(1917) 09 MAD CK 0007

In the Madras High Court

Kopparthi Lingayya and Others — APPELLANT

Vs

Araveti Chinnarayana and Others — RESPONDENT

Date of Decision : 26-09-1917

Acts Referred:
Limitation Act, 1877 — Section 6

Citation : AIR 1918 Mad 213 : (1918) ILR (Mad) 169 : (1918) 7 LW 443 : (1917) 33 MLJ 566

Hon'ble Judges : Seshagiri Aiyar, J;Bakewell, J;Ayling, J

Bench : Full Bench

Judgement

Ayling, J.—The question propounded for our decision is:

Whether recourse can be had to the general provisions of Act IX of 1908 in dealing with the admission of petitions and appeals presented after the

time prescribed under the provisions of the Provincial Insolvency Act III of 1907 ?

2. The obstacle to the application of these general provisions isSection 29 of the same Act which says:

Nothing in this Act shall...affect or after any period of limitation specially prescribed for any suit, appeal or application by any special or local law

now or hereafter in force in British India.

3. The meaning of this section has been considered by a Full Bench of this Court in Abu Backer Sahib v. The Secretary of State for India ILR

(1909) M. 505 and in my opinion that judgment effectively answers the question before us. In place of Section 29 of Act IX of 1908 and the

Provincial Insolvency Act, the learned Judges were dealing with Section 6 of Act XV of 1877 (the previous Limitation Act.)

4. The learned Vakil for appellants has in fact been forced to argue that the

decision in Abu Backer Sahib v. The Secretary of State for India ILR

(1909) M. 505 was wrong and requires reconsideration. How far we are entitled to question the correctness of a considered ruling of a Full Bench

of equal numerical strength is a matter into which I do not propose to enter for I entirely and respectfully concur in the ruling now called in question.

It is a pure question of interpretation of a statute. The juxtaposition of the words "" affect"" and "" alter "" compel us to give an independent meaning to

the word ""affect;"" and I cannot understand how the application of the general provisions extending in certain circumstances the period fixed by law

can be held not to "" affect "" that period.

5. The cases mainly relied on by appellants'' Vakil are Venkata v. Ghengadu ILR (1888) M.168 and Srinivasa Ayyangar v. Secretary of State ILR

(1912) M. 92. In the latter case the two learned Judges were inclined to question the correctness, or rather the general applicability, of the

decision, in Abu Backer Sahib v. The Secretary of State for India ILR (1909) M. 505 largely because the Full Bench ruling in Venkata v.

Chengadu ILR (1888) M. 168 had not been considered; but they deemed it unnecessary to decide whether Section 29, Indian Limitation Act

rendered the general sections of the Limitation Act inapplicable to special and local Acts generally. They disposed of the case before them with an

eye solely to the peculiar features of the Act with which they were dealing-Act II of 1864 : and I need hardly point out even if the two were

mutually destructive, the authority of this ruling cannot be held to counterpoise the Full Bench decision.

6. The decision in Venkata v. Chengadu ILR (1888) M. 168 was that of a Bench of four Judges the main Judgment being that of Muthusami

Aiyar, J., the question referred for their decision did not relate to the applicability of the general sections of the Limitation Act, or the interpretation

of Section 6 of the same (corresponding to Section 29 of the present Act); but to whether the provisions of the Limitation Act (Article 95 Schedule

II) or Section 59 of Act II of 1864 should be followed in computing the period of limitation. No doubt Muthusami Aiyar, J. expressed the opinion,

with the concurrence of Kernan, J. that Section 6 of the Limitation Act did not bar the application of the general sections. Kullayappa v.

Lakshmipathi ILR (1889) M. 467 is another pronouncement of the same two learned Judges to the same effect. But the other two Judges, who

were parties to ILR 12 Mad. 168 (Parker and Wilkinson, JJ.) expressed no opinion on the point; and this is remarked by Benson and Sundara

Aiyar, JJ. in their judgment in Srinivasa Ayyangar v. Secretary of State ILR (1912) M. 92. The decision in Kullayappa v. Lakshmipathi ILR

(1889) M. 467 is certainly not entitled to be treated as a Full Bench decision on the question now before us.

7. Veeramma v. Abbiah ILR (1894) M. 99 is another Full Bench case in which Muthusami Aiyar and Shephard, JJ. expressed contrary views as

to the effect of Section 6 of Act XV of 1877. Collins, C.J., does not refer to the section; but, by implication, he would seem to have favoured

Shephard J''s view.

8. I can find nothing in these cases, which would induce me to differ from the view of the learned Judges in Abu Backer Sahib v. Secretary of State

for India ILR (1909) M. 505.

9. It has been suggested that in the cast of an appeal to a District Court (with which we are not concerned here) the period allowed by Section 47

(4) Provincial Insolvency Act (30 days) is so short that it might be impossible to procure copy of the order in time for presentation with the appeal,

as required by Order 41, Rule 1 (Mutatis Mutandis) and that in such a case a Court could not be asked to enforce the limitation clause, Section 46

(4). That is not the case here: and we are not called on to say what a Court should do, if such facts were established. The possibility of such a

difficult case may be a ground for legislation, or, possibly, the provision of a remedy in the rules and orders under the Civil Procedure Code. But

we have merely to interpret the law as it stands: and I feel no hesitation in answering the reference in the negative.

Seshagiri Aiyar, J.

10. Both sides are agreed that the only question to be considered in this reference is whether the time taken up for obtaining copies of the order

appealed against should be deducted in computing the period of limitation fixed by Section 46, Clause 4 of the Provincial Insolvency Act. The

decision of the question turns largely upon the interpretation to be placed upon Section 29 of the Indian Limitation Act. A very learned argument

was addressed to us by Mr. A. Krishnasami Aiyar upon the meaning to be attached to the word "" affect "" in Clause 1 (b) of that Section. Apart

from authority, if I were deciding this question for the first time, I would have respectfully concurred in the view taken by three learned Judges of

this Court including the present Chief Justice in Abu Backer Saheb v. Secretary of State for India ILR (1909) M 505. The word alter would apply

directly to similar provisions in the Limitation Act, if any, giving an extended period to suits or appeals of the nature provided for in the Special act.

The word ""affect"" is more comprehensive. Whenever by a process of c imputation or exclusion or deduction the special period fixed by the

enactment is indirectly extended or cut down, it must be taken that that period has been affected. The illustration which Mr. Krishnasami Aiyar

suggested would also be connoted by the term ''affect''; for example, there may be a special period compelling a party to take steps to set aside

the order of a Special Officer under the Boundaries Act. When a party instead of adopting that course wants to avail himself of the general period

of limitation prescribed for a declaration of title in Article 120 of the Limitation Act, the relief granted to him would indirectly affect the period of

limitation prescribed in the special law. The decision of the Full Bench in The Secretary of State for India v. Assan ILR (1915) Mad. 727 : 30

M.L.J. 255 is an illustration of this mode of affecting the period of limitation fixed in a Special act. But, I am not prepared to agree with the learned

Vakil that this category of cases exhaust the significance of the word ''affect.'' Nor am I prepared to accede to the contention that a computation of

period of limitation which in effect extends the time fixed does not affect the period of limitation. In my opinion, wherever an attempt is made to

construe a special period fixed by an enactment with reference to the general provisions of the Limitation Act contained in Sections 5 to 18, the

effect of such a process would be to affect the period of limitation prescribed by the Local Act. Therefore my reading of the section apart from

authority is in accordance with the pronouncement in Abu Backer Saheb v. Secretary of State ILR (1909) M. 505. But the matter has been

complicated a great deal by other decisions to which I shall presently very briefly refer.

11. Before dealing with the cases quoted at the Bar, I may dispose of one aspect of the case which was very strongly pressed upon us by Mr.

Krishnasami Aiyar. He did not dispute the proposition that where a special Act is self-contained the general provisions of the Limitation Act should

not be imported into the consideration of questions arising under the former Act. Upon this point we have the judgment of the Judicial Committee

in (1874) L.R. 1 I.A. 167 (Privy Council) that to Acts of a special kind which are self-contained, the general provisions of the Limitation Act

should not be annexed. Sir Arthur Collins, C.J., and Muthusami Ayyar, J. followed this decision in Veeramma v. Ahbiah ILR (1894) M. 99.

There are other decisions to the same effect; and therefore it may be taken as settled that where the Code is complete in itself the general

provisions of the Limitation Act commencing from Sections 5 to 18 should not be read as forming part of that Code. In the present case it was

contended that the Provincial Insolvency Act is not a code complete in itself. I thing this contention is well founded.

12. We have only to refer to Sections 6 and 47 to show that the CPC was intended to be largely utilized in regard to proceedings under the Act.

Therefore the Act has to be supplemented by the importation of the general rules of procedure as to suits.

13. One special matter affecting limitation may also be pointed out and that is, by Section 47 of the Provincial Insolvency Act the procedure to be

followed in presenting appeals under that Act are to be the same as in the case of appeals under the Civil Procedure Code. As the learned vakil

pointed out under the CPC an appeal can be filed only if the memorandum is accompanied by copies of the decree and of the judgment. It is well

recognised that an appeal filed without these annexures must be regarded as no presentation in the eye of law. See Chamela Kuar v. Amir Khan

ILR (1893) A.77 and Abdul Hakim Chowdhuri v. Hemohandra Das ILR (1914) C 433. It therefore follows that under the Provincial Insolvency

Act, it is incumbent upon the party preferring an appeal that he should file copies of the order or judgment appealed against. It is not disputed that

in a considerable number of cases such a copy may not be obtainable within the 30 days allowed for presenting an appeal to the First Appellate

Court. It was not therefore unreasonably suggested that the legislature could not have intended that the period of 30 days fixed by Section 46,

Clause 4 should be inclusive of the period taken for obtaining copies of the order appealed against. The result of such a construction would be to deny the right of appeal in many cases. If it were shown in the present case that an application was made immediately after the order was passed

and that more than 90 days had elapsed before the copies were obtained I would have hesitated a great deal before coming to the Conclusion that

the party is not entitled to prefer the appeal after obtaining the copies, because to hold otherwise would be to deny the right of appeal given by the

section. However, it has not been shown that in this particular case the copies were not granted expeditiously.

14. Apart from this particular aspect of the case, the general question now remains whether by virtue of the fact that the Provincial Insolvency Act

is not self-contained we are at liberty to introduce into the construction of Section 46, Clause 4, the general provisions of the Limitation Act. In

Venkata v. Chengadu ILR (1888) M. 168 a Bench of four Judges had to consider this question with reference to Section 18 of-the Limitation Act.

That was a case under Revenue Recovery Act. Two Judges, Kernan, J., and Muthusami Ayyar, J., held that Section 18 was applicable to the

Revenue Recovery Act, Justices Parker-and Wilkinson expressed no definite opinion on the question. In Seshama v. Sanhara ILR (1888) Mad. 1

Chief Justice Collins and Muthusami Aiyar, J., in dealing with a case under the Madras Boundaries Act XXVIII of 1860 held that Section 14 of

the Limitation Act was applicable to the special period fixed in that Act. In Kullayappa v. Lakshmipathi ILR (1889) M. 437 Kernan and

Muthusami Ayyar, JJ., applied Section 14 of the Limitation Act to a case arising under the Kent Recovery Act. In Iswara Patter v. Karuppan

(1893) 3 M.L.J.255 Chief Justice Collins and Justice Davies applied Section 18 of the Limitation Act to a case arising under the Revenue

Recovery Act. In Veeramma v. Abbiah I.L.R (1891) Mad. 99 which was a case under the Registration Act all the three learned Judges who took

part in it viz., Collins C. J., Muthusami Ayyar, J., and Shephard, J., held that the Act was complete in itself and that consequently there was no

occasion for invoking the aid of the general provisions of the Limitation Act. The Chief Justice and Muthusami Ayyar J., once again reiterated the

proposition that if the act was not complete in itself, the general provisions of the Limitation Act may be looked into for construing a special Act.

On the other hand Shephard, J., gave an interpretation of the term '' affect'' which subsequently found favour with the Judges win decided Abu

Backer Saheb v. Secretary of State ILR (1909) M. 505. All these decisions were passed u/s 6 of the Limitation Act of 1877. There was thus a

considerable divergence of opinion regarding the interpretation to be placed upon the word ''affect'' at least in Madras, and yet when the new

Limitation Act of 1908 was passed, the legislature did not choose to give and authoritative interpretation of the term. My mind has been exercised

considerably as to whether the legislature intended to adopt the interpretation placed upon the term by Collins, C. J., Muthusami Ayyar, J.,

Kernan, J., and Davies, J., or whether it preferred the interpretation placed upon the word by Shephard, J. The opinion of Arnold White, C.J.,

Miller, J., and Wallis, J., was not given until after the new Act was passed although they had to construe the language of Section 6 of the old Act.

The view taken by Shephard, J., is shared by a very large number of Judges in the other High Courts, and as that view is in consonance with the

natural interpretation to be placed upon the word ''affect'' I prefer to hold, with the Judges who decided Abu Backer Saheb v. Secretary of State

that even in cases where the Act is not complete in itself, if by importing the general provisions of the Limitation Act the period fixed in a Special

Act is likely to be enlarged either by the process of computation in obtaining copies or by excluding the period during which a fraud was practised

or during which another litigation was proceeding in a different court, still the period of limitation would be affected.

15. It seems to me that this is eminently a matter in which the legislature should interfere. I fail to see why litigants preferring appeals under special

Acts should not have the same privilege of extension provided by the general provisions of the Limitation Act as they have in cases directly coming

under the Civil Procedure Code. There is no conceivable reason for putting one class of litigants under a disability of this kind. I may also be

permitted to suggest that until the legislature intervenes to amend the Limitation Act, our High Court should amend the rule in Order 41 by saying

that the presentation of an appeal in cases under the Insolvency Act need not be accompanied by copies of the order, decree or judgment

appealed against. My answer is in the negative.

Bakewell, J.

16. I agree with Mr. Justice Ayling.

