(1922) 11 CAL CK 0006

In the Calcutta High Court

Case No : S.A. No. 87 of 1921

Mahamed Mozaharal Ahad — APPELLANT

Vs

Mahamed Azimaddin Bhuinya — RESPONDENT

Date of Decision : 14-11-1922

Acts Referred:

Citation : (1922) 11 CAL CK 0006

Final Decision : Dismissed

Judgement

Mookerjee, J.—The facts material for the determination of the question of limitation raised in this appeal are no longer in dispute and may be briefly recited. The plaintiff-respondent, a Mahomedan gentleman, gave his daughter in marriage to the defendant appellant. At the time of the marriage, the defendant executed and registered in favour of his wife a dower deed, on the 15th September, 1908. The deed fixed the dower at Rs. 5,000; one half was prompt and payable on demand; the other half was deferred. The lady died on the 18th September, 1909. On the 10th September, 1915, the plaintiff, as one of the heirs at law of his daughter, instituted the present suit against the son-in-law for recovery of his one-third share of the dower debt. The defendant pleaded, amongst other defences, the bar of limitation. The Court of first instance held that the suit was governed not by the three years but by the six years rule of limitation and decreed the claim. On appeal, this decision has been affirmed by the District Judge. On the present appeal, that decree has been assailed on the ground that the suit is barred by the three years'' rule of limitation. The respondent has urged that the six years'' rule is applicable as the dower was fixed by a registered document.

2. Art. 103 of the Schedule to the Indian Limitation Act, 1908, provides as follows:?

103. A suit by a Mahomedan for exigible dower shall be instituted within 3 years from the date when the dower is demanded and refused, or (where during the continuance of the marriage, no such demand has been made) when the

marriage is dissolved by death Or divorce.

Art. 104 provides as follows:?

104. A suit by a Mahomedan for deferred dower shall be instituted within three years from the date when the marriage is dissolved by death or divorce.

In the case before us, as there was no demand and refusal during the continuance of the marriage, time ran, both as regards the prompt and the deferred dower, from the date when the marriage war dissolved by death. Consequently, the suit should have been, prima facie, instituted within three ears from the 18th September, 1909, when the lady died. But the plaintiff has urged and his contention been accepted by the Courts below?that as the dower deed was registered, he is entitled to the benefit of Art. 116.

Art. 116 provides as follows :?

116. A suit for compensation for the breach of a contract, in writing registered, shall be instituted within six years from the date when the period of Limitation would begin to run against a suit brought on a similar contract not registered.

3. This plainly refers to Art. 115 which provides as follows:?

115. A suit for compensation for the breach of any contract, express or implied, not in writing registered and not herein especially provided for shall be instituted within three years from the date when the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

4. The appellant has contended that even if we assume that the present suit for recovery of the dower debt may be treated as a suit for compensation for the breach of a contract in writing registered within the meaning of Art. 116, that Article, which provides a general rule applicable to contracts in writing registered, cannot be applied when there are special Articles, namely, Articles 103 and 104, which precisely cover the case. The appellant has, in fact, invoked the well-established principle that if there are two Articles in the Schedule to the Limitation Act, which may possibly govern a case, the one more general and the other more special, the more particular and specific Article should be regarded as the one governing the case. Illustrations of the application of this doctrine may be found in the cases of Issur Chander v. Jibun (1889) 16 Cal. 25, Swarupdas v. Joggeswar (1899) 26 Cal. 564, Natesan v. Soundararaja (1898) 21 Mad. 141, Ranchordas v. Parvati Bai (1899) 23 Bom. 725, Narmada Bai v. Bhabani (1902) 26 Bom. 430, the principle, generalia specialibus nonderogaut, specialia derogant generalibus, has been recognised elsewhere, and illustrations of the doctrine that general provisions do not derogate from special provisions, but that the latter do derogate from the former are by no means rare; see Hunter v. Knockdds (1850) I Mac. & G. 640 = 84 R.R. 217, Churchill v. Crease (1828) 5 Bing 180, De Winton v. Greson Corporation (1859) 26 Beav. 533 (543), Pretty v. Solly (1859) 23 Beav. 603 (610). The respondent has not denied that this argument carries

considerable weight; but he has urged that it is too late for this Court to depart from what has been recognised in a long line of cases as the true scope of Art. 116, including the decision of the Judicial Committee in Trikamdas v. Gopinath (1917) 44 I.A. 65 = 44 Cal. 759. As will presently appear, from an examination of numerous judicial decisions, Art. 116 has been held applicable, by reason of existence of a written and registered contract, in classes of cases which are prima facie governed by special provisions contained in the schedule to the Indian Limitation Act.

Art. 57 provides as follows:?

57. A suit for money payable for money lent shall be instituted within three years from the date when the loan is made.

It has been repeatedly held that a suit on a registered bond for recovery of a specific sum of money is governed not by Art. 57 but by Art. 116; see Nava Kumar v. Siru Mullick (1891) 6 Cal. 94, Kahit Ram v. Lala Dhanudi 11 C.L.R. 311, Shama Charan v. Debya Sing (1901) 21 Cal. 872, Kate v. Ruxton (1906) 4 C.L.J. 510, Nistarni v. Chandi (1910) 12 C.L.J. 423, Ram Narayan v. Ahindra Nath (1912) 15 C.L.J. 17 = 17 C.W.N. 369, Chaliphoo v. Banga Behary (1913) 22 C.L.J. 311 = 20 C.W.N. 408, Hussain Ali v. Hafiz Ali (1881) 3 All. 600, Khunni v. Nasimuddin (1885) 4 All 255, Susil v. Gauri (1916) 39 All. 81 = 14 A.L.J. 873, Ganesh Krishna v. Mudhava Rao (1884) 6 Bom. 75, Magaluri v. Narayan (1881) 3 Mad. 359, Viswanath v. S.L. Bank (1917) M.W.N. 879 = 6 M.L.W. 712.

Art. 64 provides as follows:?

64. A suit for money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them shall be instituted within three years from the date when the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.

Art. 106 provides as follows:?

106. A suit for an account and a share of the profits of a dissolved partnership, shall be instituted within three years from the date of the dissolution.

5. With reference to these Articles, it was ruled in Ranga Reddi v. Chinna Reddi (1891) 14 Mad. 465 that where a registered partnership contract binds the parties to pay the loss according to their respective shares, a suit to recover the defendants'' share of the loss, on a settlement of accounts between the plaintiffs and the defendants, is governed, neither by Art. 64, nor by Art. 106, but by Art. 116. It is to be noted, however, that in Viravan v. Ponaya (1899) 22 Mad. 14 the Court expressed its unwillingness to hold that Art. 116 could be stretched to cover every case in which the suit might in its origin be referred to a contractual relationship expressed in a registered agreement. Art. 74 provides as follows:? "74. A suit on a promissory note or bond payable by instalments shall be

instituted within three years from the date of the expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment." With reference to this provision, it has been ruled that if the instalment bond has been registered, the suit is governed, not by Art. 74, but by Art. 116; Dindayal v. Gopal Saran (1891) 18 Cal. 506, Rup Narayan v. Gopi Nath (1905) 11 C.W.N. 903.

Art. 89 provides as follows:?

"89. A suit by a principal against his agent for moveable property received by the latter and not accounted for, shall be instituted within three years from the date when the account is, during the continuance of the agency, demanded and refused, or, (where no such demand is made) when the agency terminates." With reference to this Article, it was ruled in Mali Lal Bose v. Amin Chand (1905) 1 C.L.J. 211, that a suit for an account by a principal against his agent on the basis of a registered agreement, is governed, not by Article 89 but by Article 116, the cause of action arising from the date when the contract to render accounts is broken. This view is identical with that taken in Harendra Kishore v. Administrator-General (1885) 12 Cal. 357, and was followed in Easin v. Baroda Kishore (1910) 11 C.L.J. 43, Joges Chandra v. Binode Lal (1908) 14 C.W.N. 122, and Bhagirath v. Prem Chand (1913) 17 C.L.J. 201. The current of judicial opinion, however, upon this question has been by no means uniform; see Debendra Nath v. Esha Heque (1908) 14 C.W.N. 121, Sib Chandra v. Chandra Narain (1905) 32 Cal. 719 = 1 C.L.J. 232, Marthu Sudan v. Rakhal Chandra (1916) 43 Cal. 248 = 22 C.L.J. 552, Nabin v. Chandra Madhab (1917) 44 Cal. 1 (P.C.), modifying Chandra Madhab v. Nabin (1913) 40 Cal. 108, Bhabatarini v. Sheik Bahadur (1919) 30 C.L.J. 90, Jogindra Nath v. Debnath (1903) 8 C.W.N. 113, Hafizuddin v. Jadu Nath (1908) 35 Cal. 298 = 7 C.L.J. 279, Madhub Chandra v. Debendra Nath (1905) 1 C.L.J. 147, Jhapajennessa v. Rash Bihari (1912) 16 C.L.J. 288, Premram v. Jagadis Nath (1922) Cal. 355 = 49 Cal. 250 = 35 C.L.J. 111 = 26 C.W.N. 61. These cases, however, struggle, in most instances, to escape the application of Article 116, not so much because the Article should not be applied to cases comprised within the scope of special Articles, but rather because a suit by a principal against an agent for the relief mentioned in Article 89 cannot properly be regarded as a suit for compensation for the breach of a contract in writing registered. This, however, does not apply to the decision in Pran Ram v. Jagadis Nath (1922) Cal. 355 = 49 Cal. 250 = 35 C.L.J. 111 = 26 C.W.N. 61, where the twofold contention was accepted that (a) Article 89 excludes the operation of Article 115, which is applicable only to cases not specially provided for; and (b) Article 116 must be read along with Article 115 and be deemed restricted in operation in the same manner. This view, as will presently appear, is opposed to that indicated in Vythilinga v. Thetchana 3 Mad. 76, and Dindayal v. Gopalsaran (1891) 18 Cal. 506, and accepted by the Judicial Committee on Trikamdas v. Gopi Nath (1917) 44 I.A. 65 = 44 Cal. 759. It will be observed that the expression "not herein specially provided for" which finds a place in the first column of Article 115 does not appear in the first column of

Article 116. But this plainly does not conclude the matter, and the expression "similar contract not registered" which finds a place in the third column of Article 116 does require interpretation. Does it refer only to the first column of Article 116 and consequently mean a contract in writing not registered or, does it refer to the first column of Article 115 and signify a contract not in writing registered and not herein specially provided for." The first alternative was adopted in Vythilinga v. Thetchanda 3 Mad. 76, and Dindayal v. Gopalsaran (1891) 18 Cal. 506, and apparently found favour with the Judicial Committee in Trikamdas v. Gopi Nath (1917) 44 I.A. 65 = 44 Cal. 759. The second alternative was adopted in Pranram v. Jagadis Nath (1922) Cal. 355 = 49 Cal. 250 = 35 C.L.J. 111 = 26 C.W.N. 61. The conflict, consequently, is between two opposing views; one maintains that Article 116, like Article 115, applies where there is no special provision; the other maintains that Article 116 supersedes all provisions including those covered by special Articles unaffected by Article 115. In this connection, reference may also be made to the decision in Kandaswamy v. Avayambal (1911) 34 Mad. 167, where it was ruled that a suit by an agent to recover money spent by him on account of his principal, is governed by Article 61 and not by Article 116, even though there was a registered contract of agency; the obligation was deemed as no part of the contract in writing registered, and the earlier decisions in Krishnan v. Kunnan (1898) 21 Mad. 8, and Seshachala v. Varada (1902) 25 Mad. 55, were distinguished though they were clearly authorities for the proposition that obligations not expressed in writing, but imported by the law in the case of sales, might be treated as in writing for purposes of limitation, when the sale was made by a written instrument.

Art. 110 provides as follows :?

"110. A suit for arrears of rent shall be instituted within three years from the date when the arrears become due." It has been ruled in a long series of decisions that a suit for arrears of rent, based upon a registered lease is governed, not by Article 110 but by Article 116 Vythilinga v. Thetchena 3 Mad. 76, Umes Chandra v. Adamant (1888) 15 Cal. 221, Iswariprasad v. Crewdy (1890) 17 Cal. 461, Raneeguny Coal Association v. Jadu Nath (1892) 19 Cal. 489, Umrao Bibi v. Mahomet Rojabi (1900) 27 Cal. 205, Ambabrana v. Vaguran (1896) 19 Mad. 52, Chengiah v. Umarai 7 M.L.T. 419, Sundaramier v. Muttoo 17 M.L.T. 276, Kannan v. Muthalfuri 11 Mad. L.W. 328, Mahommed Hanif v. Moorat Mahotoon 4 Pat. L.W 146, Mackenzie v. Rameswar 1 Pat. L.J. 37 = 2 Pat. L.W. 446, Lal Chand v. Narain (1913) 37 Bom. 656. The contrary view, adopted in Ramaswamy v. Sokkunatha (1891) 1 Mad. L.J. 137 = 2 Mad. L.J. 69, and Ram Narain v. Kalla Narain (1904) 26 All. 138, has now been expressly disapproved of by the Judicial Committee in Trikumdas v. Gopi Nath (1917) 44 I.A. 65 = 44 Cal. 759. Suits for rent under the Bengal Tenancy Act have, however, escaped this fate; they have been held to be governed by the special rule contained in the schedule to that statute, which remains unaffected by Article 110 and Article 116; see the decision of the Full Bench in Mackenzie v. Haji Sahed Mohammed (1892) 19 Cal. 1.

6. We have not given above an exhaustive enumeration of all the judicial decisions relevant to the points mentioned; but we have stated enough to show that Article 116 has been repeatedly interpreted; in the most diverse connections, as if it were a generalised exception engrafted upon all Articles which might, by stretch of language, be regarded as applicable to suits comprehended within the description of " a suit for compensation for the breach of a contract." One of the earliest of these decisions, Naba Kumar v. Siru Mallik (1891) 6 Cal. 94, goes back to 1880, and the judgment in that case as also the judgments delivered by the Full Bench in 1881 in Hussein Ali v. Hafiz Ali (1881) 3 All. 600, were based upon a historical review of the previous legislation on the subject; but it may be observed parenthetically that some of the judgments delivered by the Full Bench also referred to inadmissible materials, such as what happened in the Legislative Council; Administrator-General v. Premlal Mullik (1895) 22 I.A. 107 = 22 Cal. 788. Yet, the construction then placed upon Article 116 of the Limitation Act, 1877, must be taken to have found favour with the legislature, as it has been reproduced without alteration in the Limitation Act, 1908. The legislature is presumed to know not only the general principles of law, but also the construction which the Courts have put upon particular statutes; where a section of an Act which has received a judicial construction is re-enacted in the same words, such re-enactment is treated as a legislative recognition of that construction; Jogendra Chandra v. Syam Das, (1909) 36 Cal. 543, Kamini Debi v. Pramatha Nath (1912) 39 Cal. 33, Nagendra Mohan v. Peary Mohan (1916) 43 Cal. 103 the Judicial Committee in Trikumdas v. Gopi Nath (1917) 44 I.A. 65 = 44 Cal. 759 felt impressed by this consideration, and Lord Sumner emphasised the fact that when the Limitation Act of 1877 was replaced by the Limitation Act of 1908, the language and arrangement of the relevant Articles were left unaltered. In such circumstances, no useful purpose Will be served by an attempt to examine the foundations of the long series of decisions which the Judicial Committee found themselves bound to recognise.

7. In answer to the contention that claims of this character sound in debt and not in damages, it may be pointed out, however, that the term used in Article 115 and Article 116 is not damages but compensation, which also occurs in Section 73 of the Indian Contract Act. As Lord Esher observed in Dixon v. Calcraft (1892) 1 Q.B. 458 (463) the expression compensation is not ordinarily used as an equivalent to damages, although as remarked by Fry, L.J. in Skinners'' Co. v. Knight (1891)2 Q.B. 542 compensation may often have to be measured by the same rule as damages in an action for the breach. The term compensation as pointed out in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. Damages, on the other hand; constitute the sum of money claimed or ad judged to be paid in compensation for loss or injury sustained; the value estimated in money, of something lost or withheld. The term compensation etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. The

derivative meaning was familiar to the Roman Jurists and reappears in the modern codes founded on the Civil Law. (Sohm, institutes of Roman Law, 3rd Edition, pp. 458-463).

8. The term compensation, as used in Arts. 115 and 116 is thus, perhaps not sufficiently precise, while the technical distinction between debt and damages may be too refined for the purpose.

9. We must hold that the decision of the Judicial Committee in Trikamdas v. Gobi Nath (1917) 44 I.A. 65 = 44 Cal. 759, though concerned directly with the applicability of Article 110 and Article 116 to a suit for arrears of rent, instituted upon a registered lease, must be regarded as of far-reaching application. We cannot ignore the principle which lies at the root of that decision and must govern the applicability of Article 116 to cases other than those covered by Article 110, wherever the position may reasonably be maintained that the claim sought to be enforced is a claim for compensation for breach of a contract in writing registered. We must consequently examine whether a claim for eligible dower and a claim for deferred dower fall within this category.

10. The nature of dower debt was examined by this Court in the case of Mir Maharat v. Amani 2 B.L.R. 306, and it was ruled that, according to Muhammadan Law, when the heirs of a Muhammadan worn in claim from her husband dower which was not due or payable until her death, their claim is a simple money claim, founded solely on the contract entered into by the husband. The Limitation Act then in force was Act XIV of 1859. Clause 9 of Section I provided a period of three years for the institution of a suit brought to recover money lent or interest or for the breach of any contract. Clause 10 of Section 1 provided a period of three years for a suit brought to recover money lent or interest or for the breach of any contract in a case in which there was a written engagement or contract and in which such engagement or contract could hive been, but had not been registered within six months from the date thereof. Clause 16 of Section 1 provided a period of six years for all suits for which no other limitation was expressly provided. The Court held that the suit for dower was a simple suit for the breach of a contract, within the meaning of Clauses 9 and 10 of Section 1. Reference was made to the decisions in Mahomad Faiz v. Oomdah Begum 6 W.R. 111 and Woomantal Fatima v. Mirun Murnissa 9 W.R. 318, the first had been cited as an authority for the position that a suit for dower was not founded on the contract, but on the with-holding of the widow''s estate from the heirs. The second had been relied upon to support the contention that the claim to recover the dower debt was in essence to enforce a lien upon the estate of the deceased as against those entitled as heirs These dicta were explained away, and it was held that the dower, like any other debt, must be paid before the estate divisible among the heirs can be ascertained, and that the suit to recover the dower debt is nothing more or less than a suit to enforce a simple money claim founded solely on the contract entered into by the husband, see also Wafesh v. Saheeba 8 W.R. 307, Janee Khanu v. Amatool Fatima 8 W.R. 51, Mahabu Bibi v. Amina 10

Bom. H.C 430 A.C. The view taken in these cases is supported by the observation of Sir Montague Smith in Khajooroonisa v. Ryeesoonissa 2 I.A. 235 = 15 B.L.R. 306 = 24 W.R. 163, namely, that prompt or exigible dower may be considered a debt always due and demandable, and certainly payable upon demand, with the result that upon a clear and unambiguous demand and refusal, a cause of action would accrue and the statute would begin to run. To the same effect is the remark of Lord Parker in Hamira v. Zubaida (1916) 43 I.A. 294 = 38 All. 581, that the dower ranks as a debt, and the right of the wife is no greater than that of any other unsecured creditor of her husband, subject to the reservation that if she lawfully, with the express or implied consent of the husband or his other heirs, obtains possession of the whole or part of his estate to satisfy her claim with the rents and issues accruing therefrom, she is entitled to retain such possession, unless it is satisfied; see also Nurunnessa v. Kazi Mahomed (1920) 47 Cal. 537, and Abidunnissa v. Fatih Mahomed (1919) 41 Mad. 1026. In view of the principles expounded and applied in the long series of decisions which have now met with the approval of the Judicial Committee in Trikumdas v. Gopi Nath (1917) 44 I.A. 65 = 44 Cal. 759, there is thus no escape from the conclusion that Article 116 applies to suits for recovery of dower debt when there is a registered dower deed, although Articles 103 and 104 would apply when there is no such registered instrument. We are not unmindful that the contrary view was, without argument, assumed to be correct in Fulchand v. Nazab Ali (1908) 36 Cal. 184. The view which we are constrained to adopt coincides with that taken in the case of Asiatulla v. Danis Mahammad (1922) 36 C.L.J. 379, which was brought to our notice after the arguments had been closed, and has been reported since then.

11. The result is that the decree made by the District Judge is affirmed and this appeal is dismissed with costs.

