

(1962) 12 KL CK 0006
In the High Court Of Kerala
Case No : A.S. No. 73 of 1959

National Credit Bank Ltd.

APPELLANT

Vs

Elizabeth Pereira and Others

RESPONDENT

Date of Decision : 03-12-1962

Acts Referred:

General Clauses Act, 1897 — Section 6

Citation : (1963) KLJ 501

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : Mani J. Meenattoor, for the Appellant; P.K. Kesavan Nair and K.N. Narayana Pillai for Respondents 1 to 3 and 6, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, C.J.—The Court Liquidator representing the National Credit Bank Limited (in liquidation) is the appellant before us. The question involved in the appeal is a question of limitation. The claim which has been held to be barred by limitation is based on a promissory note executed on 28-6-1949. It is common ground that as a result of the combined effect of the Indian Limitation Act, 1908, and the Part B States (Laws) Act, 1951, the claim would be alive up to 1-4-1953.

2. The petition for the winding up of the bank was filed on 4-8-1953. The High Court ordered the winding up on 19-10-1953.

3. Sub-section (i) of section 45-D of the Banking Companies Act, 1949, provides:

Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court may settle in the manner hereinafter provided a list of debtors of a banking company which is being wound up.

and sub-section (2):

Subject to any rules that may be made u/s 52, the Official liquidator shall, within six months from the date of the winding up order or the commencement of the

Banking Companies (Amendment) Act, 1953, whichever is later, from time to time, file to the High Court lists of debtors containing such particulars as are specified in the Fourth Schedule :

Provided that such lists may, with the leave of the High Court, be filed after the expiry of the said period of six months.

It is common ground that the leave of the High Court was obtained and that the list filed on 27-3-1957 was filed within time.

4. If the only provisions that can be invoked are those of the Indian Limitation Act, 1908, and the Part B States (Laws) Act, 1951, the claim as already stated, would have become barred on 1-4-1953. But there is another provision which has also to be taken into account. That is section 45-F of the Banking Companies Act, 1949, which was inserted into that Act by the Banking Companies (Amendment) Act, 1950, and which provided for a special period of limitation. That provision reads as follows:-

Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application by a banking company, the period of one year immediately preceding the date of the order for the winding up of the banking company shall be excluded.

5. As pointed out by the Privy Council in A. I. R. 1935 P. C. 85 :

In order to ascertain what is the date of the expiration of the prescribed period, the days excluded from operating by way of limitation have to be added to what is primarily the prescribed period; that is to say, if the prescribed period is three years, and twenty days ought to be excluded in order to determine when the prescribed period expires, twenty days have to be added to the three years, and the date of the expiration of the prescribed period is thus ascertained.

The period of one year excluded by section 45-F-the liquidator's year as it is styled in (1951) Comp. Cas. 90-postponed the date on which the claim would have become barred from 1-4-1953 to 1-4-1954.

6. Section 45-F introduced by the Banking Companies (Amendment) Act, 1950, was repealed on 30-12-1953. The repeal was effected by the Banking Companies (Amendment) Act, 1953, which also introduced section 45-O into the Banking Companies Act, 1949. Sub-section (1) of Section 45-O is in the following terms:

Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded.

7. The claim was not barred by limitation u/s 45-F when that section was

repealed and section 45-O came into force on 30-12-1953. There is a clear and precise summary of the principles that apply in the introduction by Mr. H, Subramony Iyer to Mr. R. Ramalinga Iyer's Law of Limitation in Travancore:

A claim barred under a repealed statute cannot be sued upon even if the repealing statute has provided for an extended period of limitation. For, once a right of action has ceased to exist by operation of law or otherwise, the law of limitation has nothing to operate upon it creates no rights of action but merely restricts an existing one by interposing a bar to the exercise thereof beyond a stated period. But if the right to sue subsisted when the repealing statute came into force, its further course is regulated by the new statute and, if a longer period is provided for in the new statute, a suitor can avail himself of it.

It is not disputed that if the claim survived the repeal of section 45-F and the question of limitation has to be decided on that basis u/s 45-O, the claim was not barred by limitation when it was made on 27-3-1957.

8. Section 6 of the General Clauses Act, 1897, deals with the effect of repeals. According to that section, where any Central Act made after the commencement of that Act repeals any enactment, the repeal will not, unless a different intention appears, affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or affect any remedy in respect of any such right, privilege, obligation or liability.

9. Periods of limitation are ordinarily matters of procedure and that is why the provision that is material is the provision that is in force at the time an action is launched. That provision in this case is section 45-O. What is saved by section 6 of the general Clauses Act, 1897, in this case is not the freedom that was given by section 45-F to prefer the claim at any time prior to 1-4-1954; but the right to sue itself which was in existence on 30-12-1953 when section 45-F was repealed and section 45-O came into force.

10. We are fortified in our view by the decision in A. I. R. 1957 Madras 295. In that case Balakrishna Ayyar J., summarized the arguments advanced as follows:

The argument of the learned counsel for the liquidator was this. By reason of section 45-F of the Banking Companies (Amendment) Act, 1950, the claim was alive on 30th December 1953, when the Banking Companies (Amendment) Act, 1953, came into force. Nothing in the Banking Companies (Amendment) Act, 1953, affects the life or enforceability of that claim. On the other hand the Act gives a further period of limitation. He also referred to section 6 of the General Clauses Act, 1897, to support this contention. When the Banking Companies (Amendment) Act, 1953, was passed the remedy which the liquidator had against Surendranath Nayak was alive, and, that remedy was kept alive by reason of section 6 of the General Clauses Act, 1897.

Mr. Kamath the learned counsel for Surendranath Nayak, contended that this is not the way in which the sections should be read. According to him, there is no

justification for adding on the period referred to in section 45-O of the Banking Companies (Amendment) Act, 1953, to the period referred to in section 45-F of the Banking Companies (Amendment) Act, 1950. The Banking Companies (Amendment) Act, 1953, came into force on 30th December 1953 and that was the Act in force on 12th January 1956 when the claim was filed. We must try to see whether the claim was in time with reference to the Act which was in force on the date the claim was filed. When we try to do that it will be found that the only period that can be excluded is the time commencing from 6th April 1953. But, the claim had already become barred on 6th April 1953.

and said:

I prefer the reasoning of the learned counsel for the liquidator. The argument of Mr. Kamath in effect and in substance ignores the provisions of the Banking Companies (Amendment) Act, 1950. Before that argument can be accepted, we must postulate that the Banking Companies (Amendment) Act, 1950, had never been passed. Such an assumption cannot properly be made. On the day that the Banking Companies (Amendment) Act, 1953, became law the claim which the Official Liquidator has preferred was alive, and it is not to be readily supposed that when it passed the Banking Companies (Amendment) Act, 1953, the Legislature intended that the rights and remedies which were alive on that date should be destroyed. The contention that the claim is barred by limitation must therefore be overruled.

11. What we are dealing with is a claim which was alive when section 45-F was repealed and Section 45-O came into force on 30-12-1953. Such a claim will survive the repeal of section 45-F, has to be dealt with u/s 45-O, and will not be barred when it was made on 27-3-1957.

12. If the period of limitation available u/s 45-O was shorter than the period of limitation available u/s 45-F and claim became unenforceable as a result of section 45-O when it came into force on 30-12-1953, then the period of limitation applicable would have been not the period of limitation u/s 45-O; but the period of limitation u/s 45-F in spite of its repeal on 30-12-1953. In other words, the claim would then have been alive only up to 1-4-1954 and not thereafter. This is on the principle which is summarized as follows in A. I. R. 1953 Rajasthan 97:

Although a law of limitation is primarily a law relating to procedure and as such comes into effect right from the moment it has been enacted and governs all proceedings instituted thereafter and thus has retrospective operation there is overwhelming authority in favor of the principle that where a subsequent law curtails the period of limitation previously allowed, and such law comes into force at once, it should not be allowed to have retrospective effect, which it would otherwise have, so as to destroy pre-existing vested rights of suit, because the giving of such retrospective effect amounts to not merely a change in procedure but a forfeiture of the very right to which the procedure relates.

13. The words "and such law comes into force at once" in the extract are

apparently based on the reasoning adopted in A. I. R. 1945 Bombay 377. In that case Chagla J., said :

It is clear that as a rule statutes of limitation being procedural laws must be given a retrospective effect in the sense that they must be applied to all suits filed after they came into force. This general rule has got to be read with one important qualification, and that is that if the statute of limitation, if given a retrospective effect, destroys a cause of action which was vested in a party or makes it impossible for that party for the exercise of his vested right of action, then the Courts would not give retrospective effect to the statute of limitation. The reason for this qualification is that it would inflict such hardship and such injustice on parties that the Courts would hesitate to attribute to the Legislature an intention to do something which was obviously wrong. Applying this principle to the facts of this case, Act 12 of 1938 was published in the Gazette on 27th May 1938, and Section 1 provided that it shall come into force on such date as the Provincial Government may by notification in the Official Gazette appoint; and the date appointed by the Provincial Government was 1st July 1938. So there was an interval between 27th May 1938, and 1st July 1938, during which, if I might so put it, the operation of the Act was suspended and the necessary intimation was given by the Legislature to the public that the Act would come into force on 1st July 1938, and that if they were not vigilant about their rights, they would be deprived of them. It is true that it was not open to the respondents immediately to go to Court on the Act being published in the Government Gazette on 27th May 1938, because u/s 26 E a notice of thirty days had to be given to the District School Board. But even if such a notice had been given and the necessary period had expired, still a few days would have been left to the respondents to file the necessary suits. It may be that the period is extremely short, but I cannot possibly hold that the respondents were deprived of an opportunity of exercising their right of action, which had vested in them. However short the period, the respondents had their right after giving the necessary statutory notice to commence their action against the District School Board.

There is no time-lag between the date on which the Banking Companies (Amendment) Act, 1953, received the assent of the President and the date on which it came into operation. Both happened on 30-12-1953.

14. This is not a case where the period of limitation available u/s 45-O was shorter than the period of limitation available u/s 45-F. It is, therefore, unnecessary to consider the aspect any further.

15. In the light of what is stated above we must allow the appeal, hold that the claim is not barred by limitation and direct that it be dealt with on the merits. The appeal, is allowed as above. No costs.