
(1978) 11 OHC CK 0014
In the Orissa High Court
Case No : Civil Revision No. 28 of 1977

Harikishandas Bajoria and Another	Vs	APPELLANT
E.I.D. Parry Ltd. and Others		RESPONDENT

Date of Decision : 02-11-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63
Limitation Act, 1963 — Article 98

Citation : AIR 1979 Ori 80

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : R. Mohanty, S.C. Ghose, U.N. Sahu, S.K. Mohanty and B.C. Pradhan, for the Appellant; C.V. Murty, C.A. Rao and G.P. Rao, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Defendants 1 and 2 in Title Suit No. 53 of 1974 have carried this revision application against the order of the learned Trial

Judge finding the suit under Order 21, Rule 63 of the Civil P. C. to be within the period of limitation, the issue relating to limitation having been

adjudicated as a preliminary one. When the revision application was placed before one of us for hearing, it was directed to be placed before a

Division Bench for final disposal.

2. On 13-5-1970, plaintiff (opposite party No. 1) filed Money Suit No. 339 of 1970 in the court of the Subordinate Judge at Cuttack for recovery

of the dues on promissory notes executed by opposite parties 2 to 5 and obtained an ex parte ad interim order of attachment before judgment.

Petitioners had purchased a house from opposite parties 3 to 5 under a registered sale deed dated 20th of March, 1970, for valuable

consideration and when they found that the order of attachment covered this property also, they asked for lifting of the attachment. Their

application being Miscellaneous Case No. 255 of 1970 was allowed on 21-12-1971 and the property was directed to be released from

attachment. Plaintiff-opposite party No. 1 filed Civil Revision No. 93 of 1972 in this Court on 30th of March, 1972, and that application was

ultimately dismissed on 22nd of March, 1973, with the following observations :--

Mr. C. V. Murty, on behalf of the petitioner contends that the claimants have no right to the properties as the sale in their favour is a fraudulent

transaction. The finding of the Court below is otherwise and the only remedy for Mr. Murty's client is to institute a regular suit where this point of

fraud and similar other points can get fuller consideration. I cannot interfere with the conclusions of fact arrived at by the court below as it does not

involve any question of lack of jurisdiction or illegal exercise of jurisdiction.

In the circumstances, I find there is no merit in the revision, which is accordingly dismissed.

Plaintiff filed Title Suit No. 53 of 1974 on 21-3-1974. The defendants, inter alia, contended that the suit was barred by limitation. Issue No. 3 was

raised in regard to the plea of limitation. The defendants wanted the said issue to be examined preliminarily and when the learned Trial Judge

refused to do so, this Court in Civil Revision No. 303 of 1975 called upon the trial court by its Order dated 7-7-1976, to examine Issue No. 3

preliminarily. The learned Additional Subordinate Judge having examined the question has come to hold that the suit is not barred by limitation.

That finding is assailed in this revision application.

3. Limitation for a suit of this type is prescribed under Article 98 of the Limitation Act of 1963 and that Article runs thus:--

By a person against whom an order referred to in One Year. The

rule 63, or rule 103. of Order XXI of the Code of date of

Civil Procedure, 1908 {5 of 1908) or an order under the

S. 28 of the Pre-sidency Small Cause Courts Act, final

1882 (15 of 1882) has been made, to establish the order.

right which he claims to the property comprised in the

order.

This Article admittedly corresponds to the earlier Articles 11 and 11-A of the Limitation Act of 1908. Both these Articles were merged into one.

Under the old Act, limitation ran from the date of the order and under the new Act, limitation runs from the date of the ""final"" order. The cause of

action for the suit contemplated in Article 98 arises when an order adverse to the interest of the plaintiff under the appropriate provision of law is

made and the suit has to be filed within one year therefrom. Prior to the amendment of the CPC by the Amending Act of 1976, Rules 58 (as

amended in this Court) and 63 of the Code of 1908 read thus :--

58. (1) When any claim is preferred to any property, the subject-matter of execution proceedings, or any objection is made to the attachment

thereof, on the ground that the applicant has an interest therein which is not bound under the decree, or that such property is not liable to

attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector,

and in all other respects, as if he was a party to the suit :

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2)

63. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims

to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

By the amendment of 1976, the order under Rule 58 is open to appeal and against the appellate decision right of suit has been conferred.

Mr. Mohanty for the petitioners contends that limitation commences to run from the date of the final order rejecting or allowing the claim and Rule

63 having made the order conclusive subject to the result of a suit, the conclusiveness of the order except when disturbed in a suit cannot be taken

away. According to counsel, therefore, a revision application u/s 115 of the Code against the order on the claim petition is not a remedy provided

by law and the filing of a civil revision would in no way affect the running of the limitation and the disposal of the civil revision would not give a new

cause of action. Otherwise stated, if limitation started running from the date of the order in the claim case, its running would not be arrested by the

filing of the revision or pendency thereof and the disposal of the revision would not give a new cause of action. Mr. Mohanty further contends that

even if the period during which the Civil Revision was pending before this Court is excluded u/s 14(4) of the Limitation Act in the matter of

computing the "period of limitation of one year, in the instant case, the suit would still be barred by limitation. It is his contention that the learned

Trial Judge has clearly gone wrong in holding that the commencement of limitation is from the date of the dismissal of the civil revision.

4. Reliance is placed on a series of authorities of different High Courts by Mr. Mohanty in support of his proposition that the limitation of one year

would run from the date of the original adverse order and the abortive civil revision would not make any difference in the matter of computation of

limitation. We propose to refer to some of these authorities.

In the case of Meghmala Debi Chakravarti Vs. Saday Parhya and Others, , B. K. Mukherjea, j., as the learned Judge then was, was dealing with

computation of limitation in a suit under Order 21, Rule 103 of the CPC and observed:--

Now, so far as the first point is concerned, Mr. Banerjee relies upon a decision of the Madras High Court in ILR 39 Mad 1196 : (AIR 1916

Mad 883); (Venugopal Mudali v. Venkatasubbiah). That decision held, and in my opinion rightly, that the word order in Article 11-A Limitation

Act should be construed as meaning the final or subsisting order in the case. In that case, however, there was a judgment in the claim case

pronounced by a single Judge of the High Court against which an appeal was taken under the Letters Patent. The Court held that the period of one

year did run under Article 11, Limitation Act from the time when the Appellate Court passed its order. The learned Judges in that case pertinently

pointed out that a somewhat different consideration would apply if a revision petition presented by an unsuccessful party in a claim proceeding is

rejected by the superior Court. If the High Court in the exercise of its powers u/s 115, Civil P. C. refuses to interfere in a claim case, it merely

amounts to an abstention from exercising jurisdiction and the only final order that remains subsisting is the order passed by the trial Court. It may

be otherwise where the High Court interferes in revision with the original decision. In the present case, if the plaintiff had succeeded in the

revisional petition which she presented to this Court, the time so far as the defendants are concerned, would certainly have run from the date when

this Court passed its order. In my opinion, the only subsisting order against the plaintiff was the order that was passed by the trial Court on 25th

July 1933, and as the suit was not commenced within a period of one year after that, it is barred by limitation under Article 11-A, Limitation Act.

Niyogi, A. J. C. in the case of AIR 1931 17 (Nagpur) , took the view that Article 11-A did not contemplate computation of the period of

limitation from the date of the revisional order. A Full Bench of the Patna High Court in the case of Lal Bihar Lall and Another Vs. Bani Madhava

Khati and Others, took the view that limitation was to be computed from the original adverse order, but the plaintiff was entitled to the advantage

of Section 14(1) of the Limitation Act and, therefore, to deduction of time spent in prosecuting in good faith and with due diligence an abortive civil

revision.

A Division Bench of the Patna High Court in the case of Mt. Bibi Aziman v. Mt. Saleha, AIR 1963 Pat 62, while dealing with limitation under

Article 11-A of the old Limitation Act prescribing the limitation for the suit under Order 21, Rule 103, Code of Civil Procedure, observed :-- (at p.

69)

""Mr. Chatterji for the appellants submitted that there was no justification for the view that if the High Court interfered in revision, then the order of

the High Court was the subsisting order but in case, it refused to interfere, then the order of the executing Court was the subsisting and final order.

According to him, when a petition in revision was either dismissed or allowed, in both the cases it was the order of the High Court which was the

subsisting order and not the order of the executing Court. In other words, there was no distinction between the two orders of the High Court.

The argument of Mr. Chatterji is no doubt ingenious and plausible, but on a closer scrutiny it is not sustainable and we have to consider the

wordings themselves of Article 11-A of the Indian Limitation Act. The statute does not include the words either original or final before the word

"order" in that Article, but it has to be seen as to which is the order by which one is aggrieved for seeking another remedy to get that order either

reversed or modified. There can be applications of various kinds as enumerated

in column 1 of Article 11-A and we are concerned here with the application of persons who alleged to have been dispossessed of their property by reason of the delivery of possession obtained by the other party. On such an application, an order was passed by the executing court against the plaintiffs. The plaintiffs were aggrieved by that order and all persons coming within that category and who made applications under Order 21, Rule 100 would be aggrieved by adverse orders passed against them in one case or the other. In other words, that order is the order passed against the person making an application under Order 21, Rule 100.

.....If the revision is dismissed, either summarily or after final hearing the person aggrieved can institute a suit, but he has to do it within one year of the date of the order passed by the executing court, inasmuch as that was the adverse order against him which gave him a cause of action for a suit.

He can in proper cases take the benefit of Section 14(1) of the Indian Limitation Act and get an extension of time which he may have spent in

proceeding with his application in revision in High Court

A Full Bench of the Kerala High Court in the case of Thycattuseri Church Vs. Sicillyamma and Another, approving the view taken in the case of

AIR 1931 17 (Nagpur) and in the case of Meghmala Debi Chakravarti Vs. Saday Parhya and Others, , by majority came to hold that limitation for

a suit under Order 21, Rule 63, CPC would run from the date of the order of the executing court on the claim petition and not from the date of the

order on an infructuous application for revision thereof. The majority also took the view that the plaintiff can claim exclusion of the period which

began with the filing of the revision petition and ended with the passing of the order therein. One of the learned Judges constituting the Full Bench,

however, took a different view and came to hold following the ratio of the decision in the case of Narayanan Pisharodi v. Pathoo, 1947 Trav LR

484 and of the case reported in Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, that limitation started to commence from the date of

the order in the revision application.

5. Most of the High Courts have taken the view that the period of limitation under Articles 11 and 11-A of the Lim. Act of 1908 would run from

the date of the original order though in a few cases, as represented by the decisions in the cases reported in Koppolu Venkataswami Vs. Uttarkar

Sara Bai and Others, , 1947 Trav LR 484 as also in the case of p. Narayanasami Reddiar v. K. M. Jayarama Reddiar, (1971) 2 Mad LJ 369, it

had been held that under Article 11, the starting point should be taken to be the date of the final order where that order was passed on an appeal

or where it was passed in a civil revision petition against the order of the executing court. There appears to be unanimity of judicial opinion to a

large extent except a few exceptions that where a revision has been filed, benefit of Section 14 of the Limitation Act could be given for extending

the period of limitation and the period during which the civil revision was pending could be asked to be excluded.

6. The provision under the new Limitation Act, however, is different. Old Articles 11 and 11-A have been put together into the new Article 98.

The commencement of limitation now is from the date of the final order. In the old Limitation Act, time ran from the date of the order and the new

Limitation Act has introduced the term ""final"". The House of Lords in the case of Quebec Rly. Light, Heat and Power Co. Ltd. v. Vendry AIR

1920 PC 181, pointed out that the Legislature is deemed not to waste its words or to say anything in vain. Das Gupta, J. speaking for the Court in

the case of The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, observed (at p. 1174) :--

.....In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative

intention is that every part of the statute should have effect.

When in the Limitation Act of 1908, the corresponding word was only "order" in using the adjective "final" it would not be proper to hold that

nothing different from the position under the 1908 Act was intended. Patanjali Sastri, C. J., in the case of Aswini Kumar Ghosh and Another Vs.

Arabinda Bose and Another, , pointed out:-- (at p. 377)

.....It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate

application in circumstances conceivable within the contemplation of the statute.

We are inclined, therefore, to hold that the Legislature intentionally introduced the word "final" into the third column of the new Article 98.

7. Computation of limitation with reference to a final order was known to the Legislature from before. Article 47 of the old Limitation Act ran

thus:--

By any person bound by an order respecting the Three years. The possession of Immovable property made under the date Code of Criminal Procedure, 1898 (V of 1898), or of the the Mamlatdars' Courts Act, 1906 (from. II of final 1906), or by anyone claiming under such person, to order recover the property comprised in such order. in the case:

In Article 182, the phrase "final order" had also been used in juxtaposition to "original order". There is good authority for the view that where by the time a Legislature enacts a statute clear legal concepts are in vogue, the Legislature must be credited with the intention of using the terms in the sense and for conveying the meaning given to the terms.

8. Article 47 of the old Limitation Act which uses the same phrase as in Article 98 of the new Act came to be interpreted in several cases. A

Bench of the Patna High Court in the case of Rampal Singh Vs. Mansukh Rai Khemka, , observed :--

.....Whether the High Court ultimately interferes in revision or not, its order is nonetheless the final order. Where, as in the present case, the

Sessions Judge in exercise of his power u/s 435 makes a reference to the High Court u/s 438 with the recommendation that the order of the

Magistrate be set aside, the matter remains sub judice so long as it is not finally determined by the High Court. The order of the High Court passed

u/s 439 will be the final order in the case. In this view the period of limitation under Article 47 in the present case must be computed from the date

of the High Court's order.

Another Bench of the Patna, High Court in the case of Pitambar Chaudhury v. Achoki Choudhury AIR 1951 Fat 325, adopted the earlier Patna decision and stated (at p. 326) :--

.....If this Court had been so moved whether the orders passed by this Court, after hearing the parties or otherwise, were against the plaintiffs

they would have had the advantage of the extended period of limitation, in view of the decision of a Division Bench of this Court in the case of

Rampal Singh Vs. Mansukh Rai Khemka, . In that case, their Lordships took the view that the orders passed by the High Court in its revisional

jurisdiction against an order passed in a proceeding u/s 145, Criminal P. C., are the final orders within the meaning of Article 47, Limitation Act.

We are bound by that decision. But, as already indicated, the plaintiff-respondents did not move this Court in its re-visional jurisdiction and,

therefore, deprived themselves of the benefit of the orders of this Court and of the extended period of limitation in the event of any orders being

passed by this Court.

The view taken by the two Patna cases has been directly approved by a Bench of this Court in the case of Bingi Kurmayya and Others Vs.

Woonah Bhimayya Subudhi and Others, and we feel bound by the decision in the said case, where with reference to the phrase ""final order"" in

Article 47 of the old Limitation Act, it has been said that it would refer to the order of the High Court in a revision application. In view of the fact

that under the new Limitation Act, the phrase in Article 98 is "final order", we are inclined to agree with the submission made before us by counsel

for the opposite parties that the view taken by the Patna High Court in the two cases indicated and by a Bench of this Court should be adopted.

9. We may now refer to an unre-ported judgment of this Court in Second Appeal No. 55 of 1974 (Krishnagopal Jethmal Firm v. Kamala-kanta

Das) disposed of by one of us on 9-9-1977, where this very question directly came up for consideration. The use of the words ""the date of the

final order"" in the third column of Article 98 of the new Limitation Act came to be emphasised upon in juxtaposition to the "date of the order" in

Article 11 of the old Limitation Act. My learned Brother Ray, J. took note of the Calcutta decision Meghmala Debi Chakravarti Vs. Saday Parhya

and Others, , the Full Bench case in Thycattuseri Church Vs. Sicillyamma and Another, and the Bench decision of this Court reported in Bingi

Kurmayya and Others Vs. Woonah Bhimayya Subudhi and Others, and came to hold (at pp. 147, 148) :--

.....When the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purppse of

rectifying the error of the court below. Section 115, C.P.C. only circumscribes the limits of that jurisdiction, but the jurisdiction which is being

exercised is a part of the general appellate jurisdiction of the High Court as a superior court. It is only one of the modes of exercising power conferred by the statute. Basically and fundamentally it is the appellate jurisdiction of the High Court which is invoked and exercised in a wider and larger sense u/s 115, C.P.C. That being the position, there is not much of difference between an order passed by a revisional authority in exercise of its powers of revision and the powers of an appellate authority exercising its appellate powers. According to the view expressed in that decision *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, whether it is the final order passed in a revision or one passed in an appeal, the original order merges in it. When the aid of the High Court is invoked on the revisional side, it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. According to their Lordships of the Supreme Court there is no existence of the original order after a final order is passed by the High Court in a revision application against the original order, because the original order merges in the revisional order.

There is one more decision of a learned single Judge of the Allahabad High Court taking the same view. In the case of *Gopal Lal and Another Vs.*

Ram Karan Singh, a learned single Judge has emphasised on the words "final order" used in the Article and has taken the view that where a revision has been filed and rejected, the date of the order of rejection of the revision is the date from which limitation runs. The learned Judge has taken the view relying upon the decision of the Supreme Court in the case of *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, , that the order of the executing court merges in the revisional order.

In our view, the change brought about in the law is sufficient enough to dispose of the matter and it is unnecessary to examine the matter any further. We would accordingly in agreement with the learned Trial Judge hold that the issue of limitation has been correctly decided, as the suit has been filed within one year from the date of the final order, i.e. the order made by this Court dismissing the Civil Revision.

10. The revision application must accordingly be dismissed. We make no order for costs in the facts and circumstances of the case.

B.K. Ray, J.

I agree.