

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.*

GURA'CHA'RYA (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE PRESIDENT OF THE BELGAUM TOWN MUNICIPALITIES, THE COLLECTOR OF BELGAUM (ORIGINAL DEFENDANT), RESPONDENT.\*

1884  
June 18.

*Limitation—Act XIV of 1859, Sec. 14—Act XV of 1877, Secs. 6 and 14—  
Construction—Act VI of 1873, Sec. 86,*

The general provisions of the Limitation Act XV of 1877 are applicable to cases for which periods of limitation are specially provided by local or special laws.

Therefore where a suit was brought in the Court of the District Judge of Belgaum on 30th January, 1882, but was returned for want of jurisdiction on 6th February, 1882, and was subsequently presented on the same day in the Court of the Subordinate Judge of Belgaum, the High Court held that the provisions of section 14 taken together with 6 of the Limitation Act XV of 1877 applied to the case so as to exclude the period between 30th January and 6th February, 1882, in computing the period of three months prescribed by the Bombay District Municipal Act (Bombay Act VI of 1873), Sec. 86.

*Golapchand Nowluckha v. Krishto Chunder* (1); *Nijabutoola v. Wazir Ali* (2); *Khetter Mohun Chuckerbutty v. Dinabashy Shaha* (3) followed.

*Hari Ramchandra v. Vishnu Krishnaji* (4) distinguished.

THIS was a second appeal against the decision of C. F. H. Shaw, Judge of the District Court at Belgaum, confirming the decree of A. M. Cantem, First Class Subordinate Judge of the same place.

This was a suit brought by the plaintiff for an order allowing a certain privy to be used, and for damages sustained by the plaintiff by reason of the defendant having prevented the use of the said privy, and ultimately having caused it to be removed. The defendant, on the plaintiff's application, passed a final order on 31st October, 1881, that plaintiff should not rebuild and use his privy. The suit was originally filed on 30th January, 1882, (*viz.*, within three months from the aforesaid final order) in the District Court of Belgaum. The District Judge returned the plaint on 6th February, 1882, holding that he had no jurisdiction. The plaintiff then on the same date presented it again in the Court of the Subordinate Judge (First Class) at Belgaum.

\* Second Appeal, No. 173 of 1883.

(1) I. L. R., 5 Calc., 314.

(2) I. L. R., 10 Calc., 265.

(3) I. L. R., 8 Calc., 910.

(4) 10 Bom. H. C. Rep., 204.

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Both the lower Courts held that the time occupied between the original presentation of the plaint in the District Court and its presentation in the Court of the Subordinate Judge could not be included in computing the period of three months prescribed by section 86<sup>(1)</sup> of the District Municipal Act (Bombay Act VI of 1873), and that, therefore, the suit was barred.

The plaintiff appealed to the High Court.

*Ghanashám Nílkanth Nádkarni* for appellant.

The case of *Hari Rámchandra v. Vishnu Krishnáji*<sup>(2)</sup>, relied on by the District Judge, does not apply. That was a case under Act XIV of 1859. The provisions of this Act as well as those of the Limitation Act IX of 1871 materially differ from the corresponding provisions of the Limitation Act XV of 1877. Section 6 of Act XV of 1877 provides: "Where 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." Under the present Act only the prescribed period is not to be affected or altered, implying thereby the applicability of general rules of limitation to periods provided by special or local laws — *Golápchand v. Krishto*<sup>(3)</sup>; *Nijabutoola v. Wazir Ali*<sup>(4)</sup>. Further, the operation of section 14 of Act XIV of 1859 was confined to periods of limitation prescribed by that Act; whereas the operation of the corresponding section 14 of Act XV of 1877 is extended to the period of limitation for *any suit* whether prescribed by that Act or by any special or local Act. The suit was, therefore, not barred.

*Shámráv Vithal* for respondent.

The exclusion of time under section 14 of Act XV of 1877 would extend the period of three months prescribed by section 86 of Act VI of 1873, and this would alter or affect the period prescribed by that Act. The application of section 14 to the

<sup>(1)</sup> Section 86 provides with regard to actions brought against the municipality that "every such action shall be commenced within three months next after the passing of the final order by the municipality officer having power to pass such order, and not afterwards".

<sup>(2)</sup> 10 Bom. H. C. Rep., 204,

<sup>(3)</sup> I. L. R., 5 Calc., 314.

<sup>(4)</sup> I. L. R., 8 Calc., 910.

present case is, therefore, prohibited by section 6 of Act XV of 1877—*Purran Chunder Ghose v. Mutty Lál Ghose Jahira* <sup>(1)</sup>. Consequently the lower Courts were right in holding the suit barred.

*Ghanashám Nilkanth Nádkarni* in reply.—The case cited was under Act IX of 1871, which by section 6 provides: "When by any law, not mentioned in the schedule hereto annexed and now or hereafter in force in any part of British India 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*"; whereas the present case is governed by section 6 of Act XV of 1877 which provides \* \* \* \*  
\* \* \* nothing herein contained shall affect or alter the period so prescribed.

The judgment of the Court was delivered by

SARGENT, C. J.—We think that the question whether the general provisions of Act XV of 1877 are applicable to cases provided for by special Acts was rightly decided in the affirmative by the Calcutta Court in *Golápchand Nowluckha v. Krishto Chunder*. That decision has been since followed by the same Court in *Nijabutoola v. Wazir Ali* <sup>(2)</sup> and *Khetter Mohun Chuckerbutty v. Dinabashy Shaha* <sup>(3)</sup>, the latter of which deals with the applicability of section 14. Had the Legislature intended to entirely exclude cases under special Acts from the operation of the Act of 1877, it would scarcely have used the qualified language it has employed in section 6 of that Act. We may remark that in *Hari Rámchandra v. Vishnu Krishnáji* <sup>(4)</sup>, relied on by the District Judge, the question was as to the applicability of section 14 of Act XIV of 1859, the operation of which section is confined to "periods of limitation prescribed by the Act," and not, as in section 14 of Act XV of 1877, made applicable to "all suits". We must, therefore, reverse the decrees of both the Courts, and send the case back for trial on the merits. Costs of this appeal to abide the result.

*Decree reversed.*

(1) I. R. R., 4 Calc. 50.

(3) I. L. R., 8 Calc., 910.

(2) I. L. R., 5 Calc., 314.

(4) I. L. R., 10 Calc., 265.

(5) 10 Bom. H. C. Rep., 204.