

(1965) 04 CAL CK 0016
In the Calcutta High Court
Case No : Civil Rule No. 3867F of 1964

Ram Prosad Ramnarain

APPELLANT

Vs

Bejoy Kumar Sadhukhan

RESPONDENT

Date of Decision : 09-04-1965

Acts Referred:

City Civil Court Act, 1953 — Section 8(2)
General Clauses Act, 1897 — Section 8, 8(1)
Limitation Act, 1963 — Article 116, 10, 12, 14, 16

Citation : AIR 1966 Cal 488 : 69 CWN 921 : (1966) 1 ILR (Cal) 635

Hon'ble Judges : P.N. Mookerjee, J;D. Basu, J

Bench : Division Bench

Advocate : Jitendra Kumar Sen Gupta and Asoke Kumar Sengupta, for the Appellant; Bhagabati Prosad Banerjee, for the Respondent

Final Decision : Allowed

Judgement

P.N. Mookerjee, J.—This Rule, which was obtained inter alia u/s 5 of the Limitation Act, raises some questions of importance. The points, are more or less pf first impression and require careful consideration, depending, inter alia, as they do, on the construction of the relevant statutes.

2. The Rule was obtained under the following circumstances:

The petitioner was the defendant in Commercial Suit No. 304 of 1961 of the Third Bench of the local City Civil Court, brought by the plaintiff opposite party for recovery of Rs. 2,678-03 np. as price of goods sold and interest. That suit was decreed by the learned trial Judge on December 23, 1963. The decree; however, was actually signed on January 17, 1964. An application for copies of the judgment and the decree appears to have been made oil January 21, 1964, and the copies were made ready and taken delivery of on February 22, 1964. On the next day, which was a Sunday, the petitioner saw the learned Advocate, Sri Asoke Kumar Sengupta, with a view to 6le an appeal from the above decree and he was told by the said learned Advocate that the last day for filing the same

would be March 20, 1964. The appeal was actually filed on March 9, 1964. On August 1 following, the learned Stamp Reporter of this Court reported that the said appeal was time-barred, as, to it, the new Limitation Act applied and, under the same, after necessary and allowable exclusion or deduction of time for copies for purposes of computation of limitation, the appeal would be out of time by 14 days. The memorandum of appeal was thereafter returned to the learned Advocate on September 24, 1964, and it was refiled, in this Court, on the 28th following, with the present application, upon which the instant Rule was issued on November 11, 1964.

3. Three points were raised by Mr. J.K. Sengupta, the learned Senior Advocate for the petitioner, in support of this Rule, in the first place, he argued that, to the above appeal, although it was filed on March 9, 1964. that is, after the new Limitation Act had come into operation, and although the decree under appeal was signed on January 17, 1964, which was also after the coming into operation of the said new Act, the old Limitation Act would apply as the decree had actually been passed on December 23, 1963, that is, prior to the coming into operation of the new Act and during the continuance of the old, and, under the said old Act, the appeal would be within time on a proper computation of limitation after allowing necessary or allowable deduction of time. Under this head, Mr. Sengupta further argued that, as this was an appeal From the local City Civil Court and would thus be governed by the City Civil Court Act, which, in its relevant section (Section 8(2)(b)) refers to the old Limitation Act, which reference has not been amended by the substitution of the new Limitation Act in place of the old, whatever may be the position with regard to other appeals, that is, appeals not governed by the City Civil Court Act, the instant appeal would be governed by the old Limitation Act.

4. Mr. Sengupta next contended that, even if the new Limitation Act applied, the present appeal would come u/s 30 of the said Act and would be protected by it as it would be well within time under the terms of the said section.

5. Lastly, Mr. Sengupta urged that, in any event, this was pre-eminently a case for condonation of delay, if any, in the matter of filing of the appeal in question u/s 5, be it of the old Act or of the new.

6. Each of the above submissions requires careful consideration. As we have said above, the old Limitation Act was sought to be requisitioned by Mr. Sengupta upon two broad grounds

"1. that the new Act is not retrospective and cannot affect the right of appeal, which vested in the appellant on the passing of the decree on December 23, 1963, when the old Limitation Act was in force and the new Limitation Act had not yet come into operation, that is, prior to the coming into force of this new Act, and the said appeal thus could be filed within the time, which would have been available then for the purpose, that is, under the old Limitation Act; and (2) that, to an appeal under the City Civil Court Act, the old Limitation Act and not

the new Act would apply because it is the former Act and not the latter, which is referred to in the relevant section [Section 8(2)(b)] thereof, and the same has not been replaced or substituted by the new Act."

7. On the first of the above two submissions, it is enough to say that, though the right of appeal is a substantive right, the right to He an appeal within a particular time is not so. As was said by Sulaiman A. C. J., as he then was, in Baijnath Vs. Doolarey Hajjam, ,

"although the right of appeal is a substantive right, no one has a vested right in a period of limitation. It cannot be said that there is any substantive right in an appellant to wait for a particular time before thing the appeal. Rules of limitation are prima facie miss of procedure and unless there is something in the rules which justifies contrary inference, the rules applicable to an appeal or an application would be rules which are in force at the time the appeal or the application is filed. It has been held in numerous cases that a statute of limitation is retrospective in its operation and governs all proceedings from the moment of its enactment, even though the cause of action might have accrued before the Act came into existence (Vide Soni Ram v. Kanhaiya Lal (1918) 40 Ind App 74 (PC))".

8. On this part of the case, Mr. Sengupta relied, in particular, upon Gopeswar Pal v. Jiban Chandra Chandra AIR 1914 Cal 808 : ILR 41 Cal 1125 at p. (FB), but that case is clearly distinguishable, as, there, it would not have been possible for the appellant to file the appeal under the new or amending Act and law certainly would never impose an impossible condition upon a litigant Indeed, their Lordships made it clear that, but for the above distinctive feature of the case, the new or the amending Act would have applied to it.

9. In this connection, the following passage may be quoted from their Lordships judgment:

"Here the plaintiff at the time when the amending Act was passed had a vested right of suit, and we see nothing in the Act as amended that demands the construction that plaintiff was thereby deprived of a right of suit vested in him at the date of the passing of the amending Act. It is not (in our opinion) even a fair reading of Section 184 and Schedule 3, Ben. Ten, Act, as amended, to hold that it was intended to impose an impossible condition under pain of the forfeiture of a vested right and we can only construe the amendment as not applying to cases where its provisions cannot be obeyed. The law as amended may regulate the procedure in suits in which the plaintiff could comply with its provisions, but cannot (in our opinion) govern suits where such compliance was from the first impossible. Its effect is to regulate, not to confiscate. There are thus two positions; where, in accordance with its provision a suit could he brought after the passing of the amendment, it may be that the amendment would apply; but where it could not, then the amendment would have no application. The fact in (1913) 40 Ind App 74 (PC) did not involve the second of these positions, and we

therefore hold that the decision of the majority in *Manjuri Bibi v. Akkel Mahmud* 19 Ind Cas 793 (Cal.) so far as it relates to that position, has not been affected by the judgment of the Privy Council in (1913) 40 Ind App 74 (PC) though it may perhaps be affected if and so far as it lays down a similar rule for suits within the first of the two positions. This however is a point not before us and on it therefore we do not express any definite opinion." (Vide pp. 810-11 of the AIR report and pp. 1141-42 of the ILR).

10. The same was also the view in *Maganlal Kunverji v. Mulji Budha*, AIR 1951 Kutch 15 and *Manjuri Bibi v. Akkel Mahmud* 17 Cal WN 889 too, although, from the observations, quoted above, from *Gopeshwar Pal Vs. Jiban Chandra Chandra*, , it may appear that (1913) 17 Cal WN 889: 19 Ind Cas 793, contained a more extreme view on the point, lending support to Mr. Sengupta's present contention, though, of course, the same was held there to have been overruled by the decision of the Privy Council in *Soni Ram's case*. (1913) 40 Ind App 74 (PC) supra. It has to be remembered, however, that the above reading of (1913) 17 Cal WN 889 and of the effect on it of *Soni Ram's case*, supra, was not, as expressly stated by their Lordships in *Gopeshwar Pal's case*, supra, in the concluding lines, quoted above, a final one and, if we may respectfully point out (1913) 17 Cal WN 889 supra, did not really contain any extreme or broad proposition to the effect that the new law would not apply to any case where the cause of action had accrued prior to its enactment but only laid down that, where to apply the new law would be to destroy immediately such pre-existing causes of action, the Courts would be slow, in the absence of clear, strong and imperative indications therein to the contrary, to give it such retrospective effect. That this was so will be abundantly clear from the two ruling judgments of *Mookerjee, J.* and *N.R. Chatterjea, J.* Thus *Mookerjee J.*, observed at pp. 913-14 of the report that:

"To hold that this amended provision applies to suits in respect of dispossession which has taken place more than two years before the enactment of the new law, is to maintain the position that the Legislature intended the litigant to accomplish what is impossible in the nature of things for him to do; in other words, to prescribe that his rights are forthwith extinguished without previous notice and without opportunity afforded to him to escape the operation of the new law. To put the matter briefly, if this view is to be supported, we must hold that the Legislature acted in a most unreasonable manner i.e., that the Legislature intended to penalise all under-raiyats who had been dispossessed by their landlords more than two years before the commencement of the new statute, merely because they had waited to enforce their rights in a Court of Justice within the period of limitation allowed at that time by the Legislature. There is, in my opinion, considerable force in the contention that the Legislature may be deemed to act as a body of reasonable men and that the presumption is that they did not intend to inflict needless and unjustifiable hardship upon a large body of innocent litigants. As Lord Campbell, C.J., observed in *Cornill v. Hudson*, (1857) 8 E and B 429 the proper way to construe an Act of Parliament is to try

and find out the intention of the Legislature; if there is any room for doubt, we must assume that the Legislature did not intend to give the statute a retrospective operation, where such retrospective operation upon pre-existing causes of action would result in hardship to the litigant. In ray opinion, the cardinal and fundamental point in the case before me is that the Eastern Bengal and Assam Tenancy Amendment Act of 1908 parte into operation the very moment it became law: consequently, if it were taken to affect pre- existing causes of action, the effect would be absolutely to bar at once all actions where the cause of action had accrued more than the limited time before the statute was passed. In a case of this description, the statute of limitation ceases to be a statute of mere procedure and operates to the destruction of existing and enforceable rights."

and, further down, at p. 915:

"But whatever controversy there may be as to the particular mode of interpretation to be adopted, there is a singular uniformity of judicial opinion that statutes coming into operation immediately they become law and declaring generally that an action must be brought within a limited time after accruing will not be construed retrospectively so as to bar causes of action which accrued more than the limited time before the statute was passed."

and, later on, again, at pp. 916-7 that:

"The essence of the matter is that when a new statute of limitation which shortens the period for institution of suits and comes into force the moment it becomes law, is sought to be made retrospectively applicable to causes of action which have accrued earlier than the length of time prescribed it ceases to be a statute of mere procedure and serves to destroy pre-existing and enforceable rights. Under circumstances like these, the Court, when invited to hold that the new statute has retrospective operation, will struggle against the acceptance of such an interpretation, unless there is the clearest indication that the Legislature intended to destroy existing rights without notice and thus to penalise innocent litigants." (Vide pp. 916-7) (Per Mookerjee, J.)

And Chatterjea, J. also held that statutes of limitation arc prima facie retrospective except where such construction would cause hardship or injustice by "denying altogether" enforcement of accrued rights. I have underlined the words "denying altogether" as those words underlie the idea which runs throughout the learned Judge's discussion of this aspect of the matter and the learned Judge, in explaining himself on the above, expressly observed at p. 900 of the report that:

"There is no hardship or injustice when the plaintiff whose cause of action is not barred when the period of limitation is altered by a new Act, and who has time even after the passing of the new Act and will not institute the suit within the shorter time prescribed by the new Act."

Moreover, the new Limitation Act, in its Section 30, as interpreted by us hereinbelow, contains a saving clause, which, on well-recognised principles, sufficiently aids its construction in favour of retrospective operation and sufficiently excludes the contrary inference.

11. In the premises, Mr. Sengupta's present submission must be held not to have any support either from principle or authority and, accordingly, it must be rejected.

12. As to the second of the above two submissions of Mr. Sengupta, it will probably be enough to refer to Section 8(1) of the Indian General Clauses Act, which is in these terms :

"Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

There can be no doubt that the new Limitation Act 1963, is a re-enactment of the old, with certain modifications, upon a repeal of the same. It is thus a case of repeal and re-enactment with modification and the section directly applies to substitute it in place of the old Act in all incorporating statutes by reference or otherwise. (Vide in this connection *State of Uttar Pradesh Vs. M.P. Singh*, S.P. Sabharwal and R.K. Lahri, ; see also *Hindustan Journals Ltd. v. Dinesh Awasthi Ramswaroop Awasthi* AIR 1957 Madh B 125; *Radha Kishan Ramnath v. State*. 61 Bom LR 711; *Moosa Kazimi Vs. K.M. Sheriff and Another*, and *Raj Kishan Jain Vs. Tulsi Dass etc.*,).

13. Even apart from the section, the principle, underlying it (which is of general application and is to be found also in Section 38(1) of the English Interpretation Act) applies with the same or a similar effect (Vide *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, .) The section and its underlying principle applies to all cases of repeal and re-enactment with or without modification and such cases should not be confused with but should be kept distinct from cases of mere repeal or addition of a new provision, which fell for consideration in AIR 1931 149 (Privy Council) . To such a case, obviously, the above section or principle had no application and no wonder that their Lordships did not refer to the same. There was also a further element in that case in that it related inter alia to an amendment, which ruled out, on its proper construction, any application of the above principle. In these circumstances, their Lordships held that the added Section 26(2) in 1921 to the old Land Acquisition Act of 1894 could not be attracted to the Calcutta Improvement Act, in which the said Land Acquisition Act of 1894 had been incorporated by reference with certain modifications. That case, therefore, is clearly distinguishable from the present and does not, in any way, militate against the view that, on the above statutory provision (Section 8(1) of the

Indian General Clauses Act) and its underlying principle, the new Limitation Act will apply to Civil Court Act and should be deemed to be substituted in place of the old in Section 8(2)(b) of the same. Mr. Sengupta's submission to the contrary is, accordingly, rejected.

14. One word here on our recent decision in *Naraindas Daulatram Kripalini v. New India Assurance Co. Ltd.*, (1965) 69 Cal WN 318 which also is plainly distinguishable and has no manner of application to the instant case. There, in an amendment, made to the old statute (The West Bengal Premises Rent Control (Temporary Provisions) Act, 1950) by or through the referring statute (The City Civil Court Act), the new statute (The West Bengal Premises Tenancy Act, 1956) was sought to be read or substituted, for which course no authority could be found, either in statute or principle or judicial decision. There, further, as found by us, the relevant terms of the new statute in question would have militated against its substitution in place of the old in the referring or amending statute.

15. Thus both principle and authority AIR 1931 149 (Privy Council) would have been opposed to the reading or substitution of the new statute in place of the old in the referring statute there and, accordingly, the argument in mat behalf was rejected. We may add also that the exception or reservation Clause "unless a different intention appears" in the otherwise relevant Section 10 of the Bengal General Clauses Act, corresponding to the above Section 8(1) of the Indian General Clauses Act, would have, in the above context, apart from anything else, been sufficient to rule out the application of the said section or its underlying principle in the said case and to lead to the same result or conclusion.

16. The position thus is clear and becomes fully established that, to the instant appeal, the new Limitation Act would apply. Under this new Act, it was urged by Mr. Sengupta that the present case would be covered by Section 30 of the same and would thus be protected, there being no question that, if the said section applied, the appeal before us would be well within time, it having been filed within ninety days from the coming into operation of the new Limitation Act and also within limitation under the old Act as computed thereunder, and thus within time under the section, whichever of the said two periods be earlier. This argument seems to be sound. Whatever be the meaning of the expression "the period of limitation" in the first part of the section (Section 30) under the definition Section 2(j), there can be no doubt that the other or later expression "period of limitation prescribed by the Indian Limitation Act, 1908", used in the said Section (Section 30), means the period prescribed by the said Act, that is, as computed thereunder in the light of Section 3 thereof or, in other words, Sections 4 to 25 (inclusive), as mentioned therein.

17. Apart from authorities (Vide, in this connection *Mari Naganna and Another Vs. Peruri Krishnamurthi*, ; *Dhanna Mistry Vs. Bengal Nagpur Railway Co., Ltd.*, and *Chheda and others Vs. Baldeo* and another citing and relying on inter alia the Privy Council decision in AIR 1935 85 (Privy Council) ; see also *Thimmanna Bhat v. Advanthaya* AIR 1940 Mad 908 and *Bhiwani Cloth Mills, Ltd. v.*

Parmeshari Doss AIR 1947 Lah 168, this new statute itself gives the clue to the above connotation in its next Section 31 where the same expression "period of limitation prescribed under the Indian Limitation Act, 1908" is used and which, obviously and necessarily, carries the above meaning. Indeed, the statute, in Section 31, contains its own dictionary on the point, although the definition section (Section 2(j)) may not directly cover it. This interpretation is also aided by the definition of "prescribed period" in the said Section 2(j) of the new Act and by the well-known principle that where the language of a law of limitation is ambiguous it should be construed strictly against barring rights, that is, in favour of the right to proceed.

18. In the above view, upon this ground alone, the present Rule would succeed.

19. We are also of the view that, apart from what we have said above, the petitioner is entitled to have its appeal registered, if otherwise in form, u/s 5 of the Limitation Act after condonation of delay, if any, on the uncontroverted statements, made or contained in its petition. Any other view would be unjust and unreasonable and would be opposed to a sound exercise of our judicial discretion under the section.

20. In the premises, we make this Rule absolute and direct that the appeal be registered, if otherwise in form, It will thereafter proceed in accordance with law.

21. There will be no order for costs in this Rule.

D. Basu, J.

22. I agree.

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