

(1997) 02 BOM CK 0072
In the Bombay High Court
Case No : Writ Petition No. 937 of 1991

Sumerlal M. Bafna and others	Vs	APPELLANT
D.D. Chothia and another		RESPONDENT

Date of Decision : 05-02-1997

Acts Referred:

Limitation Act, 1963 — Section 22, 23

Citation : (1997) 02 BOM CK 0072

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : Y. S. Jahagirdar with Kum. S. M Dandekar, for the Appellant; M. A. Rane with Nitin Jamdar, for the Respondent

Final Decision : Allowed

Judgement

D.K. Deshmukh, J.—This is a landlords' petition challenging the order dated 20-11-1990 passed by the Appellate Bench of the Small Causes Court at Bombay in Revision Application No. 75 of 1990 whereby the Revisional Court dismissed the revision filed by the petitioners by which the petitioners had challenged the order dated 3-7-1990 passed by the Judge, Small Causes Court, Bombay, in R.A.N. No.358/RES/1984.

2. The facts giving rise to these proceedings are that the respondents are tenants residing in a building owned by the petitioners. The respondents filed an application before the trial Court u/s 24 of the Bombay Rent Act. The application was filed on 17-7-1984 for a direction to the petitioners to take all steps necessary to reconnect electric supply to a lift in the building and further to take all necessary steps including the payment of B.E.S.T. dues to restore the essential supply of lift and to make it in working condition. This application was granted by the trial Court by its judgment dated 3-7-1990.

3. Before the Courts below, an objection was raised by the landlords that, the application filed by the respondents, was barred by limitation. It was the case of

the landlords that according to the respondent-tenants, the lift stopped working in the month of January 1980. Article 137 of the Limitation Act, 1963 provides a period of 3 years for making an application u/s 24 of the Bombay Rent Act from the date on which the right to apply accrues. According to the petitioners, the right to apply u/s 24 accrued to the tenants in January 1980. Therefore, the application u/s 24 for restoration of the lift facility should have been made by them within a period of 3 years from the stoppage of the lift which occurred in the month of January 1980. The contention of the petitioners was rejected by the Revisional Court by relying on the provisions of section 22 of the Limitation Act. The Revisional Court held that because of the provisions of section 22 of the Limitation Act, the application filed on 17-7-1984 is within limitation.

4. The only question that is urged before me is whether the finding recorded by the Courts below on the question of the application being beyond the period of limitation is correct or not. It is common ground before me that the provisions of the Limitation Act are applicable to an application to be made u/s 24 of the Bombay Rent Act. It is also not disputed before me that for making an application u/s 24 of the Act, the limitation provided in Article 137 of the Limitation Act would be applicable. The Revisional Court has rejected the contention urged on behalf of the petitioners relying on the provisions of section 22 of the Limitation Act which reads as under :-

"In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or tort, as the case may be, continues."

It is clear that for application of the provisions of section 22, the action must be based on breach of contract or on a tortious act. Shri Rane, learned counsel appearing for the respondents fairly stated before me that he is not urging that it is a tortious act. He contended that the action of the landlords of stopping the lift facility amounts to breach of contract. Perusal of the application filed by the respondents shows that there is no averment in the application that there was any contract entered into between the petitioners and the respondents regarding the lift facility. Shri Rane fairly stated before me that there is no such pleading in the application, though the Revisional Court has observed in its judgment that there was an implied agreement between the tenants and the landlords for providing lift facility. It is pertinent to note here that there are no pleadings of implied contract or agreement between the landlords and the tenants. In the absence of any pleadings or evidence on record about the existence of any express or implied contract between the landlords and the tenants regarding lift facility, in my opinion, the Revisional Court was not justified in recording a finding that there was an implied contract regarding lift facility between the tenants and the landlords. Thus, if there was no contract in existence regarding the lift facility between the tenants and the landlords, there is no question of there being breach of contract. Therefore, clearly, the provisions of section 22 would not be applicable in the present case. Reliance placed by the Revisional

Court on the provisions of section 22 for holding that the application was within limitation is, therefore, obviously erroneous.

5. Now, this takes me to the submission of Shri Rane that because the limitation for making an application u/s 24 of the Bombay Rent Act is governed, by Article 137 of the Limitations Act, according to him, an application u/s 24 can be made within three years from the date on which the cause of action accrues. In the submission of Shri Rane, the closure of the lift by the landlords gives the tenants a recurring cause of action. Therefore, each day on which the lift remains closed, gives him fresh cause of action. For this proposition, Shri Rane relied on a judgment of the Full Bench of the Madhya Pradesh High Court in the case of Mohanlal Vs. State of Madhya Pradesh and Others, and the judgment of the Division Bench of the Allahabad High Court in Municipal Board Vs. B. Sarkar Bahadur Johari, . So far as the judgment of the Madhya Pradesh High Court is concerned, in that case a notice for recovery was given. However, no further action was taken pursuant to that notice. Therefore, the person to whom the notice was given did not take any proceeding against that notice. However, when the second notice was given for the recovery of the amounts, he approached the Court. The question was whether the period of limitation is to be counted from the first notice or the second notice. In paragraph 6 of its judgment, the Madhya Pradesh High Court has observed thus :-

"6. Therefore, the present case is a case of recurring cause of action. The appellant got fresh cause of action in respect of each threat of recovery. His right to file such a suit is not barred unless and until the recovery is made. If the recovery of the amount is not justified under the terms of the contract, the appellant could challenge the same. Though a demand notice was issued by the revenue authorities on 19-8-1959 but they took no further action and so the appellant kept quiet but when a second notice was issued on 21-10-1965 the appellant thought the danger to be imminent and so he filed the application u/s 20. He was fully justified in basing his cause of action for this suit on the notice dated 21-10-1965 and his application filed on 19-8-1966 could not be said to be barred by limitation. If an error of law appears on the face of the award it is a ground for remitting it or setting it aside."

It becomes clear from the perusal of the judgment of the Madhya Pradesh High Court that the High Court has held that every threat of recovery constituted a fresh cause of action because it is the recovery by which the person concerned was aggrieved. Thus in that case an overt act on the part of the Government gave rise to a cause of action. In the present case, the landlords stopped the lift facility in the month of January 1980 and there was no overt act on the part of landlords. So far as the judgment of the Allahabad High Court referred to above is concerned, that judgment does not show the provision which prescribed the limitation and, therefore, in my opinion, without finding out as to whether the provisions of the statute which were being construed by the Allahabad High Court in that case are part materia to the provisions which are relevant here, it would

not be proper to rely on the judgment of the Allahabad High Court for any purpose. It is to be seen here that so far as the aspect of continuing cause of action is concerned, it has been considered by the Supreme Court in its judgment in *Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others*, . The Supreme Court, in paragraph 31 of the judgment, has observed thus :-

"31. It is then contended by Mr. Rege that the suits cannot be held to be barred under Article 120 because section 23 of the Limitation Act applies; and since, in the words of the said section, the conduct of the trustees amounted to a continuing wrong, a fresh period of limitation began to run at every moment of time during which the said wrong continued. Does the conduct of the trustees amount to a continuing wrong u/s 23? That is the question which this contention raises for our decision. In other words, did the cause of action arise *de die in diem* as claimed by the appellants? In dealing with this argument it is necessary to bear in mind that section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that section 23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued. Can it be said that, after the appellants were evicted from the temple in execution of the said decree, the continuance of their dispossession was due to a recurring act of tort committed by the trustees from moment to moment? As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action *de die in diem*. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of section 23 in such a case. That is the view which the High Court has taken and we see no reason to differ from it."

It is thus to be seen that what gives a cause of action is a continuing injury and not effect of the injury which is once caused. In my opinion, the statutory right of

the respondents was breached and therefore injury was caused to them on the first day on which the lift was closed. The tenants could have approached the Court u/s 24 of the Bombay Rent Act any time within 3 years from the closure of the lift. In my opinion, keeping the lift closed every day thereafter would not give a fresh cause of action to the respondents. In my opinion, therefore, the Courts below were not justified in entertaining the application filed u/s 24 of the Bombay Rent Act by the respondents as the application was barred by limitation.

6. In the result, therefore, the petition succeeds and is allowed. Rule made absolute in terms of prayer clause (b) with no order as to costs.