ANDHRA PRADESH HIGH COURT

Palla Pattabhiramayya

Vs.

Velaga Narayana Rao

Appeal No. 3 of 1957

(Bhimasankaram and S. Qamar Hasan, JJ.)

09.04.1956. 18.03.1960

JUDGMENT

Bhimasankaram, J.

1. The suit out of which this appeal arises was instituted on the foot of a promissory note dated 26-12-1949 executed in favour of Palla Kundaraju, the father of the appellants 1 to 5 and the husband of the 6th appellant. The suit was dismissed by the learned Subordinate Judge on several grounds. But in our opinion, it is sufficient to deal with two of them because if the view of the lower court on either of them is right, this appeal must fail. Both the points arise from the fact that this suit which was instituted on 30-11-1954 is obviously barred by limitation. The contention on behalf of the plaintiffs is that if the time which was occupied in certain proceedings which were taken by Kundaraju before a French Court at Yanam on the basis of the suit promissory note were excluded under Section 14 of the Indian Limitation Act, then the suit would be in time.

1. The respondent contends that that section does not apply to the facts of this case for two reasons: Firstly, because the said proceedings were pending not in a Court in India to which only Section 14 must be held to refer but in a foreign territory; (Yanam was at the material time part of French India); secondly, because even assuming that the word 'Court' in Section 14 would include a foreign court, the litigation which was launched by Kundaraju before the French Court was disposed of by that Court on the merits and not on the ground that the court was unable to entertain it from 'defect of jurisdiction or a cause of like nature'.
2.

2. We shall first consider the question as to whether the word "Court" occurring in Section 14 could be interpreted so as to comprehend a foreign Court. A single judge of the Madras High Court who had to deal with the question as early as in 1880 took the view that there was nothing in the language of Section 14 which rendered it inapplicable to proceedings instituted in a foreign Court (Vide *Parry and Co. v. Appasami Pillai*[1],). His decision however was reversed on appeal on another point and the Judges in appeal made it clear that they were not to be understood as

[1] ILR 2 Mad 407

expressing any opinion whether Section 14 allowed the deduction of the period occupied by a litigation in a foreign court. The question does not appear to have come up for consideration again before that Court; but the Bombay High Court had to consider it in 1910 in *Chanmalapa Chenbasapa v. Abdul Vahab*[2], A divisional Bench of that Court (consisting of Chandavarkar and Heaton JJ.) ruled that "the word 'Court' in Section 14 of the Indian Limitation Act means a Court in British India, and not a Court in a Native State of India". Chandavarkar J. who spoke for the Bench reasoned thus:

> "All legislation is primarily territorial, and a limit must be placed upon the general sense of a word used in a statute with reference to that principle of law, unless there is something in. the language or object of the statute which compels the court to interpret the word in its wide sense; *Cooke v. Cuarles A. Vogeler Co*[3]. As was said by this Court in *Shidlingappa v. Karibasapa*[4], "the words of a statute, though to be given their grammatical sense are to be construed also with reference to the general purposes of the statute. "Following that canon of construction, our Court held in *Queen Empress v. Bapuju Dayaram*[5], that the words 'any Court' in Section 258 of the Civil Procedure Code of 1882, meant only "any Civil Court". Turning now to the Limitation Act, its preamble shows that the "courts" to which it applies are Courts. in British India, not foreign Courts. The word must be read in that restricted sense, or else the absurdity would follow that the Legislature intended to provide a "law relating to the limitation of suits, appeals, and certain applications" for Court outside its jurisdiction. And if that is the restricted meaning of the word as used in the preamble, the same meaning must be attached to the word where it occurs in the enacting portions of the Act, unless the enactment is itself so clear and unambiguous as to show that the legislature intended a departure from that meaning in the case of any particular section of the Act. Neither expressly nor by necessary implication has the Legislature made any such purpose apparent in the Limitation Act. The implication is rather the other way". The learned Judge then observed that the word "Court" in Section 14 must have the same meaning in the Limitation Act as in the Civil Procedure Code because both the Acts are in pari materia and proceeded to say:
>
> "The Code does not define the word "Court" and that for the obvious reason that it applies primarily to the Courts on whom the Code is binding. But it defines "a foreign Court", and wherever it intended that any section of the Code should apply to any judgment or proceeding of that Court, it has said so in distinct terms, as, for instance, in Sections 13 and 14".

3. With respect, we find ourselves in complete agreement with this reasoning of the learned Judge. This view has been adopted and followed in *Rajanna v. Narayan*[6], and approved by the High Court of Lahore in *Hari Singh v. Muhammad Said*[7], It was treated as well settled in a subsequent decision of the Bombay High Court in *Ratanchand Bhalchand v. Chandulal J. Doshi*[8], and a single Judge of the Calcutta High Court in *Mayadas Bhagat v. Commercial Union Assurance Co., Ltd*[9].

[2] ILR 35 Bom 139 at p. 142
[3] 1901 A. C. 102
[4] ILR 11 Bom 599 at p. 601
[5] ILR 10 Bom 288
[6] AIR 1923 Nagpur 321
[7] ILR 8 Lah 54 : AIR 1927 Lah 200
[8] AIR 1934 Bombay 113
[9] ILR (1937) 1 Cal 541

also adopted it later.

4. The appellants however rely strongly upon the Full Bench decision of the Rajasthan High Court in Firm *Ramnath Ramchandra v. Firm Bhagatram and Co*[10]*.,* which took the contrary view. Dave J. who delivered the judgment of the Court expressed his dissent from the view taken in ILR 35 Bom 139. He said:

> "We, however, find ourselves unable to agree, with respect, that Section 14 would appear to contain extra-territorial law in case the word "Court" appearing therein is interpreted in its wider sense. We further think that it is not proper to say that simply because the word "Court" was used in the sense of the Courts of British India in the preamble, the same meaning must be attached to the word wherever it occurs in the enacting portions of the Act without looking to the subject or context in which it has been used".

We regret our inability to follow this reasoning. In the first place, it was not stated in ILR 35 Bom 139 as a reason for restricting the word "Court" to Courts in India that if the word is not so interpreted the section would 'contain extra-territorial law'. All that Chandavarkar J. seems to have meant was that it is reasonable to suppose that the legislature of a country intends to enact only for its own territory and that the words used by it are preliminarily to be understood as referring to events or things within that domain. Such a point of view requires that the meaning of a word is not to be extended so as to cover matters beyond the territory over which the legislature has jurisdiction, unless there is the clearest indication to the contrary. The mere fact that the context admits of a wider interpretation is no such indication.

5. The further reasoning of the learned Judge of the Rajasthan High Court is contained in this passage:

> "Let us now examine as to what is the subject of Section 14 of the Act. Section 14 of the Limitation Act lays down that in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in a Court of appeal against the defendant shall be excluded where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from detect of jurisdiction or other cause of a like nature, is unable to entertain it.

A similar provision has been laid down with regard to applications. It is clear that this provision has been made to give relief to honest suitors or applicants who prosecute their suits or applications with due diligence in another court in good faith and then their suit or application is dismissed simply because the court is unable to entertain them on account of some defect in its jurisdiction or some other cause of a like nature. This law was to be applied by the Courts of British India and not by foreign courts and therefore it cannot be said that it was a piece of extra territorial legislation. It has been urged that if the legislature had thought it proper to exclude the time taken even in foreign courts, it could make its meaning clear by adding such an explanation. It is

[10] AIR 1959 Raj149 (FB)

further urged that where the legislature wanted the law to be applied to foreign countries also

such meaning was made clear, for instance, in Section 11 of the Act. This argument does not appear to be very sound, because Section 11 of the Act specifically deals with the suits based on contracts entered into a foreign country and therefore it was absolutely necessary to use those words. Section 14 however contains a general principle which is based on justice, equity and good conscience, and in our opinion it would not be proper to put a narrow interpretation on the meaning of the word "Court" appearing therein. We see no reason why the time spent *bona fide* only in municipal courts by honest suitors should be excluded and why the time spent in foreign courts could not be excluded". This reasoning is not easy to follow because what the court is concerned with is the interpretation of the word used by the Legislature. It has been pointed out by the Privy Council in *Nagandranath De v. Surash Chandra De*[11], with reference to the provisions or the Indian Limitation Act that equitable considerations have no place in the interpretation of a statute. It may be quite right and proper that the legislature should have made such a provision but the question is not what the legislature should have done, but what it has. We are unable to hold that the meaning of the words used by the legislature should be extended beyond, what on a fair reading they convey, in the light of a supposed "general principle" contained in a section.

6. We are clearly of the opinion that the view taken by the Bombay High Court in ILR 35 Bom 139 is right.

7. As regards the second point too, we have reached the conclusion that it should be decided against the appellants. What happened before the French Court was that an objection was taken by the present respondent (who was the defendant in that action) that the promissory note not having been attested by a Judge as required by the French Law it could not be enforced and that Court held that by virtue of a 'decree' of the year 1936 which required that all promissory notes should bear the "visa" of a Judge, the promissory note sued on before it should be cancelled. The French Court actually decided that the promissory note could not afford the plaintiff a good cause of action and dismissed the suit. It is impossible to hold, in these circumstances, that the former proceeding terminated against Kundaraju because the French Court was unable to entertain it either on account of defect of jurisdiction or any cause of a like nature. In our opinion, that action failed because according to the French Law, the promissory note did not give the promisee a legal basis of relief. It is true that there is in Indian Law no similar provision as to attestation and such a promissory note would constitute here a valid cause of action but that makes no difference. Mr. K. B. Krishnamurthy for the appellants however argues that the promissory note was actually executed in this country at Kodur village in Ramchandrapuram taluk in East Godavari District and that therefore it could not have required a visa like a promissory note executed in French Territory. We are not really concerned with this question of fact. The only point for consideration before us is whether the French Court was unable to entertain the action on account of any technical detect in the commencement or continuation of the proceedings. Now, it has been held that where a plaintiff pursues certain proceedings, because he misconceives his remedy, the terms of Section 14 would not help him, vide *Commercial Bank of India v.*

[11] ILR 60 Cal 1

]Allawoodeen Saheb[12], *Canapathi Mudaliar v Krishnama Chari*[13], and *V. C. Thani Chettiar v. Dnkshinamurthy Mudaliar*[14], It may be that in the present case that the plaintiff misconceived his remedy by initiating proceedings before the French Court; but that will not avail him to seek the aid of Section 14.

8. Mr. K. B. Krishnamurthy, has also argued that because of the French Establishments Order of 1954, the territory of Yanam has since become merged in Indian territory and that therefore Section 14 should be held applicable to the proceedings of the French Court. We see no substance in this contention. The question really is whether at the time the proceedings were pending in the former Court it was an Indian or a foreign Court. The subsequent merger does not affect the position. It is true that a Full Bench of the Bombay High Court took the view that after the merger of a former Native State in India a decree passed by a Court of that State prior to the merger could be treated as a decree passed by an Indian Court.
But that view has not only been dissented from by a divisional Bench of this High Court in *Kishendas v. Indo-Carnatic Bank Ltd*[15]*.,* but has no direct bearing upon the point we are concerned with. Apart from that, it has been pointed out by Mr. Somasundaram that even to-day there is no de jure merger of Yanam in Indian territory and that actions can be maintained in French Courts and appeals against decisions of those courts are to the Court of Causation in Paris. In our opinion, there is no substance in this argument.

9. The result, therefore, is that this appeal fails and is dismissed. In the circumstances, we think that there should be no order as to costs of this appeal.
Appeal dismissed.

[12] ILR 23 Mad 583
[13] AIR 1922 Mad 417
[14] AIR 1955 Mad 288
[15] AIR 1958 Andhra Pra 407