APPELLATE CIVIL

Before Mr. Justice Gajendragadkar.

1955
Dec. 20.

PATEL AMBALAL HARJIVANDAS OF KADI, (ORIGINAL PLAINTIFF), PETITIONER *v.* JANI CHANDULAL VIDYARAM, (ORIGINAL DEFENDANT) OPPONENT.*

Indian Limitation Act, (IX of 1908), s. 20—Baroda State (Application of Laws) Order 1949—Baroda Law—Promissory note, dated May 18, 1948—Part payment on June 23, 1951—Suit on June 18, 1954 whether in time.

Clause 12 of the Baroda State (Application of Laws) Order, 1949 does not merely extend time but prescribes a period of limitation within the meaning of the word 'prescribed' used in the Indian Limitation Act. A part-payment made before the expiry of the period of limitation starts a fresh period of limitation from such payment under s. 20 of the Indian Limitation Act.

Held, therefore, a suit filed on June 18, 1954, upon a promissory note executed on May 18, 1948 in Baroda State was in time inasmuch as a fresh period of limitation started from the date of payment made on June 23, 1951.

Bai Hemkore v. *Masamalli*,[1] *Chidambaram* v. *V. Venkatraman*,[2] *Puran Chand* v. *Abdullah*,[3] referred to.

CIVIL Revision Application against the decision of M. M. Kadri, Esquire, Civil Judge, Junior Division, Kadi.

The facts are sufficiently stated in the Judgment.

C. G. Shastri, for the Petitioner.

Opponent served.

Gajendragadkar J.—This revisional application raises a short point of limitation which is of some importance for similar claims in the district of Baroda. The petitioner filed a suit in the Court of the Civil Judge, Junior Division, Kadi, to recover Rs. 449 on a promissory note. The promissory-note had been executed in favour of the petitioner on May 18, 1948. On June 23, 1951, there was an acknowledgment by part payment of the principal amount and so the petitioner's case was that the suit filed by him on June 18, 1954, was within time. The learned trial Judge has held that the suit is barred by limitation and so the petitioner's claim has been dismissed. Mr. Shastri for the petitioner contends that, in coming to the conclusion that the suit was barred by limitation, the learned Judge has misconstrued the effect of the provisions contained in cl. 12 of the Baroda State (Application of Laws) Order, 1949.

It is common ground that a suit on a promissory-note under the law of limitation prevailing in Baroda prior to its merger was governed by a rule of six years, though the corresponding law in the rest of the State of Bombay prescribes a period of

*Civil Revision Application No. 1584 of 1954.

1. (1902) 26 Bom. 782.
2. [1936] A. I. R. Mad. 367.
3. [1938] A. I. R. All. 606.

three years for such a suit. After the State of Baroda merged with Bombay, the Baroda State (Application of Laws) Order, 1949, was promulgated and cl. 12 of this Order has provided that, "notwithstanding anything contained in this order, if the period of limitation prescribed by the Indian Limitation Act, 1908 (IX of 1908), for any suit, appeal or application is less than the period prescribed by any corresponding law in force in the Baroda State immediately before the commencement of this Order, such suit, appeal or application may be instituted within two years next after the date of the commencement of this Order or within the period prescribed by such corresponding law, whichever period first expires". The object of enacting this clause obviously was to protect claims based on promissory-notes from being extinguished by limitation by the application of the Bombay law of limitation. Legislature knew that in the State of Baroda a longer period of limitation had been prescribed for suing on promissory-notes and it was apprehended that, if the rule of three years was immediately made applicable to the State of Baroda, it would adversely affect several claims on promissory-notes which were in time under the Baroda law, but which would be barred by time under the Bombay law. That is why cl. 12 provides that claims made on promissory-notes should be enforced by a suit within two years next after the commencement of this Order or within the period prescribed by such corresponding law in Baroda, whichever period first expires. In regard to the promissory-note in question, under the Baroda law the last date to file a suit would have been May 8, 1954, whereas the two years commencing next after the coming into force of this Order would expire on August 1, 1951. Since cl. 12 prescribes that a suit on a promissory-note must be brought within such of the two periods as would expire earlier, it must be held that the present suit had to be filed on or before August 1, 1951. Before this period of two years expired, on June 23, 1951, a part payment of the principal has been made and the creditor relies upon this part payment as amounting to an acknowledgment within the meaning of s. 20 of the Indian Limitation Act. If the part payment in question amounts to a valid acknowledgment under s. 20, the present suit would be in time. If, on the other hand, the said part payment does not amount to a valid acknowledgment, the suit would be beyond time.

Section 20 of the Limitation Act deals with the effect of payment on account of debt or of interest on legacy and it provides that, where payment on account of a debt is made before the expiration of the prescribed period by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made. The learned trial Judge has held that the payment in question had been made, in the

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present case, after the expiration of the prescribed period, but within the extended period allowed for the institution of the present suit. That is why he came to the conclusion that the part payment does not satisfy the requirements of s. 20 of the Limitation Act. In other words, the view taken by the learned Judge appears to be that cl. 12 of the Order does not prescribe a period of limitation for suits on promissory-notes, but merely gives an extended period of grace within which the promissees can sue their promissors. If cl. 12 was intended merely to afford relief to the promissees by giving them an extended period of grace, then the acknowledgment on which the petitioner relies cannot be said to satisfy the requirements of s. 20. On the other hand, if it is held that cl. 12 of the Order prescribed a period of limitation for suits on promissory-notes, then the part payment in question would amount to a valid acknowledgment under s. 20.

The word "prescribed" is not defined in the Indian Limitation Act; but the expression "extension of period" would be fairly clear in its denotation if we examine some of the relevant provisions of this Act using the said expression. Section 4 of the Limitation Act, for instance, provides that, where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens. Now, where a party sues his debtor on the re-opening of the Court, the suit is really instituted after the period of limitation has expired, but nevertheless it is held to be in time because of the extended period which, in effect, has been provided for by s. 4. Similarly, s. 5 provides that any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. Here again, an appeal or an application is entertained even after the period prescribed for it has expired on the ground that the extension of period is justified by the proof of sufficient cause. The usual cases where the doctrine of extended period comes into operation are cases where the limitation expires during the period when the Civil Courts are closed for the Vacation and suits are allowed to be filed on the day of re-opening of the Courts. If an acknowledgment is made during the Vacation, the question has often been raised before Courts as to whether the said acknowledgment can be said to be valid, and there appears to be concensus of judicial opinion on the point. If an acknowledgment

is executed after the prescribed period has expired, but before the day of re-opening of the Courts when a suit can be filed under s. 4 of the Limitation Act, it has been held that the acknowledgment having been made after the expiration of the period, it is invalid under s. 19 or 20 even though the time when the acknowledgment has been made is a part of the time which can be described as the extended period for the purpose of bringing a suit. In *Bai Hemkore* v. *Masamali*,[4] Jenkins C. J. and Aston J. had occasion to consider this question. The suit from which the revisional application arose before the Court had been filed by the plaintiff in 1900 to recover money due under a bond dated October 16, 1894. The plaintiff had relied upon an acknowledgment made to him by the defendant on October 28, 1897, for the purpose of saving limitation, and it was urged on his behalf that, though the acknowledgment had been made more than three years after the execution of the document, the acknowledgment was valid because it was given on October 28, 1897, and he had still a right to sue for the debt under s. 5 of the earlier Limitation Act as the Courts were then closed for the October Vacation and had been closed when the period of three years from the date of the bond expired. This plea was rejected and it was held that the suit was barred inasmuch as the acknowledgment was passed after the three years had expired, although the right to sue might have been subsisting on the date of the acknowledgment owing to the intervention of the Vacation, under s. 5 of the Limitation Act. In other words, the fact that the creditor's right to bring a suit is alive would not necessarily make the acknowledgment made in his favour valid unless the acknowledgment has been made within the period of limitation prescribed for a suit. Jenkins C. J., in dealing with this point, has observed that s. 19 of the Limitation Act requires that an acknowledgment should be made before the expiration of the period prescribed for the institution of the suit, and that, in the case before the Court, though the right of suit may have been subsisting on October 28, 1897, in the sense that the suit could under the circumstances have been instituted on October 29, 1897, that was not because the period of limitation prescribed for the suit had not expired, but because notwithstanding the expiration of that period there was a special right under the provisions of s. 5 to institute the suit on the day on which the Court re-opened. The same view has been taken by the Madras and the Allahabad High Courts in *Chidambaram* v. *Venkatasubba*[5] and *Puran Chand* v. *Abdullah*.[6]

In view of this legal position, it is necessary to decide whether cl. 12 of the Baroda State (Application of Laws) Order, 1949, can

4. (1902) 26 Bom. 782. 5.[1936] A. I. R. Mad. 367.
6. [1938] All. 606.

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be said to have prescribed the period of limitation for a suit like the present, or it could be said that by cl. 12 only a period of grace has been granted so that the additional period during which the suit can be brought is only an extended period and it does not amount to the period of limitation prescribed. On a fair and reasonable construction, cl. 12 appears to me to prescribe a period of limitation for the suits mentioned in that clause: it is not a period of grace which cl. 12 intends to provide to the creditors. In view of the anomalies that would have resulted if the Bombay law of limitation had been applied to claims which until the date of merger of the Baroda State were governed by the larger period of limitation prevailing in Baroda until then, Legislature thought it necessary to provide a special period of limitation for these claims; and the most expedient way of prescribing such a period of limitation was adopted by requiring the creditors to bring their suits either within two years next after the commencement of the Order or within the period prescribed by a corresponding law of the Baroda State, whichever period first expires. If cl. 12 is held to have prescribed a period of limitation for suits under promissory-notes, then there would be no difficulty in coming to the conclusion that the part payment of principal made on June 23, 1951, was made before the period prescribed had expired and so the present suit must be held to be in time.

In construing the provisions of cl. 12, it would be useful to derive assistance from judicial decisions which have construed s. 31 of the Limitation Act of 1908. The genesis of this section is well-known. Before the enactment of this section, there was a sharp difference of opinion in judicial decisions in respect of the period during which a simple mortgagee could enforce his right against his mortgagor. Some High Courts, including the Allahabad High Court, had held that the period of limitation available to such a claim was sixty years, while some other High Courts had taken the view that the period was twelve years. Ultimately the matter went to the Privy Council in the case of *Vasudeva Mudaliar* v. *Srinivasa Pillai*[7] and the Privy Council affirmed the view that the period prescribed for suits by simple mortgagees was not sixty years, but was twelve years. As soon as this judgment was pronounced, it exposed a large number of mortgagees, particularly in the United Provinces, to the grave risk of having their claims barred by limitation. These mortgagees had not thought of suing their debtors earlier under the impression that they were entitled to a period of sixty years as had been decided by the Allahabad High Court. In order to avoid hardship of this kind to a large number of creditors, when the Limitation Act of 1908 was enacted s. 31 was

(1907) 30 Mad. 426 s. c. L. R. 34 I. A. 186.

included in the statute. This section has subsequently been repealed by Act VIII of 1930. As it stood when enacted, sub-s. (*1*) of s. 31 provided that, notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877, a suit for sale by a mortgagee may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the territories mentioned by sub-s. (*1*) instituted within the said period of sixty years and pending at the date of the passing of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that twelve years' rule of limitation is applicable. It would be noticed that the scheme adopted by s. 31 is precisely similar to the scheme of cl. 12 of the Order with which I am concerned. It prescribed an alternative period of limitation and laid down that between the two alternative periods mentioned whichever period expired first should be regarded as the period prescribed for the suit or action. In many cases acknowledgments were made during the period thus laid down by s. 31 and Courts had to consider whether these acknowledgments were valid. The decision of this question naturally depended on the view that the Courts were likely to take as to the effect of s. 31. Did s. 31 prescribe a period of limitation or did it merely give a period of grace by way of extending the period of limitation in the interests of natural justice? The answer given was in favour of the construction that s. 31 prescribed a period of limitation and so an acknowledgment made in favour of the creditor within the period permitted by s. 31 was held to be a valid acknowledgment.

In *Suryanarayan* v. *Venkataraju*,[8] a Full Bench of the Madras High Court has held that, with reference to the special class of cases dealt with in s. 31, that section must be interpreted as prescribing a period of limitation even for the purposes of the application of ss. 19 and 20 of the Act. Varadachariar J., who delivered the judgment for the Full Bench, rejected the argument that the word "prescribed" in ss. 19 and 20 must be understood as only meaning prescribed in Schedule II of the Limitation Act, as not warranted by the language of those sections and as being opposed to the weight of authority. Then the learned Judge construed s. 31 as prescribing the period of limitation for suits falling within its ambit. Mr. Justice Varadachariar rejected the narrower construction sought to be put on s. 31 and observed that there was no reason why a provision introduced for the purpose of meeting justice should be unnecessarily restricted in its scope or why the Legislature should be assumed to have intended that all persons holding

8. [1934] A. I. R. Mad. 64.

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such mortgages should immediately rush to Court, even though the mortgagors were prepared to make part payments or execute renewals. The same view has been taken by Mears C. J. and King J. of the Allahabad High Court in *Sheo Partab Singh* v. *Tajammul Husain.*[9]

It would thus appear that the authority of these decisions on the question of construing s. 31, which is very similar in its words and phraseology to cl. 12 of the Baroda State (Application of Laws) Order with which I am concerned, is in favour of the view which I am disposed to take. If cl. 12 prescribes a period of limitation for suits like the present, then it must be held that the part payment on which the petitioner relies is a valid acknowledgment and the suit filed on June 18, 1954 is in time.

There is another point which must be incidentally considered. The learned trial Judge appears to have taken the view that, though the part payment of Rs. 15 has been otherwise proved, since it does not appear in the handwriting of the debtor that the payment had been made either for interest or for principal as such, the said part payment cannot amount to a valid acknowledgment. In coming to this conclusion, the learned Judge has, through error, relied upon the unamended provisions of s. 20 of the Limitation Act. The words "as such" which were found in the corresponding provisions of s. 20 of the unamended section, have now been deleted and the circumstances on which the learned Judge relied can no longer be regarded as introducing any infirmity in the part payment of the principal.

In the result, the revisional application must be allowed, the decree passed by the learned trial Judge set aside and the suit sent back to his Court for disposal in accordance with law. Since the opponent has not appeared in this Court, I propose to make no order as to the petitioner's costs.

Rule absolute.

G. N. V.

9. [1926] A. I. R. All. 114.