

## **BOMBAY HIGH COURT**

Mahomad Mehdi Faya Tharia Topan

Vs

Sakinabai

(B Scott, Kt., C.J. Chandavarkar, J.)

02.09.1912

### **JUDGMENT**

#### **Basil Scott, Kt., C.J.**

1. The plaintiff was married to the defendant in 1894. In 1896 the defendant left him. On the nth of July the plaintiff sent her a notice demanding restitution of conjugal rights. This demand was refused by the defendant on 19th of July. The plaintiff took no action for more than two years after this refusal. Consequently under the provisions of Section 4 and Article 35 of the Limitation Act of 1877 any suit for restitution was liable to dismissal. The particular form of remedy was barred even though the plaintiff's right to the services of his wife remained. This is the effect of the decision of the Full Bench in *Dhanjibhoy Bomanji v. Hirabai*<sup>1</sup> On the 1st of January 1909,' however, the Limitation Act of 1877 was repealed and superseded by the Limitation Act of 1908. In that Act Article 35 of the Act of 1877 has not been reproduced. It contains no Article prescribing a special period for suits for restitution.

2. On the 16th of June 1911, the plaintiff sent to the defendant a fresh notice to return to his house and allow him the exercise of conjugal rights: As the notice was not complied with, this suit was filed on the 20th of June 1911 for restitution. The question is whether this remedy is now open to the plaintiff or whether it has become barred by the expiry, during the currency of the Act of 1877 of two years since the refusal of the defendant in 1896.

3. The learned Judge, considering himself bound by the decision of this Court in *Vinayak Govind v. Babaji*<sup>2</sup> that a remedy which had become barred could not be revived by the passing of a new Limitation Act, dismissed the plaintiff's suit. In our opinion his decision must be affirmed. Section 6 of the General Clauses Act of 1897 provides that the repeal of an enactment shall not revive anything not in force or existing at the time when the repeal takes effect, or affect the previous operation of any enactment so repealed. These provisions couched in general terms have reference to all repealing Acts and produce the result effected specially for the purpose of

limitation by Section 2 of the Limitation Act of 1877, which provided that nothing in that Act contained should be deemed to revive any right to sue barred under the Act of 1871 or any enactment thereby repealed. The Judicial Committee in *Mohesh Narain Moonshi v. Taruck Nath Moitra*<sup>3</sup> say with reference to Section 2 of the Act of 1877: "It is clear that on the 1st of April 1873 the plaintiff's suit was barred by limitation under the Act of 1871 and the Act of 1877 could not revive the plaintiff's right so barred-a point which was indeed decided in regard to the Limitation Acts of 1859 and 1871 in the case of *Appasami Odayar v. Subramanyd Odayar*<sup>4</sup>."

4. On behalf of the plaintiff reference was made to *Rex v. Chandra Dharma* [1905] 2 K. B. 335, and this case also appears to have raised doubts in the mind of the trying Judge ; but as pointed out by Channell J. in all the cases before the Court of King's Bench " the defendants were at the time the Act came into operation liable to prosecution and an alteration of the time within which they might be prosecuted whether by extension or diminution was a matter of procedure only. If the time under the old Act had expired before the new Act came into operation the question would have been entirely different." In the case now before us the right of suit was barred long before the new Limitation Act came into force; it is not revived by the repeal of Article 35.

5. We affirm the decree of the lower Court and dismiss the appeal with costs.

#### Cases Referred.

1(1901) I. L. R. 25 Bom. 644

2(1879) I. L. R. 4 Bom 230

3(1892) L. R. 20 I.A. 30, 38

4(1888) L. R. 15 I. A. 167