

In view of the above, we are of the opinion that the learned Judge below was wrong in dismissing the plaintiff's suit as he did. The appeal must, therefore, be allowed and the suit remanded to the Court below for disposal according to law.

While remanding the suit, however, we are asked by Mr. Chandrachud to reserve to his client the right to contend that S. Nos. 244 and 245 have not been identified with any of the lands which formed the subject-matter of the grant exh. 81. No issue was specifically raised in this behalf in the Court below, though on the evidence recorded before him, the learned trial Judge appears to have come to the conclusion that these two S. Nos. 244 and 245 were sufficiently identified. While remanding the case, therefore, we do reserve liberty to both the parties to adduce such further evidence as they may be advised on the issues which the learned Judge has not decided, namely, issues Nos. 5, 6, 8, 9 and 10. It would be open also to the defendants to raise a specific issue in regard to the identity of the properties S. Nos. 244 and 245, both the parties being at liberty to adduce such evidence in that behalf as they may be advised. The respondents will pay the appellant's costs of this appeal. The costs of the lower Court will be costs in the suit.

Appeal allowed.

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Bhagwati J.

APPELLATE CIVIL

The Hon'ble Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar.

CANARA BANK LIMITED, BOMBAY v. THE WARDEN INSURANCE COMPANY, LTD., BOMBAY.*

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Indian Limitation Act (IX of 1908), ss. 5, 29 (2)—Bombay Land Requisition Act (Bom. XXXIII of 1948), s. 8 (3)—Appeal to High Court against order for payment of compensation passed by Special Officer under latter Act—Delay in filing appeal—Whether delay can be excused for sufficient cause.

Section 5 of the Indian Limitation Act, 1908, not having been made expressly applicable to an appeal provided under s. 8 (3) of the Bombay Land Requisition Act, 1948, the Court has no power to condone any delay on the part of the appellant even for sufficient cause.

*Civil Application No. 1484 of 1951.

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Section 29 (2) of the Limitation Act contemplates a case where any special or local law prescribes for an appeal a period of limitation different from the period prescribed therefor by the first schedule to the Act. 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. The fact, therefore, that the Limitation Act does not provide for a period of limitation in respect of an appeal from a special officer to the High Court under s. 8 (3) of the Bombay Land Requisition Act, 1948, does not mean that s. 29 (2) has no application to this particular special law.

Under s. 29 (2) of the Limitation Act, s. 3 is made applicable to all special or local laws which prescribe a period of limitation for any suit, appeal or application; ss. 4, 9 to 18 and 22 are made applicable unless the special or local law expressly excludes their application; sections other than those mentioned are not unless the special or local law expressly provides for their application. It cannot be held that although s. 29 (2) (b) expressly precludes the application of s. 5, the latter section is applicable by reference to s. 3. Nor can it be said that s. 5 applies to all appeals *proprio vigore* because it merely refers to the period of limitation prescribed without mentioning the first schedule to the Limitation Act as in the case of s. 3. 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. Therefore, unless the Legislature expressly makes s. 5 applicable, it will not apply to a case for which no period of limitation is prescribed in the Limitation Act and a special period is prescribed by a special law.

Neelratan Gangulli v. Emperor,⁽¹⁾ *Chheda Lal Jain v. Officer Commanding, Meerut*,⁽²⁾ *In re Mittur Moideen Hajee*⁽³⁾ and *Syed Hasan Imam v. Brahmdeo Singh*,⁽⁴⁾ relied on.

CIVIL APPLICATION for excuse of delay in filing an appeal from the order passed by the Compensation Officer, Bombay and Bombay Suburban District.

By an order dated September 2, 1948, made under s. 5 (1) of the Bombay Land Requisition Act, 1948, the Government of Bombay requisitioned certain premises belonging to Warden Insurance Co. Ltd. (claimant) and allotted them to the Canara Bank Limited (allottee) as from February 1, 1949. The claimant thereafter applied to the Compensation Officer,

⁽¹⁾ (1932) 60 Cal. 571.

⁽²⁾ [1941] All. 356.

⁽³⁾ [1923] A. I. R. Mad. 95.

⁽⁴⁾ (1930) 9 Pat. 747.

Bombay and Bombay Suburban District, for fixing compensation payable by the allottee to it under s. 8 (1) of the said Act at the rate of Rs. 2,500 per month. On December 28, 1950, the Compensation Officer made an order awarding compensation at the rate of Rs. 2,000 per month.

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On February 28, 1951, the allottee appealed against the said order, to the High Court. Under s. 8 (3) of the Act the period of limitation for the appeal was sixty days from the date of the order and the appeal to have been in time should have been presented on or before February 26, 1951. The allottee, however, filed an application for excusing two day's delay on the ground that there was a *bona fide* and inadvertent error on the part of the Articled Clerk in the office of the allottee's Attorney in calculating the period of sixty days.

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The application was heard.

A. A. Adarkar, with Patharphekar and Messrs. Crawford Bayley & Co., for petitioners.

P. N. Bhagwati, with Messrs. Amarchand & Mangaldas, for opponents.

CHAGLA C. J. 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 s. 8 (1) of the Bombay Land Requisition Act, 1948. This was done on December 28, 1950. Sub-section (3) of s. 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 February 28, 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 s. 5 of the Indian Limitation Act as they had sufficient cause for the delay, and the question that arises for our determination is whether s. 5 applies to an appeal provided under the Land Requisition Act.

What calls for our interpretation in the first instance is s. 29 (2) of the 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

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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 the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purposes of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, sections 9 to 18, and section 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.....”

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 therefor 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, s. 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 s. 29 (2) the meaning which Mr. Adarkar contends for, then the result would be that even s. 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 s. 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.

The other contention of Mr. Adarkar is that s. 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 s. 5 does not deal with computation of the period of limitation, s. 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 s. 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 a 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 s. 4 and ss. 9 to 18 but also s. 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 s. 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.

It is then contended that inasmuch as s. 3 imports the application of ss. 4 to 25, by reason of the fact that s. 3 is made applicable by s. 29 (2), s. 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 s. 4, ss. 9 to 18 and s. 22 in s. 29 (2) (a). If these sections became applicable by reference to s. 3, then it was sufficient for the Legislature to have provided that s. 3 shall apply and excluded such of the sections from ss. 4 to 25 as the Legislature thought should apply in the case of a special law. But far from doing that the Legislature was at

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pains to point out which of those sections from ss. 4 to 25 should apply in the case of special laws. The second reason why this contention is untenable is that s. 29 (2) (b) expressly provides that the remaining provisions of this Act shall not apply, the remaining provisions being other than ss. 3, 4, 9 to 18 and 22 to which reference is made in the earlier part of the section. Therefore, the scheme of s. 29 (2) seems to be this. Section 3 is made applicable to all special or local laws which prescribe 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 s. 29 (2) (b) expressly precluded the application of s. 5, we must hold that s. 5 is applicable by reference to s. 3.

The final argument advanced by Mr. Adarkar is that s. 5 applies to all appeals *proprio vigore*, and this argument is based upon the different language used by the Legislature in s. 3 and s. 5. Section 3 refers to "period of limitation prescribed therefor by the first schedule"; s. 5 merely refers to "the period of limitation prescribed therefor"; and the argument advanced before us is that whereas s. 3 refers to the period of limitation which is to be found in the first schedule, s. 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 s. 5 must of its own strength apply because the Legislature has made s. 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 s. 3 there is an express mention of the first schedule to the Limitation Act. But the mere fact that there is no such express mention in s. 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 s. 4, it also speaks of "limitation prescribed" and not

“limitation prescribed by the first schedule,” and yet under s. 29 the Legislature had expressly to make s. 4 applicable when the period of limitation was prescribed by a special or local law. If Mr. Adarkar’s contention were right, then s. 4 as much as s. 5 would apply *proprio vigore* and it was not necessary for the Legislature in s. 29 to state that s. 4 would apply under certain circumstances. Therefore, in our opinion, unless the Legislature expressly makes s. 5 applicable, s. 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 s. 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 s. 5. On the other hand, there are statutes where s. 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 s. 5.

No more startling result could have been brought about than what was in fact brought about in the case reported in *Neelratan Ganguli v. Emperor*.⁽¹⁾ In that case under the Emergency Powers Ordinance No. II of 1932 the period of limitation was prescribed as seven days and it was contended before Rankin C. J. and Pearson J. that s. 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 s. 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.”

⁽¹⁾ (1932) 60 Cal. 571.

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The same view of the law has been taken by the other High Courts. See *Chheda Lal Jain v. Officer Commanding, Meerut*⁽¹⁾ *Mittoor Moideen Hajee, In re*⁽²⁾ and *Syed Hasan Imam v. Brahmdeo Singh*⁽³⁾. Therefore, in giving the construction to s. 29 which we are giving we find that we are taking the same view which the other High Courts in India have taken.

The result, therefore, is that we must hold that the appeal is out of time, that s. 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.

M. W. P.

⁽¹⁾ [1941] All. 356.

⁽²⁾ [1923] A. I. R. Mad. 95.

⁽³⁾ (1930) 9 Pat. 747.

APPELLATE CIVIL

Before Mr. Justice Bhagwati and Mr. Justice Dixit.

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PRALHAD DALSUKRAI AND OTHERS (ORIGINAL DEFENDANTS NOS. 2, 3, 4 AND 6), APPELLANTS v. TEWAR MAGANLAL MULJIBHAI, AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANTS NOS. 1, 5, TO 10) RESPONDENTS.*

Hindu Law—Gift by widow—Gift of usufructuary mortgagee's interest in mortgaged property—Whether such interest immoveable or moveable property—Validity of gift—Transfer of Property Act (IV of 1882), s. 58 (a)—General Clauses Act (X of 1897), s. 2 (25).

A Hindu, governed by the Mayukha, died leaving some properties to which his widow succeeded, taking a widow's estate therein. One of the properties was the right of a usufructuary mortgagee in respect of certain lands. The widow made a gift of the amount due under the usufructuary mortgage to her brother. On the question whether this gift was valid as a gift by a Hindu widow of moveable property.

Held, that in view of the definition of mortgage given by s. 58 (a) of the Transfer of Property Act, 1882, a mortgagee's interest in immoveable property even in the case of a usufructuary mortgage is itself immoveable and not moveable property and the widow was therefore not competent to make the gift.

Fateh Singh v. Raghbir Sahai,⁽¹⁾ followed.

Bai Jodi v. Purshottam,⁽²⁾ not followed.

* First Appeal No. 320 of 1948.

⁽¹⁾ [1938] A. I. R. All. 577.

⁽²⁾ (1922) 24 Bom. L. R. 729.