
(2002) 07 BOM CK 0057

In the Bombay High Court

Case No : Revision Petition No. 33 of 2002 in Writ Petition No. 168 of 1993

Pratapsing Ganpatrao Kadam

APPELLANT

Vs

Maruti Raghunath Todkar (through L.R"s.) and Others

RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14, 29(2)
Specific Relief Act, 1963 — Section 6

Citation : AIR 2003 Bom 11

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Y.S. Jahagirdar and P.D. Dani, for the Appellant; S.B. Deshmukh, holding for A.V. Antorkar, for No. 1B and R.L. Khadapkar, holding for R.G. Ketkar, for Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—Though ad interim relief in terms of prayer Clause (d) was granted on 3rd July, 2002 and notice was issued, there is no formal order admitting the review petition. Admitted, by consent heard forthwith.

2. The present application for review is filed against the order dated 1st February, 2001. The respondents who were the plaintiff before the trial Court had filed the suit u/s 6 of the Specific Relief Act. The suit came to be dismissed. That suit was filed beyond the period prescribed by Section 6 for instituting a suit for possession. The respondents before this Court contend, that they had earlier initiated proceedings by invoking the extraordinary jurisdiction of this Court. That petition was not entertained by this Court on the ground that there were disputed questions of fact. However, while disposing of the writ petition, this Court observed that petitioners were at liberty to take such other legal steps as are advised. It is based on this order, that the suit u/s 6 came to be filed. Along with the suit the plaintiffs-respondents herein also moved an application u/s 14

of the Limitation Act to exclude the period when the petition was pending before this Court. That came to be dismissed by an order dated 26-11-1992, on the ground that the suit against the defendant was not maintainable u/s 6 of the Specific Relief Act. That order was challenged before this Court by way of writ petition being Writ Petition No. 168/93. That petition came to be disposed of by the order of this Court dated 1st February, 2001. The order of the trial Court was set aside. The delay in filing the suit was condoned, to exclude the period when proceedings were pending before this Court. It is this order which is the subject-matter of the present review petition.

3. At the hearing of the petition, on behalf of the petitioners it is contended that Section 6 is self-contained provision, providing a period of six months for instituting a particular class of suits for possession. Considering that Section 14 of the Limitation Act would not be available. Schedule to the Limitation Act also does not provide for a period of limitation for filing a suit u/s 6. This being the case, provisions of Limitation Act would not be attracted. At any rate it is contended, that if the period of six months is to be considered, it cannot include the period when the proceedings taken out, by invoking the extraordinary jurisdiction of the High Court under Articles 226 and 227 of the Constitution were pending. Considering the language of Section 14 of the Limitation Act, facts on record would also show that the delay could not have been condoned. Reliance was placed on some authorities on behalf of the petitioner. They will be dealt with in the course of the arguments. It is further contended that while considering ratio of a judgment, it must be considered whether the issue now before this Court was in issue. It is only then, that the precedent or the ratio decidendi will be binding on this Court and not otherwise. On the other hand, on behalf of the respondents, learned Counsel contends that the order does not suffer from any error apparent on the face of the record, nor has any new material been discovered, which would warrant this Court review its earlier order. Even otherwise, it is contended that the issue involved is no longer res integra having been concluded by judgments of the Apex Court. Learned counsel in support of that has relied on various judgments. They will be dealt with in the course of the discussion. Under these circumstances it is contended that this is not a fit case where the order should be reviewed.

4. With the above background we may now deal with the issue in controversy. The question that will have to be considered is whether the provision of Section 14 of the Limitation Act is applicable to suits instituted u/s 6 of the Specific Relief Act. A corollary to that is that even if Section 14 is attracted, whether time taken in proceedings in the exercise of the extraordinary jurisdiction of this Court under Articles 226 and 227 can be excluded. These questions will be answered not necessarily in the order that they have been framed. We may consider Section 6, to the extent it is relevant. Section 6(1) and 6(2) of the Specific Relief Act read as under :--

Suit by person dispossessed of immovable property : (1) If any person is

dispossessed without his consent of immovable property otherwise than in due course of law he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought--

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

It is, therefore, clear that no suit can be entertained which is filed after the expiry of six months" period from the date of dispossession. Considering that the issue is whether the suit u/s 6 of the Specific Relief Act, 1963 can be filed beyond the period of six months set out in Section 6 of the Specific Relief Act.

Reference may now be made to Section 14(1) and (2) of the Limitation Act which reads as under :--

"Exclusion of time of proceeding bona fide in court without jurisdiction.--

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

Also relevant would be Section 29(2) of the Limitation Act which reads as under :--

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special law or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such, special or local law."

5. These provisions have been referred to as they are necessary for deciding the controversy in issue. According to the learned Counsel for the Review Applicant, what has to be excluded is the time taken in prosecuting another civil

proceeding, whether in the court of first instance, appeal or revision. It is, therefore, contended that proceeding invoking extraordinary jurisdiction would not fall u/s 14 of the Limitation Act. Even therefore, if Section 29(2) is to be considered, by holding that Section 6 of the Specific Relief Act is a limitation to file a proceeding for recovery of the possession, it would be of no assistance insofar as proceeding concerning the extraordinary jurisdiction. It is, therefore, submitted that the order necessitates a review. The argument is impressive and would appear at the first instance to be attractive. However, the issue is no longer *res integra* let us, therefore, first consider the judgments cited to find out whether that issue stands concluded.

The issue whether Section 14 would be attracted to the proceeding under Article 226 came up for consideration before the Apex Court in *Rameshwarlal Vs. Municipal Council, Tonk and Others*, . That was a suit filed by an employee of a Municipal Council on the ground that he was denied salary. The High Court refused to entertain the writ petition on the ground that the claim is recoverable by civil action and as such the discretionary powers under Article 226 of the Constitution is not exercisable. That order came to be confirmed by the Division Bench of that Court. A suit came to be filed. By then, the time to file the suit was beyond the period prescribed by the Limitation Act. Hence, application was made u/s 14 of the Limitation Act, 1963. The Apex Court when the matter came up for consideration, has held that normally for application of Section 14, the Court dealing with the matter in the first instance, which is the subject-matter in the later case, must be found to have lack of Jurisdiction or other cause of like nature to entertain the matter, however, as the High Court has declined to grant relief relegating the petitioner to a suit in the civil court, the petitioner cannot be left remediless. It is in these circumstances, that it was held that Section 14 would be attracted. The issue in issue is not "when the court would exercise its discretion." The issue in issue is whether Section 14 would apply to exclude time taken in prosecuting proceedings under Article 226. The Apex Court has answered that in the affirmative. It is, therefore, clear from that judgment that Section 14 would also be attracted to civil proceeding, including proceedings in the exercise of extraordinary jurisdiction. Even otherwise, to attract Section 14, the proceeding must be a civil proceeding and must be either in the court of first instance, appeal or revision. There is no reason why proceeding in the first instance, invoking the extraordinary jurisdiction of the court would not be a proceeding in the first instance. They are admittedly civil proceedings.

6. We then come to the next issue whether provision of Section 14 would apply to suit filed u/s 6 of the Specific Relief Act. Reliance for that purpose is placed, in the judgment of the Apex Court in *Beharilal v. Bhuri Devi (Smt.)* . At the outset on behalf of the petitioners it is contended by their learned Counsel, that time taken for proceeding u/s 145 of Cr.P.C, cannot be excluded considering the language of Section 14 of the Limitation Act. In that case a suit came to be filed u/s 6. Time taken in proceedings u/s 145 of Cr.P.C. was sought to be excluded in filing the suit, considering Section 14 of the Limitation Act. Whether Section 14

would be attracted to the proceeding u/s 145, Cr.P.C, was answered. What was considered was whether the time taken in pursuing the proceedings could be excluded. In answering the issue, the Apex Court observed as under (para 10 of AIR) :--

"The next question is whether the decree for possession could be granted in favour of the appellant. It is true that the suit was not filed within six months u/s 6 of the Specific Relief Act. But, as seen earlier, the proceedings u/s 145 were initiated at the instance of the respondent Ram Gopal and were pending for a long time until the revision was dismissed by the High Court giving liberty to the appellant to file the suit for possession. Under these circumstances, the suit came to be filed immediately after the proceedings came to a terminus, no doubt, after Issue of notice to the Government u/s 80, CPC and after expiry of 60 days" time required u/s 80, CPC. Under these circumstances, it must be concluded that in substance the suit is one u/s 6 of the Specific Relief Act."

Now considering the law whether the ratio of the judgment would be attracted. Let me advert to the contention raised on behalf of the review applicant by their learned counsel, by placing reliance on the judgment of the Apex Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, . A Constitution Bench of the Apex Court therein was considering judgments apparently in conflict on the interpretation of time to be considered for issuance of declaration u/s 6 of the Land Acquisition Act or the declaration, being struck down. While so considering the Apex Court in para 8-A of the Judgment observed as under :

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact-situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, and said Lord Morris in *Herrington v. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

Relying on this paragraph it is sought to be argued that this Court whilst considering the judgment in the case of *Beharilal v. Bhuri Devi* (supra), must consider the context in which it was answered. That perhaps would have been possible, if the issue of Section 6 and applicability of Section 14 had not been considered. Once it was considered it stands concluded as it is not for this court to go into the issue. The view taken by the Apex Court is binding on this Court. It may be noted that proceeding u/s 145, Cr.P.C. are strictly not purely criminal proceedings. The Apex Court has held that provisions of Section 14 of the Limitation Act would be attracted to a suit filed u/s 6 of the Specific Relief Act. Proceeding u/s 145, Cr.P.C. are initiated when there is likely to be breach of peace over possession of property. The provision of the Cr.P.C. are invoked to maintain peace and possession of the property, till a competent civil court

decides the issue as to who is entitled to possession.

It is true that some other judgments were cited including the judgment in Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, . That judgment would really be of no assistance in considering the controversy involved in the present suit. The issue there was, that even if a suit u/s 6 was not maintainable, a plaintiff could still maintain the suit based on possessory title. The issue to be decided in such a suit, would be a different issue then in a suit u/s 6 of the Specific Relief Act where mere possession is sufficient subject to some limitation. At this stage. I may refer to the judgment of the Gujarat High Court relied upon by the learned Counsel on behalf of the respondent in the Review Petition, in the case of Bai Dahi Vs. Amulakhbhai Gambhirbhai Barot, . A learned single Judge of the Gujarat High Court was considering the issue of application of the provision of the Limitation Act to file a suit u/s 6 of the Specific Relief Act. The learned Judge has set out the history of the provisions of the old Specific Relief Act, the new Specific Relief Act as also the provisions pertaining to limitation. This can be seen from consideration of paragraph 8 of the judgment. After considering the judgments, the learned Judge held that the provisions of the Limitation Act would be applicable. Section 6, it was held, was a special law prescribing a period of limitation and considering that Section 29(2) would be attracted. It is no doubt considered on behalf of the petitioner in the review application, that Section 6 is not a provision for limitation. It is not possible to so accept that contention. Section 6 does not extinguish a right, it only provides a period of institution of a suit based on possession. Once that be the case, it is a provision of limitation for instituting a suit and Section 29(2) would be attracted. It would have been otherwise if it was considered to be a provision extinguishing a right. Learned counsel have also relied on some other judgments of the other High Courts. These really would be no aid in answering the issue, which have arisen here. To my mind, considering the judgment of the Apex Court and the law declared, the judgments of the other High Courts need not be gone into.

7. Considering the above and the judgments of the Apex Court, the order does not suffer from any error apparent on the face of the record and in the light of that the Review Application stands dismissed.

Learned Counsel for the Revision Applicant prays that the orders be stayed. The writ petition is of the year 1993. The suit was filed in the year 1992. The direction was given for disposing of the suit within 2 years. Considering that, to my mind it, would not be proper to stop the proceedings. The court to proceed with the matter but not to pass judgment, for a period of 12 weeks from today.

8. Certified copy expedited.