

(1954) 05 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 12 of 1953

Punjab Commerce Bank Ltd.

APPELLANT

Vs

Brij Lal Mahandi Ratta

RESPONDENT

Date of Decision : 26-05-1954

Acts Referred:

Banking Companies Act, 1949 — Section 45D

Citation : AIR 1955 P&H 45 : (1955) 25 CompCas 72

Hon'ble Judges : Bhandari, C.J;Bishan Narain, J

Bench : Division Bench

Advocate : K.L. Gosain, for the Appellant;

Final Decision : Dismissed

Judgement

Bishan Narain, J.—This is a Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of Soni J. dismissing the suit of the Punjab Commerce Bank Limited (in liquidation), Amritsar, against Shri Brij Lal Mahandi Ratta proprietor of Baj Hosier, Attari Bazar, Jullundur City, for the recovery of Rs. 10,269/12/6 as barred by time.

2. The facts of the case are that the defendant had a cash credit account with the Lahore Branch of the plaintiff Bank and on 9-10-1946 the defendant executed a promote in favour of the Bank for a sum of Rs. 10,000/-. Balance due to the plaintiff Bank on 1-1-1947 was Rs. 10,163/6/9. On 17-2-1948 an application for winding up of the Bank was made in this Court and by his order dated 11-10-1950 Harnam Singh J. ordered the winding up of the Bank and appointed Shri Ram Narain Vermoni as official liquidator.

On 31-3-1952 the present suit was filed in this. Court u/s 45-B, Companies Act, 1949, as amended by Act 20 of 1950. In the plaint the Bank claimed that the suit was within time as Article 85, Limitation Act, was applicable to the dealings between the parties and it was further alleged that the cause of action had accrued to the plaintiff on 9-10-1946 and that the suit was within time from

various dates of part payments and acknowledgments and also because of the Displaced Persons" (Institution of Suits and Legal Proceedings) Amendment Act 68 of 1950 and the provisions of the Banking Companies Act. On 11-7-1952 the following issues were framed by Harnam Singh J., but we are concerned in this appeal with Issue No. 1 only:

1. Whether the suit was within time?
2. Whether the Bank was entitled to the interest charged? And
3. Whether the defendant was entitled to instalments?

By his judgment dated 2-12-1952 Soni J. dismissed the suit as barred by time holding that the dealings between the parties did not come within Article 85, Limitation Act, and that under Article 57 the limitation expired on 9-10-1949. He further held that neither acknowledgments nor Section 45 of the Banking Companies Act was of any avail to the plaintiff.

3. Mr. Gosain the learned counsel for the plaintiff Bank in appeal did not press before us the grounds that were urged by his client before Soni J. to bring the suit within time. He, however, urged that since the decision of Soni J. the Banking Companies Act of 1949 has been further amended by Act 52 of 1953 which came into force on 30-12-1953 and he urged that this Amending Act of 1953 is retrospective in effect and applies to all suits which were pending on the date that the Amending Act of 1953 came into force and inasmuch as an appeal is a rehearing of the case the suit is still within time as the Amending Act is applicable to the case on the date of the decision. He further urged that in any case the law of limitation being a purely procedural law the Amending Act of 1953 should be applied to this case at the time of the decision of the suit.

4. The question therefore arises whether a suit which was admittedly barred on the date of its institution could be held to be within time in view of the Amending Act of 1953. In the present case the winding up proceedings were started on 16-2-1948 under the Companies Act, 1913. On 16-3-1949 the Banking Companies Act, 10 of 1949, came into force, but it is conceded that this Act does not affect the question now under consideration. Act 10 of 1949 was amended by the Banking Companies (Amendment) Act, 20 of 1950 and in this Amending Act Part IIIA was inserted which by Section 45-A gave exclusive jurisdiction to the High Court to entertain any matter relating to or arising out of the winding up of a banking company, and by Section 45-B the High Court was given exclusive jurisdiction to decide all claims made by or against any banking company. Section 45-F of this Amending Act, 20 of 1950 reads as follows: "Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 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 winding up of the banking company shall be excluded." It was conceded before us that this Section 45-F did not bring the present suit within time. The Banking Companies Act,

1949, was further amended by the Banking Companies (Amendment) Act, 52 of 1953 and by Section 10 of this Amending Act a new Part IIIA was substituted for the previous Part IIIA. This Amending Act of 1953 came into force on 30-12-1953 long after the decision of the suit by Soni J. Under the new Part IIIA the exclusive power of the High Court to decide all claims was maintained.

By Section 45-C the High Court was given the power to transfer all cases pending in any other Court immediately before the commencement of the Banking Companies (Amendment) Act of 1953 if the High Court thought fit to do so after giving an opportunity to the parties concerned to show cause why the proceedings should not be transferred to the High Court. If such a case was not transferred then u/s 45-C (4) the proceedings were to be continued in the Court in which they were pending at the time that the Amending Act came into force. Section 45-O of this Amending Act reads as follows:

"(1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 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. (2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908) or Section 235 of the Indian Companies Act, 1913. (7 of 1913) or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from-any director of a banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims.

(3) The provisions of this section, in so far as they relate to banking companies being wound up, shall also apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953."

I have carefully read this section and in my opinion Section 45-O is not retrospective in effect expressly or by necessary implication and further there is nothing in this section so retrospective in effect as to revive a claim which before that date had become unenforceable by lapse of time. Section 45-O (1) lays down that 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, and Sub-section (3) makes Sub-section (1) applicable to a banking company in respect of which a petition for the winding up was presented before the commencement of the Banking Companies (Amendment) Act, 1952.

It will be noticed that neither Sub-section (1) nor Sub-section (3) makes any mention of a pending suit at the time when the Amending Act of 1953 came into force although the legislature does provide u/s 45-C provisions for transferring such a suit to the High Court. In the absence of any specific mention of pending suits it is not possible to hold that the section would apply to them. Sub-section (3) is to a certain extent retrospective in effect because it makes Sub-section (1) applicable to those cases in which a petition for winding up had been presented before the Amending Act, 1953 came into force, but this retrospective effect cannot be extended to claims or suits pending in the High Court at the time that the Amending Act came into force.

It is well established that a retrospective operation is not to be given to a statute so as to impair an existing right unless the effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. Applying this test I hold that Section 45-O does not apply to pending suits.

5. The question, however, arises whether the Amending Act, 1953 can be made applicable to the present suit at the present stage because a statute of limitation being a law of procedure must be considered to be retrospective in its operation and must be applied to all suits pending in the trial Court or under appeal. In my opinion when once a right to sue has become barred under any earlier Act prescribing limitation for enforcing the right, no change of the law can revive that right after it has become barred by time, unless the later Act is retrospective in its effect and I have already held that the Amending Act in question has no such effect. Their Lordships of the Privy Council in -- "Appasami Odayar v. Subramanya Odayar" 12 Mad 26 (A), have laid down the law in these terms:

"By Section 1, Clause 13 of Act 14 of 1859 a suit for a share of the family property not brought within twelve years from the date of the last participation in the profits of it would be barred. This Act continued in force until 1-7-1871, when Act 9 of 1871 came into force. Consequently if there was no participation of profits between 1837 and 1871, the suit would be barred, and the later Acts for limitation of suits need not be referred to. If they altered the law, they would not revive the right of suit."

Further, their Lordships of the Privy Council have stated the law, at p. 56 in -- AIR 1942 54 (Privy Council)

"Ordinarily, the suit would be governed by Limitation Act 9 of 1908, which is the law in force when the suit was instituted; but if the defendants are able to show that the right or action had become barred under the Act of 1859 then the title that they had acquired could not be defeated by the subsequent Limitation Acts."

Mr. Gosain urges that these cases relate to immovable property and therefore are not applicable to the present case in view of Section 28, Limitation Act, 1908, where a right as distinct from remedy is barred on expiry of limitation. It may,

however, be pointed out that the Limitation Act of 1859 had no provision corresponding to Section 28 of the 1908 Act and even then their Lordships of the Privy Council held that the 1859 Act in preference to the later Amending Acts was applicable. In my opinion the statement of law given in the two cases mentioned above fully applies to the facts of the present case and for the period of limitation and its computation we must look to the Limitation Act, 1908. I am further supported in my view by decisions u/s 20, Limitation Act. Section 20, Limitation Act, was amended by Act 16 of 1942.

Section 2 of the Amending Act reads:

"In section 20 of the Indian Limitation Act, 1908, for the substantive part of Sub-section (1) the following shall be substituted namely:

(2) Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorised agent, a fresh period of limitation shall be computed from the time when the payment was made."

Section 2 of the Amending Act substituted a new Sub-section (1) for the substantive part of the old Sub-section (1) just as Part IIIA was substituted by the 1953 Amending Act. Thus the cases relating to Section 20 after its amendment in 1942 are fully applicable to the present case. In the case reported, in -- "Peary Lal v. Sola Gir" AIR 1946 All 68 (C) Malik J. held that if the right to sue had already been barred by the provisions of the Limitation. Act then in force, then unless there was something in the later Act which could be deemed to apply retrospectively to revive claims which had already become barred, the new Act could not be availed of for the purpose of saving limitation, and for this purpose Malik J. relied on "12 Mad 26 (A)" and -- "Sachindra Nath Roy v. Maharaj Bahadur Singh" AIR 1922 PC 187 (D) discussed above. A similar view was taken in Jagdish Prasad Singh Vs. Saligram Lal and Others, and -- AIR 1949 64 (Orissa)

6. For these reasons Section 45-O is not applicable to the present suit and therefore as admitted by Mr. Gosain counsel for the plaintiff that the suit under the general law of limitation became barred by time on 9-10-1949, it must be dismissed. The result is that this appeal is dismissed but in the circumstances of the case I would leave the parties to bear their own costs.

Bhandari, C.J.

7. I agree.