Makhan Lal
v.
The State

I. D. Dua, J.

Sessions Judge, decline to interfere, and instead affirm the orders of the Magistrate and uphold the convictions.

Mehar Singh, J. MEHAR SINGH, J.—I agree.

B. R. T.

CIVIL ORIGINAL

Before D. Falshaw, J.

VED PARKASH,—*Appellant*

versus

KARAM NARAIN,—*Respondent*

First Appeal From Order No. 81-D of 1958.

1959

Nov. 16th

Limitation Act (IX of 1908)—Section 14—Time between the date of the order and the filing of the revision petition against it in the earlier proceedings—Whether can be excluded—Period of four months—Whether reasonable—Person taking advantage of a special Act—Duty of vis-a-vis *the period of limitation.*

K. N. filed an application against V. P. under section 10 of the Displaced Persons (Debts Adjustment) Act, 1951 before a Tribunal for recovery of the amount due to him. The Tribunal dismissed the application on the finding that the debt was not a debt within the meaning of the Act. About 4 months later K. N. filed a revision petition in the High Court which was also dismissed. K. N. then filed a suit and the question arose whether he was entitled to exclude the period between the date of the order and the date of filing the revision petition under section 14 of the Limitation Act.

Held, that K. N. was not entitled to exclude the period which elapsed between the dismissal of his application by the Tribunal and the filing of his revision petition in the High Court. The period of four months cannot be said to be the reasonable time for a defeated party to make up his mind to file a revision petition in a case where the

time under the ordianry law of Limitation is running against him all the time.

Held, that when a person who has a clear right to institute an ordinary civil suit to recover a debt due to him chooses to take the benefit of some special Act, like the Displaced Persons (Debts Adjustment) Act, which confers certain privileges on displaced persons for the purposes of enforcing their claims, and thus chooses to run the risk of a decision that the Act does not apply to the debt in dispute, it is his duty to keep a very sharp eye indeed on the question of limitation for an ordinary civil suit. It cannot be said that the plaintiff acted with due diligence when he challenged the order of the Tribunal dismissing his application on the ground of want of jurisdiction after lapse of four months by way of revision to the High Court.

First appeal from the order of Shri P. P. R. Sawheny Additional Sessions Judge Delhi, dated the 14th June, 1958, reversing that Shri O. P. Garg Sub-Judge, Delhi, dated the 3rd August, 1957, accepting the appeal and set aside the order of the lower Court and remand the case for decision on merits.

HARDYAL HARDY, AND MAHARAJ KRISHAN CHAWLA, for Petitioner.

S. L. SETHI, for Respondent.

ORDER

FALSHAW, J.—This appeal filed by the plaintiff Karam Narain has arisen in the following circumstances:— D. Falshaw, J.

Karam Narain filed an application against the respondent Ved Parkash before a Tribunal under section 10 of the Displaced Persons (Debts Adjustment) Act, on 20th August, 1953, for the recovery of the sum due on account of principal and interest on a pronote alleged to have been executed in his favour by Ved Parkash on 15th September, 1950. His application was dismissed by the Tribunal on 23rd August, 1954, on the finding that the debt was not a debt within the meaning of the Act which could be recovered under section 10.

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This decision was challenged by Karam Narain by means of a revision petition filed in the High Court. The date of the filing of this petition is not on record, but it appears to have been agreed between the parties that it was filed some time in December, 1954, about four months after the dismissal of the application by the Tribunal. The question involved in the revision petition was referred by me to a Division Bench, which ultimately dismissed the revision petition holding that the debt in dispute was not a debt covered by the Act, on 6th April, 1956, and on that very date the plaint was presented in the present suit which was for the recovery of Rs. 1,600 as principal and interest on the pronote.

The objection was raised on behalf of the defendant that the suit was barred by time. One ground taken which is not now pressed, was that at one stage the application had been dismissed in default by the Tribunal, and was, therefore, not being diligently pursued, but since it was restored it must be presumed that sufficient cause was shown for its restoration and, as I have said, it was ultimately dismissed on a finding of law.

The main ground, however, was that the suit was only within time if the plaintiff were given the benefit not only of the period during which the revision petition actually remained pending in the High Court but also of the period of about four months which elapsed between the dismissal of the application by the Tribunal and the filing of the revision petition in the High Court.

This point was decided against the plaintiff by the trial court but the learned Additional District Judge held that under section 14 of the Limitation Act, the plaintiff was entitled to the

whole period, and he, therefore, set aside the order of dismissal and remanded the case for a decision on the merits. It is this order which is challenged in the present appeal.

The relevant provisions of the Limitation Act are contained in sub-section (1) of section 14, which read:—

> "In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it."

Section 10 of the Displaced Persons (Debts Adjustment) Act relates to claims by displaced creditors against displaced debtors, and since the point involved in the dispute between the parties namely, whether the debt incurred on a pronote executed after both the parties had become displaced persons was a debt within the meaning of the Act, was considered sufficiently and referred to a Division Bench for decision, it could hardly be said that the attempt by the plaintiff to recover the debt through a Tribunal under the Act rather than by an ordinary civil suit was not made in good faith, and the real question in dispute is whether the plaintiff acted with due diligence.

Although some courts have gone so far as to hold that the words 'or in a Court of appeal' in the

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section refer only to appeals and not to revisions, this point has not been taken on behalf of the present appellant, who relies on certain decisions in which it has been held that although the period during which a revision petition has remained pending in the High Court may be excluded, it has also been at the same time held that the period which elapsed between the passing of the order in revision and the actual filing of the revision petition in the High Court cannot be excluded. It appears that in fact all the decisions which directly bear on this point are in favour of the appellant.

The first of these is the case '*Baijnath Lala* v. *Ramadass* (1). The case was decided by Ayling and Hanny, JJ., and the following passage occurs in the judgment:—

> "The second point depends upon the question whether the plaintiff would be entitled by virtue of section 14, Limitation Act, to deduct the time between the orders of the District Court disallowing his petition for ratable distribution and the disposal of his revision petition by the High Court (i.e., from 19th October, 1905 till 12th December, 1906) or only the time from the presentation of the revision petition until its disposal (i.e., from 21st December, 1905, till 12th December, 1906). The plaintiff relies upon the decision in *Raj Krishto* v. *Beer Chunder Joobraj* in support of the first alternative. We think that case is not in point here. It was a case where the plaintiff's suit was dismissed for want of jurisdiction and the plaintiff then tried unsuccessfully to remedy his

(1) A.I.R. 1915 Madras. 405

failure by appeal. In these circumstances, it was held that as the law allows a fixed time for appeal in order to allow the unsuccessful party to consider whether he will appeal or not, if a party appeals within the time so fixed, he ought to be considered as proceeding with due diligence between the decision of the suit and the filing of the appeal. Here there was no question of appeal. Though the plaintiff had a right of suit, he elected to proceed by revision in the High Court and the law does not fix any period within which petitions for revision are required to be brought. In these circumstances it seems to us that the case cited is not in point and that it cannot be said that the plaintiff was prosecuting a proceeding at all while he was merely making up his mind to apply for revision. In this view the time which expired between the order of the District Court and the filing of the revision petition in the High Court (viz., from 19th October, 1905 till 21st December, 1905), cannot be excluded, as the plaintiff contends under section 14, Limitation Act."

In *Laxmandas* v. *Chunnilal and others* (1), Niyogi, A. J. C., dealt the matter in the following day:—

"I am, therefore, of opinion that Chunnilal was entitled to the benefit of section 14, Limitation Act; but it appears that in applying this section the lower Court has

(1) A.I.R. 1931 Nag. 17

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gone beyond the purview of that section. All that the lower Court should rightly have excluded from computation was the time which elapsed between 27th September, 1926, and 21st March, 1927, i.e., the period during which the revision petition was pending. But the learned Judge has excluded the time between the date of the original order, viz., 1st August, 1926, and the date on which the revision petition was preferred, i.e., 27th September, 1926. The plaintiff, was thus given a concession which is not provided for in section 14, Limitation Act. The plaintiff's suit was filed on 21st July, 1928, i.e., on the last date of the period of limitation computed from the order passed in revision. On proper calculation it would appear that the suit ought to have been filed a month earlier. It was, therefore, barred by time."

A similar view was also taken by Bennet, J., in *B. Chuttan Lal* v. *B. Dwarka Prasad* (1).

In *Lal Bihari Lall and another* v. *Bani Madhawa Khatri and others* (2), a Full Bench considered the question whether the plaintiffs were entitled under section 14(1) of the Limitation Act to the deduction of the time spent in prosecuting a civil revision before the High Court against an adverse order passed by a civil court. The question as to whether the period which elapsed between the pasing of the order challenged and the filing of the revision petition in the High Court was to be excluded has not been discussed, but it is clear that the learned Judges only held that the

(1) A.I.R. 1938 All. 78
(2) A.I.R, 1949 Patna 293

period during which the revision petition remained pending in the High Court was to be excluded, and there does not appear to be a single case in which the matter has been considered from this point of view in which a contrary opinion has been expressed.

It is to be noted that in the above cases in which the dates have been given it is clear that in none of them was the period which was allowed by the plaintiff to elapse between the passing of the order, which he subsequently challenged in revision, and the filing of the revision petition as long as four months. Now it is obvious that when a person who has a clear right to institute an ordinary civil suit to recover a debt due to him chooses to take the benefit of some special Act, like the Displaced Persons (Debts Adjustment) Act, which confers certain privileges on displaced persons for the purposes of enforcing their claims, and thus chooses to run the risk of a decision that the Act does not apply to the debt in dispute, it is his duty to keep a very sharp eye indeed on the question of limitation for an ordinary civil suit. This in my opinion, by only challenging the order of the Tribunal dismissing his petition on the ground of want of jurisdiction after a lapse of four months the plaintiff cannot be said to have acted with due dilligence. It was argued on his behalf, and the view has also been expressed by the learned Additional District Judge, that the period of four months before filing the revision petition was the reasonable time for him to make up his mind and to come to a decision, but I do not agree with this view in a case where the time under the ordinary law of Limitation was running against the petitioner all the time. As a matter of fact the persons who want to come to this Court urgently in revision for such purposes as obtaining stay orders ordinarily do so quite promptly. In

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the circumstances, I am of the opinion that the appellant is not entitled to exclude the period which elapsed between the dismissal of his application by the Tribunal and the filing of his revision petition in this court and it is conceded that on this basis his suit was barred by time. I accordingly accept the appeal and set aside the order of the appellate Court remanding the case to the trial court for a decision on merits. I consider, however, that the parties should be left to bear their own costs.

R. S.

REVISIONAL CIVIL.

Before D. Falshaw and G. L. Chopra, JJ.

M/s. BANKE BEHARI LAL—*Petitioner.*

versus

M/s JAGAN NATH-RAM NATH ETC.,—*Respondents.*

Civil Revision Case No. 229-D of 1952.

1959

Nov., 18th

Delhi and Ajmer Merwara Rent Control Act (XIX of 1947) as amended by Amendment Act (L of 1947)—Section 7 A and Fourth Schedule—Whether constitute complete code for fixation of standard rent of newly constructed premises—Section 14—Rules framed by the High Court under—Rule 6—Revision against the order passed under the provisions of the Fourth Schedule—Whether competent.

Held, that as far as the fixation of standard rent of newly-constructed bulidings is concerned, Section 7A and the Fourth Schedule of the Delhi and Ajmer Merwara Rent Control Act, XIX of 1947, as amended by the Amendment Act L of 1947 constitute a complete code in which no right of revision is conferred and that the rules framed by the High Court under Section 14 do not apply in such cases. In the Fourth Schedule not only is the fixation of