

(1987) 07 KAR CK 0047

In the Karnataka High Court

Case No : Regular First Appeal No. 104 of 1975

State of Karnataka

APPELLANT

Vs

Y. Mohammed Kunhi and Another

RESPONDENT

Date of Decision : 31-07-1987

Acts Referred:

Limitation Act, 1963 — Section 22, 24, 55

Citation : AIR 1987 Kar 275 : (1987) ILR (Kar) 2739 : (1987) 2 KarLJ 298

Hon'ble Judges : S.G. Dodda Kale Gowda, J;P.K. Shyamasundar, J;M.N. Venkatachaliah, J

Bench : Full Bench

Advocate : Chandrashekharaiiah, for the Appellant; K.R.D. Karanth, for the Respondent

Judgement

Shyamasundar, J.—This is a reference made by a Division Bench, consisting of their Lordships the Hon"ble Mr. Justice Jagannatha Shetty (as he then was) and the Hon"ble Mr. Justice Chandrakanthar Urs, JJ. in R.A. 104 of 1975, which is still pending disposal.

2. At the hearing of the appeal a question having arisen as to the appropriate Article of Limitation to be applied to determine whether the suit out of which the appeal arose was in time or not, their Lordships to whom a decision of another Division Bench in State of Karnataka v. C.C. Transport Co., (R.F.A. 2 and 3 of 1975 D/- 20-12-1984), was referred, felt a doubt about the correctness of that decision as to applicability of Article 24 of the Limitation Act. Before the referring Bench reliance had been placed on behalf of the State, on the decision in C.C. Transport Company"s case in support of the contention that Article 24 and not Article 22 of the Limitation Act ("Act" for short) was attracted and that the Court below was in error in applying Article 22 of the Act to hold that the suit was in time.

3. The Division Bench formulated and referred the following question for the opinion of the Full Bench:

"Whether on the facts and in the circumstances of the case, the deposit made by the plaintiffs, as evidenced by the Government Order dated August 17, 1966, (Ex. P-9) is governed * Article 22 or Article 24 of the Limitation Act?"

4. In the referral order the learned Judges were of the view that the decision in C.C. Transport Co.'s case had not considered the applicability of Article 22 of the Act and felt that, Article 22, might apply even to a case based on an agreement to recover money which could be either express or implied but subsequent to making a demand. Their Lordships referred in that connection to the decision of the Supreme Court in V.E.A. Annamalai Chettiar and Another Vs. S.V.V.S. Veerappa Chettiar and Others,

Jagannatha Shetty, J. (as his Lordship then was) who made the referral order after adverting to the facts leading up to the appeal observed:

"In this appeal Mr. Kothavale, learned Government Advocate, depending upon a recent judgment of Division Bench of this Court in State of Karnataka v. M/s. C. C. Transport Co., (RFA Nos. 2 & 3 of 1975 disposed of on Dec. 20, 1984) urged that the plaintiffs suit is governed by Art. 24 of the Limitation Act and Art. 22 of the Act has no application to the facts of the case.

The decision in C.C. Transport Co.'s case undoubtedly supports the contention urged for the State. But, with respect, we do not share that view. Article 22 of the Limitation Act, appears to have not-been specifically brought to the notice of Court in C.C Transport Co.'s case. The only question that was urged before their Lordships was regarding the applicability of Article 113 or Article 24 of the Limitation Act. The difference between Articles 22 and 24 of the Limitation Act was not high-lighted in that case.

5. His Lordship thereafter referred to the content of Articles 22 and 24 of the Act, before adverting to the decisions of the Privy Council in Mohammad Akbar Khan v. Attar Singh AIR 1936 PC 171 and AIR 1940 132 (Privy Council) which highlighted the difference between a "Loan" and "Deposit". The learned Judge also referred to the decision of the Madras High Court in Abdul Hamid Sahib and Others Vs. Rahmat Bi, wherein the two Privy Council decisions had been followed. His Lordship then proceeded to consider the submissions of the Government Pleader that the application of Article 22 of the Act was not warranted. His Lordship next observed:

"Mr. Kothavale, however, urged that unless and until the agreement expressly provides that the money shall be refundable on demand, Article 22 of the Act has no application. In our view, this contention is not well founded. The agreement to that effect need not be express. It may be implied also. The Supreme Court in V.E.A. Annamalai Chettiar and Another Vs. S.V.V.S. Veerappa Chettiar and Others, has observed that even though the transaction is a transaction of deposit, the deposit can be coupled with an agreement that it will be payable on demand and such an agreement can be express or implied. The same is the position in the present case and that obliged us to take the contrary view from

the one reached by this Court in C.C. Transport Co.'s case.

There is one other reason to exclude the applicability of Article 24 to a case like this. Article 24 prescribes a period of 3 years when the money is received. What would be the respective right of parties if the general question contemplated under Cl. (2) of the said Government Order was not decided by the High Court within 3 years when the money is received. What would be the respective rights of parties if the general question contemplated under Cl. (2) of the said Government Order was not decided by the High Court within 3 years from the date of deposit in question. Does it mean that the right of plaintiffs to demand refund was automatically extinguished thereby nothing so bad would have been contemplated by the parties. This is an insuperable obstacle for accepting the view taken in C.C. Transport Co.'s case."

After making these observations, the Bench then formulated the question which according to them merited consideration by a Full Bench.

6. It appeared to us, after some reflection the decision in C.C. Transport Co.'s case could not have interposed at all in the disposal of this appeal by the Bench. With these observations, we now proceed to answer this reference.

7. The referral order makes ample reference to the facts leading up to the appeal in R.F.A. 104 of 1975. It is therefore unnecessary to re-state them. Suffice to say that the appeal arose out of a suit filed by one Mohamed Kunhi and another against the State of Karnataka seeking refund of a sum of Rs. 3,57,777-81 P. admittedly, tendered to and held by the State as a deposit to be refunded on the happening of an event referred to fully in the Government Order Exhibit P-9. Plaintiff had also sought for a declaration that a particular land belonging to them bore the character of a "redeemed" land which left them free, to appropriate the tree-growth on the land without making any cash offering to the State by way of seigniorage.

8. The sole defendant therein is the State of Karnataka, resisted the suit on many grounds including a bald plea of limitation, asserting that the suit was barred by time. The learned Civil Judge, who tried the suit, recorded a finding in favour of the plaintiff on all the issues including that of limitation, Court held the suit was covered by Article 22 of the Act and having been instituted within 3 years of making a demand for payment, was well in-time. Accordingly, the trial Court decreed the plaintiff's suit, thus inducing the State to prefer this appeal.

9. The question now is which Article of limitation ties up with the format of the suit. It must be remembered that what determines the period of limitation is the case of the plaintiff as put-forward in the plaint. A sojourn with the plaintiffs case makes it evident that the main or principal relief claimed in the suit is the recovery of money paid to Government in the year 1966 on terms that it should be refunded following a general decision on the question relating to the tenure of the plaintiffs property itself, in that, the plaintiff's money would either be refunded or annexed to the State, depending on the general decision of the Court

being in favour of or against the State. The relevant terms of Exhibit P-9 are:

"1. The party should deposit with Government the full seigniorage value of the timber to be cut and removed at seigniorage rates fixed in the Government Order No. AFD 124 FAD 63 dated 27th September 1963.

2. The amount in deposit will either be transferred permanently to Government or refunded to the party depositing on the decision of the High Court on the general question relating to the tenure of which has been altered in the recent past.

3. The party will reserve the right to contest the claim of Government about the payment of seigniorage value.

4. The Government will reserve the right to claim that seigniorage value is payable."

10-11. Although, for some time Mr. Karanth, appearing for the plaintiff before us, sought to contend that decision in Thimmana Bhatta's case (1968) 2 Mys LJ 227 was not the one that decided the general question relating to the land tenure he did not persist with that contention and in our opinion rightly so. We must, however, point out that right through the case of the plaintiff has been that the said Thimmana Bhatta's case had conclusively decided the nature of the land tenure and the decision being in their favour, they were therefore entitled to the money referred to in the Government Order, Exhibit P-9 dated 17-8-1986.

12. From the facts adverted to supra, it becomes clear that, the case of the plaintiff was one based on the happening of an event, namely the decision in Thimmana. Bhatta's case and that the disposal of that case had, actually triggered off the claim to recover the money identified under Ex.P-9, in terms of which, it had since become liable, for returnal.

13. Articles 22 and 24 provide:

"22. For money deposited three When the
under an agreement years demand is made
that it shall be payable
on demand including
money of a customer
in the hands of his banker
so payable.

24. For money payable by the three When the money
for money received by the years is received."
defendant for the plaintiff's

use.

At this stage it would be necessary to recall that the referral order seems to suggest that the choice should really fall on Article 22.

14. Before us Mr. Karanth, for the plaintiff was particularly anxious to avoid the application of Article 24, since that would make his client's position most untenable as under that Article, the starting point of limitation would be the date of payment and that would take us back somewhere to the year 1966 and, therefore, a suit filed in the year 1973 would be hopelessly barred by time. This was clearly not a case of money had and received, which is an essential attribute for an action for recovery of money under Art. 24 of the Limitation Act.

15. This question so far as we are concerned is no longer *res integra* and is covered by a decision of the Bench of this Court, namely, R.F.A. 149 of 1983 (*Union of India v. K.E.B., Bangalore* disposed of on 6-1-1984) : reported in (1985) 1 Kar LC 336 wherein it was held that for Article 24 to apply, payment should have been made by the plaintiff knowing full well that such a payment was wrongful at the very out-set and that if the plaintiff being conscious of the wrongfulness of the demand, had still met it, being subject to some kind of duress or irresistible exigency, it was pointed out that in such a case Article 24 would be attracted. The aforesaid view has been summed up in the following passage:

"This, indeed, is a converse case where the wrongfulness of the demand was not known to plaintiff at the time of the demand and payment. In the present case, before us, the plaintiffs own showing, even at the time of the demand of the "Demurrage" and "Wharfage" charges it was known to the plaintiff to be wrongful. If that is so, authorities indicate that the appropriate provision in the law of limitation is the one in Article 24 and not Article 113."

The foregoing principle is not a *fortiori* attracted to the case on hand. It is nobody's case that the plaintiff herein had been compelled to pay money, the refund of which was now sought for. It is nobody's case that moneys had been extracted from them by threat, coercion or duress. In those circumstances, the applicability of Article 24 is clearly ruled out and that is the position we reach even without any concession or counsel's proffered support, in order to, avert the application of Article 24, we must therefore hold that Article 24 is inapplicable.

16. Apropos the applicability of Article 22 it seems to us that there is considerable difficulty in applying that Article, on its own terms. That Article stipulates a period of limitation of three years for the recovery of money deposited under an agreement that it shall be payable on demand including money of a customer in the hands of a Banker.

17. We are not herein concerned with the case of a client's money in the hands of a Banker. But only with the plaintiffs money admittedly lying with the

defendant.

18. The admitted facts herein are that the plaintiff paid Rs. 3,45,438-13 p. in three installments between 30-11-1966 and 9-9-1969. The demand for the return of this money was made by the plaintiff for the first time in his letter Exhibit P-13 dated 14-1-1971 and subsequently, in the Lawyer's notice Exhibit P- 17 dated 2-6-1973. There being no response to either of those communications by the Government, the plaintiff then filed the suit in O. S. No. 30 of 1973 before the Civil Judge, Kodagu on December 18, 1973. There is little gain say in denying that if Article 22 is inapplicable the plaintiff's suit filed on 18-12-1973 is clearly barred by time. The position does not improve, even if the residuary Article 113 is held to apply.

19. The learned Government Advocate Mr. Chandrashekharaiyah, contends that the Article of Limitation applicable in this case would be Article 55 of the Act, the starting point therein being the happening of a contingent event in contemplation, in which case the suit would still be barred by time, because both sides having agreed to abide by the decision of the High Court on the general question relating to land tenure, i.e., the decision in Thimmana Bhatta's case (1968 2 MysLJ 227), this suit filed some 4 or 5 years after the happening of that event was clearly barred by time. Incidentally the decision in Thimmana Bhatta's case was rendered on 29-1-1968 and a SLP filed by the State before the Supreme Court having been dismissed on 18th February 1970, as indicated in the plaint, itself, this suit filed in December 1973, would clearly be barred if the terminus a quo for the period of limitation is taken to be the disposal of Thimmana Bhatta's case.

20. At the moment we are not to be detained regards the applicability of Article 55, an aspect which will loom large, only if Article 22 is inapplicable. It may be noticed that Article 22, operates with reference to an essential pre-requisite being the existence of an agreement to pay on demand.

21. Here it is neither the case of plaintiff nor of the defendant that they had subscribed factually to an agreement to repay on demand. If, as we have pointed out, the question of limitation has to be decided on the basis of the pleadings in the suit then what follows is, that the plaintiff became eligible for the refund of the money paid to the Government consequent on the decision of the High Court in Thimmana Bhatta's case (1968-2 Mys LJ .227) and there would thus be no room or scope for reading in a further agreement into the format of the case by making allowance for a demand to lead the way for payment as contemplated by Article 22.

22. The referral order takes notice of an argument advanced by the learned counsel for this appellant that, an agreement to pay on demand need not be specific, that it can also be implied; attention was invited to the decision of the Supreme Court in V.E.A. Annamalai Chettiar and Another Vs. S.V.V.S. Veerappa Chettiar and Others, wherein it was observed that though a transaction was one

of deposit, it could still be coupled with an agreement to, pay on demand, and that such an agreement can be either express or implied. Basing themselves on this dicta., the Bench observed that the position was similar in this case and, therefore, felt obliged to differ from C.C. Transport Co.'s case.

23. It may be true that an agreement to pay on demand may either be specific or implied, but with respect, we do not share Their Lordships' view that - in the case on hand there was an agreement express or implied, to pay on demand. There is absolutely no support for any -such view either in the pleadings or from the evidence led in the case. What is more, if the case is that money became payable upon the rendering of the decision in Thimmana Bhatta's case (1968 2 Mys LJ 227), it follows that right to refund arose immediately upon the happening of that event and if subsequently there was also a demand for return of that money as a sequel to the happening of that event, such a demand was only by way of a rear-guard action not attributable to any essential pre-requisite for the recovery of money. An express agreement to pay on the happening of a specific event excludes the scope for any implication as to when it is payable. The two things cannot coexist.

24. For there cannot be two causes of action in a given case, one on the happening of an event and the other on the making of a demand to discharge an obligation arising out of the happening of that event. It would be absurd to hold otherwise.

So far we have proceeded on a priori considerations in regard to the application of Article 22 of the Act. But otherwise we find that we are also amply supported by judicial authority, in this behalf.

25. Kashinath Sankarappa Wani Vs. New Akot Cotton Ginning and ; Pressing Co., Ltd., may be referred to in this connection. In that case a suit had been filed to claim monies due on a deposit receipt "which matured on 31-7-1940. But the suit was not filed within three years from the date of such maturity, but was filed within three years from the date following the demand for payment made on 17-5-1941. The contention was that the suit having been filed within three years from the date of the alleged demand, it was in time. The Supreme Court negatived that contention and held that, the amount became due and payable on the due date mentioned in the receipt and that there was no question of the amount being payable at any time thereafter, on a demand being made in that behalf, by the creditor. The limitation for its recovery, therefore, started from the due date viz., 31-7-1940, and not from 17-5-1940, the date of the alleged demand.

26. To similar effect is the decision of the High Court of Mysore in Thomas v. John D'sa AIR 1967 Mys 3 on which the learned Government Advocate, has placed reliance. That was a case in which a part of the sale consideration of a property had to be paid to the vendor's son soon-after he attained the age of 24 and in default the balance of consideration became due with interest at 6 1/4 per cent

following a demand, for such payment being made by the concerned. When the vendor's son attained the stipulated age of 24 years on 18-9-1937 the residual consideration became due but was not paid by the vendee. A belated demand for payment was made on 24-1-1959 and a suit to recover the amount came to be filed on 27-2-1959. The suit having been filed 22 years after the amount became due, it was held to be barred by time. An argument had been advanced therein that money became due upon the demand made therefore and hence a suit brought within three years of such demand was in time under Art. 60 (Art. 22 of the new Act) of the old Act, but that contention was repelled by pointing out that the deposit was not stipulated to be paid only on a demand. Suffice it to refer to parts of the Head Note highlighting the ratio of the decision as above said:

"Limitation Act (1908), S. 10 and Articles 59 and 60 - Balance of purchase money left with vendee - agreement providing that amount should be paid to another on his completing a certain age - Limitation runs from date on which that person attains the age.

Since the money had not been deposited by A with B under an agreement that it shall be payable on demand, the case did not also fall within the scope of Article 60 (now Article 22).

..... But when the conclusion that the due date for the payment on money was fixed by the document is reached the clause requiring the vendee to pay that amount on demand became superfluous. If a document prescribes a due date for payment and thereafter lays down that the payment shall be made on demand, in law it merely means that the payment shall be made on the due date."

27. We are satisfied that the two pronouncements one of the Supreme Court and the other of the Mysore High Court referred to supra fully support the view taken by us in considering the applicability of Article 22 of the Act to the case on hand. On facts, we have reached the conclusion that there was no agreement that the money should be paid on demand which was nobody's case, and therefore any other dead line for payment of the money in question is ruled out pro tanto as pointed out by his Lordship Mr. Justice Hegde, (as he then was) in the case of Thomas v. John D'sa (AIR 1967 Mys 3).

28. Thus the fact that a demand was made upon the committing of a default in payment of money that was already due does not permit the marking of time afresh from the date of demand. Therefore, the suit not having been filed within three years of the decision in Thimmana Bhatta's case (1968 2 Mys LJ 227) what followed then is the inexorable result i.e., the suit becoming barred by limitation and cannot thereafter be resuscitated by applying Article 22 of the Act, which as mentioned earlier is inapplicable.

28A. Towards the end, Mr. Karanth, basing himself on the decision of the Supreme Court in Ram Janki Devi and Another Vs. Juggilal Kamlapat, sought to contend that even in the case of a deposit, payment can result after a prior

demand. It was pointed out therein that just as in the case of a loan so also in the case of a deposit not marked for payment within a stipulated period the deposit was not bound to seek out the depositor for making payment and, therefore, a deposit can take in its fold a demand for payment.

29. The principle as above is really unexceptionable, but the -mere fact the depositor makes a demand for payment of the deposit does not necessarily imply the existence of an agreement to pay only on demand, which is really the sine qua non, for applying Article 22 of the Act and, therefore, the decision in Janaki Devi's case does not assist Mr. Karanth at all.

30. Having regard to our view as above Viz., that neither Article 22 nor Article 24 is attracted to the case, which in fact is our answer to the question referred to by the Division Bench, the point still adrift is of locating the relevant Article of the Act, that applies to the suit herein. Regards the same. We appear to have reached a cul-de-sac but must pick our way out on our journey in quest of this elusive Article of Limitation. Although the referral order does not enjoin on us this duty we think it proper to carry forward this investigation in search of the Article of Limitation appropriate to the case.

31. From the facts of the case, it becomes clear, that the cause of action for the plaintiff had arisen on the happening of a contingent event which in turn gave rise to certain expectations in the mind of the plaintiff regards the duty of the defendant to fulfill obligations undertaken earlier. On a default having been committed by the defendant in that behalf, the plaintiff was bound to sue on the basis of the breach committed by the defendant and to seek compensation in that behalf.

32. According to the terms of the Government Order Exhibit P-9, the moment A general decision on the question of land tenure was pronounced by the High Court, depending on the actual result thereof, the Government either had to refund the amount in deposit to the plaintiff or annex the same to itself. The general decision was admittedly in favour of the plaintiff and, therefore, the Government had to refund the deposit. However, it remained unmoved despite two communications from the plaintiff, which was a clear indication of its strong disinclination to perform its obligations vis-?-vis Exhibit P 9. Therefore, it was undoubtedly a case of breach of promise by the Government and consequently gave rise to a cause of action to the plaintiff to sue the Government for compensation being the return of the deposit with such other reparations as may be claimable by the plaintiff . This is exactly what the plaintiffs have done and, therefore, the suit comes squarely as contended by the Govt. Advocate within Article 55 of the Act, which reads as follows:

	Description of suit
Period of limitation	Time from which
period begins to	
run.	

xxx xxx xxx xxx 55. For compensation for the Three Years. When the contract is broken

breach of any contract, ex- or (Where they are successive
press or implied not herein breaches) when the breach in
specifically provided for. respect of which the suit is
instituted occurs or (where the breach is continuing) when it
ceases.

33. Before a Division. Bench of the Madras High Court a question arose in Balakrishnadu v. Narayanaswami AIR 1914 Mad 4 as to the appropriate Article of Limitation applicable to a suit to recover money deposited with another person on condition that he should return the same, upon the happening of a future contingent event. In a suit brought after the happening of the event, it was held that Article 115 (now Art. 55) and not Articles 66 and 120 of the Act, (presently Arts. 21 & 22) applied. The aforesaid pronouncement of the Madras High Court supports our view that Article 55 of the Act, applies in the facts and circumstances of the case.

34. Therefore, our answer to the question referred to us by the Division Bench is, that in the facts and circumstances of the case, Article 22 and Article 24 of the Act do not apply. But the Article applicable is Article 55 of the Act.

35. Having answered the reference thus we direct the matter be placed again before the Division Bench for such disposal as the case may admit hereafter. No costs.

36. Order accordingly.