
(2000) 05 DEL CK 0058
In the Delhi High Court
Case No : Suit No. 1070 of 1998

IInd Lt. B.S. Bamhrah

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-05-2000

Acts Referred:

Limitation Act, 1963 — Section 14

Citation : (2000) 5 AD 865

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. Jitender Kumar Singh, for the Appellant; Mr. Sanjiv Sachdeva, for the Respondent

Judgement

Vikramajit Sen, J.—The plaintiff has filed the present suit for the recovery of damages/compensation because he sustained severe injuries paralysing and de-capacitating him completely during the 4th Himalyan Car Rally when the Army service vehicle carrying him met with an accident. An amount of Rs. 43,32,270/- is in claim and since the suit has been filed as an indigent person, no court fee has been affixed. What has to be decided at this juncture is whether the suit is barred from being adjudicated upon, having been filed beyond the prescribed period of limitation. The relevant facts stated briefly are that the plaintiff was commissioned on 24.12.1982, and according to him he was detailed for the said Rally in a follow-up vehicle to assist senior participating officers. On 25.10.1983 the accident occurred due to the alleged gross negligence and rash and hasty planning of the Defendants. A Court of Inquiry was held on 27.10.1988 which did not hold anyone responsible for the accident. Predicated on this Inquiry it is stated that no compensation was granted. It appears that no insurance cover had been taken. On 22.1.1984 pursuant to a Medical Board, the plaintiff was invalidated out of the Army with 100 per cent (total) disability. It is stated in the plaint that from 1985-90 the plaintiff's father corresponded with Respondents for doing justice to the plaintiff, on the grounds that the matter had not been properly investigated. In this period, on 6.10.1988 the last medical examination

of the plaintiff was carried out. It was on 31.12.1990 that the Army Head Quarters had informed the plaintiff, as has been alleged by him, that no compensation would be paid to the plaintiff. On 25.4.1991 a legal notice was issued by the plaintiff to the Defendants. The plaint is dated 25.10.1991 but appears to have been filed on 27.11.1991; it was listed before the Registrar as late as on 10.2.1992, was thereupon registered and notice was issued to the Defendants. In its Written Statement the Defendants have submitted, inter alia, that the claim ought to have been filed before the Motor Accident Claim Tribunal; and in order to cover up the grossly delayed action, the plaintiff has resorted to the filing of a suit, which remedy is not available to the plaintiff since about nine years have elapsed since the date of the accident. It is averred that the plaintiff had volunteered for participation in the Rally, and that all army personnel are already insured under the Army Group Insurance Fund. The finding of the Court of Inquiry was that the accident was caused due to circumstances beyond the control of the vehicle driver. There is only a perfunctory and hence evasive denial in the Replication to Defendant's statement in paragraph 62 of the Written Statement that the plaintiff has received his dues from the Army Group Insurance Fund, and that he is still receiving pension as applicable to him.

2. Arguments were heard on the maintainability of the suit in view of the law of limitation. Learned counsel for the Defendants had submitted that the ill-fated accident and the consequent injuries were sustained by the plaintiff on 25.10.1983, and the suit having been filed in November 1991, it was hopelessly barred by time. It was his contention that in order to succeed, the plaintiff must bring his case within the ambit of Section 14 of the Limitation Act, and that the plaintiff has been unable to do so. The plaintiff on the contrary, has submitted that if limitation is calculated from 31.12.1990 when, allegedly, the Army Head-Quarters finally declined to pay compensation, the suit having been filed in November, 1991 is clearly within time. Learned counsel had rested his case on the decisions of the Apex Court rendered in *Raghubir Jha Vs. State of Bihar and Others*, ; *Jay Laxmi Salt Works (P) Ltd. Vs. State of Gujarat*, ; *N. Balakrishnan Vs. M. Krishnamurthy*, ; *P.C. Bhandari Vs. New Victoria Mills*, ; and *Sha Manmall Misrimall Vs. K. Radhakrishnan*, .

3. *Sha Manmale's* case (supra) does not advance the plaintiff's case; in fact it runs counter to the argument advanced on his behalf. The learned Division Bench observed that since the letters relied upon by the plaintiff merely called for a Statement of Account, it was no acknowledgment of liability. It was held, on facts that the suit was not barred by limitation since the payments were made without indicating any particular disability. Significantly, it was also opined that it was obligatory under Order VII, Rule 6 of the Code of Civil Procedure, 1908 to clearly plead the grounds upon which the exemption from limitation is claimed. The pleading in this context is to be found in paragraph 63A of the plaint and in my view does not contain sufficient and precise details. It reads as follows :

"63A LIMITATION

That the suit is within limitation. During these years since the accident the plaintiff was corresponding for relief on behalf of plaintiff as well as plaintiff's medical reviews were going on and the last letter received from the Adjutant General's Branch, Army Headquarters to an appeal by plaintiff's father for financial help and payment of compensation and legitimate dues is dated 27.3.1991. The Army authorities have refused to pay any compensation on the points raised by the plaintiff's father in his letter dated 31st December, 1990 addressed to the chief of Army Staff defendant No. 2. A copy each of letter dated 31.12.90 and 27.3.91 is enclosed as Annexure A11 and Annexure A12 respectively."

4. For the same reasons, I am also unable to appreciate the applicability of the New Victoria Mills case (*supra*) to the arguments advanced by Learned Counsel for the plaintiff. In a suit for recovery of a debt, it was held that Section 18 of the Limitation Act, 1963 was available to the plaintiff since it was held that the letter relied upon by the plaintiff contained a clear and unequivocal admission of the plaintiff's claim and in the Written Statement it had further been admitted that certain sums were due. No admission or acknowledgment has been in the case in hand; infact the plaintiff appears to be aggrieved by the reticence and failure of the Defendant to respond.

5. The Apex Court did not consider the applicability of Section 14 and Article 113 of the Limitation Act in Raghbir Jha's case (*supra*), although the Head Note of the Report indicates so; the judgment is perspicuous and cannot be read as laying down a general principle.

6. Balakrishnan's case (*supra*) is related to an interpretation of Section 5 and not Section 14 of the Limitation Act. The language of these Sections is so disparate that the fine considerations in one would have no applicability in the other. The Apex Court was not dealing with the condensation of delay in filing a suit. If the considerations for both are the same, there would be not necessity to separate sections. Section 5 and Section 14 are reproduced below to adumbrate their difference and for easy reference:

"5. Extension of prescribed period in certain cases._Any appeal or any application, other than an application under any of the provisions of Or. XXI of the CPC 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. - The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

"14. Exclusion of time of proceeding bona fide in court without jurisdiction. - (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant

shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Or.23 of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under R(1) of that order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation._For the purposes of this section.

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misguide of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

7. In Balakrishnan's case (supra) the Court explained and thereafter applied the principle of "sufficient cause" to condone the delay in filing an application for restoration of a suit. However, the Court made the following observations while condoning the delay.

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal

remedy must be kept alive for a legislatively fixed period of time".

"12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This court has held that the words 'sufficient cause' u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, and *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, ".

8. It would be of advantage to immediately refer to the decision in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , where the Court had cautioned against ignoring the difference between Sections 5 and 14 of the Limitation Act. The Supreme Court spoke in these words:

"12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condensation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by S.5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under S.14 of the Limitation Act. In dealing with such applications the court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of S.14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only u/s 5 without reference to S.14".

9. On a reading of Section 14 of the Limitation Act it would be clear that the following conditions must exist if delay in filing a suit, in contradistinction to an application, is to be condoned :

- a) the suit must be between the same adversaries to both the litigations.
- b) the plaintiff should have been prosecuting, with due diligence and/or good faith.
- c) another civil proceeding.
- d) in a court of first instance, or appeal or revision.

e) both the proceedings (i.e. between the same adversaries) should be pertain to the same matter.

f) the previous civil proceeding should not be entertainable by the Court, because of a defect of jurisdiction or other cause of like nature.

10. Learned counsel for the plaintiff also relied on the decision of the Apex Court in Jay Laxmi's case (supra). The plaintiff in those proceedings had filed a suit for recovery of damages caused to its factory premises because of the construction of a bundh. An official committee was appointed which assessed the loss suffered at Rs. 1,58,735/-. Since this amount was not paid the suit was filed. Two points arose for consideration, (a) that there was no negligence either in the construction of the bundh or in the action of the officers and (b) whether the suit was barred by limitation in the context of the provisions of the Limitation Act, 1908. The reliance placed by learned counsel for the plaintiff is on the observation of the Court regarding condensation of delay in the filing of the plaint. Article 36 of the old Act was to be construed which stipulated as follows :

----- "Description of suit. Period
of Time from which limitation period begins to run.
----- 36. - For compensation
Two years When the malfeasance for any malfeasance, misfeasance, or
misfeasance or non- non-feasance feasance independent takes place." of
contract and not herein specially provided for.

11. It is not in dispute that in the case in hand it is Article 113 of the Limitation Act, 1963 which is attracted and it reads as follows :

----- "Description of suit. Period
of Time from which limitation period begins to run.
----- 36. - Any suit for Three
years When the right to sue which no period of accrues." limitation is
provided elsewhere in this Schedule.

12. Even though there is some difference in the language of the two Articles the ratio of the judgment in Jay Laxmi Salt Works case (supra) is applicable and is Therefore reproduced.

"The word `when" means at what time. The time, according to finding recorded by the High Court, was negligence in the act of planning and construction of bundh. When did it take place? `Take" has many shades of meaning. How it should be understood, precisely, in a set of circumstances depends on the context in which it has been used. Literally speaking, it can mean when it happens but that would not be consistent with the purpose of its use and may defeat the very objective as malfeasance or nonfeasance arose not on 4th or 5th July but when dam was started in 1955 and in any case when completed in 1956. At that time there could have been no occasion for the appellant to claim any damage. Therefore, time obviously cannot be said to run either from the date the

construction of bundh was commenced or it was completed. therefore, the computation has to be from some other points. For instance, where there is a single wrong the time may start running immediately. In cases of assault, battery or death the cause of action may arise immediately. The limitation may be counted from that very point. It is the individual or the single act which by itself furnishes the cause of action. But there may be others where even though injury may have been caused but the cause of action may not arise unless something more happens. For instance, if one accumulates something hazardous on its own premises and it leaks then the cause of action will arise not by accumulation or even by mere leakage but cause of damage and injury. Therefore, the construction of the words "when" and "takes place" used in Article 36 has to be construed liberally so as not to deprive the person who suffers damages. In wrongs like negligence, strict liability or violation of public duty time begins to run not before the damage takes place. But the computation under the article has to be from malfeasance, misfeasance and non-feasance. It has been explained earlier that the negligence or violation in such duty which results in damage could not furnish the starting point. What could be the other point? The cause of action to claim damages arises when the actual loss has taken place. It is thus not the date on which negligence or mistake took place but the date when injury is suffered. But computation has to be from misfeasance or non-feasance, etc., that is violation of duty. This duty has to be different than the duty which was the cause of negligence. Therefore, in such actions which are latent in nature the aggrieved party has to make a claim for damages and it is the failure in discharge of this duty in this regard which too can furnish the starting point of limitation. Since the authorities refused to pay damages even though it was got assessed at their own direction the computation of the period for filing suit could arise from that date. Otherwise it would cause great injustice. A common man, an average citizen who in a developing country cannot afford to pay huge court fee would be deprived of his just claim only because he was pursuing his remedy vigilantly in the Government of a welfare State.

Therefore, the computation for purposes of limitation under Article 36 could commence either from the date when malfeasance, misfeasance or non-feasance occurred or from the date when the damage took place or where claim is lodged within period allowed by law and the damage is ascertained then from the date the claim is rejected. It is the improper performance of duty or arbitrary action of the authorities in not accepting the claim when damage was found by the Official Committee to have taken place. The limitation to file the suit on facts of this case arises from the date the Government refused to pay the amount determined by the committee. Since the rejection was not communicated nor the copy of the report was supplied despite request the suit could not be said to be barred by time."

13. The Apex Court explicitly stated that the limitation to file the suit, on facts of the case arose when the Government refused to pay the amount determined by the Committee. It did not lay down a general principle of universal application to

every case that a party can keep making representations, which if ignored, would extend the period of limitation. The decision was not rendered in the circumstances envisaged in Section 14 of the Limitation Act, 1908; in fact this Section was not even referred to.

14. The contention of learned counsel for the plaintiff is that the plaintiff is entitled to extension of time/condonation of delay u/s 14 of the Act. The cause of action had arisen on 25.10.1983 when the accident occurred. The suit ought to have been filed within three years, that is, 24.10.1986. It is the plaintiff's case that all the representation made on his behalf were ignored and the Army refused to pay any compensation. It has not even been asserted, as indeed it could not have been, in the plaint or at the time of arguments, that the representations made to the Army constituted Civil Proceedings in a Court. At no point of time had the Defendants indicated that some compensation would be paid to the plaintiff. Nor did the Defendant refer the claims for adjudication to a third party, which thereupon decided on a sum of money as damages. There is no scope for application of the decision of the Supreme Court in Jay Laxmi Salt Works case (supra).

15. Since the provisions of Section 14 of the Limitation Act are not applicable to the facts averred in the plaint, and since the suit has been filed beyond three years of the arising of the cause of action, there is no alternative available to the Court but to dismiss it. Since none of the arguments raised on behalf of the plaintiff have merit, the suit deserves to be dismissed with costs. It is dismissed accordingly. However, because of the tragic accident and the consequent disability of the plaintiff, I am desisting from imposing any costs.