

(1962) 03 GUJ CK 0002
In the Gujarat High Court

Kasna Rupla

APPELLANT

Vs

Makan Khusal and Others

RESPONDENT

Date of Decision : 07-03-1962

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 24, 24, 36
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 13, 115, 115
Limitation Act, 1963 — Article 164, 181

Citation : (1963) 4 GLR 167

Hon'ble Judges : V.B. Raja, J

Bench : Single Bench

Judgement

Raju J.

1. An award was passed ex-parte and an application for re-opening the award u/s 36 of the B.A.D.R. Act was rejected by the Civil Judge Junior Division Vyara on the ground that the application was time barred although he expressed the view that there were sufficient reasons for re-opening the award on merits. In appeal this order was confirmed.

In revision it is urged that the view taken by the Civil Judge Junior Division Vyara that the Article of the Limitation Act applicable to the application is Article 164 of Schedule I and not article 181 of Schedule I of the Limitation Act. Article 164 of Schedule I of the Limitation Act reads as follows:

By a defendant for an Thirty Days The date of the decree or order to set aside a where the summons was not decree passed ex-parte. duly served when the applicant has knowledge of the decree.

Article 181 of Schedule I reads as follows:

Application for which Three years When the right to apply accrues, no period of limitation is pro- vided elsewhere in this Schedule or by Section48 of the Code of Civil Procedure 1908 (V of 1908).

The application made u/s 36 of the B. A D.R. Act for re-opening an award is not an application given under Order 9 Rule 13 C.P. Code to set aside an ex-parte decree. There is a special provision in Section 36 of the B.A.D.R. Act for re-opening ex-parte awards. An award is not a decree because an award is passed in an application of the adjustment of debts and not in a civil suit. The procedure for executing an award is a special one and is contained in Sub-section (3) of Section 38 of the B.A.D.R. Act. An award is not a decree as defined in Section 2 of the Civil Pro. Code because an application for the adjustment of debts is not a suit. It is true that Section 46 of the B.A.D.R. Act provides that Save as otherwise expressly provided in the B. A D.R. Act the provisions of the CPC 1908 shall apply to all proceedings under Chapter 11 of the B.A.D.R. Act. But this does not deal with the question whether a proceeding under the B.A.D.R. Act is a suit or an application and whether an award passed under that Chapter is a decree. The question whether an award is a decree has not been dealt with in *Chaturbhai Nathubhai Patel v. Ramamlal Maganlal Shah* 59 Bom. L.R. 689 relied on by the Learned Counsel for the opponents In *Mangilal Chunilal Vs. Shivaram Tukaram*, it was observed that Order 9 Rule 13 CPC cannot be invoked to set aside an ex-parte order passed u/s 24 of the B.A.D.R. Act. It is therefore clear that Article 164 of Schedule I of the Limitation Act does not apply where an application is made for reopening an award u/s 36 of the B.A.D.R. Act and the Article applicable is Article 181 of Schedule I of the Limitation Act. In this view the Courts below erred in applying a wrong Article of the Limitation Act.

2. It is however contended by the Learned Counsel for the opponents relying on *Mithalu v. Maneklal* AIR 1941 Bom 271 that a wrong finding on the question of law of limitation is not open to revision u/s 115 C.P. Code. But in AIR 1949 239 (Privy Council) it was observed as follows:

The case of *Babu Ram and Another Vs. Munna Lal and Others*, and *Hari Bhikaji v. Naro Vishvanath* 9 Bom. 432 may be mentioned as cases in which a subordinate Court by its own erroneous decision (erroneous that is in the view of the High Court) in the one case on a point of limitation and in the other on a question of res judicata invested itself with a jurisdiction which in law it did not possess and the High Court held wrongly their Lordships think that it had no power to interfere in revision to prevent such a result.

An erroneous decision on a question of law is not always open to revision u/s 115 Civil Pro. Code. But it is open to revision if it invites the application of any of the sub-clauses mentioned in Section 115 C.P. Code namely if subordinate Court appears (a) to have exercised a jurisdiction not vested in it by law or (b) to have failed to exercise a jurisdiction so vested or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity. This decision of the Privy Council has been referred to with approval by their Lordships of the Supreme Court in *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, . An erroneous decision on a question of limitation can therefore be interfered with in a revision if as a result of the erroneous decision there has been a failure 40

exercise jurisdiction or an irregularity in the exercise of jurisdiction.

3. In this case by wrongly holding that the Article of the Limitation Act applicable was Article 164 and not Article 181 the application for re-opening the award which was found to be otherwise justified was dismissed. This is therefore a proper case for interference in revision. The order of the Court below is therefore set aside and the Court of the Civil Judge Junior Division Vyara is directed to hear the application and pass necessary orders u/s 36 of the B.A.D.R. Act. No order as to costs.