(1997) 02 DEL CK 0032

In the Delhi High Court

Case No : Suit No. 524 of 1982

Jugdish Chander APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 24-02-1997

Acts Referred:

Limitation Act, 1963 — Section 9
Succession Act, 1925 — Section 213

Citation : (1998) RLR 254

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : M.L. Bhargav and S.K. Khanna, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The plaintiff moved this court in December, 1997 for permission to file the suit as an indigent person under Order 33 Rules 1 and 2 of the CPC. The Court granted permission by order dated 22.3.82. The plaintiff, as a consequence, tiled a suit for recovery of Gold ornaments weighing 480 Tolas i.e. 5596.80 grams deposited in safe deposit box under receipt No. 17/47 of 3.6.47 with the defendant Bank in the alternative for the price thereof amounting to Rs. 3,72,400. The plaint was subsequently amended and the plaintiff claimed recovery of the gold ornaments/jewellery or price thereof as on the date of the judgment/decree in the suit.

(2) The brief facts of the case are that late Rai Sahib Mool Chand, father of pff. and deft. 3 to 5 and husband, of Smt. Washeshran Devi, who was arrayed as delt. No. 2 but was deleted by the Court''s order as she had expired during the pendency of the suit, was an eminent civil lawyer of Peshawar (now forming part of Pakistan) in 1947. He had a very lucrative practice as an Advocate and was a regular income- tax ''payer. He was considered to be one of the wealthiest person in Peshawar and after migration from Peshawar in 1947 to India with his family at the time of partition died on April 30, 1953 in Delhi leaving behind the L.R.s

entitled to his estate as referred to above. He entrusted for safe custody a sealed box containing 500 Tolas of Gold ornaments/ jewellery belonging to him with the then. The Punjab National Bank Ltd., Peshawar Cantt Branch, Peshawar of which deft. No. 1 is the successor according to the Banking Companies (A&T of U) Act, 1969. The gold ornaments/jewellery allegedly weighed 500 Tolas and were placed in the box with a list of the said articles of jewellery therein and the same was locked by the deceased himself after which the box was wrapped with a white cloth and duly stitched by deft. No. 2, since deceased, and sealed with "Lac'' (sealing wax) by the deceased after which a monogram "M.C.R.S." i.e. "Mool Chand Rai Sahib" was embossed on the seals of the said box in the presence of deft. No. 2. Before handing over the said box to the Bank, deceased wrote his name on the said box. The box was given under receipt No. 17/47 dated 3.6.47 and the aforesaid Bank accepted it for safe custody as a part of its business activities for fee paid by the deceased to the said Bank for safe custody. The details of the jewellery as handed over to the Bank are referred to in para 3 of the plaint (- - -) and weighed 500 tolas.

(3) In para 4 it is stated that after depositing tilt- sealed box containing the aforesaid jewellery/gold ornaments father of the plaintiff came to Simla in July, 1947 on a visit and stayed there for a month. In the meantime the communal disturbances took place and consequently said Rai Sahib Mool Cliand could not return to Peshawar to collect his belongings lying in his palatial bungalow and the safe deposit box deposited with the then The Punjab National Bank Ltd.

(4) After partition of the country in August 1947 the above said box Along with safe deposit boxes of several other depositors were removed to Rawalpindi Branch of the above Bank as per letter dated 30.7.50 received by the plaintiff''s father. From Rawalpindi the box along with other safe-deposit boxes of other depositors were removed to the Lahore Branch of this Bank as power letter dated 4.8.50. Thereafter, the said box remained throughout in the physical custody of the Bank at Lahore till the same was brought to India Along with other boxes of the other persons in the end of November 1961 under the Indo- Pakistan Moveable property Agreement of June 27 1990 between the Govt. of India and Pakistan. There had been active correspondence by the father of the plaintiff with the head office of the aforesaid Bank at Delhi regarding the delivery of his box to him. Similarly ,he had been in correspondence with the High Commissioner of India in Pakistan, the Custodian of Evacuee Property at Lahore and Branch Offices of the said Bank at Rawalpindi .and Lahore. He however, expired at Delhi on 30.4.1953 and thereafter the plaintiff and his mother remained in correspondence with the Head office of the Bank regarding the delivery of the box and also with the High Commissioner of India and Pakistan in Karachi. The plaintiff received a letter No. DMP/3469 dated 24.12.59 from the Head office of the Bank that the safe- deposit of plaintiff''s father was lying with the Bank duly sealed and that charges on that articles will be determined as soon as such articles are allowed to be released. (----)

Similarly ,plaintiff received another letter dated 27.1.59 from the Property field of the High Commission of India in Karachi intimating the safe deposit of box of Rai Sahib Mool Chand, had been jointly sealed by the representative of that Mission, the custodian of Evacuee Property and the Bank concerned and intimation will be sent as and when the boxes will be allowed to be removed to India.

(5) After the partition of the country the Govt. of India had called upon the safe deposit owners to submit their original deposit receipt and the list of their contents and the mother of the plaintiff accordingly had submitted the list of contents in the year 1955-56. Carbon copy of the list in Hindi which was sent at that time was placed on record. Similarly English translation was also prepared.

(6) The facts leading to the subsequent arrival of the deposit box of the plaintiff along with other boxes to India as well as the letter dated May 22, 1962 written by Shri Dharam Vira, the then Secretary to the Govt. of India to the General Manager of defendant Bank bringing to his notice the missing jewellery from the safe deposits and lockers are detailed in para 7 and 8 of the amended plaint (---).

(7) In view of the above averments the plaintiff has contended that the box was found tampered with and its contents were removed and jewellery of 480 Tolas was found missing from the box. The deft. Bank refused to give open delivery of the box and only on the direction of the District Judge, Delhi on 13.1.71 in Probate case No. 72/70 the box was opened in the Court where it was discovered to contain few broken/ small articles weighing only 251 grams i.e. approximately 20 Tolas. This obviously, as alleged was an act of omission and commission on the part of the Bank, its employees, representatives who were liable and responsible for the theft.

(8) The acceptance of the box by the Bank in Peshawar is not denied and, Therefore, it is argued that the Bank undertook the responsibility to keep it with due care as a trustee and to be vigilant about the box and its wrappings and seals and to return the same in the very condition with wrappings and seals intact. The Bank was li

(9) The plaintiff has submitted that the cause of action for the purpose of present suit arose firstly on 13.7.71 when the said box was found tampered in the Court of District Judge, Delhi and it contained only 251 grammes instead of 5596.80 and on 4; 12.74 when the plaintiff was granted the Letters of Administration of the estate of late R.S. Mool Chand by the District Judge and further it arose on 19.11.77 when a legal notice was served on deft. No.1 demanding therein either to return missing Gold ornaments/jewellery or the value thereof. The suit it is contended is within time as the plaintiff''s right to sue only accrued to him on 4.12.74 when the Letters of Administration were granted to him.

(10) DEFT. No. 1 filed the W/s denying liability and contending that suit was barred by time.

(11) Replication was tiled by the plaintiff wherein the contents of the plaint, were reiterated. Many issues were framed, 1st of which was Whether the suit is within time ?

(12) Issue No. 1 : The learned counsel for the plaintiff has argued that the suit is well within time whereas Mr. S.K. Khanna, learned counsel for the defendants has vehemently contended that the suit is hopelessly barred by limitation. There is no controversy that the limitation for the present suit is governed by Article 70 of the Limitation Act, 1963 which gives three years from the date of refusal after demand.

(13) The learned counsel for pff. states that plaintiff could only the suit after obtaining letters of administration in respect of the estate of his late father which were granted on 4.12.74. It is argued that the deft. Bank insisted on the pff. obtaining the letters of administration from a competent court of law to consider his claim and, Therefore, there was no option left with the pff. but to tile the suit after obtaining of the letters of administration. Reference is made to the communication dated 2.1.69 of deft. Bank to the pff. which is Exhibited as PW4/25.

(14) Reference is also made to Section 16 Limitation Act which reads :

S.16. Effect of death of before the accrual of the right to sue-(1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before right to sue accrues, or where a right to institute a suit or make an application accrues only on, the death of a person, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application." Letters of Administration were granted on 4.12.1974. The present suit (IPA 5 of 1978) was filed in this court on 2.12.77 under Order 33 rule 1 read with section 151 CPC which is within a period of three years of the expiry of limitation and Therefore, the suit is well within time. On the other hand, the counsel for deft. Bank has argued that the suit is hopelessly barred by time. The box was opened before the District Judge in probate proceedings on 13.1.71 and the suit having been filed on 2.12.77 is barred by time though the Letters of Administration may have been granted on 4.12.74.

(15) Reference is made to the judgments reported as Joginder Chander Vs. Apurna Dassi 1909 IC 859; Soona Mayana Chetty Vs. Soona Navena Air 1916 PC 202; (Tikait) Mahabir Prosad Narayan Deo Vs. Bhupal Ram and Others, ; Mt. Kulwanta Bewa and Others Vs. Karam Chand Soni and Others, Bhudeb Chandra Roy and Others Vs. Bhikshakar Pattanaik and Others, ; Venkateswara Sarma, styled Gnanasivacharia Swamigal, Matathipathi and Guru of Perur Mel Mutt, for himself and on behalf of the Mutt Vs. S.N. Venkatesa Aiyar and Others, ; P.S. Nagaranjan Vs. Robert Hotz, ; Julieta Vs. Lila Coutinho and Others, ; Ram Chand Ganesh Dass Vs. Sardara Singh and Another, ; Dr. Mrs. Joginder Kaur Malik and Another Vs. Malik Anup Singh, ; Behari Lal Ram Charan Vs. Karam Chand Sahni

and Others, ; Special Land Acquisition Officer (1) Bombay and Bombay Suburban District Vs. Natverlal Jamnadas Muni, ; Vidya Prakash Sethi Vs. Punjab National Bank, (1976) 1 Del 605; Col. Adarsh Rattan Vs. State Bank 1987 (1) Plr 193; UCO Bank Vs. Hem Chandra Sarkar, and P.K. Kutty Anuja Raja and another Vs. State of Kerala and another, .

(16) On the basis of the cases referred to above, 1998 Raj LR 254 the learned counsel for the defendant Bank has contended :

(A)The suit is barred by time and the plea of the plaintiff" that he could not come to the Court earlier as letters of Administration were only granted on 4.12.74, is fallacious as the law is well settled that it is not compulsive to apply for letters of administration and the plaintiff could have approached the court within the period of limitation, as provided in law. The limitation had started to run as early as on August 8, 1966 when the box was allegedly received by the defendant Bank from Government of India.

(B)The provisions of Section 9 of the Limitation Act clearly lay down that there is continuous running of time that where once time has begun to run no subsequent disability or inability to institute a suit or make an application will slop it.

"9.Section 9 of the Act has been referred to by learned counsel for the deft. Bank to reiterate the proposition that where time has begun to run, no subsequent disability or inability to institute a suit or make an application will stop it. This provision reads :

(17) Continuous running of time.-Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stop it;

PROVIDED that, where letters of administration to the estate of a creditor have been granted to his debtor; the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues."

(18) ''.THERE is no doubt that the law is well settled that it is not necessary to obtain letters of administration per Sections 211 and 212 of the Succession Act, 1925 and cases which are of relevance and as cited above may now be referred.

(19) In Jogendra Chander V. Apurna Dassi (supra) it was held that a Hindu widow sufficiently represents the estate of her deceased husband when there is no other person short of obtaining letters of administration to his estate who can be said to represent has estate. In Mt. Kulwanta Bewa V. Karan Chand Soni (supra) it was held that the whole scheme -of Sections 216, 220 and 273 and other provisions of the Act is only to provide for representation of the deceased''s estate for purposes of administration, and is not intended to cut down the rights of the beneficiaries. Hence merely because an estate is in the hands of an administrator, the beneficiaries are not thereby rendered incompetent to deal with their interest in the estate. In Bhudeb Chandra Roy V. Bhikshakar Pattanaik (supra) it has been held by Patna High Court as follows (page 127): Of course u/

s 213 of the same Act, no right as executor can be established in any court of Justice unless a Court of competent jurisdiction has granted probate of the Will under which the right is claimed. This only means that no Court shall recognise the right of an executor unless he has obtained probate of the will under which he claims. But the effect of Section 211 is that the estate of the deceased testator vests, in the executor by virtue of the will and from the date of his death."

(20) In Mrs. Julieta Vs. Lila, Coutinho and others (supra) it was reiterated that the rights of the minors can be established although no representation has been obtained to the estate of the deceased. No probate is necessary in order to set up a claim regarding property either movable or immovable on the basis of a Will executed in Punjab and not relating to property situated in the territories mentioned in Section 57A. The Court held so on interpretation of Section 213 and 57 of the Succession Act 1925. This was held in Ram Chand Vs. Sardara Singh & anr. (supra). The same High Court in Dr. Mrs. Joginder Kaur Malik and another V. Malik Anup Singh Jagdish Chander Vs. Pb. National Bank (supra) has held that in the absence of probate or letters of administration the suit simplicities by legatee is not barred.

(21) In Col. Adarsh Rattan Vs. State Bank of India (supra) the learned Judge took the view that it was not compulsive to apply for letters of administration and suit claiming a declaration that heirs were owners of the box lying with the Bank and entitled to the sealed box with consequential relief of allowing them to operate the said safe deposit was not barred.

(22) The Full Bench of Patna High Court in (Tikait) Mahabir Prasad Vs. Bhupal Ram (supra) reiterates title proposition that it is not necessary to invoke a theory of suspension of limitation in case in which suspension is not expressly provided for either in the Limitation Act or in some Special Act.

(23) In Venkateswara Sarma, Styled Gnanasivacharia Swamigal Matadhipathi and Guru of Perur Mel Mutt (supra) the Full Bench of Madras High Court held that equitable considerations are out of place while construing the Limitation Act.

(24) In Lahore Enamelling Co. V. A.K. Bhalla (supra) it was held when once the period of limitation has begun to run there can be no suspension of time except under the provisions specifically recognising exclusion or deduction. There is no principle of law outside the Limitation Act under which limitation can be suspended and exemptions, which are not provided by the statute cannot be assumed either on grounds of hardship or of reasonableness. In para 27 to 31, facts of the case had a co-relation with the law laid down in above judgment, was noticed. Contents of letter of Deft. Bank dt. 24.12.62, letter dt. 19.1.67 of Additional Secy of Ministry of Home, Letter of Bank of 8.8.66 reelecting request of open delivery. Bank''s letter of 2.1.69 asking obtaining of Letters of Administration, Order of Court dt. 13.1.71 for open delivery. Order dt. 4.12.74 of Distt. Judge, notice by plaintiff dt. 19.11.77 are briefly reproduced.]

(25) The defendant Bank, allegedly replied to the notice on 2.1.78. The plea of the pff. mat there was no actual refusal on the part of the deft. Rank and limitation as provided under article 70, Therefore, had not started to run is factually correct. The only time when the deft. refused to accept the demand of the pff. was on the basis of the reply to notice dated 2.1.78. There had been no categorical refusal by the deft. Bank of the demand as raised by the pff. The documents which have been referred to above are the letter dated 8.8.66, Exhibit PW4/24 refusing open delivery, letter dated 2.1.69 Exhibit PW4/25 asking the plaintiff to obtain letters of administration, Exhibit PW4/34 is the letter dated 22.7.66 by which the pff. requested for open delivery of the box and Exhibit PW4/43 is letter dated 15.9.66 refusing open delivery of the box. (----)

(26) Similarly by communication dated 2.1.69 (Exhibit PW4/25) directed the plaintiff to obtain letters of administration. These documents will establish that deft. Bank at no stage acceded to the request to grant open delivery of the box to the pff. and on the contrary directed the pff. to obtain letters of administration before taking any further action in the matter. Letters of administration were granted on 4.12.74 and the present suit was filed in forma paper on 2.12.77 which prove that the suit was instituted within a period of three years from the date of refusal by the the deft. Bank. On its own showing the deft. Bank insisted that the pff. should obtain letters of administration and only then they would deal with the case of handing over the box. Therefore, it cannot be contended at this stage that the suit is barred by limitation as it was not necessary for the plaintiff to obtain letters of administration and he ought to have tiled the suit immediately on the intimation of the arrival of the box with the defendant Bank. This argument cannot be sustained on the ground that the detl. did not entertain claim of plaintiff without grant of letters of administration nor agreed to the open delivery of the box as would be indicated from reading of the correspondence as referred to above. The limitation in this view of the matter cannot be held to have started running as has been argued by learned counsel for the defendant. The privy council in (Soona Mayana Chetty) (supra) deals with the necessity of obtaining the letters of administration at page 205. (----) Similar is the decision in P.S. Nagarajan Vs. Roberts . learned counsel argued and in my view rightly that an administrator can claim exemption u/s 17, Limitation Act, although an executor cannot because an executor is creature of the Will and is in existence at the lime of the testator''s death. An administrator on lie other hand is appointed by an order of the court and his title vests in him on the day he is so appointed and Therefore an administrator can validly say -that there was no legal representative of the deceased capable of instituting a suit until the date of his appointment on 18.9.1949, ''Meyyappa Chetty Vs. Subramanian Chetty'' Air 1916 Pc 202. But as 1 leave observed above the plaintiff cannot claim the benefit of section 17 because a case of this type is not covered by Section 17.

(27) In similar facts the D.B. of this Court in Shri Vidya Prakash Sethi Vs. Punjab National Bank, (1976) 1 Del 605 also did not accept that the suit was time barred. Para 14 of judgment reads :

"14.We may here and now dispose of the contention that the suit was barred by time. The open delivery was given on the 1st of April, 1993. It was only on that dale that the plaintiff-appellant came to know that most of the jewellery contained in the box was missing. He could have filed the suit for the reliefs claimed within three years. The learned trial Judge was right in holding that the suit was tiled within time and die contention raised before us that it should have been held lime barred is meritless."

(28) The Supreme Court in UCO Bank Vs. Hem Chandra Sarkar, took the view dial Bankers do not, in practice, set up statute of limitations against their customers or their legal representatives.

(29) Next the provisions of Section 9 and 16 of the Act''may be examined. Section 9 establishes "Where once time has begun to run, no subsequent disability stops it. The section also contains the proviso which states that where letters of administration to the estate of a creditor leave been granted to his debtor, the running of lie period of limitation for a suit to recover debt shall be suspended while the administration continues. Section 16 deals with the situation with regard to the factum of death on or before accrual to lie right to sue. Sub-section (2) which is of relevance reads as follows :

"(2)Where a person against whom, if he were living, a right to institute a suit or make an application would leave accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death of such person, the period of limitation shall be computed from the time when there is a legal representative of the deceased against suit or make such application."

(30) In the present case, the gold jewellery/ ornaments were entrusted to the defendant Bank by the father of the plaintiff, R.S. Mool Chand who died on April 30, 1953 prior to the date the right to institute suit accrued, the period of limitation has to be computed from the time there is a legal representative of the deceased on the basis of the above provision.

(31) The law on me subject is, Therefore, well settled that "in case of a cause of action arisen in favor of the estate of a deceased person on or after his death, time will at once begun to run, if there be an executor, even though probate leas not been obtained; but if there be no executor, the time will run only from the actual grant of letters of unistration." (Soona Mayana V. Soona Navena Air 1916 PC 202 Therefore, on the basis of the law as cited above and taking into consideration the facts of the present case it cannot be said that the limitation had started to run as the defendant on his own had insisted on obtaining the letters of administration by the plaintiff and there was no categorical refusal to deliver the jewellery except in reply dated January 2, 1978 to notice issued by the plaintiff. It is, accordingly, held that the suit is not barred by limitation.

