

Sri Amar Chand Inani

Vs

The Union of India

Civil Appeal No. 1270 of 1969

(K. S. Hegde, P. Jagmohan Reddy, I. D. Dua JJ)

(J. M. Shelat, I. D. Dua, Y. V. Chandrachud JJ)

(K. S. Hegde, P. Jagmohan Reddy, H. R. Khanna JJ)

(A. N. Ray, D. G. Palekar, M. H. Beg JJ)

(H. R. Khanna, Y. V. Chandrachud JJ)

13.10.1972

JUDGMENT

MATHEW, J. -

1. This appeal, by special leave, is from the judgment of the High Court of Punjab and Haryana dismissing the appeal filed by the plaintiff against the decree dismissing his suit for recovery of damages to the tune of Rs. 1 lakh.
2. The plaintiff is an advocate practising at the Ajmer bar. On the night between December 31, 1957 and January 1, 1958, the plaintiff was travelling by 2 Dn. passenger train from Ambala Cantt. to Delhi. While the train was at Mohri Railway Station, the Janatha Express train coming from Delhi collided with it and as a result the plaintiff sustained serious injuries on his head and in the spine. The plaintiff filed the suit claiming damages under several heads. The Trial Court found that the claim for damages was well founded to the extent of Rs. 33,503.00, but dismissed the suit on the ground that it was barred by limitation. The High Court, on appeal by the plaintiff, confirmed the finding of the Trial Court that the suit was barred by limitation and dismissed the appeal.
3. The main question, in this appeal, is whether the suit was filed within the period of limitation.
4. There is no dispute that the Article applicable to the suit is Article 22 of the Indian Limitation Act, 1908, hereinafter called the 'Act' which provided a period of one year for a suit for compensation for injury to the person from the date when the injury was committed. The injury here was committed on January 1, 1958. But the plaintiff had to issue a notice under Section 80 of the Civil Procedure Code before filing the suit. The plaintiff issued the notice and it was served on the General Manager of the Railway in question on December 29, 1958. The Suit was filed in the Court of the Senior Subordinate Judge of Karnal, hereinafter called the 'Karnal Court', on March 2, 1959, as March 1, 1959, was a day on which the Court was not open. For ministerial purposes, the suit was subsequently transferred to the Court of the Subordinate Judge, Panipat, hereinafter referred to as the 'Panipat Court', which by its order, dated October 28, 1959, returned the plaint for

presentation to the proper court. That was on the basis of its finding that Mohri Railway Station, where the injury was committed, was not situate within territorial jurisdiction of the Court. The plain was thereafter presented in the Court of the Senior Subordinate Judge, Ambala, hereinafter referred to as the 'Trial Court', on October 29, 1959, together with an application under Section 14 of the Act.

5. Before the Trial Court as well as the High Court the appellant contended that, by virtue of Section 4 of the suit filed, the Act, on March 2, 1959, was within time, as March 1, 1959, was a day on which the Court was not open and that in any event, the suit was not barred by limitation as the appellant could not have filed the suit before the expiration of two months after the delivery of the notice under Section 80 of the Civil Procedure Code. Both the Courts overruled these contentions.

6. Counsel for the appellant submitted that the suit could not have been instituted without giving 2 months' notice as required by Section 80 of the Civil Procedure Code and, if the period of 2 months is calculated from the date of the service of the notice, the suit need have been filed only on March 3, 1959, and therefore, the suit was filed within time. Under Section 15(2) of the Act, the plaintiff was entitled to exclude the period of notice. That means, the plaintiff could have filed the suit within one year and 2 months from the date on which the injury was committed. But according to counsel, as the plaintiff could not have filed the suit before the expiry of the period of notice, and as that period expired only on March 2, 1959, as there were only 28 days in February, 1959 and so, the suit was within time. We find no force in this argument.

7. Section 80 of the Civil Procedure Code provides, among other things, that no suit shall be instituted against the Central Government, where it relates to a Railway, until the expiration of two months next after notice in writing has been delivered to or left at the office of the General Manager of the Railway. It was not open to the plaintiff appellant to wait till December 29, 1958, for delivery of the notice and say that till the expiration of the two months from that date, no suit could be filed and that the suit is, therefore, within the period of limitation though filed after one year and 2 months from the date when the injury was committed. Section 80 only prescribes a condition precedent for the institution of the suit and has nothing to do with the period of limitation for a suit except that under Section 15(2) of the Act, the period of notice can be deducted in calculating the period of limitation.

8. It was contended for the appellant that even if the Karnal Court was not the proper Court in which the suit should have been filed, the plaintiff was entitled to the benefit of Section 4 of the Act. Section 4 of the Act provides that where the period of limitation prescribed for any suit expires on a day when the Court is closed, the suit may be instituted on the day the court reopens. But, if the Kamal Court was not the proper court in which the suit should have been filed, the plaintiff would not be entitled to the benefit of Section 4. The decision of the Privy Council in *Maqbul Ahmad and Others v. Pratap Narain Singh and Others*, (62 IA 80) is an authority for this proposition. In that case the Privy Council said :

"..... the language of Section 4 is such that it seems to their Lordships to be impossible to apply it to a case like the present. What it provides is that, where the period of limitation prescribed expires on a day when the court is closed, the application may be made on the day when the Court reopens. In their Lordships view that means the proper Court in which the application ought to have been made"

9. If the plaintiff had filed the suit in the Trial Court, on March 2, 1950, then certainly the suit

would have been within time under Section 4, as that was the proper Court in which the suit should have been filed. As Karnal Court had no jurisdiction to entertain the plaint, it was not the proper Court. The fact that the plaintiff would be entitled to take advantage of the Provisions of Section 14 of the Act would not, in any way, affect the question whether the suit was filed within the time as provided in Section 4 in the Karnal Court. Section 14 of the Act only provided for the exclusion of the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. Even if the plaintiff was entitled to get an exclusion of the time during which he was prosecuting the suit in the Karnal and Panipat Courts, the suit would not be within time the filing of the suit in the Karnal Court was beyond the period of Limitation. It was, however, argued by counsel for the appellant that the suit instituted in the Trial Court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Karnal Court must be deemed to have been filed in the Trial Court; We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court only when the plaint was presented in that Court. In other words, the suit instituted in the Trial Court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court (see the decisions in *Harachand Succaram Gandhi and Others v. G. I. P. Ry. Co.* (AIR 1928 Bom 421) *Bimla Prasad Mukerji v. Lal Moni Devi and Others*, (AIR 1926 Cal 355) and *Ram Kishun v. Ashirbad*. (ILR 29 Pat 699) Therefore, the presentation of the plaint in the Karnal Court on March 2, 1959, cannot be deemed to be a presentation of it on that day in the Trial Court.

10. Counsel for the appellant contended that the Karnal Court had jurisdiction to entertain the plaint presented to it on March 2, 1959 and, therefore, that was the proper Court for the purpose of Section 4 of the Act and that suit was filed within time. He said that although the order passed by the Panipat Court on October 28, 1959, holding that it had no jurisdiction to entertain the plaint and returning it for presentation to the proper Court, was not appealed from, the appellant is not precluded from challenging the finding in the order that Mohri Railway Station is not within the jurisdiction of the Karnal Court. On the other hand, counsel for the respondent contended that since an order passed under Order 7, Rule 10 of the Civil Procedure Code, returning a plaint for presentation in the proper Court, was appealable under Order 43, Rule 1(a), the appellant is precluded from challenging the correctness of the finding of the Court that Mohri Railway Station was not within its jurisdiction as no appeal was preferred from that order by the appellant. Counsel said that as that order has become final, it would constitute *res judicata* and the appellant cannot challenge its correctness in an appeal from the decree. Counsel further said that Section 105 of the Civil Procedure Code which enables a party to challenge the correctness of an interlocutory order whether appealable or non-appealable when an appeal is preferred from the decree in the case, has no application for the reason that the order passed by the Panipat Court cannot be deemed to be an order passed in the suit in which the decree was passed by the Trial Court, but a final order which terminated the proceedings in the Panipat Court. To put it in other words, the argument was, that since the suit in the Trial Court was not a continuation of the suit which was filed in the Karnal Court, the order returning the plaint cannot be deemed to be an order passed in the suit as instituted in the Trial Court and, therefore, there is no question of challenging that order under Section 105 of the Civil Procedure Code in an appeal against the decree passed by the Trial Court. In support of the contention, counsel referred to the ruling which have already been referred to in this judgment holding that a suit instituted by the presentation of a plaint in pursuance to an order passed under

Order 7, Rule 10 of the Civil Procedure Code is not a continuation of the suit as instituted in the Court which had no jurisdiction to entertain it. The rulings of this Court in *Satyadhan Ghosal and Others v. Sm. Deorajin Debi and Another*, ((1960) 3 SCR 590 : AIR 1960 SC 941 : (1962) 1 SCJ 268) and *Arjun Singh v. Mohindra Kumar and Others*, ((1964) 5 SCR 946 : AIR 1964 SC 993) were also referred to by Counsel to show that the order passed by the Panipat Court returning the plaint for presentation to the proper Court was a final order and operated as *res judicata*, precluding the appellant from challenging its correctness in this appeal. We do not think it necessary to decide the question whether the order passed by the Panipat Court returning the plaint for presentation in the proper Court would operate as *res judicata* and preclude the appellant from contending in this appeal that the Karnal Court had jurisdiction to entertain the suit, for the reason that the appellant never raised the contention before the Trial Court that Karnal Court was the proper Court for instituting the suit on the ground that Mohri Railway Station was within its jurisdiction. On the other hand, by invoking Section 14 of the Act, he impliedly asserted that the Karnal Court had no jurisdiction to entertain the plaint because that section proceeds on the basis that the Court in which the proceeding was pending was unable to entertain the proceeding from defect of jurisdiction, or cause of a like nature. To put it differently, the appellant had no case either in the Trial Court, or in the High Court in the appeal from the decree, that Karnal Court was the proper Court for filing the suit. No doubt he invoked the provision of Section 4 of the Act and sought to bring the case within its purview both in the Trial Court and in the High Court, but that was on the basis that even if the Karnal Court had no jurisdiction to entertain the plaint, he was entitled to the benefit of Section 4. In these circumstances, we do not think that the appellant should be permitted to urge before this Court that the Karnal Court had jurisdiction to entertain the suit for the reason that Mohri Railway Station was within its jurisdiction and show that the suit as filed on March 2, 1959, was filed in the proper Court for the purpose of Section 4 of the Act.

11. As the suit was barred by limitation, we do not think it necessary to consider the question whether the appellant is entitled to get any further amount by way of damages.

12. We dismiss the appeal but, in the circumstances, the parties will bear their costs.

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