

# **BOMBAY HIGH COURT**

Canara Bank, Ltd

Vs.

Warden Insurance Co., Ltd

Civil Appln. No. 1484 of 1951

( Chagla, C.J. and Gajendragadkar, J.)

14.01.1952

## **JUDGMENT**

### **Chagla, C.J.**

1. This civil application raises a very interesting question of the law of limitation. An order fixing the compensation was passed by a special officer under Section 8(1), Bombay Land Requisition Act, 1948. This was done on 28-12-1950. Sub-section (3) of Section 8 provides that an appeal shall lie against the decision of that officer, and in this case the appeal lay to this Court. The appeal in fact was preferred on 28-2-1951. Section 8(3) provides that such appeal shall be made within a period of 60 days from the date of the decision. The appeal was out of time by two days. The petitioners applied that delay should be condoned under Section 5, Limitation Act, as they had sufficient cause for the delay, and the question that arises for our determination is whether Section 5 applies to an appeal provided under the Land Requisition Act.

2. What calls for our interpretation in the first instance is Section 29(2), Limitation Act. The section assumed its present form in 1922. Before that amendment there was considerable conflict between the different High Courts as to the true interpretation of this sub-section, and in order to resolve the conflict the Legislature amended the sub-section in 1922. As it stands now it provides :

"(2) Where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed therefor by Sch.I, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law -

(a) the provisions contained in Sections 4, 9 to 18 and 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. ..."

3. The first question is whether the special law as embodied in the Land Requisition Act contains a period of limitation for the appeal provided therein which is different from the period prescribed therefore by the first schedule of the Limitation Act. The contention of Mr. Adarkar is that sub-s.(2) only applies when you find a period of limitation laid down in the first schedule and a special law alters or modifies that period, and inasmuch as the Limitation Act does not provide for a period of limitation in respect of an appeal from a special officer to the High Court, Section 29(2) has no application to this particular special law. In our opinion, that is not the correct interpretation to put upon the language used by the Legislature, viz. "a period of limitation different from the period prescribed therefor by the first schedule." The period of limitation may be different under two different circumstances. It may be different if it modifies or alters a period of limitation fixed by the first schedule to the Limitation Act. It may also be different in the sense that it departs from the period of limitation fixed for various appeals under the Limitation Act. If the first schedule to the Limitation Act omits laying down any period of limitation for a particular appeal and the special law provides a period of limitation, then to that extent the special law is different from the Limitation Act. We are conscious of the fact that the language used by the Legislature is perhaps not very happy, but we must put upon it a construction which will reconcile the various difficulties caused by the other sections of the Limitation Act and which will give effect to the object which obviously the Legislature had in mind, because if we were to give to Section 29(2) the meaning which Mr. Adarkar contends for, then the result would be that even Section 3 of the Limitation Act would not apply to this special law. The result would be that although an appeal may be barred by limitation, it would not be liable to be dismissed under Section 3. If possible we must try and avoid such a startling result and we are sure that the Legislature did not intend that such a result should come about by the language used by it. Therefore, in our opinion, it is clear that we have before us a special law which does prescribe a period of limitation different from the period prescribed therefor by the first schedule to the Limitation Act.

4. The other contention of Mr. Adarkar is that Section 29(2) only applies to that limited class of sections in the Limitation Act which deal with the computation of the period of limitation, and inasmuch as Section 5 does not deal with computation of the period of limitation, Section 29(2) has no application. In our opinion, the expression "for the purpose of determining any period of limitation" does not mean "computing the period of limitation." In our opinion, every provision in the Limitation Act is intended for the purpose of determining the period of limitation. The Limitation Act by its operative Section 3 provides that every suit, appeal or application presented to the Court shall be dismissed unless it is filed within the period of limitation, and, therefore, the main thing that the Court has to consider is whether suit or an application or an appeal is maintainable looking to the provisions of the Limitation Act, and in order to decide that not only has the Court to consider various sections like Section 4 and Sections 9 to 18 but also Section 5, because if a suit, appeal or application is out of time as provided by the first schedule, the Court has still to consider whether such suit, appeal or application should be allowed to be preferred by

reason of Section 5. Therefore, in our opinion, there is no justification for giving to the expression "for the purpose of determining any period of limitation" the restricted meaning suggested by Mr. Adarkar.

5. It is then contended that inasmuch as Section 3 imports the application of Sections 4 to 25, by reason of the fact that Section 3 is made applicable by Section 29(2), Section 5 should also be deemed to apply to an appeal preferred under the special law. In our opinion that contention is obviously untenable for two reasons. If that were the true position, then it was unnecessary to refer specifically to Section 4, Sections 9 to 18 and Section 22 in Section 29(2)(a). If these sections became applicable by reference to Section 3, then it was sufficient for the Legislature to have provided that Section 3 shall apply and excluded such of the sections from Sections 4 to 25 as the Legislature thought should not apply in the case of a special law. But far from doing that, the Legislature was at pains to point out which of those sections from Sections 4 to 25 should apply in the case of special laws. The second reason why this contention is untenable is that Section 29(2)(b) expressly provides that the remaining provisions of this Act shall not apply, the remaining provisions being other than Sections 3, 4, 9 to 18 and 22 to which reference is made in the earlier part of the section. Therefore, the scheme of Section 29(2) seems to be this. Section 3 is made applicable to all special or local laws which prescribed a period of limitation for any suit, appeal or application. Sections 4, 9 to 18 and 22 also apply unless the special or local law expressly excludes their application. Sections other than those just mentioned would not apply unless the special or local law expressly provided for their application. It is difficult to accept the contention that although Section 29(2)(b) expressly precluded the application of Section 5, we must hold that Section 5 is applicable by reference to Section 3.

6. The final argument advanced by Mr. Adarkar is that Section 5 applies to all appeals *proprio vigore*, and this argument is based upon the different language used by the Legislature in Section 3 and Section 5. Section 3 refers to "period of limitation prescribed therefor by Sch.1"; Section 5 merely refers to "the period of limitation prescribed therefor"; and the argument advanced before us is that whereas Section 3 refers to the period of limitation which is to be found in Sch.1, Section 5 applies to all laws which prescribe any period of limitation, and therefore according to Mr. Adarkar without any reference being made in any special or local law Section 5 must of its own strength apply because the Legislature has made Section 5 applicable to all cases where periods of limitation are prescribed. In the first place, this argument runs counter to the ordinary canon of construction which one must apply in construing a statute. When a statute speaks of a period of limitation prescribed, it can only mean prescribed by that statute itself. If the intention of the Legislature was to refer to the period of limitation prescribed by other laws, the Legislature would have expressly so mentioned. It is true that in Section 3 there is an express mention of Sch.1 to the Limitation Act. But the mere fact that there is no such express mention in Section 5 does not and cannot lead to the conclusion that the Legislature intended the limitation prescribed to be prescribed by any law other than the Limitation Act itself. The other reason why this argument cannot be accepted is that when we turn to Section 4, it also speaks of "limitation

prescribed" and not "limitation prescribed by Sch.1," and yet under Section 29 the Legislature had expressly to make Section 4 applicable when the period of limitation was prescribed by a special or local law. If Mr. Adarkar's contention were right, then Section 4 as much as Section 5 would apply proprio vigore and it was not necessary for the Legislature in Section 29 to state that Section 4 would apply under certain circumstances. Therefore, in our opinion, unless the Legislature expressly makes Section 5 applicable, Section 5 does not apply when no period of limitation for that appeal is prescribed in the Limitation Act and a special period is prescribed by a special law. The intention of the Legislature obviously was that an appellant must prefer the appeal within the period defined in the statute, and if he fails to do so, the Court should have no power to condone the delay and admit the appeal under Section 5. We are conscious of the fact that this construction may lead in some cases to considerable hardship, but that is more a matter for the Legislature than for us. There are various statutes to which our attention is drawn where the Legislature has applied Section 5. On the other hand, there are statutes where Section 5 has not been applied, and this difference in different statutes clearly bears out what we have been suggesting, viz., that in some cases the Legislature wanted to bring about a strict adherence to the period of limitation prescribed by a particular statute and not to give discretion to the Court to enlarge that period under Section 5.

7. No more startling result could have been brought about than what was in fact brought about in the case reported in *Nilratan Ganguli v. Emperor*<sup>1</sup>, In that case under the Emergency Powers Ordinance No.2 of 1932 the period of limitation was prescribed as seven days and it was contended before Rankin, C.J., and Pearson, J., that Section 5 should be applied in favour of the appellant who had preferred the appeal after the expiry of seven days, and with considerable hesitation that bench rejected that contention and held that Section 5 had no application, and the learned Chief Justice observed (p.577) :

".....It is certainly somewhat alarming that limitation for so short a period as seven days should not be one over which the High Court in a proper case should have any power of control or dispensation but it is necessary to base our construction of the Ordinance and of the Limitation Act upon principle and it is not possible for us on the ground of hardship to give another meaning to the Ordinance."

The same view of the law has been taken by the other High Courts. See *Chheda Lal v. Officer Commanding, Meerut*<sup>2</sup>, *Mittoor Moideen Hajee, In re*<sup>3</sup>, and *Hasan Imam v. Brahmdeo Singh*<sup>4</sup>, Therefore, in giving the construction to Section 29 which we are giving we find that we are taking the same view which the other High Courts in India have taken.

8. The result, therefore, is that we must hold that the appeal is out of time, that Section 5 does not apply, and, therefore, we have no power to condone the delay on the part of the petitioners. Rule discharged. No order as to costs.

Rule discharged.

<sup>1</sup>60 Cal 571  
<sup>2</sup>1.L.R (1941) All 356

<sup>3</sup> AIR 1923 Mad 95  
<sup>4</sup>9 Pat 747