
(2015) 05 SHI CK 0026
In the High Court Of Himachal Pradesh
Case No : CWP No. 6506 of 2014

Ramesh Kumar	Vs	APPELLANT
Rajesh Kumar and Others		RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Himachal Pradesh Panchayati Raj Act, 1994 — Section 113, 13, 163, 165
Limitation Act, 1963 — Section 12, 12(2), 13, 3, 5

Citation : AIR 2015 HP 85

Hon'ble Judges : Rajiv Sharma, J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Gaurav Gautam, for the Appellant; Sandeep Sharma, Advocate vice and Ashwani Pathak, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Elections for the post of Pradhan, Gram Panchayat, Kawari were held on 30.12.2010. Petitioner was declared elected. The election of the petitioner was assailed by respondent No. 1 by way of Election Petition under section 113 of the H.P. Panchayati Raj Act (hereinafter referred to as the "Act" for brevity sake) on the ground that the petitioner has not obtained "no objection certificate" from the office of Block Development Officer, Nagrota Bagwan at the time of contesting the election of Pradhan, Gram Panchayat, Kawari. The Election Petition was instituted on 7.2.2011. The reply was filed by the petitioner to the Election Petition vide Annexure P-2. According to the averments made in the reply, petition was not maintainable in the present form and respondent No. 1 had no locus standi to file the petition.

2. The Sub Divisional Officer (Civil), Kangra allowed the Election Petition No. 2 of 2011 on 30.9.2013. Petitioner feeling aggrieved, assailed order dated 30.9.2013 before the Deputy Commissioner, Kangra at Dharamshala by way of case No. 7/2013. He dismissed the same on 11.4.2014. Hence, the present petition.

3. Mr. Gaurav Gautam, learned counsel for the petitioner, has vehemently argued

that, Election Petition preferred by respondent No. 1 assailing his client's election to the post of Pradhan, Gram Panchayat, Kawari was barred by limitation. He has also contended that the inquiry against his client has not been completed and thus the findings given by the Sub Divisional Officer (Civil), Kangra as well as the Deputy Commissioner, Kangra at Dharamshala are contrary to record.

4. Mr. Sandeep Sharma, learned vice counsel for respondent No. 1, has supported the orders passed by the Sub Divisional Officer (Civil), Kangra and the Deputy Commissioner, Kangra at Dharamshala.

5. We have heard the learned counsel for the parties and have gone through the records carefully.

6. Elections for the post of Pradhan, Gram Panchayat, Kawari were held on 30.12.2010. Since no date of publication of result has been brought to the notice of the Court, we presume it from the date of declaration of result, i.e. 30.12.2010. We make it clear by way of abundant precaution that in case the date of publication of result was mentioned by either of the parties, the limitation would have run from that date. Section 165 of the Act lays down that if the election petition is not furnished in the prescribed manner, or the petition is not presented within the period specified in section 163 the authorized officer shall dismiss the petition. No provision has been brought to the notice of the Court whereby the delay could be condoned by the authorized officer. The language of section 165 of the Act is mandatory and imperative since the expression "shall" has been used therein. Petitioner has taken a specific ground that the election petition was barred by limitation. It was also argued before the Sub Divisional Officer (Civil), Kangra. Plea raised by the petitioner has been rejected merely on the pretext that the question regarding limitation was raised only at the time of arguments before the Sub Divisional Officer (Civil). The reason given by the Sub Divisional Officer (Civil) was perverse. He had to ensure that the election petition was filed within the period of limitation. Petitioner has taken the ground of limitation also in his appeal while assailing order dated 30.9.2013. The appellate authority has noticed that the election petition was filed beyond the period of limitation, but despite that has not gone into this question elaborately. The election petition was not maintainable as the same has been filed beyond the period of limitation. The result was declared on 30.12.2010. The election petition was filed on 7.2.2011 beyond the period of limitation. The election petition, according to order dated 30.9.2013, was filed on 7.2.2011, but according to the observation of the Sub Divisional Officer in his order, it was filed on 16.2.2011. There is no power vested with the Sub Divisional Officer (Civil) to condone the delay under the H.P. Panchayati Raj Act. The Deputy Commissioner was required to look into the provisions of Section 163 read in conjunction with Section 165 of the Act while hearing the appeal preferred against the order dated 30.9.2013. Petitioner had also moved an application for placing on record copy of letter of Ombudsman (MGNREGA) dated 18.6.2013 and copy of letter of Executive Engineer (RDD) dated 27.6.2013. According to these documents, the inquiry was

pending and the re-assessment was being carried. Thus, the matter was under inquiry and despite that the election of the petitioner has been set aside. These documents have bearings on the case and should have been taken into consideration by the Deputy Commissioner while hearing the appeal. The appeal has been decided by the Deputy Commissioner in a very slipshod manner without taking into consideration the grounds of appeal. The Deputy Commissioner after the order dated 11.4.2014 has issued order dated 25.8.2014 Annexure P-11 and in sequel thereto, the Block Development Officer has issued order dated 27.10.2014 whereby the office of Pradhan was declared vacant.

7. The Sub Divisional Officer (Civil) Kangra and the Deputy Commissioner Kangra at Dharamshala were required to take into consideration whether the election petition was filed within limitation instead of rejecting the plea of the petitioner without due application of mind. We have already noticed that the petitioner has taken the plea in the election petition that it was not maintainable. Moreover, once the plea has been raised before the Sub Divisional Officer (Civil) Kangra, the Deputy Commissioner was also required to consider the same as per settled law. Both the authorities below have erred in law by hearing the election petition filed beyond the period of limitation only on the ground that arguable points were involved in the election petition. The Sub Divisional Officer (Civil) has no jurisdiction to condone the delay.

8. Division Bench of Andhra Pradesh High Court in *Pyda Subbaramayya Chetty v. The Premier Bank of India Limited, Branch Nellore and others*, AIR 1959 Andhra Pradesh 96, has held that although it is true that the court must dismiss a suit as barred by limitation if the facts disclose that it is even when the defendant has not raised such a plea, the court must make sure that it is so barred on the facts established on the evidence. Division Bench has held as under:

"[7] We, therefore, propose to proceed upon the footing that the appellant was aware of the nature and terms of the contract between the creditor and the principal debtor which he understood to guarantee. We must ascertain first the nature of the contract between the 1st defendant and the plaintiff and then the situation in which the liability under the suit promissory note would arise.

It is needless to point out that the promissory note though fully supported by consideration would remain unenforceable so long as the instalments payable by the 1st defendant in respect of the chit-fund were being regularly paid. It is only on default of payment of one or more of such instalments that the contract of guarantee of which Ex. A-1 is the material embodiment, would at all become enforceable. Now, the relevant rule in Ex. B-1 which is a copy of the printed rules relating to the chit-fund, is in these terms:

"If default in the due payment of subscription for any one installment be made by a subscriber who has received his prize, the Bank will, immediately on the happening of such default, become entitled to recover from him the arrears together with the full amount of subscriptions due for all future installments in

one lump sum with, interest, on the aggregate sum at one per cent per mensem from the date of default without any claim for any deduction on account of discount."

The argument has mainly therefore centred round this clause and canvassed at considerable length its legal effect. On behalf of the appellant it was contended that the case fell within the scope of Article 75 of the Limitation Act, and that unless the Bank could be said to have waived the benefit of the provision, the first default which was really on 10-5-1947, constituted the terminus a quo. It is pointed out that there was no proof, not even a plea of waiver in the present case.

So it is argued that if time began to run against the plaintiff, as well as the sureties from 10-5-11947, the suit filed on 30-10-1950 was clearly barred. On this submission it becomes material to determine when the first default took place. If it took place on 10-5-1947, and the liability of the sureties too arose, eo instanti, the suit on the promissory note would be obviously out of time. If on the other band, the first default was on 10-12-1947 as the plaint stated it would be within time because the liability of the sureties could not spring into being before the principal debtor's own liability arose.

But as we have already indicated the case in the plaint cannot be held to have been established. In the first place, there was not a sum of Rs. 1,400/-available in the savings Bank account of the 1st defendant, for being credited to the chit-fund account. Secondly it is not established that the adjustment was made with the consent of the 1st defendant because though P. W. 1 stated at one stage of his evidence, that he (the 1st defendant) authorised the adjustment, he later admitted that the Bank did not obtain any such authorisation. Now the sum of Rs. 1,200/- available with the Bank could only meet six instalments, and then the default would be on 10-11-1947.

It is true that in the latter case the suit would still be in time. But then, we would be proceeding on a basis different from that on which the plaint proceeded in order to claim exemption from the bar of limitation. It may however be noted that though the written statement raised a plea of limitation, there are no averments of fact in support! of such a plea. Therefore although it is true that we must dismiss a suit as barred by limitation --if the facts disclose that it is -- even when the defendant has not raised such a plea, we must make sure that it is so barred on the facts established on the evidence.

Now even if the plaint case of payment of seven instalments from 10-5-1947 to 10-11-1947 is not accepted and even if the first default should be held to have occurred on 10-5-1947, the question would still remain whether the promissory note became automatically enforceable against the promisors immediately on the date of the first default i.e., on 10-5-1947.

It is argued for the respondent that the promissory note became enforceable not on the date of the first or any other default made by the principal debtor hut

when notice of such default was given to the sureties and they were intimated that their liability under the promissory note would be enforced."

9. Learned Single Judge of Orissa High Court in *Sheikh Makbul v. Union of India* and another, AIR 1960 Orissa 146 has held that where issue such as jurisdiction and limitation, as question of pure law, are involved, the right to raise an issue cannot be treated as having been waived. Objections regarding limitation cannot be waived and even if they are waived they can be taken up again by the parties waiving them or by the courts themselves. Learned Single Judge has held as under:

"[7] Lastly, there is a point of limitation which the defendants raised in the written statement but did not press it as an issue before the learned Munsif. The learned Subordinate Judge in appeal however found that the suit was barred by limitation. Mr. H. Sen, learned counsel for the plaintiff, contended that the defendants not having pressed the issue as to limitation before the learned Munsif, it was not open to the lower appellate Court to have gone into the question and given his decision thereon. In support of his contention the learned counsel cited several decisions. In *Ulich Kotayya Vs. Nallamalli Sreeramulu and Others*, AIR 1928 Mad 900 , it was held that a pleader's general powers in the conduct of an appeal include, in ordinary cases, the abandonment of an issue which in his discretion he thinks inadvisable to press and therefore an issue of fact abandoned by him in the lower appellate Court cannot be challenged in second appeal.

The context in which the Madras High Court gave the above finding was in connection with an issue of pure fact, namely, whether the plaintiff is entitled to the property. The Vakil had not argued before the lower appellate Court the question covered by the said issue stating that a finding in his favour on the other issue would be quite enough for his client. In *Venkata Narsimha Naidu v. Bhasyakarlu Naidu* ILR 25 Mad 367 (PC) on the facts that in a partition suit between brothers, relating to a zamindari at the hearing, after the other issues had been settled, the defendant asked to be allowed to raise an issue as to limitation on the ground that he had been in possession adversely to the plaintiff for more than 12 years but the Judge refused to allow the issue to be raised, it was held that no question of limitation necessarily arose on the pleadings and it was not obligatory on the Judge to direct an issue on that point.

Furthermore in the context that one of the issues as to whether the zamindari was impartible or not, was abandoned by the Vakils for the defendant; it was held that the Vakil's powers in the conduct of a suit include the power to abandon an issue which, in his discretion, he thinks it inadvisable to press. All these cases cited above, related to questions of either pure fact or question of law dependent on finding of fact, which, -- on materials available before the court without further evidence, --could not be given for deciding the issue. Where however issues such as jurisdiction and limitation,--as questions of pure law, -- are involved, I do not think that the right to raise an issue can be treated

to have been waived.

Objections regarding limitation cannot be waived and even if they are waived they can be taken up again by the parties waiving them or by the Courts themselves : *Kunclo Mal v. Daulat Ram Vidya Parkash Firm*, AIR 1940 Lah 75 . The Patna High Court in *Pallakdhari Thakur and Others Vs. Bankey Thakur and Others*, 89 Ind. Cas. 340 , where the question as to limitation was raised in the written statement and an issue was framed but it was not pressed in the trial court, held that the defendants respondents were entitled to press that point on appeal. It is thus open to the parties to raise it at subsequent stage. That apart, when such issue cuts at the very root of a litigation and if the court's attention is drawn to it, it must take cognizance of the same and give its decision thereon. Mr. H. Sen however contended that the issue of limitation in the present case being a mixed question of law and fact, the defendants should not be allowed to raise it at a late stage as alleged.

The learned counsel relied on a decision of the Calcutta High Court in *Bejoy Kumar Bhattacharjee and Another Vs. (Firm) Satish Chandra Nandi, Jnanendra Nath Nandi, Dharendra Nath Nandi and Others*, AIR 1936 Cal 382 : 166 Ind. Cas. 900 , where it was held that no doubt the plea of limitation can be urged at any stage having regard to Section 3 of the Limitation Act but when a party does take the appropriate defence but does not put before the Court materials to sustain that defence, it is difficult for the Court sitting in appeal to give effect to the defence contention and the court is justified in rejecting it. In *Secretary of State v. Ananda Mohan* 34 Cal LT 205: (AIR 1921 Cal 661) which was also relied on by the plaintiff, it was held that the general rule is that points of limitation should not be allowed to be raised for the first time in appeal where they involve a decision upon a question of fact; points of limitation should not be decided against the parties unless attention has been drawn to the question of limitation and an opportunity given them to meet it on evidence; if limitation is urged as bar, the facts on which it is barred must be proved after an issue has been framed.

In both the two particular Calcutta cases cited above, limitation was a mixed question of law and fact where it was necessary for the party to produce evidence. But that is not the case here. In the present case, on the materials as available, this court is in a position to give a finding on limitation. It is not necessary for the party to produce fresh materials as in the Calcutta cases cited above. The present case is clearly governed by Article 30 or Article 31 of the Limitation Act. Article 30 provides a period of one year limitation from the time when the alleged loss or injury occurred. Article 31 provides for the same period one year limitation from the time when the goods ought to be delivered. In the present case, the goods were delivered on July 19, 1953, alleged to be in rotten condition as aforesaid. The suit was filed not until September 29 1954. In either view whether it was under Article 30 or 31, the suit is clearly barred by limitation. Section 3 of the Limitation Act is imperative. It provides that every

suit filed after the period of limitation shall be dismissed although limitation has not been set up as a defence. The point of limitation was taken as a ground as ground No. 9 before the lower appellate Court. The plaint itself shows that on the date of the institution of the suit the claim was barred by limitation. Paragraph 4 of the plaint states that potatoes were found damaged on opening of the baskets. Admittedly the delivery was taken on July 19, 1953 when the potatoes were found damaged. Therefore, one year period of limitation expired on July 19, 1954. Accordingly the suit having been filed on September 29, 1954 it was clearly out of time. Furthermore, the damage certificate Ext. C dated July 19, 1953 also supports the point of limitation raised on behalf of the defendants. The materials available to the Court are sufficient for giving a decision on the point of limitation. It is not necessary for the party to produce any further evidence on the point. I do not, therefore, accept the contention of the learned Counsel For the plaintiff on this point to be tenable in law. I uphold the finding of the lower appellate Court that the suit was barred by limitation."

10. Their Lordships of the Hon^{ble} Supreme Court in *Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others*, AIR 1964 SC 1336 : (1964) 3 SCR 495 have held that under section 3 of the Limitation Act, it is the duty of the Court not to proceed with the application if it is made beyond the period of limitation prescribed. The court has no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate court comes to erroneous decision, it is open to the Court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter. Their Lordships have held as under:

"[9] Section 3 of the Limitation Act enjoins a Court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the Court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate Court comes to an erroneous decision, it is open to the Court in revision to interfere with that conclusion as that conclusion led the Court to assume or not to assume the jurisdiction to proceed with the determination of that matter.

[10] Section 5 of the Limitation Act, on the other hand, empowers the Court to admit an application, to which its provisions are made applicable, even when presented after the expiry of the specified period of limitation if it is satisfied that the applicant had sufficient cause for not presenting it within time. The Court therefore had jurisdiction to determine whether there was sufficient cause for the appellants not making the application for the setting aside of the abatement of the suit in time and, if so satisfied to admit it."

11. In the case in hand, once the election petition was barred by limitation, the

Sub Divisional Officer (Civil) could not proceed with the matter.

12. Learned Single Judge of Andhra Pradesh High Court in Syed Jalaluddin Hasan Quadri Vs. Tarapharmacy, AIR 1966 AP 136 has held that section 3 of the Limitation Act places a statutory obligation on the court to examine whether the suit is filed within limitation or not, and if it is filed beyond limitation it must be dismissed. Learned Single Judge has held as under:

"[6] It was lastly contended by the learned counsel for the respondent that this Court should not interfere under Section 12 of the Act because there has been no injustice done in this case. Section 3 of the Limitation Act places a statutory obligation on the Courts to examine whether the suit is filed within limitation or not, and if the suit is filed beyond limitation, what must follow is that it must be dismissed. When the suit is clearly time-barred and when it cannot be decreed in the teeth of Section 3 of the Limitation Act, I fail to see how the lower Court's judgment which is obviously wrong, can be sustained. The moment Article 85 becomes inapplicable to the facts of the case and the plaintiff is not in a position to show any other Article under which the suit if brought, ceases to be time-barred, what must follow is that the suit being time barred must be dismissed. This revision petition therefore, is allowed and the suit is dismissed as time-barred. In view of the circumstances of the case however I leave the parties to bear their own costs throughout."

13. Division Bench of Mysore High Court in Nagappa Gulappa Amminabhavi v. Fakirappa Bhimappa Hanchinal and others, AIR 1970 Mysore 73 has held that time barred election petition under section 13 must be dismissed under section 3 of the Limitation Act even if plea of limitation is not raised in defence. Their Lordships have held as under:

"[9] Secondly, an application under Section 13 of the Panchayat Act to the Munsiff is not an application to examine the correctness or otherwise of the declaration of the results by the Returning Officer, but an application which questions the validity of the election itself. After hearing the parties and taking necessary evidence, the Munsiff is given the power either to confirm or amend the declared results of the election or to set aside the election itself.

The various reasons on which the Munsiff can make an order in relation to the validity of the election set out in the subsequent portions of Section 13 also leave no room for doubt that what the Munsiff is called to examine is the validity of the election itself. Hence, we have no doubt in our mind that an application under Section 13 questioning the validity of an election cannot, in any sense, be regarded as an appeal against or an application to revise the declaration of the result made by the Returning Officer, nor can such a declaration be regarded as an order or a judgment for the purpose of Sub-section (2) of Section 12 of the Limitation Act, or for any other purpose.

[11] There can be no doubt therefore that the Munsiff was bound under Section 3 of the Limitation Act, to dismiss the petition although the plea of limitation had

not been set up as a defence by the petitioner (in this writ petition) or any other respondent before him in the election petition.

[13] We are not impressed by this argument for two reasons. The electoral right is a statutory right and the principle is that in dealing with an election statutory provisions must be strictly interpreted and applied. When Section 13 of the Panchayat Act expressly lays down a time limit of 15 days from the date of declaration of the result for entitling any person to question the validity of the election, it is not possible to extend that time except in accordance with law. We have already examined the legal position and held that there is no way of extending the time by the application of Section 12(2) of the Limitation Act as contended for on behalf of the respondent. The Munsiff, therefore, was bound to dismiss the petition under Section 3 of the Limitation Act. He having failed to exercise that jurisdiction, it is necessary that we should correct that error of jurisdiction which goes to the root of the matter.

[14] Secondly, the principle, as far as possible, is not to disturb the verdict of the electorate unless clear grounds justifying the same are made out. The verdict of the electorate in this case was in favour of the petitioner, and the Munsiff's verdict after recounting is a result based on a narrow difference. We do not think therefore that public interest will be served by dismissing this petition."

14. Learned Single Judge of Bombay High Court in *Ajab Enterprises v. Jayant Vegoiles and Chemicals Pvt. Ltd.*, AIR 1991 Bombay 35 has held that under section 3 it is the duty of the court to consider as to whether the suit is barred by limitation or not even if no such defence is taken by the defendant. Thus, there cannot be waiver against the provisions of limitation. Learned Single Judge has held as under:

"[7] The next question that arises for determination is about the waiver of limitation by the defendants and estoppel. As a matter of fact, the plaintiffs have to again fall back only on the consent terms. On behalf of the plaintiffs, Mr. Shah very strenuously tried to contend that the plaintiffs have averred in the Plaint that there is a waiver on the part of the defendants and as there is no written statement filed by the defendants, the said fact must be held to be established and it would not be permissible to hold that there is no waiver as such. The said contention also, really speaking, is not totally correct. The plaintiffs in para 13 of the Plaint have stated as under in this respect :--

"The plaintiffs therefore submit that the claim of the plaintiffs is within time. The plaintiffs further submit that all objections by the defendants to the claim of the plaintiffs on the ground of limitation have been given up or are deemed to be given up by the defendants at the time when the said consent terms were filed in the said Appeal and when the defendants submitted to the said consent order dated 10-10-1986 in the said Appeal No. 838 of 1986. The plaintiffs further say that the said consent order dated 10-10-1986 has been further acted upon by the defendants by depositing the sum of Rs. 20,000. 00 in this Hon'ble Court on

25-11-1986 within the time extended by the said Appeal order dated 10-10-1986. "the plaintiffs have also averred in the beginning of para 13 as under:--

"The plaintiffs submit that although the defendants urged the plea of limitation for the first time in the said Appeal No. 838 of 1986, the defendants have condoned and waived the said plea by admitting and acknowledging the liability to pay the aforesaid amount to the plaintiffs and by entering into consent terms and submitting to a consent order in the said Appeal whereby time to file the suit by the plaintiffs pursuant to the order dated 30-7-1986 was extended by a period of 10 weeks from 10-10-1986. "reading the said contention raised in para 13 of the Plaint, it is clear that the said plea of waiver is based on the consent terms dated 10-10-1986 on the basis of which the consent order confirming the Original Court's order came to be passed. I have already reproduced the consent terms earlier and by no stretch of imagination it could be considered to be a waiver of the ground of limitation. By consent terms only the order passed by the Lower Court was agreed to be confirmed. Similarly, the time which was granted earlier by the Trial Court for the depositing of the amount specified in the order and filing of the suit was extended. This also by no stretch of imagination can be said to be a waiver of ground of limitation on the basis of which the suit for recovery of the debts due to the plaintiffs could be said to have been barred by limitation. Apart from this, there is catena of decisions on the basis of which it could be said that there can be no waiver of ground of limitation even if it is assumed that in fact the said consent terms could be considered as waiver. Under Section 3 of the Limitation Act it is the duty of the Court to also consider as to whether the suit is barred by limitation or not even if no such defence is taken by the defendants in a suit. Therefore, there cannot be such waiver against the provisions of limitation. Reliance could be placed on the ruling reported in AIR 1920 PC 139 which has been followed in (1968) ILR 47 Pat. 262. In view of this, there also cannot be any estoppel which could be pleaded by the plaintiffs successfully. The defendants cannot be said to be estopped from pleading that the suit is barred by limitation when in fact the claim of the plaintiffs clearly appears to be barred by limitation taking into consideration Article 15 of the Limitation Act."

15. Learned Single Judge of Kerala High Court in Craft Centre and Others Vs. The Koncherry Coir Factories, Cherthala, AIR 1991 Ker 83 has held that if the suit is barred by limitation on the face of it, court is duty bound to dismiss the same even at appellate stage though issue of limitation not raised. Learned Single Judge has held as under:

"[4] What Section 3 of the Limitation Act says is that every suit instituted after the prescribed period shall be dismissed, although limitation has not been set up as a defence. It is the duty of the plaintiff to convince the Court that his suit is within time. If it is out of time and the plaintiff relies on any acknowledgment or acknowledgments in order to save limitation, he must plead them or prove, if

denied. An acknowledgment not pleaded in the plaint, atleast by way of amendment, cannot be relied on. The plaint must appear on the face of it to be within time. If not, the court can reject it on the ground of limitation even without issuing summons to the defendant and waiting for his plea of limitation. In this case, the only acknowledgment pleaded is Ext.A1 dated 23-10-1978. If the Court finds that the acknowledgment was only on 23-10-1976, the suit filed beyond three years, on 20-3-1981, could be dismissed on that ground itself. The provision in Section 3 is absolute and mandatory. The Court can claim no choice except to obey it in full. It is the duty of the Court to dismiss a suit which on the face of it is barred by time even at the appellate stage despite the fact that the issue was not at all raised."

16. Their Lordships of the Hon"ble Supreme Court in Binod Bihari Singh Vs. Union of India, AIR 1993 SC 1245 : (1993) 1 ARBLR 313 : (1992) JT 496 Supp : (1992) 3 SCALE 386 : (1993) 1 SCC 572 : (1992) 3 SCR 468 Supp have held that the Limitation Act is a statute of repose and bar of a cause of action in a court of law, which is otherwise lawful and valid, because of undesirable lapse of time as contained in the Limitation Act, has been made on a well accepted principle of jurisprudence and public policy. Their Lordships have further held that if a claim is barred by limitation and such plea is raised specifically the court cannot straightaway dismiss the plea simply on the score that such plea is ignoble. Their Lordships have held as under:

"[10] After giving our anxious consideration to the facts and circumstances of the case, we do not find any reason to interfere with the decision of the High Court. In our view, the High Court has rightly held that the application made by the appellant was an application for directing the arbitrator to file the award in Court so that such award is made a rule of Court. In this case, there was no express authority given by the arbitrator to the applicant to file the award to make it a rule of Court although a signed copy of the award was sent to the applicant. The forwarding letter clearly indicates that the award was sent for information. Accordingly, the decision of this Court made in Kumbha Mawji Vs. Union of India (UOI), AIR 1953 SC 313 : (1953) 4 SCR 878 is applicable. The High Court has given very cogent reasons which, we have indicated in some details, for not accepting the case of the appellant that he had received a signed copy of the award and the forwarding letter some time in May, 1965 and we do not find any reason to take a contrary view. The applicant has not produced the registered cover received by him which would have established the actual date of the receipt of the postal cover by the applicant convincingly. We are also not inclined to hold that the delay in presenting the application deserves to be condoned in the facts and circumstances of the case. The appellant has taken a very bold stand that he had received the signed copy of the award only in May, 1965 and only within three weeks of such receipt, he had filed the application. On the face of such statement, the plea of ignorance of the change in the Limitation Act need not be considered and accepted. As the case sought to be made out by the appellant that he had received the signed copy of the award only in May, 1965

has not been accepted, and we may add, very rightly by the Court, the question of condonation of delay could not and did not arise. In our view, it is not at all a fit case where in the anxiety to render justice to a party so that a just cause is not defeated, a pragmatic view should be taken by the Court in considering the sufficient cause for condonation of delay under S. 5 of the Limitation Act. Coming to the contention of Mr. Ranjit Kumar that to defeat a just claim of the appellant, the ignoble plea of bar of limitation sought to be raised by the respondent should not be taken into consideration, we may indicate that it may not be desirable for the Government or the public authority to take shelter under the plea of limitation to defeat a just claim of a citizen. But if a claim is barred by limitation and such plea is raised specifically the Court cannot straightway dismiss the plea simply on the score that such plea is ignoble. A bar of limitation may be considered even if such plea, has not been specifically raised. Limitation Act is a statute of repose and bar of a cause of action in a Court of law, which is otherwise awful and valid, because of undesirable lapse of time as contained in the Limitation Act, has been made on a well accepted principle of jurisprudence and public policy. That apart, the appellant, in this case, having taken a false stand on the question of receipt of the signed copy of the award to get rid of the bar of limitation, should not be encouraged to get any premium on the falsehood on his part by rejecting the plea of limitation raised by the respondent. We may also indicate here that the High Court is justified in its finding that the objection petition has been filed within time by the respondent and the service of the copy of the application made by the appellant on the counsel of the respondent who had appeared in an earlier proceeding did not constitute a notice as contemplated under Art. 119(b) of the Limitation Act. In the aforesaid circumstances, the appeal must fail and is dismissed but we make no order as to costs."

17. Their Lordships of the Hon^{ble} Supreme Court in V.M. Salgaocar and Bros. Vs. Board of Trustees of Port of Mormugao and Another, AIR 2005 SC 4138 : (2005) 3 JT 607 : (2005) 140 PLR 743 : (2005) 4 SCC 613 : (2005) 3 SCR 27 : (2005) AIRSCW 3285 : (2005) 4 Supreme 181 have held that even if defendant intentionally does not raise the plea of limitation, if the suit is ex facie barred by law of limitation, court has no choice but to dismiss the same. Their Lordships have held as under:

"[20] The mandate of Section 3 of Limitation act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex-facie barred by the law of Limitation, a Court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation."

18. Their Lordships of the Hon^{ble} Supreme Court in Damodaran Pillai and Others Vs. South Indian Bank Ltd., AIR 2005 SC 3460 : (2005) 100 CLT 608 : (2005) 4 CTC 534 : (2005) 8 JT 197 : (2006) 142 PLR 30 : (2005) 7 SCC 300 : (2005) 3 SCR 117 Supp has held that the hardship or injustice is not a ground

for extending limitation period. Their Lordships have held as under:

"[21] Hardship or injustice may be a relevant consideration in applying the principles of interpretation of statute, but cannot be a ground for extending the period of limitation."

19. Accordingly, in view of the analysis and discussion made hereinabove, the writ petition is allowed. Annexures P-3 dated 30.9.2013, P-10 dated 11.4.2014, P-11 dated 25.8.2014 and P-12 dated 27.8.2014 are quashed and set aside. Pending application(s), if any, also stands disposed of. No costs.