

Manjur Ahmed Vs Rajlakshmi Dasi**Civil Rule No. 2782 of 1953**

Court: Calcutta High Court**Date of Decision:** Jan. 13, 1955**Acts Referred:**

Civil Procedure Code, 1908 (CPC) " Order 32 Rule 1, Order 32 Rule 3, Order 32 Rule 4#Land Acquisition Act, 1894 " Section 18#Limitation Act, 1963 " Section 4

Citation: (1956) 1 CALLT 151 : (1956) 2 ILR (Cal) 646**Hon'ble Judges:** Guha, J; Das Gupta, J**Bench:** Division Bench**Advocate:** Hem Chandra Dhar, for the Appellant;Saroj Kumar Chatterji, for the Respondent**Final Decision:** Allowed

Judgement

Das Gupta, J.

On August 24, 1953, Manjur Ahmed obtained a Rule from this Court calling upon the opposite parties to show cause why

an order passed in a Reference u/s 18 of the Land Acquisition Act should not be: set aside or such other order or orders passed as to the Court

may seem fit and proper.

2. Manjur Ahmed died on July 7, 1954, leaving-it is not disputed before us-eleven persons including among others, his son Monir Ahmed, his

widow Akhtari Bibi, minor daughters Wasima Bibi, Najma Bibi and minor sons Mohomed Hashim, Mohomed Kasim, Nissar Ahmed and Gulzar

Ahmed. this Court closed for the long vacation on September 9, 1954 and remained closed till November 21, 1954. The offices of the Courts,

however, remained open from the 9th to the 24th of September and again from the 29th of October to the 20th of November. On September 14,

1954, when the Court was closed but the offices of the Court were open, an application for substitution was presented in the office on behalf of

ten out of the eleven heirs of Manjur Ahmed. It was, however, taken back the same day. It was thereafter filed in the office on November 22,

1954. It is stated in this application that these ten persons as well as Monir Ahmed may be brought on the record as heirs of Manjur Ahmed and

that as Monir Ahmed is not willing to join in the present application he may be brought on the record as an opposite party and the other ten

persons on whose behalf the petition was presented may be permitted to carry on the proceedings. It was also stated in the application that the

application was being presented on behalf of the minor sons and daughters by Akhtari Bibi, their mother and ""natural guardian"".

3. This petition has been hotly contested before us. Three objections have been taken on behalf of the opposite party. The first is that the

application is barred by limitation. The second is that as Akhtari Bibi has not been appointed by the Court guardian of the minors, she is not

entitled in law to present the application on behalf of the minor children, so that there is no proper application on behalf of the minor children.

Thirdly it is contended that it has not been proved properly that Monir Ahmed is unwilling to join in the application and consequently an application

to carry on the suit by other persons to the exclusion of Monir Ahmed is not maintainable in law.

4. As regards the last contention, it is undoubtedly true that before the other heirs are allowed to carry on the proceedings as heirs of Manjur

Ahmed to the exclusion of Monir Ahmed, it should be properly proved that Monir Ahmed is not willing to join. There is, however, an affidavit on

the record that Monir Ahmed is unwilling to ""join the Petitioners in this application or to sign the vakalatnama in that behalf"". There is no counter-

affidavit before us to show that this statement is not correct. In this state of the record I think that we are bound to hold that it has been properly

proved that Monir Ahmed is unwilling to join the Petitioners in this application. Consequently, the right course has been followed by the other ten

heirs in asking that they should be allowed to carry on the proceedings themselves after bringing Monir Ahmed also on the record as one of the

heirs of Manjur Ahmed. The decision in the case of Fajor Banu v. Rohim Bux Bhuiya (1928) 32 C.W.N. 1020 which was cited by the learned

advocate for the opposite party in my opinion fully supports this proposition. There it was laid down:

In case of representatives unknown or unwilling to join in the application under Order XXII, Rule 3, H bona fide application by all the

representatives town or willing may be sufficient compliance with the law, but when there is a known representative whose unwillingness has not

been proved, omission to have him substituted is fatal.

5. The learned advocate for the opposite party wanted to convince us that the unwillingness of Monir Ahmed has not been proved. As I have

stated above, the affidavit filed on behalf of the Petitioners that Monir Ahmed is unwilling should be taken as sufficient proof of that fact.

6. Nor is there, in my opinion, and substance in the second contention raised, namely, that there can be no proper application on behalf of the

minors Unless there is a formal appointment by the Court of Akhtari Bibi as their guardian. When a minor has to present an application, he cannot

do it himself but he has to proceed through a next friend. This follows from Order XXXII, Rule 1 of the Code of Civil Procedure. The provision in

Order XXXII Rule 1 that

Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

is equally applicable to all applications in suits or appeals. Rule 4 of Order XXXII provides:

Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit provided that the

interest of such person is not adverse to that of the minor.

7. I can find nothing in law to prevent the Court from allowing the mother to act as next friend for the minor sons and daughters of Manjur Ahmed

for the purpose of making this application for substitution.

8. This brings us to the main objection raised on behalf of the Opposite party, namely, that the application is barred by limitation. Manjur Ahmed"s

death having taken place admittedly on July 7, 1954, 90 days expired on October 5, 1954. The application would, therefore, ordinarily, be barred

by limitation unless it was presented on or before the 5th of October. The only way in which the applicants can save this position is by application

of Section 4 of the Limitation Act which is in these words:

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 reopens.

9. As I have indicated earlier, the Court was closed on October 5, and continued to remain closed up to November 21, and reopened on

November 22, so that, on the face of it, the position appears to be that limitation was saved. It is, however, contended on behalf of the opposite

party that the words court in ""the Court ""is closed"" and ""the Court reopens"" should be given the limited meaning of ""Court"s office"". So it is argued

that while the period of limitation in this case expired on October 5, when the office was also closed, this application may, u/s 4 of the Limitation

Act, have been presented on October 29, when the office reopened and limitation cannot be escaped by making it on the date the Court as a

whole reopened, namely, November 22. Our attention has been drawn to a notification which was published in these words:

It is hereby notified that the High Court, Appellate Side, will be closed for the Long Vacation from Friday, September 10, to Saturday, November

20, 1954, both days inclusive. The office of the Appellate Side will be closed from Sunday, September 26, to Thursday, October 28, 1954, both

days inclusive.

10. I must assume for the purpose of this case that this notification was issued under the authority of this Court and represents the correct state of

facts as regards the period for which the High Court as a whole was closed and the period during which the office on the Appellate Side remained

closed. I am unable, however, to see anything in this notification to justify the conclusion that the Court was not closed within the meaning of

Section 4 of the Limitation Act during the period when the office was open. The offices of the Court are not the same thing as the Court. The

Legislature in its wisdom used the words ""the Court is closed"". We shall be legislating instead of interpreting the statute if for the words ""the Court

is closed"" we read the words ""the office of the Court is closed"". I am aware that an interpretation as suggested by the learned advocate has found

favour with a Bench of the Bombay High Court, *Dharamsi Morarji Chemical Company, Ltd. v. Occhablal Hurgovandas Shah* ILR (1927) 51

Bom. 848. With due deference to those learned Judges, I have come to the conclusion that this view is wrong. It is always wrong for a Court

anywhere to read words in a statute which are not there, even more so when the effect thereof is to increase the rigour of the law of limitation

which is a drastic law and has always been considered as a necessary evil. The bounds of the law of limitation must be kept within the strict words

of the statute and there is no justification, in my mind, for interpreting the words in such a way as to refuse the litigants justice which they would be

otherwise entitled unless the plain meaning of the words require this. It has been said that the tower of justice is always upright and should never

lean. This is nowhere more true than in interpreting the statute of limitation.

11. It has been argued that when the offices are open, it is possible for the parties to file their complaints and applications- in the office so that it will be

wrong to say that the Court is closed. In the absence of any definite rule to the contrary, it seems to me clear that every application to the Court is

to be presented to the Judges of the Court, but in fact, for the sake of convenience, presentation is made to officers of the Court who are really

doing the manual work of receiving as the hands of the Court. If the Court is closed so that the Judges are not present, the mere fact that some

officers are present cannot give them the right and duty to receive such documents. It may be that in actual fact, even, when the Court is closed, the

office remains open for certain, purposes and during that period even presentation of applications is made. That cannot alter the legal position that

presentation of these applications is to the Judges of the Court. I am unable to agree, therefore, that the mere fact that the notification issued by the

Registrar shows that the office remained open on October 29, 1954, made it obligatory on the applicants to present their application on the 29th of

October. In my opinion, therefore, the application is not barred by limitation as it was filed on November 22, when the Court as a whole

reopened.

12. I would, therefore, allow the application for substitution and order that the Petitioners be brought on the record as heirs of Manjur Ahmed and

be allowed to carry on the proceedings and that Monir Ahmed be also brought on the record as an opposite party as heir of the said Manjur

Ahmed. The parties will bear their own costs of this application.

Guha, J.

13. I agree.