
Raghu Nath Shaw Vs Kanailal Das

Civil Rule No. 1486 of 1960

Court: Calcutta High Court

Date of Decision: Aug. 8, 1960

Acts Referred:

Limitation Act, 1963 " Article 52, 85#Provincial Small Cause Courts Act, 1887 " Section 25

Citation: (1961) 2 ILR (Cal) 312

Hon'ble Judges: Renupada Mukherjee, J

Bench: Single Bench

Advocate: Chandidas Roy Choudhury, for the Appellant;Shyama Charan Mitter and Purnendu Prakash Sircar, for the Respondent

Judgement

Renupada Mukherjee, J.

This Rule arises out of a decree passed by the Small Cause Court Judge, 1st Subordinate Judge, Hooghly,

against Petitioner Raghu Nath Shaw and some other opposite parties in a suit for recovery of a sum of Rs. 579-8-6 on khata account. According

to the allegation of the Plaintiff opposite party one Shyamlal Shaw who was the predecessor-in-interest of the Petitioner of this Rule and opposite

parties Nos. 2 to 5, had purchased certain quantity of rice from him and a sum of Rs. 579-8-6 was outstanding on account of the transaction

between the Plaintiff opposite party and Shyamlal, The suit was instituted against the heirs of Shyamlal.

2. The suit was contested by the present Petitioner who denied the liability and also took a plea of limitation. The defence of the Petitioner was

negatived and the suit was decreed against all the heirs of Shyamlal and there was a direction that the decretal dues would be realised from out of

the assets of Shyamlal. The present Rule was obtained by Raghunath Shaw one of the sons of Shyamlal.

3. Mr. Roy Choudhury who supported the Rule contended that the learned trial Judge of the Court of Small Causes went wrong in law in deciding

the question of limitation. He submitted that the suit was instituted after the lapse of more than three years from the date of the last transaction of

sale of rice and so the Court below should have held that the suit is barred by limitation. Mr. Roy Choudhury contended that the proper article of

the Limitation Act applicable to this case was Article 52 of the First Schedule of the Limitation Act. That article lays down that the period of

limitation for recovery of the price of goods sold and delivered is three years from the date of the delivery of the goods where no fixed period of

credit is agreed upon. In the present case no such period of credit was agreed upon between the parties and admittedly all the dates of delivery of

the goods were outside a period of three years from the date of the institution of the suit. The court below held that Article 85 of the Limitation Act

is the proper Article which is to be applied to this case. There can be no doubt that Article 85 has no application, because it provides for a period

of limitation in respect of mutual, open and current account. The court below has found that during his life time Shyamlal paid some money towards

the unpaid price and that date of payment was within a period of three years from the date of the institution of the suit. Such a payment, however,

does not make the account a mutual, open and current account. The account was one-sided and that was the khata account of the Plaintiff

opposite party where the transactions were regularly entered. In these circumstances, I am definitely of opinion that the court below committed an

error in law in holding that Article 85 of the Limitation would run from the date when the purchaser made his last payment. The suit was governed

by Article 52 of the Limitation Act and the claim of the Plaintiff opposite party was prima facie barred by limitation.

4. Mr. Roy Choudhury contended on behalf of the Petitioner that as the claim of the Plaintiff opposite party was barred by limitation, the learned

Judge of the Court below was not justified, in law in passing a decree in favour of the Plaintiff and this Court should interfere u/s 25 of the

Provincial Small Cause Courts Act. That section runs in the following terms:

The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to

law, may call for the case, and pass such order with respect thereto as it thinks fit.

5. Mr. Shyamacharan Mitter contended on behalf of the Plaintiff opposite party that he is not in a position to assail the contention of Mr. Roy

Choudhury that the claim of his client was barred by limitation. "But he submitted that the claim of his client was a true claim and there is absolutely

no reason for setting aside the finding of the court below to that effect. Mr. Mitter further argued that the claim of the Plaintiff opposite party having

been found to be a true claim, no substantial injustice has been caused by the decree passed by the court below and so I should not interfere u/s

25 of the Provincial Small Cause Courts Act. In support of this contention Mr. Mitter relied on a case of this High Court Govinda Chandra

Chakravarty and Anr. v. Brojendra Mohan Maitra and Anr. AIR [1956] Cal. 526. It has been held in that case that the powers of revision u/s 25

of the Act mentioned above are discretionary and the High Court will refuse to interfere with the trial court's decision when no injustice has

resulted therefrom to the applicant, even though there has been a misapplication of the law of limitation by the Court below and especially when

injustice will result to the opposite party by such interference.

6. There can be no doubt that the claim of the Plaintiff opposite party is a true and just claim. Mr. Roy Choudhury has not been in a position to

attack that finding of the court below. The opposite party will be deprived of his just dues if the decree passed by the court below is set aside on

the ground that the claim of the opposite parties was barred by limitation. An exactly similar view has been taken in a case of Allahabad High

Court Raghunath Sahai v. The Official Liquidator of the Himalaya Bank Ltd. ILR (1893) All. 139. That case follows a Full Bench case of the same

High Court, Muhammad Bakar v. Bahal Singh ILR (1890) All. 277 (F.B.). It has been held in the Full Bench case that Section 25 of the Provincial

Small Cause Courts Act does not give a right of appeal in all Small Cause Court cases either on law or on fact, and that the powers conferred on

the High Court by that section are purely discretionary and not to be exercised unless it appears that some substantial injustice has resulted from

the decree of the Court of Small Causes. Following this Full Bench decision of the Allahabad High Court as well as the decision of our Court to

which I have already referred, I hold that in the present case I should not interfere with the decree passed by the learned Judge of the Court of

Small Causes simply because the law of Limitation has been erroneously applied by the learned Judge who held that the claim of the Plaintiff

opposite party was a true claim.

7. It follows from the above observations that this Rule must be discharged. I, accordingly, discharge this Rule. Having regard to the circumstances

of the case I do not make any order as to costs in this Court.