

(1954) 04 CAL CK 0009
In the Calcutta High Court
Case No : Suit No. 4617 of 1949

Suburban Bank Ltd. (in liqdn.)

APPELLANT

Vs

Nistaran Chakrabarti

RESPONDENT

Date of Decision : 08-04-1954

Acts Referred:

Banking Companies Act, 1949 — Section 45F, 45O, 45O(1)
Limitation Act, 1908 — Article 120, 59

Citation : AIR 1955 Cal 172 : (1954) 24 CompCas 273 : 58 CWN 676

Hon'ble Judges : Bachawat, J

Bench : Single Bench

Advocate : A.C. Lahiri and Sudhamoy Bose, for the Appellant; P.C. Mullick and Arun Mukherjee, for the Respondent

Judgement

Bachawat, J.—The plaintiff claims a sum of Rs. 1604/12/- in respect of an overdraft account. Admittedly this claim is not barred by the law of limitation. Interest on this account was charged at the rate of 12 per cent, per annum with monthly rests. The bank is not a scheduled bank. It is not alleged nor proved that the loans were commercial loans. The rate of interest being excessive the accounts must be reopened under the provisions of the Bengal Money Lenders Act. It is admitted by both parties that on such reopening and on taking accounts in accordance with the provisions of that Act only a sum of Rs. 350/- is due from the defendant to the plaintiff. The plaintiff is accordingly entitled to a decree for the sum of Rs. 350/- against the defendant in respect of this account.

2. The plaintiff claims another sum of Rs. 16,751/4/9 in respect of three loans of Rs. 6,000/-, Rs. 5,000/ and Rs. 1,000/-, all advanced by the plaintiff to the defendant on 27-6-1945. On the same date the defendant executed in favour of the plaintiff three promissory notes all carrying interest at the rate of 9 per cent, per annum with quarterly rests. - The plaintiff bank is now in liquidation. The winding up petition was presented on 12-5-1948 and the order for winding up was passed on 30-6-1948. The suit was instituted on 3-12-1949.

3. The Banking Companies Ordinance (23 of

1949) came into force on 10-9-1949. It amended . Act 10 of 1949 and inserted in it Part III-A which consists of a group of sections including Section 45F. The Banking Companies (Amendment) Act (20 of 1950) came into force on 18-3-1950. It repealed Ordinance 23 of 1949 and re-enacted many of its provisions including Section 45F, Section 45F read as follows:

"45F. Special period of limitation--Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application by a banking company, the period of one year immediately preceding the date of the order for the winding up of the banking company shall be excluded."

The Banking Companies Ordinance 4 of 1953 came into force on 24-10-1953. It amended Act 10 of 1949 and substituted a new part IIIA in place of the existing Part IIIA. The new Part IIIA consisted of a group of sections including Section 45-O. The Banking Companies (Amendment) Act (52 of 1953) came into force on 30-12-1953. It repealed Ordinance 4 of 1953 and re-enacted many of its provisions including Section 45-O.

Section 45-O reads as follows:

"45-O. Special period of limitation--(1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking, company shall be excluded.

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

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

4. If Art. 59, Limitation Act, and S. 45F, Banking Companies Act (Act 10 of 1949), in force on 3-12-1949 is applied the suit so far as it seeks recovery of the sum of Rs. 16,751/4/9 from the defendant personally is clearly barred by the law

of limitation.

5. The question is whether in view of the alteration of the law during the pendency of the suit Section 45-O of Act 10 of 1949 now in force should be applied to the suit and whether in the circumstances the suit is barred by the law of limitation.

6. Ordinarily the law of limitation applicable to a proceeding is the law in force at the date of the commencement of the proceeding, -- "Soni Ram v. Kanhaiya Lal", 40 Ind App. 74 (PC) (A) and unless there is distinct provision to the contrary a law of limitation either extending or abridging the time during which proceedings are to be taken is a simple alteration in the procedure for enforcement of vested rights and is retrospective in the sense that it regulates all proceedings for the enforcement of all causes of action whether accrued before or after it came into force. See "The Ydun", 1899 LRP 236 (B); -- "The King v. Chandra Dharma", (1905) 2 K. B. 335 (C). .

7. But where a statute of limitation takes away or impairs a vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already past, it ceases to be a mere matter of procedure and is presumed not to have retrospective operation. Thus unless the contrary appears by express words or by necessary implication, a statute abridging the period of limitation and coming into operation at once will not be construed retrospectively so as to bar and confiscate an existing cause of action where the shortened period expired before the new statute came into force and compliance with the new statute was from the first impossible, see -- Gopeshwar Pal Vs. Jiban Chandra Chandra, ; and a statute extending the period of limitation will not be construed retrospectively so as to destroy a title acquired by prescription or to revive and render effective a decree barred under the existing laws. -- "Sachindra Nath Roy v. Maharaj Bahadur Singh", AIR 1922 PC 187.

There is some difference of opinion if a statute extending the period of limitation will be presumed to apply retrospectively so as to revive the remedy in respect of a personal obligation where the earlier law barred the remedy only and did not extinguish the obligation: see -- Km. Kr. Ramanathan Chettiar Vs. N.M. Kandappa Goundan (died) and Others, ;-- "Mohesh Lal v. Busunt Kumaree", G Cal 340 (G); (1905) 2 KB 335 ; Crawford on Construction of Statutes, 1940 Edition 3, 285 page 583.

8. The general rule rests upon the presumed Intention of the legislature. The presumption is displaced if a contrary intention is shown by express words or by necessary implication from the scope and purpose of the "Act and a statute of Limitation may operate retrospectively so as to bar an existing cause of action: -- "Pardo v. Bingham" (1869) 4 Ch App. 735 (H).

9. A statute which is not a matter of mere procedure will not be presumed to affect the rights of the parties in a pending proceeding even though the statute is

shown to affect similar rights in subsequent proceedings. This rule rests-upon the principle that the statute will not be given greater retrospective operation than its language renders necessary. The statute may affect pending proceedings either by express words or by necessary intendment -- "*Hutchinson v. Jauncey*", (1950) 1 All ER 165; -- AIR 1936 49 (Privy Council) .

In the absence of clear intention to the contrary a statute altering the period of limitation during the pendency of a proceeding will not bar or revive the remedy in a pending proceeding and the question whether the proceeding is or is not barred by the law of limitation must depend upon the law in force at the time when the proceeding was instituted (See -- (1934) 66 MLJ 431 (Privy Council) . Where there is no question of barring or reviving the remedy in the pending proceeding the statute takes effect as a matter of mere procedure and applies to the pending proceeding. See 1899 L. R. P. 236 .

(10) The legislature may provide special or general rules of interpretation expressly declaring if the statute is or is not to have retrospective operation. Section 6, General Clauses Act, 1897, provides general rules of interpretation for repealing statutes. Section 2, Limitation Act (15 of 1877) provided a special rule of interpretation for that Act and the Limitation Act (9 of 1871) and though not expressly referred to is in the background of the decisions of the Judicial Committee in -- "*Appasami Odyar v. Subramanaya Odyar*", 15 Ind. App. 167 (PC) (L); -- "*Mohesh Naraih Moonshi v. Taruck Nath Moitra*", 20 Ind. App. 30 (PC) (M); -- "*Khunni Lal v. Gobind Krishna Narain*", 38 Ind App. 87 (PC) (N); -- AIR 1942 54 (Privy Council) (O), to the effect that Act 9 of 1871 and Act 15 of 1877 did not affect any title already acquired and did not revive a right to sue already barred.

11. The legislature considered that a strict application of the existing law of limitation to claims by Banking Companies in liquidation was. unjust and unreasonable. With a view to remedy. what was considered to be an evil the legislature by Ordinance 23 of 1949 and Act 20 of 1950, inserted S. 45F in Act 10 of 1949. Section 45F provides for a special law of limitation for. Banking Companies in liquidation and its effect" was to extend the period of limitation for suits and applications by such companies in respect of" claims accruing before the order for winding up.

Ordinance 4 of 1953 and Act 52 of 1953 substituted in Act 10 of 1949 new Part III A consisting of a group of sections including Section 45-O in place of the existing Part III A including Section 45F. Section 45-O also is a remedial measure. It substitutes a new special law of limitation in place of the existing special law of limitation. Sub-section (2) of Section 45-O provides specially for claims against directors. This sub-section has no application to this case. Sub-section (1) of Section 45-O is a special law of limitation with regard to all claims and is not limited to claims against directors. In the computation of the prescribed period of limitation for suits and applications by Banking Companies Sub-section (1) of Section 45-O provides for the exclusion of the period since the

presentation of the winding up petition replacing the existing Especial law of limitation which provided for exclusion of one year immediately preceding the date of the winding up order.

In my opinion the sub-section does not refer to a pending proceeding either in express words or by necessary implication. In some cases it extends and in other cases it abridges the period of limitation prescribed by the earlier law for suits and applications by, Banking Companies in liquidation. Suppose a cause of action against persons other than directors accrued on 1-6-1946, the winding up petition is presented on 1-1-1950, the winding up order is made on 1-3-1950 and a suit is instituted on 1-4-1950. The suit is not barred by the law of limitation if the law applicable is the law in force on the date of the suit, viz. S. 45P introduced by Act 20 of 1950 read with the Limitation Act, whereas, the suit is barred if the law applicable is Section 45-O introduced by Act 52 of 1953 read with the Limitation Act. The object of the Legislature being the extension of the period of limitation for claims by Banking Companies, I do not consider that the Legislature intended that the sub-section would apply to such suits and would bar the existing right of action.

I am unable to hold that the sub-section applies to those pending suits where its application would revive the right of action barred by the law in force at the time of the institution and that it does not apply to other pending suits where its application would bar the existing right of action. The language of the sub-section is not capable of such construction. The general words "a suit or application" can be given full effect by limiting them to suits and applications commenced after the sub-section came into force. The effect of the non-obstante clause at the beginning of the sub-section is to abrogate existing laws clearly inconsistent with the sub-section. I find nothing in the subsection inconsistent with the rule that a statute which is not a matter of mere procedure does not affect a pending proceeding in the absence of a clear intention to the contrary shown either by express words or by necessary implication. In my judgment Sub-section (1) of Section 45-O does not apply to a suit or application pending on the date when it came into force.

12. I do not express any opinion on the effect and operation of Sub-section (1) of Section 45-O in proceedings instituted after it came into force. I do not also express any opinion on the effect of Sub-section (2) of Section 45-O and on the question of the applicability of the laws of limitation in proceedings for settlement of the List of Debtors.

13. The question whether this suit is barred by the law of limitation must, therefore, depend upon the law in force when this suit was instituted and applying Article 59, Limitation Act, read with Section 45F introduced by Ordinance 23 of 1949, the claim for a decree for Rs. 16,751/4/9 against the defendant personally is barred by the law of limitation.

14. The claim is secured by a charge on two policies of life insurance. The suit,

so far as it seeks to enforce that charge, is governed by Article 120, Limitation Act, read with Section 45P (See -- "Nim Chand Baboo v. Jagabundhu Ghose", 22 Cal 21 (P)). The policies were assigned to the Bank of 2-2-1941 and on 6-3-1942 as security for loans advanced from time to time. The right to enforce the charge in respect of the loans advanced on 27-6-1945 accrued on the making of those loans and consequently the suit for enforcement of the charge is within time.

15. I pass the following decree. There will be a decree in favour of the plaintiff against the defendant for the sum of Rs. 350/-, interim interest at the rate of 6 per cent, per annum, interest on decree at the rate of 6 per cent, per annum and costs. There will be a declaration that the policies mentioned in paragraphs 2 and 3 of the plaint stand charged for the repayment of Rs. 16,751/4/9 which is due from the defendant to the plaintiff but the recovery of which from the defendant personally is barred by the law of limitation.

16. The Court Liquidator is appointed Receiver of the said policies without security and without remuneration.

17. There will be a declaration that the plaintiff is entitled to appropriate all moneys realised from the policies towards pro tanto satisfaction of the said sum of Rs. 16,751/4/9.

18. Certified for two Counsel;