(1954) 11 RAJ CK 0004

In the Rajasthan High Court

Case No : First Appeal No. 21 of 1954

Jethmal and another — APPELLANT

Vs

Ambsingh — RESPONDENT

Date of Decision : 26-11-1954

Acts Referred:
Marwar Limitation Act, 1945 — Article 64

Citation : AIR 1955 Raj 97 : (1954) RLW 615

Hon'ble Judges : Wanchoo, C.J;Modi, J;Dave, J

Bench : Full Bench

Advocate : B.N. Chanda, for the Appellant; Sohan Nath and R.D. Cattani and Hastimal, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

Modi, J.—This first appeal directed against a judgment and decree of the District Judge, Balotra, dated 27-1-1954, dismissing the plaintiffs'' suit as barred by time, has been laid before this Full Bench, as it involves a very important point relating to the Law of Limitation.

2. The facts of the case may be stated very briefly for our present purposes. There were money dealings between the plaintiffs'' appellants and the father of the defendant-respondent on whose death the present respondent was brought on the record as his heir and legal representative. There were two Khatas between the plaintiffs and the respondent defendant''s father. It was assumed in the trial court that the parties went into accounts on Migsar Sudi 3 Smt. 2004 corresponding to 15-12-1947, and there came forth two accounts stated; one for a sum of Rs. 20,365/12/- and the other for a sum of Rs. 6,260/10/3.

The plaintiffs added as interest a sum of Rs. 9,041/- calculated at the stipulated rate of 14 annas per cent. per mensem up to the date of the suit to the principal sum of Rs. 20,365/12/- on the one Khata, and a further sum of Rs. 3178/3/- calculated at the rate of 1 per cent. per mensem on the other Khata and in the result the plaintiffs filed a suit for Rs. 38,845-/9/3 in the court of the District Judge, Balotra, on 23-1-1952. The defendant respondent entirely repudiated the plaintiffs'' claim and took a number of pleas in his defence; the most important of which was the plea that the suit was barred by limitation. The trial court thought fit to try the issue of limitation, in the first instance, as the question involved was one of pure law, and both parties had accepted that they did not want to lead any evidence ''on the issue in question. The learned trial Judge came to the conclusion that the suit was barred by limitation and, be, therefore, dismissed the plaintiffs'' suit. This appeal has been filed from the above judgment and decree.

3. At the outset, I consider it desirable to set forth, briefly, the changes through which the law of limitation has passed in so far as it is relevant to the present suit. The case comes from what was formerly the State of Jodhpur or Marwar before it formed part of the present State of Rajasthan. When the accounts were stated between the parties, the Marwar Limitation Act, 1945, (hereinafter referred to as the Act of 1945) was in force. Article 64 of that Act which was the relevant article reads as follows:

Description

of suit.

Period of Limitation

Time from which period begins to run.

64. For money payable to plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.

Six years.

When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf...........

This was followed by the Marwar Limitation (Amendment) Act, 1949 (32 of 1949) (hereinafter referred to as the Act of 1949). By S. 2(l)(g) thereof, the period applicable to Art. 64 (among other articles relating to suits for money) was shortened from six years to three years. This Act was to come into force from the date of its publication in the official gazette, and for the first time it was published in the Jodhpur Rajpatra dated 27-3-1949. It, therefore, came into force at once and no time was left whatsoever between the date of its publication and its enforcement. The Act of 1949 contained a saving section which is S. 4 and is in these terms:

4. Notwithstanding anything contained in this Act-

(a) Any suit or application for the execution of a decree which would be barred under the provisions of this Act may be instituted or made, as the case may be, within three years next after the commencement of this Act or within the period of limitation previously in force, whichever period expires first, and

(b) any application other than an application for the execution of a decree which would be barred by the provisions of this Act may be made within one month next after the commencement of this Act or within the period of limitation previously in force, whichever period expires first.

We are concerned with sub-s. (a) in this case. The decision of the point of limitation involved in this appeal mainly depends upon the interpretation to be put upon this section; but before I address myself to this question, I may as well state that the Rajasthan Limitation Act (Adaptation) Ordinance, 1950 (6 of 1950) (hereinafter referred to as the Act of 1950) came into force on 25-1-1950. This Act applied to the whole of Rajasthan, and by it the Indian. Act was made applicable, subject to a few modifications, with which we are not concerned, with effect from the date on which the Ordinance came into force.

This also contained a saving provision namely S. 9 which I propose to quote biter. The Indian Limitation Act provides a period of three years for suits under Art. 64 and no change therein was made in the adaptation. Then came the Part B States (Laws) Act, 1951, (3 of 1951) by which the Indian Limitation Act of 1908 (hereinafter referred to as the Act of 1951) became wholly applicable in this State. This Act came into force cm 1-4-1951, and was the Act in force when the present suit was instituted. It also contains a saving provision, namely, S. 30 with which I propose to deal at its proper place. It is against this legislative history that the question of limitation before us falls to be decided.

4. As already stated, it is S. 4 of the Act of 1949 which we must primarily consider and interpret. Two rival interpretations are urged for acceptance by us. The first interpretation, which has found favour with the trial court, is that the saving provision in S. 4 applies only to suits (we are not concerned with "applications" for our present purposes) which are barred at the commencement of the said Act. It was contended that that is the proper meaning to be put upon the expression "would be barred" occurring in the section and that the period of limitation applicable to a suit must be the one which has been prescribed by the Act in force when the suit is tiled and, therefore, a saving provision was inserted in this Act for those suits only which may have become barred according to the new Act at the commencement thereof. The provision in the case of such suits was that they may be filed within three years next after the commencement of the Act, that is, up to 26-3-1952 or within the period of limitation which was previously in force (that is, according to the Act of 1945) whichever period expires first.

On this interpretation it was argued that the present suit which is based on a cause of action dated 15-12-1947 was not barred at the commencement of the Act of 1949, and so, S. 4 would have no application to it, and the period governing limitation was only three years from the date when the cause of action arose i.e., up to 15-12-1950. It may be at once stated that if the present case falls outside the benefit available under S. 4, then the plaintiffs'' suit would be admittedly time-barred under the Acts of 1950 or 1951.

I may further mention in this connection that this interpretation of S. 4 is in consonance with the view accepted in - ''Lalchand v. Labura'', 1954 RLW 403 (A) which was decided by one of us. There it was held that the meaning of S. 4(a) was that if on the date that Act came into force, the suit was barred under it - the grace Allowed by S. 4(a) could be taken advantage of by the person filing the suit. But if the suit was not barred under that Act on the date on which it came into force, the period of limitation would be the period fixed by that Act.

It has been contended on the other hand on behalf of the plaintiffs that the aforesaid interpretation of S. 4 would be productive of a good deal of inconvenience, injustice and hardship such as could not have been intended by the Legislature, that the intention of the legislature was best expressed under the circumstances by not adding the words "at the commencement of the Act" after the expression "would be barred" occurring in the section, but the words to be so added should be "at the time of its institution." It was argued with great force that if the meaning of the saving provision was not plain or certain, without the addition of some words therein, such words should be added which would work the least hardship, and that interpretation Should be adopted by its which would be beneficial and advance the remedy or favour the right to sue rather than destroy or retard it.

It was suggested that the expression "would be barred" was not tantamount to "is barred", and that the manner in which the section was worded showed that the intention of the legislature was to allow grace to suits which were barred not merely at the commencement of the Act but which would in future be barred under the provisions thereof. It was also submitted that the expression used in the section was "suit" and not "claim'''' and that a claim became a suit only when it was instituted as such. It was further submitted that on this interpretation, it was clear that S. 4 must be taken to have "prescribed", by itself, a certain period for limitation and such period being larger than the period allowed by the Acts of 1950 and 1951, the saving provision in those Acts would also be applicable and the present suit should not be thrown out on the ground of limitation.

5. I may state at once that the question before us is not free from complexity or difficulty. I am fully aware of the view which has been taken in Lalchand s case (A), but since that case was decided (and in passing, I may state that full-dress arguments could not nave been addressed there in the very nature of things as the revision was dismissed in limine) it has been felt that the matter required fuller consideration and that explains how this point has come before this Full Bench.

6. Now, it is firmly settled that the Law of Limitation relates to the Branch of procedural laws and no one can claim a vested right in any period of limitation. It, therefore, follows, without the slightest doubt or dispute, that the law which is

applicable to a suit or proceeding is the law which is in force when it is instituted. Therefore, such laws normally have received and are entitled to receive retrospective force. It is with a view to avoid the hardship resulting from the retrospective operation of such laws that usually when the preexisting Law of Limitation is amended and the period prescribed thereunder is reduced, the Legislature provides a saving clause in the Amending Acts, which allows a period of grace within which suits may be tiled and suitors may not be taken by complete surprise.

I may further mention in this connection that it is also not unusual that when such amending law is enacted, some period is allowed to pass between its publication and the enforcement thereof so that the intention of the legislature is clearly discernible that the new law shall have a retrospective effect and the intervening time during which the new Act is a it were in a state of suspension may be taken advantage of by the litigants by filing their suits or applications. The argument of hardship has almost invariably been repelled by the courts in such cases and rightly so. Unfortunately, considerable difficulties arise, as have arisen in the present case, where no such time is allowed and the Amending Act comes into force at once.

I cannot help stating that difficulties have been further caused in the present case on account of the not very artistic manner in which the saving section happens to be worded. The usual wording is that adopted in the repealed S. 30, Indian Limitation''. Act of 1908 or in the Acts of 1950 and 1951, and if that wording had been adopted by the framers of the Marwar Act, the difficulty with which we have been confronted would not have arisen. Instead of that wording, what we find in S. 4 is a provision in respect of a suit which "would be barred under the provisions of this Act." The question is what does the expression "would be barred" mean, "barred at the commencement of the Act" or, "barred at the time of its institution"? The section itself has not made this clear. I may point out in this connection that in my opinion this difficulty is not adequately solved by merely "saying that "would be" means "is", or "not is" but some time in future". Even assuming that "would be" may be taken as equivalent to "is", the question still arises to which point of time the section refers when it says that a suit is barred, - or in one word barred when? The need to supply some words after the expression "barred" still remains. That is the question for answer.

I am also inclined to the view that the use of the word "suit" in the context in which it has been used as contradistinguished from the word "claim" is not of any real significance. The Limitation Act prescribes period of limitation for "suit" or "appeals" or "applications" and not for "claims", and in that view the use of the word "suits" has no added significance. What would be barred at the commencement of the Act would also be a suit which has undoubtedly been brought in respect of a claim. I am of opinion, therefore, that nothing substantially turns on the arguments referred to above so as to persuade us to adopt the one interpretation rather than the other.

7. I would next refer to another feature which, in my opinion, is of very great importance. That feature is this. It is admitted that suits which are barred at the commencement of the Act will get a grace up to 26-3-1952 or the previous period of limitation whichever expires first under S. 4. The question is what is to happen to the suits the limitation whereof may not have become barred but extends up to the date on which the Act of 1949 came into force. Taking a concrete example, suppose the cause of action for a suit arose on 27-3-1946. Under the old law, that is, the Act of 1945, limitation for the suit extended up to 27-3-1952. On 27-3-1949, the Act of 1949 came into force and became applicable at once. The suit was not barred obviously on the commencement of the Act and, therefore, on the interpretation that the expression "would be barred" refers to the commencement of the Act, such a suit would not be eligible for the grace permissible under S. 4. Such a suit brought, say on the 30-3-1949 would, therefore, be barred by time. This must be so notwithstanding the fact that in the case of a suit for which a cause of action had arisen earlier, that is, beyond three years of the passing of the Act, there would be time left for the plaintiff to file a suit under S. 4.

The same difficulty must arise in the case of suitors whose time would expire within a few days after the Act came into force. It is not difficult to see that the Act must take some time before it gets out of the press and reaches the people. The Act has meanwhile come into force, and there may be hundreds of suits relating to money or immovable property whose limitation may have expired not before the time the Act of 1949 came into force but between the time it became operative and the law was known to the people. It is a serious question to consider whether it was the intention of the legislature to have created such a state of affairs and deprived the citizens of their remedial rights absolutely for no fault of theirs. Shall we say on principle that an Act, be it procedural, should receive such as effect that it throws out of court hundreds of innocent suitors, and deprives them of their very right of suit, which is undoubtedly a vested right? And yet on the interpretation which is put forward on behalf of the respondent, this must be the inevitable result, although the very presence of the saving section in the amended Act throws a pointer to the contrary. It is this aspect of the matter which has caused me the greatest anxiety, and, for this, the interpretation which has found favour with the trial court affords no answer.

8. In fact, I am disposed to think that whether a saving provision exists or not, where an amending Act of Limitation cuts down the period formerly available, and such Act comes into force at once, the true principle of limitation is and must be that the amending Act should not receive a retrospective operation so as to destroy pre-existing and vested rights of suit inspite of the general principle that a law of limitation is procedural and, must therefore, receive retrospective effect. I may in this connection refer to a few cases.

9. The first case to which I may refer is - ''Khusalbhai v. Kabhai'', 6 Bom 26 (B). There in a pending suit which was filed under the CPC of 1877, one of the

defendants died and his son was sought to be made his legal representative. He raised the objection that his father had been dead more than six months before the application of the plaintiffs to make him a defendant was made and, therefore, the suit must abate according to S. 368, Civil P.C. (Act 10 of 1877) as amended by the amending Act 12 of 1879, read with Art. 171-B, Limitation Act. The amendments came into force at once on 29-7-1879, and their effect was to require a plaintiff to apply within 60 days of the defendant''s death to have his legal representative brought on the record, but by that time the original defendant had been dead for more than six months so that it was physically impossible for the plaintiffs to have carried out the direction of the legislature. It was held that the provisions of Art. 171-B, Limitation Act should not be given retrospective effect and that the plaintiffs'' application was not time barred.

Reference was made in this case to the decision in an earlier case - ''Reg v. Dorabji Balabhai'', 11 Bom HCR (AC) 117 (C) and on which the courts below had relied wherein the rule was laid down that "an Act of Limitation, being a law of procedure, governs all proceedings, to which its terms are applicable, from the moment of its enactment, except so far as its operation is expressly excluded or postponed." But this case was distinguished and it was laid down that the rule enunciated in the previous case was subject to a qualification that

when the retrospective application of a statute of limitation would destroy vested rights, or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then the statute is not, any more than any other law, to be construed retrospectively.

In the earlier case, that is, 11 Bom HCR (AC) 117 (C), the facts were these. An accused who was tried for murder had been acquitted on 6-11-1873. An appeal was filed on 5-6-1874. On the 5th May, an Amending Act, 2 of 1874 came into force by which S. 272, Criminal P.C. was amended and it was laid down that no appeal shall be presented more than six months after the date of the judgment complained of. It is interesting to note that six months in this case ended on the 5th of May, the date on which the amending Act came into force. The learned Judges held that the appeal was time-barred on the ground that the Law of Limitation was a law of procedure, and governed all proceedings to which its terms were applicable from the moment of its enactment, except, so far as its operation was expressly excluded or postponed. I am inclined to think that this case was decided on its special facts. The question of the liberty of the subject was involved and the learned Judges may have felt justified in imputing an intention to the Legislature favourable to such liberty.

10. In - ''Chajmal Das v. Jagdamba Prasad'', 11 All 408 (D), the plaintiff-respondent in a pending appeal died on 17-9-1885. The defendants appellants applied to the High Court to bring certain persons on the record, as the legal representatives of the deceased, on 24-7-1888. Meanwhile the CPC Amendment Act, 7 of 1888 had come into force on 1-7-1888, and by it an application for substitution was required to be made within six months of the death of the

deceased party. The period previously in force was three years. On a reference to the Full Bench, it was held that the application for substitution was a fresh application and not a continuation of any former proceedings between the parties, and as it had been made on 24-7-1888, after the new Act had come into force and six months'' limitation applied, it was barred by time.

The ratio of the decision was that no person has any vested right in procedure and that an application made or a suit commenced after a particular Act regulating procedure has come into operation must be dealt with according to the rules provided in such Act. This decision was obviously given on the general principle. The actual decision may, however, be supported on the ground that the Act 7 of 1888 had been brought into force after a certain period of its enactment and publication, and in the meantime it was in a state of suspension. But the learned Judges did not rely on any such ground in arriving at their decision and based it simply on the principle that a law relating to procedure such as the Law of Limitation governed all cases which are instituted after such law has come into force.

11. I may next refer to - ''Manjuri Bibi v. Akkel Mahmud'', 19 Ind Cas 793 (Cal) (E) a case, in which two learned Judges having differed, was placed before a third Judge. In a very able and learned judgment, Mookerjee J. after carefully going through a number of Indian, English and. American decisions came to the following conclusion:

But whatever controversy there may be as to the particular mode of interpretation to be adopted, there is a singular uniformity of judicial opinion that statutes coming into operation immediately they become law and declaring generally that an action must be brought within a limited time after accruing, will not be construed retrospectively so as to bar causes of action which accrued more than the limited time before the statute was passed. On the other hand, where a new Statute of Limitation reduces the time previously allowed for commencement of the suit but does not come into operation forthwith and allows a reasonable time for the enforcement of existing causes of action, the court will not hesitate to hold mat the statute may affect causes of action already accrued in the same manner as those accruing after its passage.........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 an interpretation, unless there is the clearest indication that the Legislature intended to destroy existing rights without notice and thus to penalise innocent litigants.

12. In - Gopeshwar Pal Vs. Jiban Chandra Chandra, the question arose whether the decision of the majority of the Judges in ''Manjuri Bibi''s case (E)'' was

affected by the judgment of the Privy Council in the case of - ''Soni Ram v. Kanhaiya Lal'', 19 Ind Cas 291 (PC) (G), and it was held that it was not. I may point out that the question before their Lordships in ''Soni Ram''s case (G)'' was different. In that case it was held, that a suit brought in 1907 was not governed by the Limitation Act, 14 of 1859 but by the later Act, 15 of 1877 and that the acknowledgments relied on to extend the limitation being not within the meaning of S. 19 of the Act of 1877 were ineffectual to extend the period of limitation. Their Lordships were not called upon to consider the retrospective operation of a period of limitation provided by a law coming into force at once.

13. In - ''Ramakrishna Chetty v. Subraya Iyer'', AIR 1916 Mad 607 (H) it was held that

Unless the terms of a statute expressly so provide or necessarily require it, retrospective operation will not be given to a statute so as to affect, alter or destroy any vested right. Statute relating to procedural law are as much subject To this important qualification as statutes dealing with substantive rights.

14. In - ''Raja of Pittapur v. Gani Venkata Subba Row", AIR 1916 Mad 912 (FB) (I), it was held on a difference between two Judges that:

The correct rule seems to be that though laws affecting limitation might abridge or enlarge periods of limitation in cases of suits or causes of action which were alive at the date when the new enactment came into force and which under the old law would expire afterwards, the change cannot, unless there is a clearly expressed intention to the contrary, either by apt words in the enactment or otherwise be retrospective so as to destroy rights of suits which were alive on the date.

15. In - District School Board of belgaum Vs. Mohamad Mulla, Chagla J. as he then was, held that:

It is clear that as a rule statutes of limitation being procedural laws must be given a retrospective effect in the sense that they must be applied to all suits filed after they came into force. ''This general rule has got to be read with one important qualification, and that is that if the statute of limitation, if given a retrospective effect, destroys a cause of action which was vested in a party or makes it impossible for that party for the exercise of his vested right of action, then the Courts would not give retrospective effect to the statute of limitation.

I may point out that in this case the Bombay Primary Education Act (No. 12) of 1938 which reduced the period of limitation to six months from the date of the act or default complained of was published on 27-5-1938, and it came into effect on 1-7-1938. A notice of 30 days had to be given to the authorities concerned before the suit could be tiled but still a period of 6 days was left to the plaintiff to file the necessary suits. The learned Judge accordingly, however reluctantly, dismissed the plaintiff''s suit except for a period of six months preceding the suit.

16. I may now refer to a few English cases. In - ''Cornill v. Hudson'', (1857) 120

ER 160 (K), the plaintiff was in prison in 1844 when his came of action arose and remained there for more than six years. By S. 10, Mercantile Law Amendment Act, 1856 (19 and 20, Vict. c. 97) which came into force on 29-7-1856, the statute of limitation was amended and it was provided in effect that residence of the plaintiff beyond the seas or his imprisonment would not afford any ground for extension of limitation, and the period of limitation could not be computed from the determination of the imprisonment. The obvious result was that the plaintiff was altogether deprived of his remedy. Lord, Campbell C.J. held that the amended law prevented any action being commenced after the period had elapsed within which if the prisoner had been at large, he must have sued, and that the plaintiff was clearly within the scope of such law according to its grammatical and natural construction.

The learned Chief Justice further pointed out that the cases cited merely showed that they were to find out the intention of the Legislature in each particular Act, and was of the opinion that the intention in that case was to prevent actions thereafter to be brought whether on past or future transactions. It was further observed that persons should not, by merely remaining abroad, when travelling was so easy and directions should be so readily transmitted, be enabled indefinitely to prolong the time within which they could commence their actions and that the Legislature intended to prevent the vexatious prolongation of the right, and, therefore, there was no injustice in such intention which could fairly be collected from the words of the 10th section.

Erle J. concurring in the same decision further pointed out that where the Legislature intended to keep the right of section alive after the coming into operation of the Act, it made express provision as in S. 9 and that as no such provision was made under the 10th section, they were bound to give effect to the intention of the Legislature.

17. In - ''Queen v. Leads and Bradford Rly. Co.'', (1852) 21 LJ MC 193 at p. 195 (L), the Summary Jurisdiction Act, 1848 (11 and 12, Vict. c. 43) came into force on 2-10-1848, and provided that certain awards must be applied for and obtained within six months from the time when the damage was done. The damage in this case had been done before 1847 ended and six months had already passed before the Act of 1848 was passed. The claim was, therefore, thrown out as barred by time. It may be pointed out, however, that there was an interval of six weeks between the passing of the Act and its coming into operation and this period was considered to be sufficient to provide against any possible hardship that might result from a retrospective operation of the Act, It is remarkable that Lord Campbell C.J. in this case said:

If it had been enacted that the provisions of the statute should come into operation immediately, I should have said that there was a hardship in their being construed retrospectively, and I should not nave been willing so to construe them. But, here, the Act receiving the Royal assent on 14th August, S. 38 directs that it "shall commence and take effect from the 2nd day of October in the year of our Lord 1848." That seems to be an intimation by the Legislature that they mean to give a time, whether long or short, within which bygone matters of complaint may be brought before justices, and the limitation avoided. Six or seven weeks are given: if the interval had been as many months, the case would be the same.

18. Again, in - ''Towler v. Chatterton'', (1829) 130 ER 1280 (M), retrospective operation was given to 9 C. 4 C. 14 which was passed on 9-5-1828, but was to come into force on 1-1-1829 whereby it was provided drat in an action for debt, an acknowledgment of promise to take a case out of the statute of limitation must be in writing and signed by the party who is sought to be charged. The plaintiff relied on an oral promise made by the defendant in February, 1828. The plaintiff was non-suited and the Act was given a retrospective operation on the principle that all hardship must be considered to have been obviated by the Legislature declaring that the Act should not take effect till the 1st January, and all persons who relied on such parol promises were given seven months or more in which to bring their actions.

19. The last English case to which I may refer is ''The Ydun'', (1899) 15 TLR 361 (N). It was provided by the Public Authorities Protection Act that an action against any person, in respect of any alleged neglect or default in the execution of any Act of Parliament or of any public duty or authority, must be commenced within six months next after the act, neglect or default complained of. The Act was passed on 5-12-1893 and came into force on 1-1-1894, and the plaintiff brought his action on 14-11-1898. Smith L.J. observed that:

When a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away. But where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions.

This case again illustrates the principle that the courts will have no hesitation in giving retrospective action to a rule of limitation where the Legislature has given some interval between the publication of the Act and its enforcement. In this case a period of 26 days was allowed between the passing of the enactment and its coming into operation. 1 need not multiply examples.

20. From a review of the case law, I am of opinion that although a law of limitation is primarily a law relating to procedure and as such comes into effect right from the moment it has been enacted and governs all proceedings instituted thereafter and thus has retrospective operation there is overwhelming authority in favour of the principle that where a subsequent law curtails the period of limitation proviously allowed, and such law comes into force at once, it should not be allowed to have retrospective effect, which it would otherwise have, so as to destroy pre-existing vested rights of suit, because the giving of such retrospective effect amounts to not merely a change in procedure but a forfeiture of the very right to which the procedure relates.

21. It must follow, from the foregoing discussion that even though the Legislature may not have provided a saving clause in the Act of 1949, the reduced period of limitation should not receive retrospective operation so as adversely to affect the suits which would have become barred at the commencement of the Act, but all such suits would still continue to be governed by the old law. The Legislature, however, thought fit to provide a saving section in the case under debate. From this the only reasonable inference is that it wanted to provide a facility to the litigants who would other-wise have been affected by the hardship brought about by the new Act.

Now, if we were to interpret this saving provision so as to hold that it applied only to suits which were barred at the commencement of the Act, then two consequences seem to me to follow. First, that the saving clause does no more than what would have followed under the general principle as discussed above. Secondly, on this interpretation the right words to be understood or supplied after the expression "would be barred" being "at the commencement of the Act", the position tinder the saving section would in fact become worse because in that event all suits which are not barred at the commencement of the Act but must inevitably become barred for reasons entirely outside the control of the parties concerned will not get any grace under S. 4 whatever and their vested eights of suit would be irrevocably lost I am of opinion that it would not be right to impute, such an intention to the Legislature, if an alternative reasonable interpretation is possible.

Our attention was drawn on behalf of the defendant respondent to two decisions of the Privy Council, namely, - AIR 1932 165 (Privy Council) and- AIR 1941 6 (Privy Council) which lay down that the fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship, and in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide, and it is not open to the Judges on equitable grounds to enlarge the time allowed by the law, postpone its operation or introduce exceptions not recognized by it. These principles are indeed undisputed and indisputable. The difficulty, however, arises where the provisions of an Act of Limitation are not clear and are vague and indefinite and of doubtful import and are open to more interpretations than one. Unfortunately, S. 4 of the Act of 1949 falls within the latter category, and it is on this score only and no other that 1 feel called upon to determine what its true meaning is. It is difficult for me to imagine that on 27-3-1949, the intention of the Legislature was to make a law reducing certain periods of limitation, introduce the Act at once and deprive certain suitors who were to be governed by the law of all rights of action which they would otherwise have had without notice and without allowing them any period for the bringing of such actions even though the Legislature was prepared to provide a saving clause.

I wish to lay emphasis on two things in fins connection: (1) that the new Act came into force at once and (2) that the Legislature clearly wanted to afford facilities to the litigants whose rights of suit were going to be affected under the new law. We are asked to hold that the intention of the Legislature was merely to allow this facility to the litigants whose suits had already become barred, i.e., barred at the commencement of tile Act and no more. But if that is undoubtedly so, could it be the intention of the Legislature, while providing a saving clause, to forfeit vested rights of suit of persons who were under a physical impossibility to file their suits on the day of the coming into force of the new Act or soon thereafter, but whose suits were not barred at the time of its commencement when they could not possibly know that they were running out the period of limitation for their suits beyond all repair? It will be, in my opinion, not a reasonable inference that such was the intention of the Legislature. If this view is just and reasonable, as I think it is, then it would be right to say that the missing words after the expression "would be barred" are not "at the commencement of the Act," but "at the time of its institution". When these words are supplied, the relevant portion of the section would read as follows:

Notwithstanding any thing contained in this Act-Any suit......which would be barred at the time of its institution under the provisions of this Act may be instituted within three years next after the commencement of this Act or within the period of limitation previously in force, whichever period expires first.

The acceptance of this view would certainly avoid the hardship and the injustice which seem to me to be patent in the other view. I may also in passing point out that the Legislature did not think fit to use the words "at the commencement of this Act" which occurred later in the section; but instead used the words "under the provisions of this Act" after "barred". This is not, in my opinion, without significance. The object of the Legislature was to give a grace period to all suits which may be barred when brought under the provisions of this Act.

22. I wish in this connection to refer to the ''decision of the Privy Council in -''Delhi & London Bank Ltd.'', v. Melmoth A.D. Orchard'', 4 Ind App 127 (PC) (Q) to which no reference was made at the bar, but which appears to me to be a very instructive case for our present purposes. In that case the appellant obtained a decree against the respondent on 5th October 1866 and the question was as to the limitation affecting the right to execute the decree which was of a date prior to the extension of Act 14 of 1859 to the Punjab. The Act was extended to that province on 1-1-1867. The decision of the question depended upon the interpretation of Ss. 20 and 21 of Act 14 of 1859. Sections 20 and 21 were in these terms:

20. No process of execution shall issue from any Court not established by royal charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force, with in three years next preceding the application for such execution.

21. Nothing in the preceding section shall apply to any judgment, decree, or

order in force at the time of the passing of this Act, but process of execution may be issued, either within the time now limited by law for issuing process of execution thereon, or within three years next after the passing of this Act, whichever shall first expire.

Now, according to the literal words of S. 20, no process of execution could ever be issued to enforce the judgment even within a week from the date of it unless some proceedings had been taken to enforce or to keep it in force within three years next before the application for execution. It was held by the Privy Council that such a construction was insensible and the meaning of the section was that no process of execution should be issued to enforce a judgment or order of a Court not established by royal charter, after the expiration of three years from the date of it, unless some proceeding to enforce it, or to keep it, in force, should have been taken within three years next before the application for such execution. In other words, the words "after the expiration of three years from the date of it" were added after the word "court" in order to make the section read sensibly.

Section 21 had been interpreted by the High Courts of Calcutta and Madras in one way and by the High Court of Bombay and the Chief Court in the Punjab in another way. The interpretation adopted by the Bombay High Court was literal and had the effect of making all judgments existing at the time of the coming into operation of the Act in executable at the end of three years from their date or from the commencement of the Act whichever expired first. The interpretation favoured by the Calcutta High Court was that S. 21 was a proviso to S. 20 and that execution might issue after the expiration of three years from the passing of the Act to enforce a judgment which was in force at the time the Act was passed provided some proceeding to enforce the judgment as required by S. 20 had been taken within three years next preceding the application for execution. Their Lordships of the Privy Council disagreed with the-view of the Bombay High Court and held that the words "nothing in the preceding section in S. 21" meant that the prohibition laid down in S. 20 should not apply to judgments in force at the passing of the Act and that notwithstanding anything mentioned in the preceding section execution might issue, either within the time limited by law or within three years next after the passing of the-Act. The following observations made by their Lordships in arriving at their conclusion are of considerable importance for our present purposes:

It cannot be disputed that the construction put upon the Act by the High Court at Calcutta, if permissible, was equitable, and prevented what must be admitted to be an inconvenience and injustice. Indeed, if the construction put upon the Act by the High Court at Bombay, and by the Chief Court in the. Punjab, is correct, a judgment creditor could not, after the three years, have enforced a judgment which was in force in the Regulation Provinces when Act 14 of 1859 was passed, or a judgment which was in, force in the Punjab at the time when the Act was extended to that province, however diligent he might have been in endeavouring to enforce his judgment, and however unable, with the use of the utmost diligence, to get at the property of his debtor. Such a construction would cause great inconvenience and injustice, and give the Act an operation which would retrospectively deprive the creditor of a right which he had under the law as it existed in the Regulation Provinces at the time of the passing of the Act, and in the Punjab at the time of the introduction of it. Their Lordships are of opinion that such a construction would be contrary to the intention of the Legislature.

23. These observations of their Lordships of the Privy Council afford clear justification for the adoption of the interpretation of S. 4 on the lines which has commanded itself to me. On this interpretation, the result would be that suits which are time-barred at the commencement of the Act get a grace under S. 4. This would have been so under the other interpretation also. As regards suits which are alive on the date the Act came into force but become barred immediately thereafter or those which are likely to become time-barred within a few days after the commencement of the Act these will also be entitled to get a grace which may be equivalent to the period available under the previous law (that is, six years in the present case) or three years from the commencement of the Act, that is up to 26-3-1952, whichever expires first. Again, as regards suits which have still time to run after the new Act comes into force, these will also be capable of being instituted up to 26-3-1952, or the period available under the former law which-ever expires first. It is thus clear that this interpretation of S. 4 would remove all hardship or injustice and would not adversely affect any vested rights of suit.

The ''Delhi and London Bank Ltd. v. Melmoth A.D. Orchard (Q)'' to which I have referred above, also establishes the principle that, where the language of a law relating to limitation is not precise and is of doubtful import, such law may be construed equitably, or reasonably, that is, such construction thereof may be adopted which favours the right to sue rather than which bars that right. Another case on this point to which reference may usefully be made is - AIR 1945 324 (Lahore) where it was held that where two interpretations are found to be equally possible, the court must impute a reasonable intention to the legislature end hold the suit not to be falling within a shorter period of limitation.

24. It may be contended that if this interpretation is adopted, the time for bringing a suit would depend upon the sweet will or whim of the plaintiffs and this may introduce an uncertainty as regards limitation applicable to a suit. I am not impressed by this argument. Even under the ordinary law, it is open to a litigant to file his suit within the period allowed under the Limitation Act. He may bring his suit at anytime within that period and not necessarily at a particular point of time so long as he is within the limitation. If the plaintiffs under my interpretation have the same liberty to file their suit, I see nothing wrong in this. All that need be done is to fix the terminus a quo in each case which would be either three years from the commencement of the Act, that is, 26-3-1952, or the period allowed under the previous Act whichever expires first. This does not, in

my opinion, lead to any uncertainty as to the period of limitation applicable to a suit.

25. Learned counsel for the respondent next relied on another argument in support of the dismissal of this suit by the trial court, and I shall now turn my attention to it. That argument was that the suit of the plaintiffs was not barred at any time during the period the Act of 1949 was in force and therefore S. 4 did not apply at all. It was submitted that the present suit was not barred at the time this Act came into force on 27-5-1949, as the cause of action for it arose on 15-12-1947. Nor was it barred until 25-1-1950, when the Act of 1949 was repealed by the Rajasthan Act of 1950. It was thus contended that the present suit was not at all barred under the provisions of that Act and was, therefore, not entitled to the grace permissible under S. 4; and consequently it was barred by time having been brought after three years from 15-12-1947, under the Act of 1949.

This argument appears to be attractive at first sight, but after giving my careful consideration to it, I have come to the conclusion that it is fallacious and must be repelled. In the first place, I am of opinion that while considering the application of S. 4, we must assume that the Act containing the section was still in force for the purposes of such application. It is only then that we can sensibly gauge the effect of S. 4 and not otherwise. In the second place, learned counsel seems to assume that the expression "barred under the provisions of this Act" occurring in that section is, as it were, synonymous with the expression "barred during the currency of the Act." But 1 cannot accede to this contention. Besides, the expression "under the provisions of this Act" has no reference to time whatever during which the Act would remain in force but to the sections and the articles contained in the Act which govern the period of limitation in a particular suit or other proceeding. It seems to me, therefore, that to read this expression as itself suggestive of a time limit for the purposes of (he application of S. 4 can have no warrant.

Again, I can, properly speaking, think of only two points of time in connection with S. 4, namely (1) commencement of the Act and (2) institution of the suit or application, as the case may be Learned counsel would have us adopt the view on his, interpretation of the phrase "under the provisions of this Act" that the framers of, the Act had a third point of time in mind, namely, "between the commencement and repeal of the Act" or "during the period this Act was in force" by which the application of S. 4 was to be conditioned. I am not at all satisfied that that is the true import of the section. The Act has not used the latter expression and I see no overriding reason to import it into the section. I think that this argument is really an off-shoot of the view that S. 4 allows grace in the case of suits barred at the commencement of the Act only; but as I have already pointed out above, that interpretation leads to great hardship and needless injustice.

It is to avoid such hardship and injustice that I have bees disposed to hold that the intention of the framers of the Act was that S. 4 applies not merely to suits which are barred at the commencement of the Act but which may be barred at the time of their institution under the provisions thereof. It follows that the circumstance that the suit was not barred while this Act was in force is of no consequence. The correct angle from which a case must be viewed for the purposes of the application of S. 4 is whether the suit would be barred under the provisions of this Act if the Act were alive at the date the suit is brought. The present suit was brought after three years from the date of cause of action, namely, 15-12-1947. It was'' actually brought on 23-1-1952, and having been so brought it would be barred under the provisions of this Act on the assumption that it was in force. Section 4 is thus called into operation and, therefore, the suit could be filed within the period of grace allowed by S. 4, that is, up to 26-3-1952, at the latest. There is no force in this contention and I overrule it.

26. I next turn to S. 9, Rajasthan Limitation Act (Adaptation) Ordinance, 1950, herein referred to as the Act of 1950. The relevant portion of S. 9 is as follows:

Notwithstanding anything contained in this Ordinance and in the India 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 S. 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......................

The period of limitation prescribed by this Act for a suit under Art. 64 was three years. The question, therefore, is whether it can be held to be shorter than the period of limitation prescribed for such a suit by the law relating to (sic) of suits in force in the former Marwar State on the date of the commencement of the Act of 1950, if so, S. 9 would apply and the plaintiffs could instigate their present suit within the period allowed by the former law or two years next after the commencement of this Act, that is, up to 24-1-1952. The trial court of course came to the conclusion, on its interpretation of S. 4 of the Act of 1949, that no grace period was allowed thereunder to suits which were not barred at the date of the commencement of the Act of 1949 with the result that it further held that the period allowed by the Act of 1950 could not in such cases be said to be shorter than the period allowed under the Act of 1949, it being three years under either Act, the saving clause did not apply at all.

Be that at it may, the trial court was of the view that "the period prescribed" means not only the period prescribed by the first schedule of the Limitation Act but also includes the period prescribedly Ss. 4 to 25 thereof. This view has not been contested before us. I also think that the period laid down in S. 4 is also covered by the expression "the period prescribed". It seems to me that this special period had not been compendiously provided for under S. 4, in the form of a saving section, such period would have had to be male in the schedule itself in a suitable manner. This Would be obviously much too cumbersome and inconvenient and, therefore, I have no hesitation in holding the view that the expression "period of limitation prescribed" occurring in S. 9 includes the period as laid down in S. 4 also, Reference may be made in this connection to - ''Bans Bahadur Singh v. Mt. Sakalraj Kuar'', AIR 1924 Oudh 385 (S); - Somisetti Seshayya Chetty and Others Vs. Rolla Subbadu, minor by Next Friend, Rolla Ragadu and Others, ; - Koer Durag Pal Singh Vs. Th. Pancham Singh and Others, and - Udhavji Anandji Ladha and Others Vs. Bapudas Ramdas Darbar, .

The decision of their Lordships of the Privy Council in - AIR 1935 85 (Privy Council) also tends is support the same view and, therefore, the contrary view taken in some cases does not appear to us to be correct. Now, the period specially provided under S. 4 was the one allowed under the old law or a period of three years from the commencement of the Act of 1949, that is, up to 26-3-1952, whichever expired first and, therefore, the period prescribed in the present case under the old law was up to 26-3-1952. There can be no doubt that the period prescribed by the Act of 1950 was certainly shorter as it would be only three years from the date of the cause of action, that is, up to 15-12-1950, and, therefore, the benefit of S. 9 of the Act of 1950 must go to the plaintiffs. In other words, his limitation would extend up to 24-1-1952, instead of to 20-3-1952.

27. It only remains for me to state that the Act in force at the time the plaintiffs brought their suit was the Indian Limitation Act (No. 9) of 1908, herein-called the Act of 1951, applied to this State under the Part B States (Laws) Act, 1951. Section 30 of this Act is as follows:

30. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by any law corresponding to this Act in force in a Part B State which is repealed by the Part B States (Laws) Act, 1951, may be instituted within the period of two years next after the coming into force of this Act in that Part B State or within the period prescribed for such suit by such corresponding law whichever period expires first.

This Act allowed a grace of two years next after the commencement of the Act or the previous period whichever expired first. The net effect of this provision is that the limitation in the present case would remain up to 24-1-1952, as provided under the Act of 1951, as it would expire earlier than the grace of two years allowed under the Act of 1951. I hold, therefore, that the present suit which was instituted on 23-1-1952, is not barred by limitation.

28. Consequently, I would allow this appeal, set aside the judgment of the District Judge and send the case back to him for trial on the remaining issues in accordance with law. As to costs, I would direct that as the question involved in this appeal was full of complexities, the parties will bear their own costs in this Court but costs hitherto and further costs in the trial court shall abide the event.

Wanchoo, C.J. (Concurring)

29. I have read the judgment of my brother Modi, and would like to add a few words as ''Lalchand''s case'' 1954 RLW 403 (A) was decided by me.

30. It is well settled that the law of limitation is a procedural law and applies to all suits tiled after it comes into force, whether the cause of action accrued before the law came into force or afterwards. The law is thus applied retrospectively as a general rule. It is because of this that he law-makers generally provide a saving clause whenever a period of limitation is shortened, or if no saving clause is provided there is usually an interval between the publication of the law and its coming into force allowing persons, whose suits would otherwise be barred under the new law, some time within which to file their suits. 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. In this category difficulty may arise where the suit is not barred under the new law, and limitation is expiring within a day or two of its coming into force. The present case, however, is not of this kind, and I would therefore not like to express an opinion on what is the correct principle in case the new law does not provide a saving clause, and comes into force on the day it is published.

31. Three points arise in this appeal. The first and the most important is the meaning to be attached to S. 4(a), Marwar Limitation (Amendment) Act (No. 32) of 1949. This section was considered by me in Lalchand''s case (A)'' and I was then of opinion that the intention of the legislature was that if the suit is barred under the Act on the date on which the Act came into force, the period of grace could be taken advantage of; but if the suit was not barred under the Act on the date on which it came into force, the period of grace could not be taken advantage of and the period of limitation would be the period fixed by the Act. As some doubts arose about the correctness of that view; a Full Bench was constituted to go into the matter, particularly as ''Lalchand''s case (A)'' was decided summarily.

I have since given the matter further consideration, and have carefully read the view put forward by my brother Modi. I am now of opinion that in view of the difficulties and hardships pointed out by my brother Modi it would be better to adopt the view which he is taking. There are two reasons which have impelled me to change my view. The first is that the words "at the commencement of the Act" do not appear in S. 4(a), and were read by me as implied in it. It has been, however, strenuously contended that if certain words have to be implied in this section after the words "would be barred", and those can be either "at the, commencement of the Act", or "at the time of its institution", we should imply such words as would carry out the intention of the legislature in providing a saving clause and as would avoid unnecessary hardship to the general public.

There is no doubt that unless some words are implied to be present in S. 4(a), it would not be possible to give a sensible interpretation to it, for the words "would be barred" used in it must imply some point of time at which the suit or application for execution would be barred. The question is whether that point of time should be the commencement of the Act, or the institution of the suit. In ''Lalchand''s case (A)'', I expressed the opinion that the implied words were "at the commencement of the Act". But having read the judgment of my brother Modi, I have come to the conclusion on account of the difficulties and hardships pointed out by him that it would be more in consonance with justice to read the implied words as "at, the time of its institution."

It is true that the law of limitation is to be strictly interpreted and equitable considerations are out of place because of some hardships. But where it is a question of supplying an (sic) J. clause and it is possible to choose out of two implied clauses, it would not in my opinion, be wrong for the court to choose that clause which obviates hardships For this reason, therefore, I am now disposed to change the view which I have taken in ''Lalchand''s case (A)''.

32. The second reason, which impels me to change my view is that thus law provided a saving clause, and the intention was to save certain suit which would otherwise be barred under the new law by which the period of limitation in many cases was being shortened. Such a saving clause is usual in the form of S. 30, Indian Limitation Act as it existed in the statute before 1927, and as we find it in S. 9, Rajasthan Limitation Act (Adaptation) Ordinance (No. 6) of 1950, or in The Part B States (Laws) Act (No. 3) of 1951, by which S. 30 was added to the Indian Limitation Act far Part B States. The Marwar Amendment Act of 1949 unfortunately used a different language, but, on further consideration of the matter, I have come to the conclusion that the intention of those, who framed the Marwar Amendment Act was the same as is to be found in S. 30, Limitation Act as it now exists for Part B States, though the words used were different. I can only attribute the use of different words to the immaturity of the Legislative Department of the former State of Marwar. The intention, however, seems to have been to provide a saving clause obviating difficulties, particularly as there was no interval between the coming into force of the Act and its publication.

As I have already indicated, the usual methods adopted by the legislature, whenever periods of limitation are shortened, are two, namely (1) to put in a saving clause, or (2) to give a period of time between the publication of the Act and its coming into force. In this case, the first method was used, namely a saving clause was provided, and the intention of that clause was to save difficulties which would otherwise have arisen by the coming into force of the Act at once. The words used in S. 4(a), however, left something to be implied, and the courts have to make good that implication. I now think in view of what I have said above that those who passed the Marwar Amendment Act of 1949 intended what is contained in S. 30 Limitation Act as it now exists, for Part B States and there fore it is right to hold that the words implied after the words "would be barred" are "at the time of its institution".

33. I am not unconscious of the fact that there is a certain amount of anomaly in implying the words "at the time of its institution". This anomaly will appear from an illustration. Suppose the cause of action of a suit arose on 15-12-1947. According to the old Marwar Law, the period of limitation was 6 years up to 1953. According to the Amendment Act of 1949, this period was cut down to 3 years and if S. 4(a) was not applicable, limitation would expire in December, 1950. Now if S. 4(a) is applicable with the words "at the time of its institution" implied in it, the result is two possible periods of limitation depending upon when the suit is brought. If, for example, the suit is brought before July, 1950, S. 4(a) would not apple as the suit would not be barred at the time of its institution, and the period of limitation would be 3 years. But if the suit is brought in January, 1951, S. 4(a) would apply, and the period of limitation would be up to March, 1952. But as is either case the suit would be within time. I fed that this anomaly should not prevent me from implying the words "at the time of its institution", as these words avoid all hardships, and, in all probability carry out the intention of the framers of the Amendment Act of 1949. I, therefore, agree with my brother Modi, and hold that the words implied after the words "would be barred" in S. 4(a) (and the same would apply to S. 4(b) also) are at the time of its institution".

34. The second point is that, in any case, this suit was never barred till the Marwar Amendment Act of 1949 was in force, and therefore the plaintiff in this suit cannot take advantage of S. 4(a). 1 agree with the view taken by my brother Modi on this point, and am of opinion that the repeal of the Marwar Amendment Act of 1949 by the Rajasthan Ordinance of 1950 was an extraneous matter so far as the application of S. 4(a) to suits of this nature is concerned, and we have to apply that section irrespective of whether the Marwar Amendment Act was in force on the date the suit was brought in order to find out whether it is within time under the successive laws which came into force in Rajasthan in 1949, 1950 and 1951.

35. The third point relates to the meaning of the words "period prescribed" in S. 9, Rajasthan Limitation Act (Adaptation) Ordinance (No. 6) of 1950, and in. S. 30 added to the Limitation Act by the Part B States (Laws) Act (No. 3) of 1951. I agree with what my brother Modi has said about this, and have nothing more to add.

36. I, therefore, agree with the order proposed by my brother Modi.

Dave, J. (Concurring)

37. The main question for determination in this appeal is that of the interpretation and application of S. 4(a), Marwar Limitation (Amendment) Act,

(No. 32 of 1949) 1949. It was provided to save limitation in respect of those suits and applications which would otherwise have been time-barred on account of this amended Act. This saving clause having been provided by the legislature we are not called upon to decide as to what would have been the position if this provision were not there. I, therefore, agree with my lord the Chief Justice that strictly speaking that question is not involved in this appeal and therefore, I would also refrain from expressing any opinion on that matter.

38. As regards the interpretation of the said section its language is ambiguous and it is, therefore, capable of two interpretations. I agree with the interpretation which has been given to it by my learned brother Modi J. I also agree with, him that this section is applicable to the present case for reasons given by him. It is not necessary for me to repeat the arguments which he has already given at length and with which I agree. In my opinion also the plaintiffs'' case is within time and the appeal is fit to be allowed.

39. We would allow this appeal, set aside the judgment of the District Judge and send the case back to him for trial on the remaining issues in accordance with law. As to costs we would direct that as the question involved in this appeal was full of complexities, the parties shall bear their own costs in this Court but costs hitherto and further costs in the trial court shall abide the event.

