

ALLAHABAD HIGH COURT

Dropadi

Vs

Hira Lal

(Henry Richards, C.J. and Karamat Husain and Chamier, JJ.)

01.05.1912

JUDGMENT

Henry Richards, C.J.

1. One Ram Narain was declared to be insolvent by the Court of Small Causes, Cawnpore, and the respondent was appointed to be receiver of his estate. On the application of the respondent, under Section 37 of the Provincial Insolvency Act, certain transfers made by the insolvent in favor of the applicant were set aside by an order dated the 18th of March, 1911. The applicant presented an appeal to the District Judge on the 26th of April, 1911. His appeal was within limitation only if he was entitled under Section 12 of the Limitation Act to deduct the time spent by him in obtaining a copy of the order of the court of first instance. The District Judge, following the decision of Knox and Piggott, JJ. in *Jugal Kishore v. Gur Narain*¹ held that the applicant was not entitled to the benefit of Section 12 of the Limitation Act. Accordingly he dismissed the appeal. This is an application for revision of the order of the District Judge. It has been treated by the office as a first appeal from an order, but it is an application under the proviso to Section 46(1) of the Provincial Insolvency Act.

2. In the course of their judgment in the case cited, Knox and Piggott, JJ., say that the only case in this Court bearing on the point of which they are aware, is that of *Beni Prasad v. Dharaka Rai*² (the actual reference is to a case reported at page 270 of the same volume, but this was evidently a slip). They distinguished that case on the ground that it proceeded on a very special line of reasoning. It seems to us that the decision of Strachey, C.J., and Banerji, J., in I.L.R., 23 All, 277, proceeded upon two grounds, namely, that Section 5 of the Limitation Act of 1877 did not, within the meaning of Section 6 of that Act, 'affect or alter' a period of limitation prescribed by the N.W.P. Rent Act of 1881, and that the latter Act could not be considered a complete Code in itself so as to render the general provisions of the Limitation Act inapplicable. Knox and Piggott, JJ., held that if Section 12 of the Limitation Act were applied to an appeal under Section 46 of the Insolvency Act, it would, within the meaning of Section 29 of the present Limitation Act, 'affect or alter' the period of limitation prescribed for an appeal under the Insolvency Act. As the

language of Section 29 of the present Limitation Act is to all intents and purposes the same as that of Section 6 of the Limitation Act of 1877, the decision of Knox and Piggott, JJ., conflicts with that of Strachey, C.J., and Banerji, J., upon a question of the correct construction of the Limitation Act, which is of considerable importance. It also conflicts with the decision of Banerji, J., in *Joti Sarup v. Ram Chandar Singh* Weekly Notes 1902 p. 34. which was not brought to their notice.

3. The question has been argued very fully before us, and our attention has been drawn to a large number of decisions bearing upon it. For the applicant it has been contended that the Provincial Insolvency Act is not a 'special law' within the meaning of Section 29 of the Limitation Act, and that, even if it is a 'special law,' the application of Section 12 of the Limitation Act to the appeal in this case does not, within the meaning of Section 29 of that Act, 'affect or alter' the period prescribed for an appeal under Section 46 of the Provincial Insolvency Act.

4. So far as we are aware, the expression 'special law' has not been defined by the Legislature, except in the Penal Code, and it is not permissible to use the definition in that Code as a guide to the meaning of that expression in the Limitation Act. It may be that the expression was intended to cover only laws like the Rent Act X of 1859, which was held by the Privy Council to be a complete Code in itself, but it seems more likely that the words were intended to be understood in their ordinary sense as meaning an Act dealing with a particular subject. Even so the expression is not free from, difficulty. The Code of Civil Procedure is a general law (see L.R., 3 I.A., 7), though it purports to deal only with procedure. The Forfeited Property Act of 1859 is obviously a special law. But what of such an Act as the Transfer of Property Act? The Registration Act has been held to be a special law, and we think rightly. The Provincial Insolvency Act, though it applies to a large part of British India, appears to us to be a special law, as it creates a special jurisdiction and deals with a very special branch of the law. We are of opinion that the Provincial Insolvency Act is a special law within the meaning of Section 29 of the Limitation Act.

5. We think the course of legislation on the subject throws some light upon the true meaning of Section 29 of the present Limitation Act. Act XIV of 1859, Section 3, provided that when by any law, then or thereafter to be in force, a shorter period of limitation than that prescribed by that Act was specially prescribed for the institution of a particular suit, such shorter limitation should be applied notwithstanding that Act; and Section 14 of that Act contained provisions similar to those contained in Section 14 of the present Limitation Act. While the Act was in force, a question arose whether a suit for rent under Act X of 1859 was governed by Act XIV or not. A Full Bench of the Calcutta High Court answered this question in the negative, see *Poulson v. Modhoosoodun Paul Chowdhry*³ and this decision was approved in a later case by their Lordships of the Privy Council, who said that the special legislation contained in Act X was of such a special kind that according to the well-established rule for the construction of Statutes, it must be presumed that the Legislature did not intend by the general enactment in Act XIV to

interfere with it. They pointed out that Act X was intended to form a special and complete Code of Procedure with regard to the trial of questions relating to rent and the occupancy of land in the mufassil--*Unnoda Persaud Mookerjee v. Kristo Coomar Moitro*⁴ Note. In accordance with that decision it was held by a Full Bench in *Nagendro Nath Mullick v. Mathura Mohan Parhi*⁵ that Section 14 of the Limitation Act of 1877 did not apply to suits under Act X of 1859. See also *Girija Nath Roy Bahadur v. Patani Bibee*⁶

6. Section 6 of the Limitation Act of 1871 provided as follows:

When by any law not mentioned in the schedule hereto annexed and now or hereafter to be in force, a period of limitation differing from that prescribed by this Act is especially prescribed for any suits, appeals or applications, nothing herein contained shall affect such law. This was replaced in 1877 by Section 6 of the Limitation Act of that year, which provided as follows: When by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.

7. The alteration in the language is noticeable and suggests an intention to limit the operation of special or local laws to the periods prescribed by them and to re-introduce the principle of Section 3 of the Limitation Act of 1859, which limited the operation of other Acts to any shorter periods prescribed by them. This seems to have been the view taken in *Behari Loll Mookerjee v. Mungolanath Mookerjee*⁷ where Section 12 of the Limitation Act of 1877 was held to cover an application for review of judgment in a case under the Bengal Rent Act of 1869 and in *Golap Chand Nowluckha v. Krishto Chunder Dass Biswas*⁸ where Section 5 of the Limitation Act of 1877 was held to apply to a suit under the Bengal Rent Act of 1869. Similarly in *Nijabutoolla v. Wazir Ali*⁹ and in *Khetter Mohun Chuckerbutty v. Dinabashy Shaha*¹⁰ it was held that Sections 5 and 14 of the Limitation Act of 1877 applied to suits under Section 77 of the Registration Act. The last three decisions were approved and followed by the Bombay High Court in *Guracharya v. The President of the Belgaum Town Municipalities* (1884) I.L.R. 8 Bom. 529. On the strength of three of the Calcutta decisions it was held in a reference under the Madras Forest Act of 1882, I.L.R., 10 Mad., 210, that Section 5 of the Limitation Act of 1877 applied to an appeal under that Act, and in *Kullayappa v. Lakshmi pathi*¹¹ that Section 14 of the Limitation Act of 1877 applied to a suit under the Madras Rent Recovery Act, 1865.

8. After examining the cases mentioned above and others, MuthuSami Ayyar, J. in *Veeramma v. Abbiah*¹² came to the conclusion that the general provisions of the Limitation Act of 1877 were applicable to suits and other proceedings under Acts prescribing special periods of limitation, unless those Acts were complete Codes in themselves to which the general provisions of the Limitation Act could not be applied without incongruity. This view was accepted by Strachey, C.J., and Banerji, J., in *Beni Prasad Kuari v. Dharaka Rai* (1907) I.L.R. 23 All. 277 (Supra) and by Banerji, J. in *Joti Sarup v. Ram Chandar Singh*¹³ both cases under the N.W.P. Kent Act, 1881.

9. There is therefore authority for the proposition that the general provisions of the Limitation Act, 1877, are applicable to suits and other proceedings under other Acts which prescribe special periods of limitation, but which are not intended to be complete Codes in themselves, and that the words 'affect or alter' in Section 6 of the Limitation Act of 1877 relate only to the period prescribed and not to the way in which that period is to be computed. The same words appear in Section 29 of the present Limitation Act. It cannot, however, be said that this view has gone unchallenged. Shephard, J., in the case reported in I.L.R., 18 Mad., 99, expressed the opinion that the application of the general provisions of the Limitation Act to periods of limitation prescribed by other Acts did 'alter or affect' those periods and Chandavarkar, J., in a land acquisition case in I.L.R., 30 Bom., 275, said it was a moot question whether the general provisions of the Limitation Act could be applied in this way, though he followed a previous decision of the Bombay High Court by which he considered himself bound.

10. The question is one of considerable difficulty, and it must be admitted that at first sight it is straining the words to hold that the application of the general provisions of the Limitation Act to periods of limitation prescribed by other Acts does not 'affect or alter' those periods. In one sense it certainly does. But the construction accepted by Strachey, C.J., Banerji, J., and Muthusami Ayyar, J., seems to us to be correct. Apart from the history of this piece of legislation, we find it difficult to believe that when the Legislature introduced, as it has, into several Acts, provisions giving a right of appeal and prescribing periods within which the right may be exercised, it intended as a general rule that those provisions should be applied without reference to the general provisions contained in the general Limitation Act. In many, if not most, cases the Code of Civil Procedure is made applicable with the result that an appellant must produce a copy of the order against which he is appealing. It is reasonable to suppose that the Legislature intended to give him time to procure a copy of the order. The general provisions of the Limitation Act are founded mainly upon equitable considerations which apply as much to periods of limitation prescribed by special Acts as to periods of limitation prescribed by the Limitation Act itself.

11. Upon the question whether this or that Act is a complete Code in itself to which the Limitation Act should not be applied, there is considerable difference of opinion. In some of the cases already cited, the Calcutta High Court held that the general provisions of the Limitation Act, 1877, were applicable to suits under the Registration Act. But in *Veeramma v. Abbiah* (1893) I.L.R. 18 Mad. 99(Supra) three Judges held that they did not apply and that decision was followed in *Abdul Hakim v. Latif-un-nessa*¹⁴ In *Suraj Bali Prasad v. Thomas*¹⁵ it was held that Section 5 of the Limitation Act, 1877, did apply to a suit under the Registration Act. It is unnecessary to express any opinion on this point, but the soundness of one of the reasons given for holding that the general provisions of the Limitation Act do not apply to suits under the Registration Act, namely, that a suit to compel registration of a document might be delayed for many years under Section 7 of the Limitation Act of 1877 (Section 6 of the present Act), is open to question, for that Section applies only to suits the period of limitation for which is prescribed by the schedule. The same reason was given by Knox and Piggott, JJ., for holding that the

general provisions of the Limitation Act did not apply to proceedings under the Insolvency Act.

12. There remains the question whether the Provincial Insolvency Act is a complete Code in itself. In our opinion it is not order to ascertain the procedure to be followed in original, appellate or revisional proceedings, one has to refer to the Code of Civil Procedure. It appears to us that the object of Section 47 of the Act was to attract the provisions of the Code of Civil Procedure. There are several Acts, for example, the Succession Act, the Probate and Administration Act, and the Land Acquisition Act, which make the Code of Civil Procedure applicable to proceedings under the Act and give a right of appeal to the High Court, but do not prescribe any period of limitation for the appeal. It has always been assumed, probably rightly, that such appeals are appeals under the Code of Civil Procedure, governed by what is now Article 156 of Schedule I to the Limitation Act and by the general provisions of the Act also Sub-section (4) of Section 46 of the Provincial Insolvency Act does not seem to have been required, but whether it was required or not, we do not think that it can have been inserted for the purpose of rendering the general provisions of the Limitation Act inapplicable.

13. For the above reasons we are of opinion that Section 12 of the Limitation Act applied to the appeal presented by the present applicant to the District Judge. In this view the appeal was within time. We set aside the order of the District Judge and remit the case to him to be disposed of according to law. Costs in this Court to be costs in the cause.

Cases Referred.

- 1(1911) I.L.B. 33 All. 738
- 2(1901) I.L.R. 23 All 277
- 3(1865) 2 W.R. Act X Rulings p. 21
- 4(1872) 15 B.L.R. 60
- 5(1891) I.L.R. 18 Calc. 368
- 6(1889) I.L.R. 17 Calc. 263
- 7(1879) I.L.R. 5 Calc. 110
- 8(1879) I.L.R. 5 Calc. 314
- 9(1882) I.L.R. 8 Calc. 910
- 10(1884) I.L.R. 10 Calc. 265
- 11(1889) I.L.R. 12 Mad. 467
- 12(1893) I.L.R. 18 Mad. 99
- 13 Weekly Notes 1902 p.34
- 14(1903) I.L.R. 30 Calc. 532
- 15(1906) I.L.R. 28 All. 48