

SUPREME COURT OF INDIA

Ahmmadsahab Abdul Milla (dead) By proposed Lrs.

Vs.

Bibijan

C.A.No. 4190 of 2000

(Dr. Arijit Pasayat, Harjit Singh Bedi and Asok Kumar Ganguly JJ)

01.04.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. A reference was made to a three-Judge Bench, by reference order dated 21st April, 2008. The relevant question is whether the use of the expression "date" used in Article 54 of the Schedule to *Limitation Act, 1963* (in short the `Act') is suggestive of a specific date in the calendar. In *S. Brahmanand v. K.R. Muthugopal*¹ a Bench of this Court did not go into this issue. It decided the appeal on the factual scenario applicable. It was however noticed that several High Courts have dealt with the matter differently. In all these cases, for example in *Kashi Prasad v. Chhabi Lal*², *Alopi Parshad v. Court of Wards*³, *Lala Ram Sarup v. Court of Wards*⁴, *Kruitiventi Mallikharjuna Rao v. Vemuri Pardhasaradhirao*⁵, *R. Muniswami Goundar v. B.M. Shamanna Gouda*⁶, *Huthegowda v. H.M. Basaviah*⁷, *Purshottam Sava v. Kunverji Devji*⁸, *Lakshminarayana Reddiar v. Singaravelu Naicker*⁹, *Shrikrishna Keshav Kulkarni v. Balaji Ganesh Kulkarni*¹⁰, *P. Sivan Muthiah v. John Sathivasagam*¹¹, the High Courts had decided the issue in the background of Article 113 of the *Limitation Act, 1908* (hereinafter referred to as the `Old Act'). Article 113 of the Old Act is in pari materia with Article 54 of Schedule to the Act. Some of the High Courts took the view that the force of the word `fixed' implies that the date should be fixed definitely and should not be left to be gathered from the surrounding circumstances of the case. Some other High Courts, however, took a different view. There are two decisions of this Court i.e. *Ramzan v. Hussaini*¹² and *Tarlok Singh v. Vijay Kumar Sabharwal*¹³. In Tarlok Singh's case (supra) the factual scenario was noticed and the case was decided after referring to Article 54 of the Schedule to the Act. Ramzan's case (supra) related to the specific performance of contingent contract. It was held that the expression `date fixed for performance' need not be ascertainable in the face of the contract deed and may be ascertainable on the happening of a certain contingent event specified in the contract.

2. Article 54 of the Schedule to the Act reads as follows:

“Description of suit Period of limitation Time from which Period begins to run 54 For specific performance three years The date fixed for the Of a contract performance or, if no Such date is fixed, when the plaintiff has notice that performance is refused.”

3. Learned counsel for the appellants submitted that purposive interpretation has to be given to the expression "the date fixed".

4. The judgments in Ramzan and Tarlok Singh cases (supra) were rendered in a different factual scenario and the discussions do not throw much light on the controversy at hand.

5. According to Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition 2005, the word 'date' means as follows:

“Date. (As a noun) The point of time at which a transaction or event takes place; time given or specified;

time in some way ascertained and fixed; in a deed, that part of the deed or writing which expresses the day of the month and year in which it was made, (2 Bl. Commn. 304; Tomlin). In *Bement v. Trenton Locomotive, etc., Mfg. Co.*¹⁴, it is said : ‘The primary signification of the word date, is not time in the abstract, nor time taken absolutely but, as its derivation plainly indicates, time given or specified time in some way ascertained and fixed; this is the sense in which the word is commonly used. When we speak of the date of a deed, we do not mean the time when it was actually executed but the time of its execution, as given or stated in the deed itself.

"Where a deed bears no date, or an impossible date, and in the deed reference is made to the 'date', that word must be construed 'delivery'; but if the deed bears a sensible date, the word 'date', occurring in the deed, means the day of the date, and not that of the delivery"

(Elph. 123, citing *Styles v. Wardle*, B&C 908;

"Date", though sometimes used as the shortened form of "day of the date", is not its synonym; but mean the particular time on which an instrument is given, executed, or delivered (*Howard's Case*, 1 Raym. Ld 480; *Armitt v. Breame*¹⁵, *Pewtress v Annan*¹⁶).

4 "The word 'date' is much more commonly descriptive of a day than of any smaller division of time" (per *Simpson v. Marshall*¹⁷).

"Date" means day, so that where a cover note providing for temporary insurance of a motor car expires "15 days after date of commencement" it runs for the full 15 days after the day on which it was to commence (*Cartwright v. Mac Cormack; Trafalgar Insurance Co. (Third Party)*¹⁸)."’

6. 'Fixed' in essence means having final or crystallized form or character not subject to change or fluctuation.

7. The inevitable conclusion is that the expression 'date fixed for the performance' is a crystallized notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on 'when the plaintiff has notice that performance is refused'. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression 'date' used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits.

8. The reference is disposed of accordingly.

¹(2005 (12) SCC 764)

²(AIR 1933 All 412)

³(AIR 1938 Lah 23)

⁴(AIR 1940 PC 19)

⁵(AIR 1944 Mad 218)

⁶(AIR 1950 Mad 820)

⁷(AIR 1954 Mys 29)

⁸(AIR 1954 Sau 104)

⁹(AIR 1963 Mad 24)

¹⁰(AIR 1976 Bom 342)

¹¹(1990 (1) MLJ 490)

¹²(1990 (1) SCC 104)

¹³(1996 (8) SCC 367)

¹⁴32 NLJ 513 (515)

¹⁵2 Raym Ld 1076

¹⁶9 Dowl 828, at pp. 834, 835

¹⁷37 SLR 316

¹⁸(1963) 1 WLR 18