

(1964) 04 CAL CK 0017
In the Calcutta High Court
Case No : S.A.T. No. 460 of 1964

Joti Majumdar and Another		APPELLANT
	Vs	
Girija Bhusan Roy and Others		RESPONDENT

Date of Decision : 07-04-1964

Acts Referred:

Limitation Act, 1963 — Article 130, 30, 31, 32

Citation : AIR 1965 Cal 11 : 68 CWN 1071

Hon'ble Judges : D. Basu, J;B.N. Banerjee, J

Bench : Division Bench

Advocate : Abinash Chandra Bhattacharjee, for the Appellant;

Judgement

Banerjee, J.—On December 21st, 1957, the two appellants-petitioners filed a suit, being Title Suit No. 279 of 1957, in the court of the Subordinate Judge at Berhampore, as paupers. They won in the suit. The defendants-respondents appealed against the decree of the trial court before the court of the Additional District Judge at Berhampore. The lower Appellate Court decreed the appeal and reversed the decree of the trial court. The appellate decree bears the date December 13, 1963.

2. On February 24, 1964 the petitioners filed memorandum of second appeal in the office of this court, against the Appellate decree, and by a separate application prayed for leave to appeal as paupers. The Stamp Reporter of this court returned the memorandum of appeal to the learned Advocate, who filed the appeal, on February 24, 1964; with the following report:

"In time upto 5-2-64 so far as the application is concerned. It is, therefore, out of time on 24-2-64, the date of presentation, by 19 days.

If the new Limitation Act is held to apply to the present case, the application, will be in time. It may, however, be pointed out in this connection that the judgment and decree in this case were, passed in the year 1963 i. e. before the date of enforcement of the new Limitation Act, which came into force on and from

1-1-64. The right of appeal may thus be said to have accrued during the period of continuance of the old Act. This is, however, a matter for decision of the court.

The second Judge's copy of papers filed but incomplete without the copy of the judgment of the trial court.

Further report will be made after the Court's decision" on the point of limitation and also on pauperism. This is to be returned to the L/Advocate for presentation to Court".

3. On the same day the petitioners appellants filed the memorandum of appeal, accompanied, by the application for leave to appeal in formal pauperis, before this court. The learned Advocate for the petitioners appellants took a fortnight's time to file the certified copy of the judgment of the trial court and the hearing of the application was adjourned until that time, On March 9, 1964, the petitioners filed the necessary copies, which were wanting.

4. Thereafter, on March 16 1964, the application for leave, to appeal as a pauper was taken up for hearing. The question for our consideration is whether the application is barred by limitation,

5. Under Article 170 of the Limitation Act, 1908, the time prescribed for leave to appeal as a pauper was thirty days from the date of the decree appealed from. Indian Limitation Act, 1908 was repealed by the Limitation Act, 1963 (Act XXXVI of 1963), which, latter Act came into operation from January 1st, 1964. Under the Act of 1963, Article 130 provides as follows:

Description of application. Period of Limitation Time from which period begins to run.

For leave to appeal as a pauper. (a) to the High Court.

Sixty days. The date of decree appealed from.

6. The petitioners presented their application, for leave to appeal to this court as paupers beyond thirty days but within sixty days of the date of the decree appealed from, excluding the time spent for obtaining certified copies of the judgment and decree of the lower Appellate Court.

7. Mr. Abinash "Chandra Bhattacharjee, learned Advocate for the petitioners, contended that inasmuch as the application for leave to appeal as paupers was made after the new Limitation Act had come into operation, Article 130 of the new Limitation Act would apply and the application should be taken to have been made in time.

8. The point is interesting and requires careful consideration, with particular reference to the saving and repealing sections of the new Limitation Act.

9. Section 30 of the new Limitation Act makes provisions for suits, appeals or applications for which the prescribed period of limitation is shorter than the period prescribed by the Limitation Act of 1908, in the following language:

"Provision for suits etc., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908. : Notwithstanding anything contained in this Act

(a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of five years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier,

(b) any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be preferred or made within a period of ninety days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier."

10. Section 31 of the new limitation Act. makes certain provisions as to barred or pending suits, appeals or applications, as hereinbelow set out:

"Provision as to barred or pending suits etc: - Nothing in this Act shall

(a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908, expired before the commencement of this Act; or

(b) affect any suit, appeal or application instituted, preferred or made before and, pending at, such commencement".

11. Section 32 of the new Limitation Act repeals the Limitation Act of 1908.

12. Now, Section 30 of the new Act has no application, in the instant matter, because the period of limitation for an application for leave to appeal as a pauper is not shorter but longer than the period prescribed by the repealed Limitation Act of 1908. Nor is Section 31 of the new Limitation Act is of relevant consideration because the application for leave to appeal as a pauper was not time barred when the new Limitation Act came into force. We are thus left with the effect of the repealing section, namely, Section 32, which repealed the Limitation Act of 1908.

13. The intention of the law of limitation, it is well known, is not to give a right where there is not one but to impose a bar, after a certain period, to a suit to enforce an existing right. *Harrinath Chatterjee v. Mothur Mohun Goswami* 20 Ind App 183 (192) (PC) per Sir Richard Couch, J. Law of limitation is thus a law of procedure and as such, is of retrospective operation, in the sense that its provisions would apply to proceedings already commenced. But when under an existing law of limitation, a right of suit has become barred and another person has acquired a right against the person intending to sue, the right of suit cannot be revived and the rights accrued to another person cannot be extinguished by subsequent legislation, unless of course there are express provisions to that

effect in the new law.

Vide in this connection *Khunnilal v. Govind Krishna Narain*, 38 Ind App 87 (PC).

14. Here, of course, the application to appeal as a pauper was not barred when the new Limitation Act came into operation, on January 1st, 1964. It was, however, barred under the old Limitation Act on the date of its presentation, but not so under the new law. The question is which law will apply to the application, the old law or the new law?

15. So far as right of appeal is concerned It. is well known, such right is not merely a matter of procedure. It is a substantive right and becomes vested in a party when proceedings are first initiated. Such a right cannot be taken away except by express enactment or necessary intendment. If any authority is necessary for the proposition one need refer to *Colonial Sugar Refining Co. Ltd. v. Irving* (1905) A. C. 369, AIR 1927 242 (Privy Council) *Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others*, . The new Limitation Act does not take away the petitioners' right to appeal as paupers but merely enlarges the time. If the application for leave to appeal as paupers had already become time barred on January 1st, 1964, the new Act would not have applied and would not have given them longer time to apply for leave. Since that application was not time barred when the new Act came in force, the petitioners are entitled to have the benefit of the new Limitation Act and may present their application within the time prescribed under Article 130 of the Limitation Act, 1963.

16. We, therefore, hold, that the application is not barred by time.

17. D. Basu, J.: I agree.