BOMBAY HIGH COURT

P.K. Porwal

Vs.

Labour Court, Nagpur

S.C.A. No. 469 of 1965 with S.C.A. No. 470 & 471 of 1965

(S.P. Kotval, C.J., Abhyankar and Tulzapurkar, JJ.)

23.12.1966

JUDGMENT

S.P. Kotval, C.J.,

1. Sri Quazi; who appears for the petitioners, contends that the provisions which were considered by their lordships of the Supreme Court in *Bombay Gas Company v. Gopal Bhiva*[1] are not the same as are now obtainable. The provisions that were considered by the Supreme Court in that case were provisions of the Limitation Act of 1908 which is no longer applicable to the present state of circumstances. The Limitation Act of 1908 was repealed and the Limitation Act 36 of 1963 was brought in force. The Act came into force on 1 January, 1964 and the application were made by the workers after April, 1964.

2. Sri Quazi contends that there were several changes brought about in the law of limitation which materially affect the question of limitation in regard to applications made in industrial disputes. In the first instance; the word "application" which was not defined in the old Limitation Act of 1908 has now been defined.

3. Secondly, it was pointed out by Sri Qazi that the entire law of limitation was consolidated and amended and the old Limitation Act was repealed in pursuance of a report submitted by the Law Commission upon the Limitation Act in 1963. In Part II of the said report, Para. 9, the observations of the Law Commission are the following :

> "We recommend that a new definition of the word 'application' so as to include any petition, original or otherwise, should be added. The object is to provide a period of limitation for original petitions and applications under special laws as there is no such provision now."

4. In pursuance of this report, a Bill was published and the statement of objects shows that except for one important modification effect was being given to the recommendations of the Law Commission. In the note on Clause 2, it is stated in the Bill as follows :

> "A new definition of 'application' is being inserted so as to include a petition, original or otherwise. The object is to provide a period of limitation for original

[1][1964] AIR. SC. 752

> application and petition under special laws as there is no such provision now. Consequential changes have been made in the definition of 'applicant'."

5. If, therefore, the recommendations of the Law Commission and reasons given for the various clauses in the Bill introduced in the Parliament were only to be considered, then an inference must follow that it was intended to bring within the provisions of the Limitation Act applications under special laws for which previously there was no such provision therein. The amendment made, however, was to the effect of defining an application to include a petition. Sri Qazi urged that upon this definition of an application being given as an inclusive one, the provisions of Art. 137 would read differently form the interpretation which was given to original Art. 181 of the old Limitation Act of 1908.

6. In the Act of 1908, Art. 181, which was the residuary article, was as follows :

Application for which no period of this schedule or by Section 48 of the Code of Civil Procedure , 1908.	Three years.	When the right to apply accrued.

7. This article was construed by their lordships of the Supreme Court in *Bombay Gas Company v. Gopal Bhiva [1964] AIR SC 752 (vide supra)*. The observation of the Supreme Court are as follows (p. 614) :

> "... It is well-settled that Art. 181 applies only to applications which are made under the Code of Civil Procedure; and so, its extension to applications made under Section 33C(2) of the Act would not be justified."

8. The question that now arises is whether in view of the definition of the word "application" as given in the new Act (36 of 1963), any change is brought about and the applications, contemplated within the meaning of the same in Art. 137 would include applications made under special Acts.

9. Their lordship of the Supreme Court, while considering the exact question which is now posed before us, viz; whether the law of limitation applies to an application made under Section 33C(2) of the Industrial Disputes Act, held as follows (p. 613) :

> "... It seems to us that where the legislature has made no provision for limitation, it would

not be open to the Courts to introduce any such limitation on grounds of fairness or justice. The words of Section 33C(2) are plain and unambiguous and it would be the duty of the labour court to give effect to the said provision without any considerations of limitation."

10. From this observations, it appears that their lordships of the Supreme Court were of the opinion that since the words of Section 33C(2) were plain and unambiguous, it was the duty of the labour court to give effect to the said provisions without any consideration of limitation. Their lordships of the Supreme Court were, however, considering the provisions of the old Limitation Act of 1908 which did not make any provision for applications under the special Acts.

11. Sri Kukday appearing for the respondent-worker also brought to our notice a decision of a Division Bench of this Court in *Ramakrishna Ramnath v. Presiding Officer, Labour Court*[2] After considering the various decisions of the Supreme Court, the learned Judges of the Division Bench held that it was clear that the laws of limitation as such were not applicable to industrial adjudication, but at the same time, over-stale claims were not to be encouraged. These were the observations made by the learned Judges in p. 425 after considering the various decisions of the Supreme Court in regard to the application of the law of limitation to applications under Section 33C(2) of the Industrial Disputes Act. These observations of the Division Bench of this Court are of a very wide import. The question is whether these observations would prevail now in view of the intended change in the Limitation Act as brought about by the clause defining the words "application" within the Act itself. The decision of the Supreme Court as well as of the Division Bench of this Court have laid down that the law of limitation does not apply to an application under Section 33C(2) of the Industrial Disputes Act, 1947.

12. However, considering the intention at the time of consolidation and amendment of the law of limitation, the statements of objects of the Bill and the statements in regard to the particular Clause 2, it appears to us that this question requires reconsideration. Since a Division Bench had held that the law of limitation does not apply to industrial legislation and since they are of opinion that a change is definitely brought about in the law of limitation by reasons of the definition given to "application" in the said Act, we feel that a lager Bench should consider this point so that this point be decided finally so far as this Court is concerned. The point is of importance because several such applications might be pending before the labor Court and several applications such as the present one or under any other provision under industrial legislation are bound to be filed hereafter. Since the point is of such great importance, we hold that a larger Bench should decide this particular point :

"Whether by the Limitation Act 36 of 1963, the application in respect of special law is also provided for within Art. 137 of the said Act ? "

Kotval, C.J.

15. In all these special civil applications a common question of law has been referred for decision to the Full Bench. As referred, that question was in somewhat wide terms and we have with the consent of counsel for both the parties modified the question as shown below to make it applicable exclusively to the facts of the cases before us as follows :

> "Whether the applications filed under Section 33C(2) of the Industrial Disputes Act, 1947, prior to its amendment by the Central Act 36 of 1964, are governed by the period of limitation laid down in Art. 137 of the Limitation Act, 1963 (36 of 1963) ?"

14. The question arises under the following circumstances : On 11 June, 1958, the State Government issued a notification revising the wages of bidi workers working in bidi factories in the Vidarbha region of the State. The notification was published in the gazette of 14 June, 1958, but effect was given to it from 1 July, 1958. The notification purported

[2][1963] Mah. LJ. 182

to make a certain revision in regard to the notifications previously operating which restricted the right of the employer to reject bad work by the employee and not pay for it. This right is otherwise referred to as the right of "chhat". The employers found the revision of their right of chhat to be commercially unworkable and, therefore, the petitioners in each of the three cases before us closed their bidi factories at Kamptee in Nagpur district. Later on, for certain reasons they reopened their factories. The factories thus remained closed from 1 July, to 9 August, 1958. Upon reopening, the workers were taken back in service. For the period for which the petitioners' factories remained closed the workers put in applications under Section 33C(2) of the Industrial Disputes Act, 1947 (prior to its amendment by Act 36 of 1964); for computation of benefit of retrenchment compensation for the 39 days during when the factories remained closed. Each workers claimed a different amount according to the daily average earning to which he was entitled and the number of years of service he had already put in with the employer.

15. In answer to the applications of the workers, the petitioners raised several preliminary objections. One such objection was that the applications were all barred by time. The period for which claim was made in the applications was form 1 July to 9 August, 1958, but the respective applications put in by the workers were on 16 April, 1964 in Special Civil Application No. 932 of 1965; on 19 May, 1964 in Special Civil Application No. 931 of 1965 and on 11 November, 1961 in Special Civil Application No. 933 of 1965. The labour court at Nagpur rejected all the preliminary objection raised by the employers. The preliminary objection relating to limitation was covered by the issue."Is the application barred by time ? Is it an over delayed claim ?"and the answer was in the negative.

16. In coming to this conclusion the labour court merely relied upon the decision of the Supreme Court in *Bombay Gas Company v. Gopal Bhiva [1964] AIR. SC. 752 (vide supra)*. It also held even under the new Limitation Act 36 of 1963, Art. 137 of the Limitation Schedule did not lay

down a period of limitation for applications under Section 36C(2) of the Central Act. The employers preferred special civil applications before this Court which came up before a Division Bench (Wagle and Padhye, JJ.) and the Division Bench has, by a common order, passed on 22 December, 1965, referred the question as to limitation for decision by a Full Bench. In their opinion whatever may be the position prior to the new Limitation Act having come into force, under the new Limitation Act, it was clear that the residuary article, viz., Art. 137 of the Third Division of the Limitation Schedule, would apply to applications in respect of special laws including Section 33C of the Industrial Disputes Act, 1947.

17. In order to reach a correct decision as to the scope and effect of Art. 137 of the new Act, it is necessary to delve into the rather peculiar history of the interpretation put upon Art. 181 of the old Act. For convenience we reproduce below the two articles side by side:

Third Division : Applications
(Old Act)

Description of application	**Period of Limitation**	**Time from which period begins to run.**
181. Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.	Three years	When the right to apply accrues.

Third Division : Applications
(New Act)

137. Any other application for which no period of limitation is provided elsewhere in this division.	Three years.	When the right to apply accrues.

18. Now, so far as this Court is concerned, the position as it existed under the old Act is clear. It was consistently held that Art. 181 of the Limitation Schedule was limited to applications under the Code of Civil procedure only. It was so held in *Bai Manekbai v. Manakji Kavasji*[3] where Sir Michael Westropp, Chief Justice, ruled that (p. 214) :

> "... An examination of all the other article in Sch. II relating to 'applications', that is to say, of the third division of that schedule, shows that the applications therein contemplated are such as are made under the Civil Procedure Code. Hence, it is natural to conclude that the applications referred to in Art. 178 are applications ejusdem generis, i.e., applications under the Code of Civil Procedure. The preamble of the Act, moreover, purports to deal with 'certain applications' only and not with all applications".

19. Despite powerful dissents from this view, most other High Courts followed Bai Manekbai case [(1880) I.L.R. 7 Bom 213] (vide supra) and the Supreme Court has now laid at rest the controversy by its decision in *Sha Mulchand & Co. v. Jawahar Mills, Ltd*[4].

20. As will appear from the quotations from Sir Michael Westropp's judgment, the principle arising which prevailed for holding that Art. 181 was applied only to applications under the Code of Civil Procedure, was that all other articles in the third division of Sch. I to the Limitation Act were confined to applications under that Code. To that contention a Division Bench of the then Judicial Commissioner's Court at Nagpur in *Sheikh Kaudu v. Berar Ginning Company, Ltd*[5]. had given inter alia the following answer, which so far as we can find from the authorities has nowhere been met;

> "But Section 29 of the Limitation Act puts the matter beyond all doubt. It provides that nothing in the Act shall affect or alter any period of limitation prescribed for any application by any special or local law in force in British India. If the Act did not apply in the first place to all applications, even under special and local laws, it would be mere waste of time to say that it was not to apply to those of them for which special periods were prescribed by those laws. It is clear that Art. 181 of the Schedule of the Limitation Act governs the limitation of every application made to

[3][(1880) I.L.R. 7 Bom. 213] [5][(1928) 24 N.L.R. 100 at 103]
[4]1953 AIR. SC. 98.

a Court under any Act except those for which different periods are prescribed in the Acts under which they are made."

21. In 1940 by Section 49 of Act 10 of 1940 the two articles of the third division of the schedule under the old Limitation Act were substituted by new articles. They were Arts. 158 and 178 both of which dealt with applications under the Arbitration Act, 1940; the one "to set aside an award or to get an award remitted for reconsideration" and the other "for the filling in Court of an award." With that amendment, the controversy as to the interpretation of Art. 181 came to be revived because it was suggested that the very basis of the decision of Sri Michael Westropp in Bai Manekbai case [(1880) I.L.R. 7 Bom. 213] (vide supra) was taken away. It was urged that the ejusdem generis rule could no longer apply because now all articles in the third division were not confined to applications under the Code of Civil Procedure and the reasoning in Sheikh Kaudu case [(1928) 24 N.L.R. 100 at 103] (vide supra) should apply. To that of course answer was made that applications under the Arbitration Act are nevertheless applications under the Code of Civil Procedure, because the Arbitration Act was enacted after repeal of Sch. II of the Code of Civil Procedure which dealt with arbitrations and the effect of the reenactment was as though the applications under the Arbitration Act must be treated for the purposes of the applicability of the Limitation Act as if they were applications under Sch. II of the Code of Civil Procedure. We need not, however, go into the pros and cons of this controversy because the controversy was set

at rest by the decision of the Supreme Court in *Sha Mulchand & Co. v. Jawahar Mills, Ltd. (vide supra)*.

22. In that decision it was held that even after the amendment of Arts. 158 and 178 of the Limitation Schedule the position would still remain the same, namely, that Art. 181 would apply only to applications under the Code of Civil Procedure, Chief Justice S. R. Das stated the rule in the following words (p. 104) :

> "... It does not appear to us quite convincing, without further argument, that the mere amendment of Arts. 158 and 178 can ipso facto alter the meaning which, as a result of a long series of judicial decisions of the different High Courts in India, came to be attached to the language used in Art. 181. This long catena of decisions may well be said to have, as it were, added the words 'under the Code' in the first columns of that article. If those words had actually been used in that column, then a subsequent amendment of Arts. 158 and 178 certainly would not have affected the meaning of that article. If, however, as a result of judicial construction, those words have come to be read into the first column as if those words actually occurred therein, we are not of opinion, as at present advised, that the subsequent amendment of Arts. 158 and 178 must necessarily and automatically have the effect of altering the long acquired meaning of Art. 181 on the sole and simple ground that after the amendment, the reason on which the old construction was founded is no longer available."

23. Thus it was held that the construction put upon Art. 181 in Bai Manekbai case [(1880) I.L.R. 7 Bom. 213] (vide Supra) was the correct construction in spite of the amendment of Arts. 158 and 178 by Act 10 of 1940.

24. Despite the above decision, a bold attempt was made in *Bombay Gas Company v. Gopal Bhiva [1964] AIR. SC. 752 (vide Supra)* to apply Art. 181 of the old Act directly to applications under Section 33C(2) of the Industrial Disputes Act, 1947, but it was also negatived by the Supreme Court. The Supreme Court held (p. 613).

> "... The failure of the legislature to make any provision for limitation cannot, in our opinion, be deemed to be an accidental omission. In the Circumstances, it would be legitimate to infer that legislature deliberately did not provide for any limitation under Section 33C(2). It may have been thought that the employees who are entitled to take the benefit of Section 33C(2) may not always be conscious of their rights and it would not be right to put the restriction of limitation in respect of claim which they may have to make under the said provision. Besides, even if the analogy of execution proceedings is treated as relevant, it is well-known that a decree passed under the Code of Civil Procedure is capable of execution within twelve years, provided, of Course, it is kept alive by taking steps in aid of execution from time to time as required by Art. 182 of the Limitation Act;

so that the test of one year or six months' limitation prescribed by the payment of Wages Act cannot be treated as a uniform and universal test in respect of all kinds of execution claims. It seems to us that where the legislature has made no provision for limitation, it would not be open to the Courts to introduce any such limitation on grounds of fairness or justice. The words of Section 33C(2) are plain and unambiguous and it would be the duty of the labour court to give effect to the said provision without any considerations of limitation. Sri Kolah no doubt emphasized the fact that such belated claims made on a large scale may cause considerable inconvenience to the employer, but that if a consideration which the legislature may take into account, and if the legislature feels that fair play and justice require that some limitation should be prescribed, it may proceed to do so. In the absence of any provision, however, the labor court cannot import any such consideration in dealing with the applications made under Section 33C(2).

25. In coming to this conclusion the Supreme Court also referred to the previous history of the intervention of Art. 181 from Bai Manekbai case [(1880) I.L.R. 7 Bom. 213] (vide supra) down to their decision in the case of Sha Mulchand & Co. (vide supra) and relying upon that construction of Art. 181 held that it was not possible to accede to the argument that the limitations prescribed by Art. 181 can be invoked in dealing with the application under Section 33C(2) of the Act. An anomaly was pointed out to the Supreme Court, namely, that while the same claim could be made at any time under Section 33C(2) of the Industrial Disputes Act, that very claim was liable to be rejected as barred by time if made under the Payment of Wages Act (S. 15) and as to that the Supreme Court observed in Para. 12 of their judgment that "It does appear to be somewhat anomalous" and in the passage which we have quoted suggested that if there was any inconvenience or that if the legislature felt that fair play and justice require it, the legislature may introduce some limitation. It was urged as one of the arguments before us that it was in direct consequence of this suggestion made by the Supreme Court in the Bombay Gas Company case [1963 - II L.L.J. 608] (vide supra) that the legislature deliberately made a change while enacting the new Limitation Act 36 of 1963 and made the new Art. 137 which substantially reproduces the provisions of Art. 181 of the old Act, applicable to applications like these under Section 33C(2). This was the reasoning which prevailed under Art. 181 of the old Limitation Act 9 of 1908. We have deliberately reproduced in detail the reasons which impelled the conclusion that the old Art. 181 applied only to applications under the Code of Civil Procedure because one or the other of those reasons was relied on by each party to support its own construction of Art. 137.

26. And so, in the light of the history of the interpretation of the old Art. 181, we proceed to consider the provisions of the new Act and particularly Art. 137. The new Limitation Act is, as its preamble indicates, "an Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith." The preamble of the old Act was "An Act to consolidate and amend the law for the limitation of suits, and for other purposes." The first important charge is, therefore, indicated by the preamble itself, namely, that the new Act applies

to "other proceedings and for purposes connected therewith." Previously it applied to "limitation of suits, and for other purpose." it is clear, therefore, that proceeding other than suits and purposes connected therewith are now covered by the law of limitation. Another important change to be noticed is that in the preamble of the old Act were the words, "limitation of suits, appeals and certain applications to Courts." Thus the preamble itself limited that Act to certain applications only and those applications also were applications to Courts only. That part of the preamble is now dropped by the new Act. This is the second indication of the intention of the legislature to widen the application of the law of limitation, making it applicable to all applications.

27. The next important change which, in our opinion, is of vital significance is that contained in the definition of "applicant" in Section 2(a) of the new Act. The definition of "applicant" in the old Act was "'applicant' includes any person from or through whom an applicant derives his right to apply." In the present Act, the definition of "applicant" is widened as follows :

> "2(a) 'applicant' includes -
> (i) a petitioner;
> (ii) any person from or through whom an applicant derives his right to apply;
> (iii) any person whose estate is represented by the applicant as executor, administrator or other representative."

28. The difference brought about is that a "petitioner" is now included in the definition of "applicant." Similarly, In Section 2(b) of the new Act the word "application" is defined to include a "petition". There was no separate definition of "application" in the old Act. Therefore, the intention of the legislature is clear. When the Act speaks of "applicant", and "application," it necessarily includes a "petitioner" and a "petition." We put it to counsel whether in the light of this amended definition, it could still be urged that the third division which deals with applications could now be possibly limited to applications under the Code of Civil Procedure, for the very word "petition" or the word "petitioner" does not appear in any part of the Code of Civil Procedure. None of the counsel were able to point out that the word "petitioner" or the word "petition" is used in the Code of Civil Procedure. Therefore, by the amendment in the definition of the word "applicant" and by the incorporation of the new definition of "application" as including a "petition" the intention of the legislature is made clear. It was not intended to confine the word "application" to applications under the Code of Civil Procedure. Since this change was brought about by express legislation, we do not think that the ratio decidendi of the decisions under the old Act, to which we have referred to above, can prevail.

29. Apart from this we may say that sub-stratum if the decision in Bai Manekbai case [(1880) I.L.R. 7 Bom. 213] (vide supra) is now taken away for two other important reasons. The first is that viewing the third divisions as a whole, it is no longer confined to applications under the Code of Civil Procedure or even to applications which may be deemed to be under the Code of

Civil Procedure. We have already shown what was the argument advanced regarding Arts. 158 and 178 of the old limitation schedule. Now, these articles have been consolidated into one article, namely, Art. 119. While, no doubt, so far as this article relating to applications under the Arbitration Act, 1940 is concerned, the argument can still be justified that these applications must also be deemed to be applications under the Code of Civil Procedure because of the repeal of Sch. II to the Code of Civil Procedure and its reenactment in the shape of the Arbitration Act, 1940, the same argument cannot possibly prevail regarding several new articles introduced in the third division, which beyond any shadow of doubt deal with applications totally unconnected with the Code of Civil Procedure. These are, for example, Art. 131 :

> "To any Court for the exercise of its powers or revision under ... the Code of Criminal Procedure, 1898;"

Art. 132 :

> "To the High Court for a certificate of fitness to appeal to the Supreme Court under Clause (1) of Arts. 132, 133 or Sub-clause (c) of Clause (1) of Art. 134 of the Constitution or under say other law for the time being in force :"

Art. 133 :

> "To the Supreme Court for special leave to appeal -
> (a) in a case involving death sentence;
> (b) in a case where leave to appeal was refused by the High Court;
> (c) in any other case."

30. In the case of each of these articles, the application could never be under the Code of Civil Procedure. They lie under the Code of Criminal Procedure or under the provisions of the Constitution. The legislative draftsman must be presumed to have known the previous history of the interpretation of Art. 181 and the view taken that the applications in the third division of the Limitation Act in the old Act were confined only to applications under the Code of Civil Procedure and yet deliberately there have been introduced is the third division applications under the Criminal Procedure Code and the Constitution. We think that the change read in conjunction with the change in the definition of "applicant" and the introduction of the new definition "applications" in Ss. 2(a) and 2(b) of the new Act indicate a clear intention to put an end to the ratio decidendi of the decision in Bai Manekbai case [(1880) I.L.R. 7 Bom. 213] (vide supra) and the long catena of cases which followed it including the decision of the Supreme Court in *Sha Mulchand & Co. v. Jawahar Mills, Ltd. (vide supra)* and *Bombay Gas Company v. Gopal Bhiva [1964] AIR. SC. 752 (vide supra)* in so far as they held that Art. 181 applied only to applications under the Code of Civil Procedure. The reasoning adopted in those cases cannot prevail so far as the analogous Art. 137 is now concerned.

31. The next consideration which leads to the same conclusion is the deliberate division of the third division of the new Limitation schedule into parts, part I dealing with applications in "specified cases" and part II with "other applications." This subdivision was not there in the old Act in which the third division dealt with all applications. The splitting up of the division into two parts, "applications in specified cases" and "other applications" seems to us to have been deliberately made so that the reasoning whatever it may be with regard to Part I on lines analogous to those adopted in Bai Manekbai case [(1880)] I.L.R. 7 Bom. 213] (vide supra) should not apply to the other applications in part II of the third division. The second part of the third division contains only one article, namely, Art. 137 and we can see no point in relegating that solitary article to the second part except to take away the possibility of similar reasoning as was adopted in Bai Manekbai case [(1880) I.L.R. Bom. 213] (vide supra) which the legislature must be presumed to have known when it enacted the new legislation.

32. For these various reasons and taking into account

> (1) the intention expressed in the preamble when the law of limitation was amended and reenacted,
> (2) the amendment made in the definition of "applicant" and the addition of the definition of "application,"
> (3) the introduction of new articles in the third division unconnected with the Code of Civil Procedure,
> (4) the subdivision of the third division of the new schedule into two parts, and
> (5) the relegation or Art. 137 alone to a second part,

we think that the legislature has clearly made Art. 137 applicable to applications under laws other than those contained in the Code of Civil Procedure. Article 137, would, therefore, apply to an application under Section 33C(2) of the Industrial Disputes Act. 1947.

33. In the conclusion which we have reached, we are fortified by a consideration of the statement of objects and reasons which accompanied the Bill 11 of 1962 before it was introduced in the Rajya Sabha as published in the Gazette of India, Extraordinary, Part II Section 2, No. 20 dated 19 June, 1962. In the notes on clauses, dealing with the new definition of "application," the following note was made :

> "A new definition of 'application' is being inserted so as to include a petition, original or otherwise. The object is to provide a period of limitation for original applications and petitions under special laws as there is no such provision now. Consequential changes have been made in the definition of 'applicant'."

34. We note also that a Division Bench of this Court has in *Employees' State Insurance*

Corporation, Bombay (through the Regional Director) v. Bharat Barrel and Drum Manufacturing Company (Private), Ltd[6]. applied the provisions of Art. 137 of the new

[6][(1966) Civil Ref No. 8 of 1964, decided by Tarku and Chit JJ., on 15, 16 and 19 September, 1966 (Unrep.)

Act to applications under the Employees' State Insurance Act but it does not appear that the applicability of the new article was disputed or seriously discussed before them.

35. There is no doubt that the new Act will govern the present applications which were all made in 1964 after it came in to force. The present Act came into force on 5 October, 1963. By virtue of Section 13, a notification was issued by the Central Government on 9 November, 1963, bringing into force the rest of the provisions of the Act from 1 January, 1964. On the date on which the applications by the workers were made, the new Act was in force. Now it is axiomatic that an application made after the Act came into force would be governed by its provisions. Statutes of limitation must be given a retrospective effect in the sense that they must be applied to all applications filed after they come into force. This general rule has one qualification that where the statute of limitation, if given a retrospective effect, destroys a cause of action which was vested in a party or makes it impossible for that party to exercise his vested right of action, the Courts will not give retrospective effect to it. See the decision of Chagla, J. (as he then was) in *District School Board, Belgaum v. Mohamed Mulla*[7] and the several cases cited there. This decision was later accepted but distinguished in *Chotmal Ganeshram v. Ramchand*[8] by the same learned Judge sitting in Division Bench. There is no argument possible here that the new Act will destroy a cause of action which was vested in a party or make it impossible for that party to exercise his vested right of action if the Act is given retrospective effect. The new Limitation Act was first published and then received the assent of the President in 5 October, 1963. Its main provisions ware brought into force much later by the notification of the Central Government, dated 9 November, 1963 as from 1 January, 1964. The respondents thus had ample opportunity to put in their claims before the newly-enacted bar of limitation began to operate against them. Their right of action was thus not destroyed by the new Act. In that view we can neither see any difficulty in the retrospective application of the new Act to these applications nor any particular hardship being worked.

36. Then we turn to examine whether an application under S, 33C(2) as it stood before its amendment by Act 36 of 1964 would fall within the ambit of the words used in Art. 137 :

> "any other application for which no period of limitation is provided elsewhere in this division."

37. It is not disputed that since the claims involved in these special civil applications are between the period 1 July, and 9 August, 1958, it is Section 33C of the Industrial Disputes Act, 1947, prior to its amendment by Act 36 of 1964 that falls to be considered.

38. Section 33C, Sub-secs. (1) and (2), run as follows :

"33C, (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chap. V-A, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same

[7][47 Bom. L.R. 323]

[8]1957 [59 Bom. L.R. 828]

in the same manner as an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may; subject to any rules that may be made under this Act, be determined by such labor court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in Sub-section (1)."

39. It is clear from Sub-section (2) of Section 33C that the amount has to be recovered as provided for in Sub-section (1) and that Sub-secs. (1) and (2) are interrelated, but what is sought to be argued is that Sub- section (2) is couched is language which does not require any application whatever from the worker and the duty is that of the labour court to determine the amount at which the particular benefit should be computed and recover the amount for the worker as provided for in Sub-section (1). We do not think that we can accede to this argument, for Sub-section (1) in terms says, "the workman may without prejudice to any other mode of recovery, make an application." and by Sub-section (2) the amount "so determined" has to be recovered as provided for in Sub-section (1). Therefore, without an application we do not think that the worker can claim that the amount determined under Sub-section (2) can be recovered. Rule 67 of the Industrial Disputes (Bombay) Rules, 1957, also indicates the same thing. It says :

"An application under Sub-section (1) of Section 33C shall be delivered personally or forwarded by registered post in triplicate in the forms XX-A and XX-B, as the case may be, to the Secretary to Government of Bombay, Labour and Social Welfare Department, Bombay ..."

40. Rule 62 of the Industrial Disputes (Central) Rules, 1957, also shows that the worker has to apply or for the recovery of the money due to him or for the computation of an amount in respect of any benefit due to him.

41. For these reasons, we hold that the applications of the workers in each case would be barred by limitation. We answer the question referred in the affirmative. The papers will now be returned to the Division Bench for final disposal of the special civil applications.

Answer accordingly.