

(2018) 03 KAR CK 0015

In the Karnataka High Court

Case No : Civil Revision Petition No.250 of 2007

**The Bharath Sanchar Nigam Limited @APPELLANT@Hash Sri Ahmed
Sharief Abdul Gaffar Kamanagar**

Date of Decision : 09-03-2018

Acts Referred:

Provincial Small Causes Courts Act, 1887 — Section 18
Companies Act, 1956 — Section 617
Limitation Act, 1963 — Article 112, 113

Citation : (2018) 03 KAR CK 0015

Hon'ble Judges : KRISHNA S.DIXIT, J

Bench : Single Bench

Final Decision : Disposed of

Judgement

1. This revision petition by the plaintiff Bharat Sanchar Nigam Limited (for short â??BSNLâ??) is directed against the judgment and order dated

27.06.2006 rendered by the Principal Civil Judge (Sr.Dn.), Hubballi in petitionerâ??s Small Cause Suit No.98 of 2003 whereby the suit is dismissed

on the sole ground of limitation.

2. The brief facts stated are:

A. The revision petitioner Bharat Sanchar Nigam Limited is a Government Company as defined under Section 617 of Companies Act, 1956; the

BSNL had instituted a civil suit on 27.09.2003 numbered as Small Cause Suit No.98 of 2003 seeking a money decree against the respondent defendant

who having availed the facility of land-line telephone bearing No.62550 had remained in arrears that had accumulated in a sum of Rs.16,738/- over the period of time;

B. The plaintiff BSNL had disconnected the telephone services w.e.f. 28.06.1999 on the ground that the defendant failed to clear the dues despite the

demand notice dated 04.01.2000; Despite service of notice, neither defendant filed the Written Statement nor did he participate in the suit proceedings.

3. On the basis of the pleadings of the petitioner and the documents produced by it, the trial court framed the following three issues:

- (i) Whether the plaintiff is entitled to recover the suit claim (sic)?
- (ii) Whether the suit filed is within the time prescribed under the law of limitation?
- (iii) What order?

4. To prove the suit claim, the revision petitioner had examined one Mr. Shivashankar S/o. Gurupadappa Ambalagi as PW-1 and as many as two

documents namely, the demand notice dated 4.01.2000 and the authorization letter to institute the suit came to be marked respectively as Exs.P-1 &

P-2. There was no cross-examination of this witness at all nor was there any participation from the side of the defendant. The trial court by the

impugned judgment and order held that the amount due if any from the defendant was for the period anterior to 28.06.1999 and therefore, the suit

ought to have been filed on or before 28.06.2002; the revision petitioner has filed the suit only on 27.09.2003 and therefore, the suit is barred by law of

limitation.

5. The Court below for computing the period of limitation has invoked Article 113 of Schedule I of the Limitation Act, 1963 (for short 'the Act')

which reads:

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

113 Any suit for which no period of limitation is provided elsewhere in this Schedule. Three years When the right to sue accrues.

6. Since the respondent defendant despite service of notice both in the trial court and in this Court chose to remain absent, Sri. Girish Yadav, on

being requested has assisted the Court as an amicus curiae dispassionately. Such a course was adopted by this Court since a Question of Law of

some significance had arisen in this case.

7. The learned Senior Standing Counsel for the Central Government submits that the impugned judgment and order are a result of misdirection in law

inasmuch as the Court ought to have invoked Article 112 of the Limitation Act which provides for a limitation period of thirty years as against three

years provided by residuary Article 113. It is profitable to reproduce that text of

Article 112 hereunder:

Description of suit Period of limitation Time from which period begins to run 112
Any suit (except a suit before the Supreme Court in the exercise of

its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and

Kashmir. Three years When the period of limitation would begin to run under this Act against a like suit by a private person.

8. The learned counsel for the revision petitioner contends that the BSNL is a Government Company as defined under Section 617 of the Companies

Act, 1956; it was established as a public sector undertaking with effect from 1.10.2000; going by the instrument of its incorporation, virtually it has

succeeded to the rights and liabilities of the Department of Telecommunication so far as telephone services are concerned either as a legal successor

or as an assignee of the Department and therefore the period of limitation should be computed under Article 112 and not under Article 113 of the I

Schedule to the Act.

9. The learned amicus curiae took a different route of reasoning, banking upon the judgment of the Honâ??ble High Court of Punjab and Haryana in

the case of Vipin Kumar Jain Vs. BSNL and Another, reported in 2014 SCC Online P&H 122 which held:

â??â??.BSNL came into existence only on 01.10.2000 whereas in the present case the amount became due to the Department of Telecom on

21.06.1997 thus, limitation period for any suit to be filed by the Department of Telecom is 30 years as per Article 112 of the Schedule to the Limitation

Act, 1963. Therefore, in the present case, the suit was filed within the period of limitation. â?|â?|.â??

The learned amicus curiae Sri.Girish Yadawad also points out that in the aforesaid judgment, the Honâ??ble Punjab and Haryana High Court has

followed the earlier cases involving almost identical facts.

10. The learned amicus Curiae submits that the cause of action for this suit arose on 28.06.1999 when the BSNL was not in existence. The said cause

of action had accrued due, to the Department of Telecommunication which is a part of the Central Government. The limitation period started to run

with effect from the said date. The BSNL having been incorporated as a Government Company with effect from 01.10.2000 (as held by the

Honâ??ble Punjab and Haryana High Court), the said cause of action enures to the benefit of BSNL and therefore, it should be deemed that the

BSNL was prosecuting the cause of action of the Central Government if not for the Central Government and as a corollary of this, he submits that

Article 112 is invocable for computing the limitation period. To buttress his view, he submits that it is a canon of law of limitation that once the

limitation period starts to run, nothing stops it.

11. The learned Amicus Curia also submits that 30 years of limitation period prescribed under Article 112 has got an underlining philosophy namely the

Government working with a large number of employees who take collective or institutional decisions as prescribed by the Rules and Regulations

governing the transaction of its business has to have a longer limitation period much different from the ones prescribed for individuals and non-

governmental entities/bodies. He submits that the purpose for which a special longer period of limitation is enacted under Article 112 would be better

served if the BSNL as the legal successor of Department of Telecommunication is permitted to seek refuge under this Article since the cause of

action accrued to the Department of the Government anterior to its incorporation.

12. I have carefully considered the parallel contentions, one advanced by the learned Senior Standing Counsel for the Central Government and the

other arguments advanced by the learned amicus curia Sri.Girish Yadawad who has taken pains to make research in the matter to enable himself to

assist the Court. I find a lot of force in the submissions of the learned amicus curiae that the cause of action had accrued to the Department of

Telecommunication i.e., the Central Government; that the BSNL which came to be incorporated by the very same Department with effect from

04.01.2000 is prosecuting the suit founded on the cause of action of the Central Government and therefore, the suit should be deemed to be one on

behalf of the Central Government if not by the â??Central Governmentâ?. If that be so, the limitation period as prescribed under Article 112 is

applicable to the suit in question which was filed on 27.09.2003. The suit is well within the limitation period of 30 years.

13. The expression â??by or on behalf of the Central Governmentâ? the Amicus Curie submits has to be liberally construed to advance the cause of

the public at large inasmuch as a long period of 30 years of limitation is given by

the parliament as contra distinguished from the shorter periods of limitation given to others, because the cause of action which the Government prosecutes in a suit or proceeding is for and on behalf of the public at large. He also points out the juridical difference maintained between the Central Government and other ordinary litigants. He further submits that, the suit is founded on the cause of action that had accrued to the Central Government inasmuch as amount was due to the Department of Telecom and therefore the suit filed by the B.S.N.L is for recovery of the amount due to the Central Government only.

14. The Amicus Curie develops his arguments that the absence of Central Government in the array of parties in the suit of the Government pales into insignificance once the amount to be recovered is shown to be on the basis of cause of action that had accrued to the Central Government. In sum and substance, the learned counsel states that, even though the plaint does not describe in so many words that the suit is filed on behalf of the Central Government, still the same is insignificant once we go by the content and intent of the plaint, it is obvious that the suit is one for the recovery of money that was originally due to the Central Government. I am in full agreement with this argument that advances the cause of justice which the Court of law has to keep in view in interpreting the provisions of adjective law, i.e., the Limitation Act.

15. The assistance ably rendered by the learned amicus curiae is appreciated.

16. For all the reasons stated above, I pass the following order:

ORDER

(i) This Revision Petition Succeeds. The impugned judgment and order dated 27.06.2006 made by the learned Principal Civil Judge (Sr.Dn.), Hubballi, whereby the revision petitioner's Small Cause suit No.98 of 2003 was dismissed, is hereby set aside. The matter is remanded to the learned Judge for disposal afresh in accordance with law.