

The Central
Bank of India,
Ltd.
v.
Firm Rur Chand-
Kurra Mal
Grover, J.

the defendant-bank in the matter of entrusting the work to the Oriental Bank or in the delay in informing the plaintiff-firm about non-realisation of the amount of the hundi. It was admitted by Mr. Dalip Chand Gupta that the question of negligence would only arise if the defendant-bank was the agent and not if the Oriental Bank became the substituted agent.

In the result, the appeal is allowed and the decree of the Court below is set aside. The plaintiff's suit shall stand dismissed. The defendant-bank will be entitled to costs in this Court.

B.R.T.

REVISIONAL CIVIL.

Before Falshaw, J.

THE STATE OF PUNJAB,—*Petitioner.*

versus

MESSRS WENGER AND CO.,—*Respondents.*

Civil Revision No. 8-D of 1955.

1957
Dec., 23rd

Indian Limitation Act (IX of 1908)—Article 97—Catering for festivities on certain dates given—Festivities postponed and then abandoned—Failure of consideration—When took place—Right barred under the Act—Whether can be revived by a subsequent enactment.

The festivities were fixed for three days from 16th to 18th March, 1948, for which catering contract was given to the defendant. These festivities were first postponed and then abandoned.

Held, that the failure of consideration took place on the date when the decision to abandon the festivities was taken and that was the starting point of limitation.

Held, that if a right to sue had become barred by the provisions of the Limitation Act then in force on the date of the coming into force of a new Act, then such a barred right is not revived by the application of the new enactment.

Petition under section 25 of the Provincial Small Cause Courts Act, for the revision of the order of Shri Nathu Ram Sharma, Additional Judge, Small Cause Court, Delhi, dated the 19th August, 1954, dismissing the suit, but in view of the circumstances of the case the parties are left to bear their own costs.

R. S. NARULA, for Petitioner.

BHAGWAT DYAL and JINDRA LAL, for Respondents.

JUDGMENT

FALSHAW, J.—The facts giving rise to this revision petition filed originally by the Patiala and East Punjab States Union, of which the place has now been taken by the State of Punjab since the merger last year, are as follows:—

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The Raja of Kalsia State was to be installed on the throne on the 17th of March, 1948, and in that connection the Council of Administration of Kalsia State engaged the services of Messrs Wengers and Co., of New Delhi for carrying out the necessary catering arrangements from the 16th to the 18th of March and an advance payment of Rs. 1,000 was made on the 8th of March, 1948. For some reason or other it was decided to postpone the installation and the Council of Administration informed Messrs. Wengers and Co., about this postponement by a letter dated 11th of March, 1948. Thereafter the firm was informed that the ceremony would have to be postponed till November or December and a request was made for the return of Rs. 1,000. The Patiala and East Punjab States Union in which Kalsia State was merged came into existence on the 20th of August, 1948, and in consequence of this it was decided to abandon altogether the festivities in connection with the installation of the Ruler. Ultimately, after the firm had refused to refund the money, the present suit was instituted in the

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Small Cause Court at Delhi by the Patiala and East Punjab States Union on the 27th of November, 1953.

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The defendants, the firm Messrs. Wengers and Company and its proprietor Mr. B. M. Tandon, contested the suit on the ground that it was barred by time. This contention prevailed and the suit was dismissed by the order now challenged.

The learned Small Cause Court Judge took the view that the suit was covered by Article 97 of the Schedule to the Limitation Act, which prescribes for a suit for money paid upon an existing consideration which afterwards fails a period of three years starting from the date of the failure. On the other hand the plaintiff relied on the provisions of Article 149 which prescribes a period of sixty years for a suit brought by the Union of India or the Government of any State, the starting point being the same as in the case of a suit brought by a private person.

The lower Court took the view that at the time when the limitation began to run, Kalsia State was not an Indian territory and that once the time began to run it could not stop, the plaintiff Union being no more than the legal representative of Kalsia State.

In the ordinary way I do not think there is any doubt that Article 97 would be the appropriate Article, since the sum in suit was paid as an advance payment towards the cost of certain catering arrangements which were to be made by the defendants on a special occasion, and the occasion in question, after being postponed, was abandoned. It is, however, argued that there is no escape from the provisions of Article 149 which supersedes the ordinary provisions of Limitation Act,

as regards suits by Governments, whether Central Government or the Government of a State, and allows them 60 years from the ordinary starting point of limitation.

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The argument advanced on behalf of the defendants before me was on less simple lines than that advanced before and accepted by the lower Court. It is contended that the starting point of limitation in this case was the date on which the catering arrangements were to be carried out i.e., 18th of March, 1948. It is pointed out that it was not until the 1st of April, 1951, that the Limitation Act was made applicable to Part B States, of which the Patiala and East Punjab States Union was one, and by that date the period of three years had already expired. It is thus contended that once the period of limitation had expired it could not be revived by subsequent legislation and on this point reliance was placed on the decision of Rajamannar, C. J. and Balakrishna Ayyar, J., in *Km. Kr. Ramanathan Chettiar by Partner Km. Kr. K. Lakshmanan Chettiar v. N. M. Kandappa Goundan and others* (1), in which they held that if a right to sue had become barred by the provisions of the Limitation Act, then in force on the date of the coming into force of a new Act, then such a barred right is not revived by the application of the new enactment.

There is no doubt that the Limitation Act became applicable to Part B States only on the 1st of April, 1951, when the Part B States (Laws) Act (No. III) of 1951, came into force. The words "State Government" had been substituted for "Provincial Government" in Article 149 before that by the Adptation Order of 1950, but it was only

(1) A.I.R. 1951 Mad. 314.

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by the Act III of 1951, that the words "except Part B States" were struck out of section 1(2) and the definition of 'State', which had hitherto included only Part A and Part C States, was omitted altogether.

It would therefore seem that if in fact the cause of action arose on the 18th of March, 1948 and it was only after the 1st of April, 1951, that the Patiala and East Punjab States Union could bring a suit in which limitation was to be governed by Article 149 the suit was rightly dismissed as barred by time, since limitation under Article 97 had expired and could not be revived by a change in the legal status as regards limitation of the plaintiff Union. On the other hand, I am very much inclined to doubt whether the period of limitation in the circumstances of the present case could be deemed to have started on the 18th of March, 1948. No doubt the original catering arrangements were intended to be for the period from 16th to 18th of March but it seems to me doubtful whether the consideration could be said to have failed when at that stage the installation ceremony and the accompanying celebrations were merely postponed. The correspondence on the file shows that even in the middle of May the Council of Administration which had entered into the contract still contemplated holding the ceremony in November or December, and it was therefore some date after that the idea of holding the ceremony was abandoned. It is not possible to determine exactly on what date this decision was taken but in my opinion the decision was really the failure of consideration and the starting point of limitation, and on whatever date the decision was taken, it was certainly long after the 1st of April, 1948. On this view of the matter the period of limitation under Article 97 had not expired when

the plaintiff Union became entitled to claim the 60 years' period of limitation under Article 149. It must, therefore, be held that the suit was wrongly dismissed as barred by time and I accordingly accept the revision petition and set aside the order of dismissal of the suit which will now be decided by the Small Cause Court Judge on merits. The parties would bear their own costs in this petition and they are directed to appear in the lower Court on 6th of January, 1958.

B.R.T.

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REVISIONAL CRIMINAL

Before Mehar Singh, J.

STATE,—Petitioner.

versus

DINA NATH, Respondent.

Criminal Revision No. 156-D/55.

Code of Criminal Procedure (Act V of 1898)—Section 234—Accused found in possession of stolen property, the proceeds of six different thefts committed at different times in six different places—One charge of receiving stolen property under section 411, Indian Penal Code, framed—Whether legal.

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Held, that where an accused person is found in possession of stolen articles which were found to concern six thefts committed on six different occasions and in the houses of six different persons, but one charge under section 411 of the Indian Penal Code for receiving stolen property knowing it to be stolen was framed, the charge was legal. In such circumstances all that can be said is that the accused has been found guilty of at least one act of receiving, for he must have the benefit of the doubt that he did not receive the different stolen articles on different dates.

Jalal v. Emperor (1), relied on; *Hyder v. Emperor* (2), dissented.

Petition for revision under section 439 of Criminal Procedure Code of the order of Shri Tara Chand Aggarwal,

(1) A.I.R. 1932 Lah. 615.

(2) 91 I.C. 64.