
(1959) 11 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 53-D of 1952

Pearl Insurance Co.

APPELLANT

Vs

Atma Ram

RESPONDENT

Date of Decision : 04-11-1959

Acts Referred:

Contract Act, 1872 — Section 28

Displaced Persons (Debts Adjustment) Act, 1951 — Section 36

Limitation Act, 1908 — Article 86, 28, 3

Citation : AIR 1960 P&H 236

Hon'ble Judges : A.N. Bhandari, C.J;G.L. Chopra, J;A.N. Grover, J

Bench : Full Bench

Judgement

A.N. Grover, J.

(1) In order to decide the points which have been referred to the Full Bench the facts may be shortly stated.

(2) Atma Ram respondent was carrying on the business of a General Merchant in a shop bearing No. 10 situate in Anrkali Bazar Lahore under the name and style of Messrs. Sita Ram Atma Ram. He had effected insurance of the goods lying in his shop with the appellant Company against all risks including riots and looting, the amount of insurance at the material time being Rs. 30,000/-. Atma Ram claimed the aforesaid amount but the Company having denied its liability he filed a suit in February, 1949 for its recovery on the allegations that the goods lying in his shop at Lahore had been looted on 7-9-1947 and that the Company was liable to indemnify him for the loss. Apart from other defences the Company pleaded that condition No. 11 of he policies issued by the Company had not been complied with and that under condition No. 19 the Company was not liable as the suit had been filed after the expiry of one year from the date of the loss and the claim was not the subject of a pending suit or arbitration. Issue No. 4 out of the issues framed by the trial Court was in the following terms:

"Whether the plaintiff has complied with the requirements of conditions 11 and

19 of the policy and if not, what is its effect ?"

The trial Court after finding the material issues in favour of the plaintiff decreed the suit for Rs. 24,000/- assessing the value of the stock at the time of looting at that figure.

(3) The Company preferred an appeal to this Court which came up for hearing before a Division Bench consisting of Bishan Narain and S. D. Capoor JJ. The arguments before the Bench were confined to the following points:

1. That the insured goods were not looted at all;
2. That the value of the goods lost is not proved;
3. That the suit was barred by the Pakistani laws; and
4. That the plaintiff's suit was not maintainable in view of condition 19 of the policy.

The Bench found that the plaintiff had successfully shown that the entire goods in his shop had been looted by the Muslim rioters on 7th September, 1947 and the finding of the trial Court was confirmed on that point. As regards the assessment of the value of the goods the Bench found no reason to interfere with the trial Court's decision. The third point was not seriously pressed and was rejected.

On the last point the Bench was inclined to the view that although clause 19 was not opposed to public policy it would be hit by the provisions contained in Section 28 of the Contract Act. As to the effect of Section 36 of the Displaced Persons (Debts Adjustment) Act 1951 the Bench did not express any definite opinion and all that was observed was that the decision on the effect of Section 36(b) would be intimately connected with the decision on the effect of Section 28 on the clause in question. The following questions were then framed for determination by a larger Bench:

- (1) Whether clause 9 of the policy is rendered void by virtue of Section 28 of the Indian Contract Act and
- (2) Whether limitation of the present suit is extended by virtue of Section 36(b) of the Debts Adjustment Act in spite of clause 19 of the policy.

Clause 19 of the policy runs as follows:

"In no case whatever shall the Company be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration".

Clauses similar to clause 9 in policies of other Insurance Companies had been coming up for consideration before various courts. The question raised was whether such a clause would be hit by the first part of Section 28 of the Indian Contract Act which provides that every agreement, by which any party thereto is

restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent. The first case referred to in this connection is of the Lower Burma Chief Court in *Ma Ywet v. The China Mutual Life Assurance Co. Ltd.* 11 Ind Cas 756. The judgment is a very short one and may be represented in its entirety:

"The Judge of the Small Causes Court has held that a condition in a life policy saying that no suit shall be brought on the policy after one year from the death of assured, is a reasonable condition and a valid one. Section 28 of the Contract Act clearly makes such a condition void. The decree is set aside and the case is remanded to the Small Causes Court to be tried on its merits".

It is significant that the language of the clause was such that it was sought to curtail the ordinary period of limitation as provided by the Indian Limitation Act which immediately attracted Section 28 of the Contract Act. In *Hirabhai Narotamdas v. Manufacturers Life Insurance Co.*, 14 Bom LR 741, equivalent to 16 Ind Cas 1001, a contract for insurance contained a clause:

"No suit shall be brought against the Company in connection with the said policy later than one year after the time when the cause of action accrues".

A suit was brought for after the expiry of that period but within three years as provided by Article 86 of the Limitation Act. It was urged that the condition curtailing the period of limitation was void u/s 28 of the Contract Act. Chandavarkar, Acting C. J. observed while considering the argument that the deceased had agreed to lessen the period prescribed which he could not do u/s 28 of the Contract Act, that if the words in the clause be construed literally, there might be considerable force in the argument addressed but the terms used in an insurance contract must be interpreted with reference to the object and the exigencies of insurance.

The learned Acting Chief Justice then proceeded to observe that the parties had agreed in substances that if no suit were brought within a year then neither party should be regarded as having any rights as against the other, in other words, the condition contained in the clause meant that there was to be a waiver of the rights of the respective parties if no suit was brought within a year. It is noteworthy that although the clause was so worded that it would have been directly hit by Section 29 of the Contract Act but the learned Judges founded their decision on the assumed intention of the parties having reference to the object and exigencies of insurance. This question again came up for consideration before a Division Bench of the Bombay High Court consisting of the Chief Justice and Batchelor J. in *The Baroda Spinning and Weaving Company, Limited v. Satyanaryan Marine and Fire Insurance Co. Ltd.* ILR 38 Bom 344: (AIR 1914 Bom 225). Clause 12 of the policy was that if, after a claim had been made and rejected, the insured should not institute any proceedings within three months from the date of such rejection he was to forfeit all benefits under the

policy. Beaman J. by whom the matter was originally heard expressed a doubt regarding the correctness of the earlier decision in Hirabhai's case 14 Bom LR 741. In the Letters Patent Appeal, Scott. C. J. examined the argument that Section 3 of the Limitation Act indicated that the law of limitation could not be modified by agreement of parties as it was possible to do in England; that there was no distinction under that Act between rights and remedies; and that a conditional agreement to forfeit rights within the period within which the remedy was not barred by the Limitation Act was a void agreement. The following view expressed by him at p. 353 (of ILR Bom): (at p. 228 of AIR) is noteworthy:

"I cannot accept the proposition that there is no distinction in India between rights and remedies. Section 28 of the Limitation Act shows the cases in which the loss of the remedy will destroy the right but what does not cover suits for money such as we are now concerned with. On the other hand the loss of the right always involves a very material consideration in the case of an conditional forfeiture of all benefits under a policy".

The judgment if Batchelor J. was a little more exhaustive and the statement of law by him has been followed largely in subsequent decisions. It was conceded before him that in England the agreement in question would be perfectly valid and he was of the view that it could not be contended that Insurance Companies in India had less need than such companies in England of the protection afforded by the agreement for acceleration of legal proceedings to be brought against them. That being so, there was less reason to suppose that the legislature intended S. 28 to have the far-reaching effect that had been contended for.

After examining certain English decision, Batchelor J. inclined to think that the genesis of Section 28 was to be found in the Indian Legislature's desire to sweep away the refinements of the then English law and to enact for India a simpler and more suitable rule. The learned Judge examined the distinction between saying "I agree that upon the expiry of three months after the rejection of my claim, my rights shall be forfeited" and saying "as to the time within which I may enforce my rights, I agree to limit it to the period of three months, after the rejection of my claim". According to him the latter covenant would undoubtedly be void under S. 28. The statement which has almost become classical on this point is to be found at p. 356: (of ILR Bom): (at p. 229 of AIR):

"In my opinion, however, the distinction, which beyond question exists, is vital in the construction of the section. As I understand the matter, what the plaintiff was forbidden to do was to limit the time within which he was to enforce his rights, what he had done is to limit the time within which he is to have any rights to enforce; and that appears to me to be a very different thing".

In subsequent cases the Bombay High Court followed the law laid down in the above case in Haji Shakoore Gany Vs. H.E. Hinde and Co. Ltd., where a similar covenant existed in al Bill of Lading and in Ramji Karamsi Vs. The Unique Motor and General Insurance Co. Ltd., where the point did not directly arise but the

language in which Bhagwati J. expressed his view is noteworthy. He relied on the passage in Pollock and Mulla's Indian Contract Act at page 209 and a passage in Baroda Spinning and Weaving Co.'s case ILR Bom 344:(AIR 1914 Bom 225(2)). While observing that it was only when a period of limitation is curtailed that Section 28 of the Contract Act comes into operation, the learned Judge proceeded to state:

"It does not come into operation when the term spells out an extinction of the right of the plaintiff to sue or spells out the discharge of the defendants from all liability in respect of the claim".

In the Calcutta High Court the Bombay view was followed in Girdharilal Honuman Bux Vs. Eagle Star and British Dominions Insurance Co. Ltd., and in Dawood Tar Mahomed Bros. v. Queensland Insurance Co. Ltd. AIR 1949 Cal 390. In the first case apart from the Bombay decision a reference was made to an earlier decision of the Calcutta High Court in South British Fire and Marine Insurance Co. v. Brojo Nath Shaha ILR Cal 516 but there this point had not been directly referred. Greaves J. mentioned at p. 187 that in Porter's Law of Insurance, 6th Edition, Page 195, it was stated that insurers might lawfully limit the time within which an action might be brought to a period less than that allowed by the statute of limitation the time of claim rested and was maintainable, was that by the contract of the parties the right to indemnity in case of loss and the liability of the Company thereof did not become absolute, unless the remedy was sought within the time fixed by the condition in the policy.

In the second Calcutta case Mc. Nair J. did not discuss the matter in any great detail but relied on a decision of the Rangoon High Court in A. N. Ghose v. Reliance Insurance Co. ILR Rang 475: (AIR 1934 Rang 15) where a similar clause had been examined and had been held to be valid. The Rangoon decision was, however, based on an earlier Bench decision in G. Rainey v. The Burma Fire and Marine Insurance Co. Ltd. ILR Rang 383: (AIR 1926 Rang 3) and on the statement by Batchelor J. in Baroda Spinning and Weaving Co.'s Case ILR 38 Bom 344: (AIR 1914 Bom 225(2)) set out before. Apart from relying on certain decisions including the Baroda Spinning Case ILR 38 Bom 344: (AIR 1914 Bom 225 (2)) the Bench observed that the plaintiff had willingly agreed that in the happening of a certain event he would forfeit all his rights from that date and any suit, therefore, brought after that date was brought on account of a cause of action which was non-existent.

It was open to a party to contract that on the happening of a certain event he would lose all his rights. It could not be argued that such a condition must be one which limited the period within which he could seek relief in the ordinary courts. In this Court the same view has been adopted by Kapur J. in the Ruby General Insurance Co. Ltd. v. Bharat Bank Ltd. AIR 1950 EP 352 and by Mehar Singh J. in the Punjab National Bank Ltd. v. American Insurance Co. Ltd., F. A. F. O. No. 167 of 1955. The Saurashtra High Court while considering the effect of Section 28 on similar clauses existing in Bills of Lading has followed the Bombay

view. *Western India Prospecting Syndicate Ltd. v. Bombay Steam Navigation Co. Ltd.* AIR 1951 Sau. 83.

(4) As against the weight of authority in favour of holding such a clause valid and not void u/s 28 of the Contract Act, the learned counsel for the respondent has been able to refer only to 11 Ind Cas 756 and *Nathu Mal Ram Das v. Ram Sarup and Co.* ILR Lah 692: (AIR 1932 Lah 169). The language employed in the first case was clearly such that it would be hit by Section 28 even according to the view expressed by Batchelor J. in the *Baroda Spinning and Weaving Company's* case ILR 38 Bom 344: (AIR 1914 Bom 225 (2)). As regards the Lahore decision the point does not seem to have been argued at all and it was taken for granted that such a clause existing in an indent would be void.

(5) It appears that the law in England is that a limitation of the period within which action can be brought after loss is valid notwithstanding that it gives a shorter period than the Limitation Act 1939 vide *Mac Gillivray on Insurance Law*, Fourth Edition, para 1794. It may, however, be mentioned that it is difficult to draw any assistance from the law as it prevails in that country. There is no bar there to parties curtailing the period of limitation in the absence of any provision analogous to Section 28 of the Contract Act.

(6) In the United States of America a similar condition in a policy against the maintenance of any action to recover a claim unless commenced within twelve months after the loss has been held to be valid. *Riddlesharger v. Hartford Fire Ins. Co. Ltd.* (1872) 19 Law Ed 257. With regard to the policy of the statute of limitation it was stated that it was to encourage promptitude in the prosecution of remedies. Such statutes prescribe what is supposed to be a reasonable period for this purpose but "there is nothing in their language or object which inhibits parties from stipulating for a shorter period within which to assert their respective claims.

It is clearly for the interest of insurance companies that the extent of losses sustained by them should be speedily ascertained and it is equally for the interest of the assured that the losses should be speedily adjusted and paid". This reasoning is similar to the one adopted in some of the decisions mentioned before and *Kapur J.* in AIR 1950 EP 352 has observed at page 353 that there seems to be a great deal of sense in it particularly in the case of fire insurance or insurance against accident where the liability to the extent of the damage caused, when the matters are fresh, can be measured with a certain amount of accuracy. Lapse of time in such cases may result in all kinds of claims which are not capable of determination with any amount of exactitude and when memories of men may become rather hazy.

(7) The learned counsel for the respondent contends that a clause similar to clause 19 is in effect and substantiates an agreement limiting the time within which rights may be enforced by legal proceedings and because of mere change of phraseology or words Courts should not accord validity to such clauses as that

would mean virtually allowing insurance companies to perpetrate a fraud on the statute (Section 28). He has also referred to a decision of a learned Single Judge in Governor-General in Council Vs. Firm Badri Das Gauri Dutt,

There it has been held that it is not open to the railway to repudiate its liability for loss or damage to the goods if the claim is not made immediately to the clerk in charge of the station to which they had been booked and is not forwarded to the Traffic Manager forthwith because the observation of such a rule would be contrary to the provisions of law relating to limitation of suits (section 28, Contract Act). A similar view was expressed by a Bench in Dominion of India v. Rupchand Heerchand, AIR 1953 Nag. 169. These cases do not deal with the question of fraud having been committed on the statute.

It is significant that although the matter had come up for consideration before various High Courts in several cases no such argument had ever previously been addressed. This argument is based more on the construction of Section 23 of the Contract Act than Section 28. It has never been questioned, however, that such a clause is not opposed to public policy and is not hit by the provisions of Section 23. Even the Bench referring the matter to us agreed that it was not opposed to public policy. In a recent decision in Gherulal Parakh Vs. Mahadeodas Maiya and Others, the doctrine of public policy has been summarised thus:

"Public Policy or the policy of the law is an illusive concept; it has been described as "untrustworthy guide", "variable quality", "uncertain one", "unruly horse", etc; the primary duty of the Court of Law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which form the basis of the society, but in certain case, the Court may relieve them of their duty on a rule founded on what is called the public policy, for want of better words Lord Atkin describes that something done contrary to public is a harmful cases but also to harmful tendencies; this doctrine of public policy is only a branch of common law, it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for Courts to expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public; though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days".

In that case wagering contracts were not held to be opposed to public policy. It cannot be said that by curtailing or specifying a period within which such a suit can be brought by agreement or providing that in a certain event, all rights under the policy shall cease would bring the same into conflict with any accepted concept of public policy or it would be an incontestable case of harm or harmful tendencies.

(8) The learned counsel for the respondent further relied on the view expressed by Bishan Narain J. in his referring order that the covenant under consideration

when extinguishing the right to enforce the claim necessarily bars the remedy also. Bishan Narain J. went on to observe as follows:

"In the present context it is impossible to think of a case where the plaintiff can enforce his remedy against the Insurance company under any circumstance whatsoever when he is barred from enforcing his claim. Section 28 of the Indian Limitation Act provides for extinguishment of a right may not be co-extensive with the right to resist".

It is well known that the Limitation Act only bars the remedy but does not extinguish the right. Section 28 of that Act does not apply to suits for possession of property which cannot be recovered in specie e.g. debts whether ordinary or judgment debts. That being so, in the case of a time-barred debt the remedy is barred but the right is not extinguished and an agreement to pay wholly or in part of a debt of which the creditor might have enforced payment but for the law for the limitation of suits is enforceable by law. In the present case if the plaintiff is debarred by virtue of clause 19 from enforcing his claim against the Company it is not by reason of his remedy being barred by reason of any stipulation as to the period of limitation but it is simply not possible for him to get any relief as he is not left with any rights at all having failed to comply with the terms of that condition.

As observed in (1872) 19 Law Ed 257 at p. 259 the statutes of limitation do not confer any right of action. They are enacted to restrict the period within which the right, otherwise unlimited might be asserted. They are founded upon the general experience of mankind, that claims which are valid are not usually allowed to remain neglected. The analogy of Section 28 of the Limitation Act can not possibly be drawn as that relates only to suits for possession. As laid down in *Global v. Haria* AIR 1949 E. P. 414, that section gives effect to a well known principle of the English common law according to which if such a suit is not brought within the period of limitation it is not merely the remedy that is lost to the plaintiff but his title in the property is also extinguished and the opposite party acquires a valid title to such property. No question of extinction or acquisition of a title can possibly arise in the present case.

(9) As a result of the above discussion, on principle and authority the validity of a clause similar to clause 19 must be upheld principally on following grounds:

(1) The primary duty of a Court of law is to enforce a promise which the parties have made and to uphold the sanctity of contracts into which the parties have an unfettered right to enter provided they are not opposed to public policy or are not hit by any provision of the law of the land.

(2) The object and exigencies of the insurance are such that promptitude in asserting or enforcing a claim and also in its settlement was of the essence. The Insurance Companies would thus be justified in putting a time limit within which the claim must be enforced; otherwise all rights under the policy would come to an end.

(3) A clause of this nature does not provide a different period of limitation from the one prescribed by the Indian Limitation Act. Notwithstanding the existence of the clause, it is open to the insured to maintain an action within three years as prescribed by the Limitation Act subject to the Company waiving the clause although under the Limitation Act the suit must be dismissed if instituted after the expiry of the prescribed period and the waiver is wholly ineffective.

(4) A contract may contain within itself the elements of its own discharge express or implied for its determination in certain circumstances.

(5) As the clause does not limit the time within which the insured could enforce his rights and only limits the time during which the contract will remain alive it is not hit by the provisions of Section 28 of the Contract Act.

(10) On the second point the contention raised on behalf of the appellant Company is that Section 36 of the Displaced Persons (Debts Adjustment) Act 1951, hereinafter called the Act, can be of no assistance whatsoever to the respondent as it does not apply to a case of the present kind. Section 36 runs as follows:

"36. Extension of period of limitation--Notwithstanding anything contained in the Indian Limitation Act, 1908 (IX of 1908) or in any special or local law or in any agreement--

(a) any suit or other legal proceeding in respect whereof the period of limitation was extended by Section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948) and

(b) any suit or other legal proceeding for the enforcement of a claim against an insurance company not falling within the provisions of clause (a) in respect whereof the cause of action had arisen, whether wholly or in part, in the territories now situate in West Pakistan and the institution of the suit or other legal proceeding has become barred by reason of a condition in the contract, which, but for the condition, would have been governed by the provisions contained in clause (a), may be instituted at any time within one year from the commencement of this Act". It is contended that the said Section relates to the extension of period of limitation as stated in the marginal heading. Clause (a) would have no application where a shorter period for institution of a suit is provided by an agreement contained in a policy because the phrase "or in any agreement" was not included in the opening clause of Section 8 of the Displaced Persons (Institution of Suits) Act, 1948. Only providing for a shorter period of limitation for filing a suit than the one provided by the Limitation Act. But, the argument proceeds, clause (b) cannot apply as clause 19 of the policy in question does not relate to the extension of the period of limitation of a suit but to the extinction of the plaintiff's right to derive any benefit out of the policy. It may be mentioned here that while answering the first question the view put forward on behalf of the Company has been accepted by us correct.

(11) On the other hand it is submitted by the learned counsel for the respondent that Section 36(b) directly applies to the present case even if it be held that clause 19 of the policy did not relate to the curtailing of the period of limitation and was not struck down by provisions of Section 28 of the Contract Act. Prima facie the argument canvassed on behalf of the Company appears to be a plausible one but a careful examination of the history of the legislation for benefit of displaced persons, the circumstances prevailing at the time when the legislation was enacted, the evil that was sought to be remedied and other relevant factors which would provide an indication of the real intention of the legislature would reveal the infirmities in the contentions put forward on behalf of the Company and would go a long way to show that the respondent can take the benefit of Section 36(b) of the Act.

(12) The unprecedented difficulties and hardships which resulted in the wake of the partition of the country in 1947 and which rendered thousands of people homeless and destitute are a matter of history of which judicial notice has been taken and can be taken. It is well known that for a long time it was not possible for the persons who had been displaced from their homes in Pakistan to get settled down or to have any funds available for filing actions or suits or taking arbitration or other legal proceedings. In a majority of cases the displaced persons had to come without any belongings and all their documents including insurance policies were left behind in Pakistan.

The Indian Parliament taking these circumstances into consideration started enacting special legislation for the relief and rehabilitation and one important step was to provide for extending the period of limitation for filing of suits or for the institution of any other proceedings. Ordinance No. XVIII known as the Displaced Persons (Institution of Suits) by an Act. Section 8 of the Ordinance and the Act was as follows:

"8. Extension of period of limitation. Notwithstanding anything contained in Section 3 of the Indian Limitation Act, 1908 (IX of 1908), or any special or local law, any suit instituted in pursuance of Section 4 of this Act may be admitted after the period of limitation prescribed therefore when the plaintiff satisfies the Court that he was unable to institute the suit within such period owing to causes connected with his being a displaced person".

It is significant that the aforesaid Section was similar to Section 5 of the Limitation Act which in terms did not apply to original actions and suits. The intention of the legislature appears to have been to give the benefit of a provision analogous to Section 5 of the Limitation Act to displaced persons to enable them to maintain actions and suits even after the period of limitation had expired by giving a cogent and reasonable explanation for the delay in filing the same. The Displaced Persons (Institution of Suits) Act 1948 was amended by the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act of 1950. The following section was substituted by the Amending Act.

"8. Extension of Period of Limitation.--Notwithstanding anything contained in Section 3 of the Indian Limitation Act, 1908 (IX of 1908), or in the special or local law, any suit or other legal proceeding by a displaced person.

(a) where such suit or other legal proceedings instituted in pursuance of Section 4 and the period limitation expires or has expired on or after the 14th days of August, 1947, or

(b) where such suit or other legal proceeding is instituted otherwise than in pursuance of Section 4 in respect of a cause of action which arises or has arisen in a place now situate within the territories of Pakistan and the period of limitation expires after the commencement of the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act, 1950 may be instituted at any time before the day of expiry of this Act".

The period of limitation for suits which had expired on or after 14-8-1947 in case of clause (a) and after the commencement of the Amending Act in case of clause (b) was extended up to the date of the expiry of the Act, namely, up to 31-3-1952. Prior to the Amending Act the Displaced Persons (Legal Proceedings) Act, 1949 was enacted to make special provision of the relief of the displaced persons in respect of certain proceedings. Section 3 provided for restoration of suits, appeals, applications for a final order which had been dismissed for default of appearance or for failure to pay costs of service of process or to furnish security for costs, x x x x x which could be restored notwithstanding anything contained in the Indian Limitation Act on an application made within 90 days from the commencement of the Act x x x x x Then came the Act in which Section 36 was inserted and in which for the first time in the opening part of the Section in the non-obstante clause the words "in any agreement" appeared. Clause (b) was also a new provision, the necessity for inserting which arose because the legislature was making a provision with regard to those cases in which in case of insurance companies the policies contained agreements by reason of which the suit or the legal proceeding would become barred.

(13) It has now to be seen what is the true import and ambit of the provisions contained in Section 36. If the contention raised on behalf of the appellant Company is to be accepted then a suit of the present nature would fall within cl. (a) of the aforesaid Section as the suit would be one whereof the period of limitation had been extended by Section 8 of the Act of 1948. If it fails under (a) it will not fall under (b). This will, however, depend on a determination of the question as to which suits or legal proceedings of cl.(a) question as to which suits or legal proceedings cl.(a) applies. It appears quite clear that cl.(a) was intended to cover cases for which the period of limitation had been provided either by the Limitation Act or by any special or local law.

As pointed out previously, Section 8 of the Act of 1948 clause (a) contains no reference to any agreement and, therefore, it follows that clause (a) would not cover any case where an agreement provides or relates to period of limitation.

Clause (b) would certainly be applicable to the latter class of suits or legal proceedings and then the only question is whether a claim on the policy containing clause 19 as in the present case would fall under cl.(b). the language employed in cl.(b) is such that it seems to provide for extension of limitation only with regard to those policies in which there is a clause providing for the period of limitation different from the one provided by the Limitation Act.

But if it was intended to provide for such clauses only, clause (b) becomes wholly redundant in view of the provisions contained in Section 23 of the Contract Act because any condition or covenant in a policy directly curtailing the period of limitation as provided in the Limitation Act would be struck down by the aforesaid provision in the Contract Act. It would be useful at this stage to advert to some of the well settled principles which are applicable to such cases on the question of interpretation. In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, it was observed at p. 674 by Das, Ag. C.J. (as he then was), as follows:

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when--"Heydon's case" (1584) 3 Co Rep 7a was decided that--

"..... for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act;

2nd. What was the mischief and defect of which the common law did not provide;

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the common wealth; and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and "pro privato commodo", and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, "pro bono publico" ".

Under the law of the land with regard to limitation viz: Indian Limitation Act there was no provision for granting extension of time in case of original actions and suits similar to Section 5 of that Act. When the Displaced Persons (Institution of Suits) Act 1948 was enacted, Section 8 as it originally stood extended that benefit to the displaced suitors. This shows that the intention of the legislature was to give an opportunity to such persons to ask for extension of the ordinary period of limitation because of the special circumstances in which they had been (sic) intention appears to dominate to the entire subsequent legislation which has been referred to.

Now the Act has been enacted for the relief of a class of persons called the

Displaced Persons and the object was a remedial and beneficial one. The preamble, the provisions and the procedure show that such was the object and a beneficial interpretation must be put on the words used Union of India v. Sm. Tara Rani (1956) 58 Pun LR 518 . Their Lordships of the Supreme Court had also occasion to refer to this aspect of the matter in Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited, The following observations are pertinent:

"Now, the Displaced Persons (Debts Adjustment) Act is one of the statutory measure meant for relief and rehabilitation of the displaced person. It is meant for a temporary situation brought about by unprecedented circumstances. It is possible, therefore, to urge that the provisions of such a measure are to be treated as being particularly special in their nature and that they also serve an important nation purpose. It is by and large a measure for the rehabilitation of displaced debtors".

If a condition like clause 19 were to be allowed to be effective it would have stood as an unsurmountable obstacle in the way of displaced persons maintaining actions on their policies in strict compliance with its provision. It is difficult to envisage that the legislature while making provisions with regard to other onerous conditions in insurance policies in Section 18 of the Act would have omitted to take into consideration a condition or clause of this nature. In the present case the loss occurred on 7-9-1947. In terms of clause 19, the insured had to file a suit within twelve months or get the matter referred to arbitration within that period otherwise he was to forfeit all rights under the policy.

What has to be seen is whether in the circumstances leading to the displacement of various persons was it possible for them to comply with the requirements of clause 19. In the first place it may not be easy to know the exact date on which the loss occurred or the extent of the loss incurred at Lahore or other places in Pakistan while the displaced person himself was trying to find some shelter in India. His policies may have been lost or left in Pakistan and he would first have to write to the Company making his claim which the Company may take time to investigate. The completion of all preliminaries prior to institution of a suit would be well nigh impossible in the abnormal circumstances and conditions which prevailed during that period.

The insured would then have to rush to the Court although he may destitute and penniless with twelve months unless the Company agreed to accept his claim and incur a lot of expense on the same as reduced Court fee came to be payable only after the enactment of the Act. In normal circumstances and conditions it may be possible to submit to the rigour of the clause but it is almost inconceivable that ordinarily a displaced person would be able to comply with its requirements after having lost his hearth and home. When the legislature was intervening at every stage, extending the "Period" of limitation for filing of suits by displaced person, making provisions for restoration of suits or other proceedings dismissed for default and for setting aside ex parte proceedings started during the unprecedented period, it is conceivable that it would ignore that a great deal of

mischievous result and the object of rehabilitating displaced persons would be wholly defeated if they were to be deprived of their claims under insurance policies on account of non-compliance with clauses similar to clause 19.

It appears that the intention of the legislature in enacting Section 36 was to provide for nullifying the effect of such a clause in the agreement. That is the reason why it did not find place in Section 18 which dealt with other onerous conditions in insurance policies. But the draftsman of the statute while trying to embody that intention lost sight of the fact that according to certain judicial decisions which have been dealt with under point No. 1 a condition so worded as clause 19 would not have the effect of curtailing the period of limitation but would result in the extinction of the rights of the insured to derive any benefit from the policy.

The draftsman was in all probability labouring under the belief that conditions similar to clause 19 related to the period of limitation within which suits or other legal proceedings could be instituted and it was under that misapprehension that clause (b) of S. 36 was drafted. As has been rightly observed in *Bihar Subai Sunni Majlis Awkaf Vs. Sitaram and Another*, the manifest intention of a statute ought not to be defeated by too literal an adherence to its precise language. When the main object and intention of a statute is clear it must not be reduced to a nullity by a draftsman's unskilfulness or ignorance of the law. The following passage in *Maxwell on Interpretation of Statutes*, Tenth Edition, at page 229 is noteworthy:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended a construction may be put up upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar by giving an unusual meaning to particular words, by altering their collocation or by rejecting them altogether, under the influence, no doubt, of not irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning".

In the *Patna* case itself, if Section 5 of the Bihar Wakf Act had been grammatically construed no Majlis could ever be established or incorporated and the object and intent of the Act--the better administration of Wakfs--would have been wholly modified. The section was accordingly so construed by the Bench as if the phrase "by the State Government" was interpolated after the phrase "shall be established". It was considered to be a case of "*casus omissus*" and the Bench observed that the section must be so construed as to give effect to the undoubted object of the statute. In *Salmon v. Duncombe* (1886) 11 AC 627 it was laid down by their Lordships of the Privy Council at p. 634 as follows:

"It is however, a very serious matter to hold that when the main object of a statute is clear it shall be reduced to a nullity by a draftsman's unskilfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity or the absolute intractability of the language used".

The clearly expressed intention of Natal Ordinance No. 1 of 1856 was to give to any subject of the Queen resident in Natal the power of disposing by will according to English law of Property both real and personal with otherwise would devolve according to Natal law. Section 1 was operative for that purpose except that it concluded with the provision "as if such subject resided in England." The effect of which was to leave both the *lex situs* and the *lex domicilli* in operation, thus reducing the section to a nullity.

It was held that these words ought not to be so construed as to destroy all that has gone before and therefore should be treated as immaterial, and the powers conferred not being affected by the question of residence in England. In a recent decision in *Dewa Singh Vs. Lal Singh and Another*, Bhandari C. J. and Chopra J. had to consider whether a Letters Patent Appeal lay u/s 52 of Pepsu Ordinance No. X of 2005 BK against the decision of a Single Judge passed in the exercise of revisional jurisdiction of the High Court.

The section as it stood did not make any exception in case of judgment, decree or order made in exercise of the Civil or Criminal jurisdiction of the High Court as is done by clause 10 of the Letters Patent of our Court. In spite of that it was held that omission of the phrase in exercise of the revisional jurisdiction or "in the second proviso to the aforesaid section seemed to have been due to some accidental mistake of the draftsman. The rule contained in Maxwell's Interpretation of Statutes set out before was applied. The language of the second proviso was considered by no means clear and free from ambiguity; it was regarded to be faulty and ununderstandable in certain respects.

(14) The learned counsel for the appellant Company has relied on the equally well established rule that where the language of an Act is clear and explicit, it must be given effect to whatever the consequences may be. The intention has to be gathered from the language employed. Reference was made to the statement in Craies on Statute Law (Fifth Edition) at page 65:

"In a Court of Law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication".

The same rule was laid down in *New Piece Goods Bazar Co. Ltd., Bombay v. Commr. Of Income Tax, Bombay* AIR 1950 SC 165 , that the primary duty of the Court was to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration could be called in aid to find well settled principles but each case will have to be decided on its own facts and in the light of the other equally well settled rules of interpretation. Emphasis have

been laid by the learned counsel for the appellant Company on the marginal note to Section 36 also. In Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co., Bombay, it has been laid down that the marginal note cannot be referred to for construing the statute.

All the arguments that have been advanced on this point on behalf of the appellant Company can well be explained if it is borne in mind what had been stated previously that the draftsman of Section 36 did not seem to know the true effect and import of such conditions in a policy was interpreted by the Court and such a condition was taken to be one which related to limitation and which thus barred the institution of the suit or other legal proceedings. If any other hypothesis is taken into consideration the object of the legislation in question would be defeated which eventuality must be avoided by the Courts.

(15) The next consideration which impels me to hold that Section 36(b) would cover a case of this kind is that it is hardly possible to conceive that any Insurance Company functioning in India would retain a clause in an insurance policy after the enactment of Section 28 of the Contract Act which would be similar to the one which was held to be void in 11 Ind Cas 756. If the suggestion of the learned counsel for the appellant Company were to be accepted that Section 36(b) provides for such a condition only as was struck down in the aforesaid case no relief or benefit was being conferred on the displaced persons who had taken out insurance policies because such a condition would be clearly void u/s 28 of the Contract Act and there was no necessity for declaring it to be so. In other words, if the legislature intended to remedy the evil which was created by the existence of clauses similar to clause 19 it would not have contended itself merely by providing for making a clause ineffective which under the law of the land was altogether void.

(16) For all the reasons given above, it must be held that Section 36(b) read with the words "or in any agreement" in the first part of Section 36 was clearly intended to nullify the effect of clauses similar to clause 19 in so far as the claims by displaced persons concerning properties insured and left behind in Pakistan were concerned. In Great American Insurance Co., Ltd. v. Dina Nath (S) AIR 1957 Punj 152, Falshaw J. reached the same conclusion with which I am in respectful agreement.

(17) In this view of the matter the question No. 2 as framed by the Division Bench will have to be re-cast as follows:

"Whether by virtue of Section 36(b) of the Displaced Persons (Debts Adjustment) Act, 1951, read with the opening part of the Section, it was open to the plaintiff to institute the present suit within one year of the commencement of the Act in spite of clause 19 of the policy and whether by the aforesaid provisions the effect of the clause in question was nullified ?

(18) In the result the answer to the first question must be in the negative and to the second question as re-cast, in the affirmative.

G.L. Chopra, J.

(19) I agree.

A.N. Bhandari, C.J.

(20) I agree.

(21) Reference answered accordingly.