**(1962) 01 GUJ CK 0009**

**In the Gujarat High Court**

**Case No :** Civil Revision Application No. 51 of 1960

Thacker Chatrabhuj Gokuldas — APPELLANT

Vs

Thacker Khatau Motiram — RESPONDENT

**Date of Decision :** 17-01-1962

**Acts Referred:**

General Clauses Act, 1897 — Section 6
Limitation Act, 1908 — Section 19, 29, 3
Merged States (Laws) Act, 1949 — Section 5

**Citation :** AIR 1963 Guj 185

**Hon'ble Judges :** V.B. Raju, J

**Bench :** Single Bench

**Advocate :** Y.S. Mankad, for Palan, for the Appellant; B.R. Sompura, for the Respondent

**Final Decision :** Allowed

## Judgement

V.B. Raju, J.—The learned District Judge of Kutch held in Regular Civil Appeal No. 72 of 1956 that the original suit was cot out of time and therefore set aside the decree of the trial Court which dismissed the suit as having been barred by limitation. In revision it is contended by the petitioner, who is the original defendant, that the appellate Judge committed a gross irregularity in the exercise of his jurisdiction by holding that the suit was in time.

2. Therefore, the question is one of limitation and the following facts have to be borne in mind. The cause of action arose in Kutch State. The Khata in question has been executed in Kutch State on 14-4-48. The Kutch State was integrated in the Union of India and came to be classified as a C Class State. By Notification No. I27(C)-J, dated 31st July, 1949, the Government of India applied the Indian Limitation Act to Kutch and the Notification was styled as ''the Kutch Application of Laws Order, 1949''. By the said order, the Indian Limitation Act came into force in Kutch on 31-7-49 subject to the Sudhara or the modification. The only modification specified in the schedule I of the order which was as under :-

 

"All suits and applications which would be barred as a result of coming into operation of the Indian Limitation Act shall be brought within a period of three years from the data of commencement of the Act in Kutch, provided that nothing herein stated shall be construed to extend the period of limitation allowed under the Kutch Limitaiton Act."

The Notification also repealed the Kutch Limitation Act, 1948, subject to a saving clause which when translated reads as under:-

"Save as provided in the amendment to the Indian Limitation Act in Schedule I."

By the Merged States Laws Act, 1949, the Indian Limitation Act was applied and the Kutch Application of Laws Order, 1949, was repealed together with the amendment shown above. The Indian Limitation Act without any modification was re-applied. This was in January 1950. The suit was filed on 30-6-55 and an acknowledgement, dated 26-6-52 was also relied on in the suit as saving limitation.

3. It is clear form the Merged States Laws Act, 1949, which came into operation in January, 1950, that on the date of the suit, in 1955, the saw of limitation which applied was the Indian Limitation Act without any modification. Under this law, the suit which was based on a Khata dated 14-4-1948 would have been barred by limitation in 1951, but it is contended by the learned counsel for the opponent that what was applied (sic - repealed ?) was the Indian Law of Limitation, which had been applied by the Kutch Application of Laws Order and not the Sudhara or amendment thereof contained in the second column of Schedule I to the Kutch Application of Laws Order, 1949. Section 3 of the Notification of the Government of India, dated 31st July, 1949. referred to above, applied the Indian Limitation Act, subject to the "Sudhara" shown in the schedule and that "Sudhara'' ''has been translated above. Section 5 of the Merged States (Laws) Act, 1949. which came in force in January 1950 reads as follows :-

"5. Repeal of corresponding laws - If immediately" before the commencement of this Act there is in force in any of the new Provinces or merged States an Act, Ordinance, Regulation or other law corresponding to an Act, Ordinance or Regulation specified in the Schedule, whether such Act, Ordinance or Regulation is in force by virtue of an Order under the Extra-Provincial Jurisdiction Act, 1947 (XLVII of 1917). or by virtue of any other legislative power; such corresponding taw shall upon the commencement of this Act -

(a) in a new Province, stand repealed."

It is, therefore, contended that what was repealed was merely the Indian Limitation Act and not the "Sudhara'' contained in the schedule. This contention cannot be accepted because the law Corresponding to the Indian Limitation Act which is referred to in Section 5 of the Merged State (Laws) Act, 1949, is not merely the Indian Limitation Act but the Indian Limitation Act together with the "Sudhara" contained in the Kutch Application of Laws Order, 1949. The two together are the corresponding law and, therefore, must be taken to have been repealed.

4. It is, however, contended that even if the Act is repealed, u/s 6(c) of the General Clauses Act the rights under the repealed Act are saved. The learned counsel for the petitioner, however, contends that what are saved by the provisions in Section 6(c) of the General Clauses Act are rights, privileges, obligations or liabilities acquired, or incurred under the enactment so repealed; that the liability of the defendant is a liability under the Contract Act, and not under the Act repealed viz., the Limitation Act, which merely provided a period of limitation for the plaintiff to litigate his case and that the lapse of that period barred the plaintiff''s remedy against the defendant and that the liability of the defendant is in no way affected. It is true that the Indian Limitation Act does not create any rights but mersly bars certain remedies. But in the instant case, however, the Indian Limitation Act as repealed contained a special amendment, the translation of which has been given above. This provision, creates a special right to bring the suit within three years from the date of commencement of the Act in Kutch. This is a special right created by that Act and is saved by Section 6(c) of the General Clauses Act. But the effect of this saving is merely that a suit can be brought within a period of three years from the date of the commencement of the Act (sic - Order?), i. e., 31st July, 1949. The suit could, therefore, have been brought before 31-7-1952 but was in fact brought in June, 1955.

The learned counsel for the petitioner has relied on a judgment of the Bombay High Court in ''Appeal from Order No. 24 of 1958. In that judgment V. S. Desai, J.. held that Section 6(a) or 6(b) of the General Clauses Act would not invite the application of the previous law of limitation. With respect I agree with him that Section 6(b) of the General Clauses Act, which says that the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, would keep the old rule of limitation alive because that is not anything done or suffered under the old law. As regards Section 6(c) of the General Clauses Act, with reference to the contention that the liability of the defendants to pay the plaintiffs within the period of the original limitation, cannot he affected by the subsequent enactment of the Indian Limitation Act, Desai, J., rejected this contention holding that the liability of the defendant was a liability under the Contract Act whereas the Limitation Act provided for a period of limitation for the plaintiff to litigate his case and the lapse of the period barred the plaintiff''s remedy against the defendants without affecting in any way the liability of the defendants. He, therefore, held that Section 6(c) of the General Clauses Act cannot help the plaintiff in such a case. With respect I agree with these general observations of Desai, J., but, in my opinion, Section 6(c) of the General Clauses Act does apply in the instant case because it is not merely the Indian Limitation Act that was repealed but that Act together with a special amendment which created a right. The law of limitation does not create a right but the special amendment made to "the Law of Limitation by the Merged States

 

(Laws) Act, 1949, (Sic) Kutch Application of Laws Order, 1949 does create a special right by reason of the amendment contained in the second column of the schedule to that Act (Sic) Order? That amendment created a special right to file a suit within a period of three years from 31st July 1949.

5. It is, however, contended by the learned counsel for the petitioner that once the right to file a suit is saved, he can rely on Section 19 of the Indian Limitation Act and the acknowledgment of the liability made on 26-6-1952 before the expiry of the period mentioned in the amendment to the Indian Limitation Act. . Sub-section (1) of Section 19 of the Indian Limitation Act reads as follows : -

"19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed". The reference in this Section to the period prescribed is as stated in Section 3 of the Limitation Act to the period prescribed by the First Schedule to the Indian Limitation Act. The first part of Section 3 of the Indian Limitation Act reads as follows : -

"3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred and application made, after the period of limitation prescribed therefore by the first schedule, shall be dismissed, although limitation has not been set up as a defence".

Section 3 of the Indian Limitation Act makes a reference to the provisions of Sections 4 to 35 and is subject to those provisions. It is, therefore, clear that the expression "period prescribed" used in Section 19 has reference to Section 3 and to the period prescribed by the First Schedule to the Limitation Act. The expression "period prescribed for a suit or application" contained Section 19 of the Limitation Act cannot, therefore, be applied to the amendment made to the Indian Limitation Act in the second column of Schedule to the Kutch Application of Laws Order; 1049. The plaintiff, cannot therefore rely on the acknowledgment of liability, dated 26-6-52 and Section 19 of the Limitation Act. He can merely rely on Section 6 of the General Clauses Act arid the special right given by the amendment to the Indian Limitation Act contained in the Schedule to the Kutch Application of Laws Order, 1949, which was repealed by the Act which came in operation in January 1950. The appellate Court, therefore, erred in holding that the suit was in time and has committed a gross irregularity in the exercise of its jurisdiction.

6. It is also contended by the learned counsel for the opponent that the expression "period prescribed" in Section 19 of the Limitation Act does not necessarily relate to the period prescribed under the Schedule I to the Indian Limitation Act and he relies on Firm Kamta Prasad Jagannath Prasad Vs. Gulzari Lal and Another, , Savada Gounder Vs. Veerappa Gounder, and Ambalal

 

Harjivandas Vs. Jani Chandulal Vidyaram, in support of his contention. In the Allahabad case (S) Firm Kamta Prasad Jagannath Prasad Vs. Gulzari Lal and Another, it is observed as follows :

"There has been some conflict of opinion as to the meaning of the words "prescribed period" in Sections 19 20 and other sections of the Act. It has been held in some cases that prescribed period means the period mentioned in the third column of the first Schedule. It has also been held that there is no reason'' to limit the words "period prescribed" to the period mentioned in the third column of the first Schedule and the prescribed period must mean the period prescribed under the Limitation Act. In other words, the period mentioned in the third column of the first schedule is subject to the provisions of Sections 4 to 25 of the Limitation Act".

With reference to Section 29 of the Limitation Act, it was observed as follows : -

"We may point out that Section 29, Limitation Act, deals only with cases where a special or local law prescribes a period of limitation different from the one prescribed in the first Schedule. It has nothing to do with a case like the present in which a pertain period has to be excluded from computation in determining the period of limitation prescribed under the Limitation Act, or a case like the one before the Full Bench where a certain period had to be excluded in computing the period of limitation by reason of the provisions of Section 52, Court of Wards Act".

This case was followed in Savada Gounder Vs. Veerappa Gounder, : and it was observed that the period prescribed referred to in Section 19 of the Limitation Act was not limited to the prescribed in the first Schedule of the Act and that in computing the period prescribed the period to which a party is entitled to exclude under any law for the time be-ine in force should be taken into account.

7. The Bombay case refers to a case under the Baroda Act where the case was decided with reference to the wording of Section 3(a) and Section 29 of the Limitation Act. With reference to Clause (12) of the Baroda State (Application of Laws) Order, 1949, it was held that Clause (12) of that order prescribed a period of limitation for suits on promissory notes and that a part payment made within that period cannot amount to a valid acknowledgment u/s 20 of the Limitation Act.

8. Although the learned counsel for the appellant relied on these three cases, I must reject his contention for the following reasons. It is true that ordinarily the expression "prescribed period'' used in Section 19 of the Limitation Act should not be restricted in any manner. But Section 19 of the Limitation Act, which is one of the group of Sections 4 to 25 has been enacted with reference to Section 3 of the Limitation Act, para 1 of which reads as follows:-

"3. Subject to the provisions contained in Sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefore by the first schedule shall be dismissed, although limitation has not been set up as a defence."

Where the period of limitation is prescribed by Schedule J of the ''Indian Limitation Act, all the Sections 4 to 25 are applicable. For cases, where the period of limitation is prescribed outside the Indian Limitation Act, we have the provision in sub-section (2) of Section 29 of the Limitation Act, which reads as follows:-

"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law -

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

If the Kutch Application of Laws Order, 1949, is a special or local law within the meaning of Section 29, then the application of Sections 19 and 20 of the Limitation Act is specially excluded by sub-section 2(b) of Section 29. The Indian Limitation Act is the general law of limitation and every other Act prescribing periods of limitation is a special or local law on the subject of limitation. The Indian Limitation Act has, therefore, made two provisions, (1) for the period of limitation prescribed in the Indian Limitation Act; and (2) for the period of limitation prescribed elsewhere. For the periods of limitation in the Indian Limitaton Act, Sections 4 to 25 are applicable as stated in Section 3 of the Limitation Act. In view of the clear provisions in Section 3 and Section 29, in my opinion, the expression "period prescribed" found in Section 4 to 25 has reference only to the period of limitation prescribed under the Indian Limitation Act and not elsewhere.

9. Even assuming for a moment that the expression "period prescribed" used in Section 19 includes the period of limitation prescribed outside the Indian Limitation Act, then Section 29(2) (a) and (b) would be attracted and in such a case Section 19 of the Limitation Act would not be applicable. In either view, Section 19 of the Limitation Act cannot be availed of by the original plaintiff.

10. The petition is therefore allowed and the original suit is ordered to be dismissed. There will be no order as to costs.

 