limitation for the case under consideration, the above section would have no application.

10. On the first of the above controversies, the opinion in this Court has been uniform that the section [Sec. 29(2)] is wider than its first part and the suggestion or implication to the contrary in the Madras case of (2) Mutyala Venkatramayya Vs. Tanguturi Venkatasubbayya and Others, , was rejected--and categorically rejected--in (1) Amulya Dhon's case, supra, and this latter case on this point has never been doubted or dissented from. We, on our part, too, find no reason to differ from it.

11. On the second controversy also, we agree with the view, expressed by this Court (Mitter, J. and P.N. Mitra, J.) in the said case of (1) Province of Bengal Vs. Amulya Dhon Addy and Others, , that the two parts of the section [Sec. 29 (2)] are separate and independent and deal with different types of cases with different results, so that, to cases, coming under the first part, the second part does not apply, and sec. 3 of the Act applies to them in full, thus attracting to those cases secs. 4 to 25, unless they or any of them be excluded by the special or local law in question.

12. On the third controversy too, which also relates to the scope of the second part of sec. 29(2), we feel that the correct view was taken by this Court (Das Gupta and Debabrata Mookerjee, JJ.) in (3) Bijanlata Bassak Vs. Bhudhar Chandra Das, , explaining and supplementing the decision in (1) Province of Bengal Vs. Amulya Dhon Addy and Others, .

13. The view, we have taken above, of sec. 29(2) of the Indian Limitation Act -- of its scope and construction--is, even apart from authorities, well supported by its wording, scheme and structure. That the section contains two parts, as above, is plain on its face. That the said two parts are distinct, separate and independent and deal with different types of cases with different results is also sufficiently clear, though the words of the section have to be closely read and examined for the purpose. That, again, it does not apply, where the special or local law in question is silent on the point of limitation or, where it prescribes or adopts the same period as the first schedule of the Indian Limitation Act, expressly or by necessary implication, including, within such implication, cases of prescription or adoption by reference, is also implicit in the section, the former, appearing on the face of it, and the latter, fairly following from its scheme and structure and its wording, read in the light thereof. This has been sufficiently explained in the two cases of this Court, to which reference has been made above, namely, (1) Province of Bengal Vs. Amulya Dhon Addy and Others, , and (3) Bijanlata Bassak Vs. Bhudhar Chandra Das, , and we respectfully adopt the said explanation and the reasons, given by their Lordships for the said view, and concur therein. We do not think that any further elaboration is necessary on the point.

14. It remains now to deal with (4) Dharma Chand Roy v. Nabin Chandra Mondal, 66 C.W.N. 902, to which our attention was particularly drawn by Mr. Biswas. We feel, however, that not much need be said on this decision in view of what we have already stated above and it will be enough to point out that this (66 C.W.N.

902) was a case, outside the first schedule of the Indian Limitation Act, in which a special or independent period of limitation was prescribed in the special statute [the West Bengal Land Reforms Act --vide Sec. 19(2)] and plainly, therefore, it was a case, falling within the second part of sec. 29(2) of the Indian Limitation Act, and the conclusion of our learned brother Chatterjee, J. to that effect was correct, although his reasonings for the same and his approach to the problem and analysis of the different cases, cited in his judgment, may not be fully approved and, to the extent the same conflict with ours, we do not concur therein. Plainly, however, as said above, the said case is distinguishable, and, similarly also, the other case, cited by Mr. Biswas, namely, (5) Rai Harendranath Chaudhuri Vs. Sm. Daulatmani Chaudhurani, , where, too, on the finding of the learned Judges (Lahiri and Mitter JJ.) that the case was not one, covered by the first schedule of the Indian Limitation Act, and the period of limitation was prescribed for it only by the special statute (The Calcutta Thika Tenancy Act)--Sec. 27), the second part of sec. 29(2) was rightly applied by their Lordships.

15. In the above view, we would hold that the section [Sec. 29(2)] applies--

(a) to cases, otherwise coming under the first schedule of the Indian Limitation Act, where a different period is prescribed in the special or local law in question and

(b) to cases, which do not come within the said first schedule but for which periods of limitation have been prescribed by the special or local law; and that it does not apply to cases--

(i) where the special or local law is silent on the point of limitation, and

(ii) where the special or local law prescribes the same period as the first schedule of the Indian Limitation Act, either expressly or by necessary implication; bearing in mind that where the special or local law contains nothing on the period of limitation except by way of reference to some article of the first schedule of the Indian Limitation Act, the case is well within either (i) or (ii) or both, as, in such a case, the special or local law may well be said to be silent (vide Province of Bengal Vs. Amulya Dhon Addy and Others,), or, as prescribing the same period of limitation as the first schedule of the Indian Limitation Act by implication or necessary implication.

16. The instant case is, obviously one of this last description and, to it, accordingly, the section [Sec. 29(2)] would not apply with the necessary consequence that the other provisions (sections) of the Indian Limitation Act would apply to it in full and in all respects, that is, including inter alia Sec. 5 thereof, with which we are here directly concerned.

17. For the foregoing reasons, we would hold that sec. 5 of the Indian Limitation Act would apply to the instant case and, as there is no dispute that, if that section applies, this is a fit case for condonation of delay and extension of time to the requisite extent, we make this Rule absolute, condone the delay in the

filing of the instant appeal in this Court, grant the necessary extension of time and direct that the present appeal be registered, if otherwise in form, and that it will, thereafter, proceed in accordance with law. There will be no order as to costs of this Rule.

D. Basu, J.

I agree.