

APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Acting Chief Justice and Mr. Justice Shah.

SHIDAYA VIRBHADRAYA KODLINATH (ORIGINAL PLAINTIFF),
APPELLANT v. SATAPPA BHARMAPPA MUTGOUDA AND OTHERS
(ORIGINAL DEFENDANTS), RESPONDENTS.*

1918;

January 31.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 48—The words 'period of limitation prescribed' in the section, construction of—Whether the words refer only to the period expressly provided in the Limitation Act—Decree—Execution—Conciliator's certificate—Civil Procedure Code (Act V of 1908), section 48—Limitation.

A decree was obtained on October 28, 1899, and was followed by three Darkhasts which had been made within the time allowed. The fourth Darkhast was presented on August 23, 1913, that is, more than twelve years after the decree. In July 1911, the judgment-creditor applied for a conciliator's certificate, the suit being governed by the Dekkhan Agriculturists' Relief Act, 1879. The certificate was obtained on March 29, 1913. A question being raised whether under section 48 of the Dekkhan Agriculturists' Relief Act, 1879, the judgment-creditor was entitled to exclude the interval of time occupied in obtaining the certificate in computing the period of limitation prescribed by section 48 of the Civil Procedure Code, 1908 :

Held, answering the question in the affirmative, that the words "the period of limitation prescribed for any suit or application" in section 48 of the Dekkhan Agriculturists' Relief Act 1879, were general and comprehensive and referred to the limitation prescribed in any law for the time being in force. They could, therefore, control or modify the period of time allowed not only in the statute of limitation but also that in section 48 of the Civil Procedure Code, 1908.

Dayaram v. Lazman (1), distinguished.

SECOND appeal against the decision of C. C. Boyd, District Judge of Belgaum, confirming the decree passed by P. Shriniwas Rao, Subordinate Judge at Bail-Hongal.

Execution proceedings.

* Second Appeal No. 866 of 1916.

(1) (1911) 13 Bom. L. R. 284.

1918.

SHIDAYA
VIRBHAD-
RAYA
v.
SATAPPA
BHARMAPPA.

The decree under execution was passed on October 28, 1899.

The first Darkhast application was presented on October 28, 1902. Second on October 22, 1905, and the third on December 8, 1908.

On July 1, 1911, the judgment-creditor applied for a conciliator's certificate and it was granted to him on May 29, 1913.

Then the fourth Darkhast was presented on August 23, 1913.

The decree-holder pleaded that on excluding the time taken in obtaining the conciliator's certificate as required by section 48 of the Dekkhan Agriculturists' Relief Act, 1879, the last Darkhast was in time.

The judgment-debtor set up limitation as a bar on the ground that the Darkhast being presented more than twelve years after the date of the original decree the Court could take no action for the execution of the said decree under section 48 of the Civil Procedure Code, 1908.

The Subordinate Judge relying on the ruling in *Dayaram v. Laxman* ⁽¹⁾ held that the defendant's plea ought to prevail and the plaintiff could not be allowed to take advantage of the saving clause in section 48 of the Dekkhan Agriculturists' Relief Act, 1879.

The District Judge, on appeal, confirmed the decree.

The plaintiff appealed to the High Court.

A. G. Desai for the appellant :—The question in this appeal is whether section 48 of the Civil Procedure Code, 1908, is not controlled by section 48 of the Dekkhan Agriculturists' Relief Act, 1879. Both the lower Courts have answered it in the negative and have held

⁽¹⁾ (1911) 13 Bom. L. R. 284.

that our application for execution is barred by the twelve years' rule laid down in section 48 of the Civil Procedure Code, 1908.

We say we are entitled to exclude the time spent by us in obtaining the conciliator's certificate. If that is done, our Darkhast is in time. Section 48 of the Dekkhan Agriculturists' Relief Act, 1879 has to be read with section 47 thereof. Section 47 makes it obligatory on a party applying for execution to obtain a conciliator's certificate and section 48 directs that the time so taken up in applying for a certificate "shall be excluded". Section 48 does not say that this method of computing the period of limitation is limited to that prescribed by any particular Act or any particular part thereof. The words are very general. The "period of limitation prescribed" may be that prescribed by Limitation Act or by the Code of Civil Procedure. The case of *Dayaram v. Laxman* ⁽¹⁾ relied on by the lower Court does not really apply to the facts of this case. In that case the party seeking relief wanted to add the period spent in obtaining a conciliator's certificate to that allowed by section 31 of the Limitation Act, 1908. Section 31 allowed a period of grace of two years. That was the maximum period allowed and no further period of concession whether under section 48 of the Dekkhan Agriculturists' Relief Act, 1879, or otherwise could be tacked on to it.

On the day we applied for a certificate our Darkhast was in time. The conciliator took nearly two years to grant the certificate. We say we are entitled to deduct this period in computing the period of limitation prescribed by section 48 of the Civil Procedure Code, 1908.

H. B. Gumaste for respondents Nos. 2 to 4 :—The word 'entertained' in section 47 of the Dekkhan Agriculturists' Relief Act, 1879, shows that it is not necessary

1918.

SHIDAYA
VIRBHAD-
RAYA
v.
SATAPPA
BHARMAPPA.

1918.

SHIDAYA
VIRBHAD-
RAYA
v.
SATAPPA
BHARMAPPA.

for the party to wait till the conciliator's certificate is obtained. The party can apply in execution and then produce the certificate. The section 48 of the Civil Procedure Code, 1908, stands by itself and no other section or sections can control its operation. It is an absolute bar and the period mentioned therein cannot be extended by section 48 of the Dekkhan Agriculturists' Relief Act, 1879. The case of *Dayaram v. Laxman*^(a) is in point and there the Court did not allow the party to exclude the time taken in obtaining the conciliator's certificate. The word 'prescribed' in section 48 of the Dekkhan Agriculturists' Relief Act, 1879, means as held in *Dayaram v. Laxman*^(a), prescribed in 2nd Schedule of the Indian Limitation Act, 1908, and not elsewhere or in any other Act.

BATCHELOR, AG. C. J. :—This is an appeal in execution, and the only question involved is whether the application to execute is barred by time. The decree was obtained on the 28th October 1899, and was followed by three Darkhasts, all of which must, for the purposes of this appeal, be taken to have been made within the time allowed. The fourth and present Darkhast is dated the 23rd August 1913, that is, more than twelve years after the decree. The delay, however, is sought to be excused in this way. The suit was governed by the Dekkhan Agriculturists' Relief Act, and on the 1st of July 1911, the appellant, the judgment-creditor, applied for a conciliator's certificate, as under the Act he was then bound to do. He did not get the certificate till the 29th March 1913, and the only question to be answered in the appeal is whether under section 48 of the Dekkhan Agriculturists' Relief Act, he is entitled to exclude this interval of time occupied in obtaining this certificate.

The learned Judges below have both held against the judgment-creditor, but the only ground for their decision

is the ruling of this Court in *Dayaram v. Laxman*⁽¹⁾. If that case, however, be read with attention, it will, I think, be recognised that it has no bearing whatever upon the question now in controversy. For the only point in *Dayaram's case*⁽¹⁾ was whether the phrase "the period of limitation prescribed" in section 48 of the Dekkhan Agriculturists' Relief Act, could cover not only the period of limitation expressly mentioned in an Article of the Limitation Act, but also an added section of that Act, namely section 31, under which a special temporary concession was allowed to mortgagees. The Court held that the words "the period of limitation prescribed" in section 48 of the Dekkhan Agriculturists' Relief Act must refer only to the period expressly prescribed in the Limitation Act, and could not include the exceptional concession subsequently allowed. With all that, however, we have nothing to do here, where the question which confronts us is totally different, and is this, whether the words "the period of limitation prescribed" in section 48 of the Dekkhan Agriculturists' Relief Act, can control or modify the period of time allowed, not in the Statute of Limitation at all, but in section 48 of the Civil Procedure Code. It is necessary for the judgment-debtor to contend for the negative, but it appears to me clear that the affirmative is the correct answer. In the first place, if it had been the intention of the Legislature to enact that the period of limitation in section 48 of the Dekkhan Agriculturists' Relief Act should be exclusively that period of limitation to be found within the Limitation Act, nothing would have been easier than to express that intention clearly. So far from this being done, we have a complete omission of any reference to the Limitation Act, and the words are general and comprehensive, namely, "the period of

1918.

SHIDAYA
VIRBHAD-
RAYA
v.
SATAPPA
BHARMAPPA.

(1) (1911) 13 Bom. L. R. 284.

1918.

SHIDAYA
VIRBHAD-
RAYA.
v.
SATAPPA
BHARMAPPA.

limitation prescribed for any suit or application." That I take it means the period of limitation prescribed in any law for the time being in force, and it seems to me clear that the intention of the Legislature in enacting this section 48 of the Dekkhan Agriculturists' Relief Act was to secure that the judgment-creditor, compelled by the new Act to approach the conciliator for a certificate, was not to be damnified by any lapse of time before the conciliator gave him the certificate. But unless the judgment-creditor's argument is to be allowed in this case, it is manifest that grave injustice must often ensue. For, if we suppose that, a week before the expiration of the twelve years, the judgment-creditor approached the conciliator for a certificate, and the conciliator then, as he did here, slept over the matter for the space of two years, the judgment-creditor must inevitably be out of time through no fault of his own. This result, it appears to me, it was the precise intention of the Legislature to avoid by section 48 of the Dekkhan Agriculturists' Relief Act. And our present case is little less strong than that which I have put, for on the 1st July 1911, when the application to the conciliator was made, it was admittedly in time. This view of the case seems to me to receive direct support from the language employed by the Legislature in Articles 181 and 182 of the Limitation Act of 1908, for those Articles deal with applications provided or not provided for "by section 48 of the Code of Civil Procedure." Clearly, therefore, in the mind of the Legislature section 48 of the Code of Civil Procedure provided a period of limitation, and I can see no reason for thinking that the period of limitation thus provided falls outside the general words employed by the Legislature in section 48 of the Dekkhan Agriculturists' Relief Act. On these grounds, I am of opinion that the appeal must be allowed, the lower Court's decree must be reversed, and the Darkhast must be proceeded with as being in

time. The appellant to have his costs. It will be open to the respondents, if so advised, to raise a point of limitation as to the earlier Darkhasts.

SHAH, J. :—I agree.

Decree reversed.

J. G. R.

1918.

SHIDAYA
VIRBHAD-
RAYA
v.
SATAPPA
BHARMAPPA.

PRIVY COUNCIL.*

BHAGWANDAS PARASRAM (PLAINTIFF) v. BURJORJI RUTTONJI BOMANJI (DEFENDANT).

[On appeal from the High Court of Judicature at Bombay.]

Wagering contracts—Common intention to wager essential—Speculation not equivalent to wagering—Pakki Adat—Contract Act (IX of 1872), section 30—Bombay Act III of 1865, sections 1 and 2.

Speculation does not necessarily involve a contract by way of wager, and to constitute such a contract a common intention to wager is essential.

Even if one party to a contract were a speculator who never intended to give delivery, and that fact was known to the other party, yet in the absence of any bargain or understanding, express or implied, that the goods were not to be delivered, that would not convert a contract, otherwise innocent, into a wager; nor would the mere fact, that as to the greater part of the goods there was no delivery but an adjustment of claims, vitiate the transaction.

Pakki Adat dealings are well established as a legitimate mode of conducting commercial business in the Bombay market.

Held (reversing the decision of the Appellate High Court)—that the contracts in suit were not wagering contracts.

APPEAL 51 of 1916 from a judgment and decree (28th March 1913) of the High Court at Bombay in its appellate jurisdiction, which reversed a judgment and decree

P. C.°

1917.

October
26, 29;
November
26.

16A-LJ-24

* *Present*.—Lord Buckmaster, Sir John Edge, Sir Walter Phillimore, Bart., and Sir Lawrence Jenkins.