

(1880) 05 CAL CK 0022
In the Calcutta High Court

Nobocoomar Mookhopadhaya

APPELLANT

Vs

Siru Mullick

RESPONDENT

Date of Decision : 26-05-1880

Acts Referred:

Citation : (1881) ILR (Cal) 94

Hon'ble Judges : Richard Garth, C.J.; Mitter, J

Bench : Division Bench

Judgement

Richard Garth, C.J.—I confess that I have considerable doubt as to the correctness of the judgment of the Court below; but as my learned colleague thinks that the judgment is right, and as I find that, on the Original Side of the Court, it has been held by Mr. Justice WILSON that, under the Act of 1877, six years is the proper period of limitation in the case of a registered bond, I am unwilling, where the meaning of the Legislature is really doubtful, to divide the Court upon a question of limitation.

In one sense, of course, every suit for a breach of contract is a suit for compensation; but I should have thought that, in ordinary legal parlance, a suit to recover money due upon a bond (especially having regard to the form of a single bond in this country), would be a suit for a debt or sum certain; whilst on the other hand, a suit for compensation for breach of contract (Article 116), meant a suit for unliquidated damages.

But there is no doubt that, under the Acts of 1859 and 1871, the period of limitation in the case of a bond, or other contract in writing registered, was six years ; and that the people of this country have for years past understood that an unregistered bond must be sued upon within three years, and a registered bond within six years.

Unless, therefore, it appears clear from the Act of 1877, that the Legislature intended to change the period of limitation from six to three years in the case of a registered bond, I think that it would be unfair to persons, placed in the

position of the plaintiff to oblige them to sue within the shorter period; and as not only the Judge in the Court below, but also learned Judges of this Court, have satisfied themselves that a suit upon a bond is, properly speaking, a suit for compensation for breach of contract, I do not think it right, in the interests of justice, to press the opposite view.

[Article 66:- Description of suit. Period of limitation. Time from which the period begins to run. On a single bond where a day Three years The day so specified.] is specified for payment.

Mitter, J.—I am of opinion that the plaintiff's claim in this case is not barred by limitation. I think the case comes within the Article 116 of the 2nd schedule of the Limitation Act of 1877. The article 66 is not applicable. It is true that the suit is "on a single bond where a day is specified for payment," but the bond, the basis of the suit, being registered, and the claim (for reasons which I shall presently state), being for compensation for the breach of the stipulated condition of payment, the suit falls under the art. 116. In this article, under the head "time from which period begins to run," it is enacted that "the period of limitation would begin to run against a suit brought on a similar contract not registered." Having regard to the words, "a similar contract not registered," it seems to me that a suit for compensation for the breach of the condition of a contract of the nature described in Article 66 would fall under Article 116 or 66, respectively, according as the contract is registered or unregistered.

It seems to me that, when a party to a contract commits a breach of its condition, the aggrieved party has either of the two alternative civil remedies: he may either bring a suit for specific performance or for compensation. A suit for specific performance, by reason of the specified time for payment having already elapsed, has become impossible in this case.