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**(2003) 09 CAL CK 0056**  
**In the Calcutta High Court**  
**Case No : S.A.T. No. 1891 of 2003**

Rashidan Nabi Tarafdar

APPELLANT

Vs

Nurjahan Becum

RESPONDENT

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**Date of Decision :** 05-09-2003

**Acts Referred:**

City Civil Court (Amendment) Act, 1999 — Section 8(3)  
City Civil Court Act, 1953 — Section 8(1), 8(2)  
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 104(1), 14  
Limitation Act, 1908 — Section 29(2)  
Limitation Act, 1963 — Section 5  
West Bengal Premises Tenancy Act, 1956 — Section 2(5)

**Citation :** (2003) 2 ILR (Cal) 558

**Hon'ble Judges :** Rajendra Nath Sinha, J; Dilip Kumar Seth, J

**Bench :** Division Bench

**Advocate :** S.P. Roychowdhury, for the Appellant;

**Final Decision :** Allowed

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## Judgement

Dilip Kumar Seth, J.—The Stamp Reporter had reported that the appeal is time-barred. In view of the provisions contained in Section 8 Sub-section (2) of the City Civil Court Act, 1953.

2. Mr. Roychowdhury has filed an application u/s 5 of the Limitation Act. At the same time, he had contended that the amended Sub-section (3) as incorporated in Section 8 through City Civil Court (Amendment) Act, 1999 has not provided any period of limitation. An appeal from a decree passed in exercise of Sub-section (3) as amended is subject to appeal under the general provisions of law, namely, Code of Civil Procedure, not under the City Civil Court Act. Accordingly to him, such a construction can be made in view of the confusing situation. At the same time, alternatively, it can be argued that the legislature was aware of the situation of Sub-section (2)(a) of Section 8. Therefore, it was silent with regard to limitation. According to him, the Statute, as it stands, does not indicate whether it is a casus omisus or it was a deliberate omission on the part of the

legislature.

3. Learned Counsel for the Respondents, on the other hand, contended that when Sub-section (2) has been kept untouched and Sub-section (3) is silent, then Sub-section (3) cannot have any effect of superseding the provisions of Sub-sections (1) and (2). If a reconciled meaning is given, in that event, according to him, Sub-section (2) would hold the field and not the Code of Civil Procedure. He also contends that the other way of argument can also be advanced. The position is fluid. Therefore, the Court should lay down the law.

4. After having heard the respective contentions and perusing the provisions as it stood and the amendment, we feel that the respective provisions should be quoted in order to understand the situation clearly which is as follows:

8. Appeal. (I). An appeal shall lie to the High Court from

(a) every decree passed by the City Civil Court; and

(b) every order passed by the City Civil Court being

(i) an order specified in Sub-section (1) of Section 104 of the Code of Civil Procedure, 1908 (V of 1908), and in particular, in order XLIII of the First Schedule to the Code of Civil Procedure, 1908, or an order under Clause (i) or Clause (ii) of Section 14, or

(ii) any other order from which an appeal lies to the High Court under any law.

(2)(a) The period of limitation for an appeal from a decree or order of the City Civil Court shall be thirty days from the date of such decree or order.

(b) The provisions of the Indian Limitation Act, 1908 (LX of 1908), other than the portion of Sub-section (2) of Section 29 thereof, beginning with the words "and for the purpose of determining" and ending with the words "shall not apply", shall apply to all suits and proceedings triable by the City Civil and to appeals and applications under this Act to the High Court from or in respect of any suit or proceedings.

Amendment:

4. Amendment of Section 8. In Section 8 of the principal Act, after Sub-section (2), the following Sub-section shall be inserted:

(3) Save as otherwise provided in the foregoing provisions of this Section, the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction in respect of an appeal arising out of a suit or proceeding for the recovery of possession of any premises under the West Bengal Premises Tenancy Act, 1956 (West Bengal Act 12 of 1956).

5. It appears that Sub-section (1) of Section 8 provides for an appeal to the High Court from every decree and order passed by the City Civil Court provided in Clause (i) to the High Court, whereas Clause (ii) provides any other order from

which the appeal lies to the High Court under any law. Under Sub-section (2)(a) the period of limitation for the appeal is provided as thirty days. If we read Clause (ii) of Clause (b) of Sub-section (1) of Section 8 together Sub-section (3) and Sub-section (2) Clause (a) then it appears that the period of limitation would be thirty days and not ninety days under the general provisions of law.

6. Inasmuch as when the legislature is introducing Sub-section (3) it has not provided for any limitation specifically. Neither it has used any expression of nonobstanti clause. On the other hand, it saves the other provisions of Section 8 and provides an appeal to the City Civil Court itself in respect of a suit or proceedings for the recovery of possession of premises under the West Bengal Premises Tenancy Act. This proceeding under the West Bengal Premises Tenancy Act is a proceeding within the meaning of Sub-section (5) of Section 2 though initiated in the Small Causes Court, Calcutta. This appeal has been specifically provided to the City Civil Court. It is not a general appeal but a special appeal to the City Civil Court and the decree passed by the City Civil Court would be a decree within the meaning of Clause (a) to Sub-section (1) of Section 8 of the City Civil Court Act, 1953. It is not mean that it should be confined only to the original decrees and not appellate decrees. This governs an appeal to the High Court for which one month's limitation is provided in Sub-section (2). It is difficult to read a distinction between original decree and appellate decree in Clause (a) while it provided "every decree" as it stood prior to amendment.

7. The legislature was not oblivion of the provisions contained in the Section since been amended. When the legislature is silent and incorporated Sub-section (3) it had intended to maintain the other part of the section without deviating therefrom. It had nowhere provided that Sub-section (3) would be something extraordinary. The provisions contained in Section 8, since amended cannot be read to mean that the amended provision would be governed by the general provisions of law, namely, Code of Civil Procedure. Therefore, it is not a casus omisus but deliberate intention of the legislature to leave the other part of Section 8 untouched. When the legislature is amending the section and adding something to it, it had in its view the entire section, which is being added to. Therefore, when the legislature had not expressed any intention to deviate from the other provisions only creating an appellate forum in the City Civil Court which is distinct from the Small Cause Court, Calcutta, then it would be a decree within the meaning of Clause (a) of Sub-section (1) attracting the provision of Sub-section 2(a) of the said Act particularly when it covers all kinds of appeals to the High Court either from decree or from order as are available to the High Court.

8. In the circumstances, we hold that the limitation provided in Sub-section (2) in Clause (a) would apply with equal force in respect of appeals arising out of the decrees passed in exercise of Sub-section (3) by the City Civil Court being a decree within the meaning of Clause (a) of Sub-section (1). Inasmuch as it governs the appeal to the High Court. Particularly when Sub-section (2) does not qualify the appeal to the High Court or otherwise, therefore, it will govern all

appeals whether to the City Civil Court or the High Court, whether it is from the original or from the appellate decrees as the case may be, and the limitation would be 30 days.

9. In the circumstances, the appeal being barred by limitation, after hearing the parties we find that the delay has been sufficiently explained and the Appellant was prevented from preferring the appeal within time. We condone the delay and allow the application. Let the appeal be registered and be listed for hearing under Order XLI Rule 11 of the CPC on Wednesday next (September 10, 2003).

Rajendra Nath Sinha, J.

I agree.