

(1898) 02 CAL CK 0014
In the Calcutta High Court

Poorno Chunder Ghose and Others

APPELLANT

Vs

Sassoon and Others

RESPONDENT

Date of Decision : 04-02-1898

Acts Referred:

Limitation Act, 1963 — Section 13

Citation : (1898) ILR (Cal) 496

Hon'ble Judges : Francis William Maclean, C.J.;Trevelyan, J;O''Kinealy, J;Ghose, J;Ameer Ali, J

Bench : Full Bench

Judgement

Maclean, C.J.—I had the advantage of bearing this case argued before the Division Bench of which I was a member, and I have had the further advantage now of having heard the case re-argued by the learned Advocate General, but the later arguments have not shaken the view I entertained and expressed when the case was before us on the previous occasion. The facts in this case have been found in the reference, and the short question we have to decide is, whether or not, having regard to Section 13 of the Limitation Act, and to the fact found in the reference that all the partners in the defendants' firm were absent from British India from February to November 1896, the time of such absence is to be excluded in computing the period of limitation prescribed for the suit. It is conceded by the defendants that, if such time be excluded, the suit has been instituted within the prescribed period, and is not barred by the statute.

2. It is found as a fact in the case, that the defendants had a place of business, I assume, in Calcutta, which was carried on by a manager, to the knowledge of the plaintiffs, and that the defendants' manager held a power-of-attorney which authorized him to institute and defend suits.

3. It is contended for the defendants that Section 13 only applies to oases where the jurisdiction is founded upon residence, and that it does not apply to cases in which the carrying on of a business in Calcutta is the basis of the jurisdiction, in other words, that the section does not apply, and could not have been intended

to apply, when the defendants, to the knowledge of the plaintiff's, have a place of business in Calcutta carried on by a manager, who is authorised to institute and defend suits, and when in fact, the defendants, to the knowledge of the plaintiffs, are represented in British India by a duly authorised agent. In support of this contention the case of *Harrington v. Gonesh Roy* (1884) ILR 10 Cal. 440 is strongly relied on by the defendants. I doubt, however, whether, having regard to the clear and precise language of Section 13, that decision is well founded, for it seems to me that, whatever may be the common sense of the decision, it can only be arrived at by interpolating into the section words that are not there, words to the effect that the time of absence is not to be excluded if the defendants are, during the period of personal absence, represented by a duly constituted agent in British India. Although we have been referred to the case of *Hawkins v. Gathercole* (1855) 6 DeG. M. & G. 1 as to the manner in which statutes are to be construed, I do not see my way to put the construction upon the section for which the defendants contend; if we did so, I think we should be rather legislating than adjudicating upon the section as it stands. It may well be that it would be expedient not to allow the time of absence from British India to be excluded, if the defendants be carrying on business in British India, and be represented by a duly authorised agent during such absence; but, if this change is to be made, it must be made by the Legislature. Reading the language of Section 13---a section be it remembered in a Limitation Act, the provisions of which must be construed strictly, and which, when set up as a defence, must not be extended to cases which are not strictly within the enactment, whilst exceptions or an exemption from its operation are to be construed liberally [(see per Lord Cranworth in *Roddan v. Morley* (1857) 1 DeG&Jon 1 (23)] reading, I say that section according to the ordinary significance of the words used, I think we are not warranted in holding that the section does not apply to cases where the defendants are, during the period of absence, carrying on business in British India through an authorised agent.

4. In other words, I do not see my way to getting over the clear and precise language of the section, feeling as I do that the words of the section are too strong against the view contended for by the defendants, and that we could only support that view by the interpolation of words to the effect I have stated above. This I do not think we are justified in doing. My opinion is supported by the case of *Atul Kristo Bhose v. Lyon & Co.* ILR (1887) Cal. 457 in which decision, notwithstanding the able criticism of the Advocate-General upon it, I concur, and is strengthened by the consideration that the words in the corresponding section of Act IX of 1871 as to service of a summons to appear and answer in the suit have been omitted in the present section.

5. With reference to the further argument which has been addressed to us to-day that Section 9 of the Limitation Act must be read in conjunction with Section 13 of the same Act, it is no doubt a cardinal rule of construction that in construing any Act of Parliament one may look at the whole Act to ascertain what the intention of the Legislature was, but to my mind, notwithstanding the decision to

which our attention has been called in the case of *Narrowji Bhimji v. Mugniram Chandaji* I.L.R.(1880) 6 Bom. 103 I am unable to see how Section 9, even if read with Section 13, can assist the defendants in the present case. Section 9 only says that "when once the period of limitation has commenced to run in any case, it will not cease to do so by reason of any subsequent disability or inability to sue." I do not see the application of that section to the present case. Here there is neither subsequent disability or, in my judgment, inability to sue. What disability or inability is suggested ? None so far as I have heard. In his work on the Law of Limitation Baboo Upendra Nath Mitter, the author, at page 240, gives this definition of disability and inability "Disability," he says, "is want of a legal qualification to act." "Inability is want of a physical power to act." I do not say these definitions are exhaustive: few definitions are, but so far as they go I am not prepared to dissent from them. It is perhaps unnecessary to prosecute this matter further, for I am unable to see where, in this case, the disability or inability existed. I think therefore that the Chief Judge of the Court of Small Causes was right in holding that the case came within Section 13 of the Limitation Act, and that the plaintiffs have brought their suit within time.

O'Kinealy, J.

6. I agree in thinking that the suit has been brought within time, and that the view taken by the Chief Justice of Section 13 of the Limitation Act is correct.

Trevelyan, J.

7. I agree entirely with what has fallen from the learned Chief Justice.

Ghose, J.

8. And so do I.

Ameer Ali, J.

9. I also agree with the learned Chief Justice.

Maclean, C.J.

10. We can only award such costs as the Rules allow; and this we do, to be paid by the defendants in the suit.