

Before P. C. Jain, A.C.J. & I. S. Tiwana, J.

HARI NARAIN (DECEASED),—Appellant.

*versus*

SUBHASH CHANDER AND OTHERS,—Respondents.

First Appeal from order No. 306 of 1977

February 8, 1985.

*Indian Succession Act (XXXIX of 1925)—Section 263—Limitation Act (XXXVI of 1963)—Sections 2(j), 3, 6, 29(2) and Article 137—Application for revocation of a probate—Period of limitation—Article 137—Whether applicable to such an application—Applicant, a minor on the date when the probate was granted—Starting point of limitation for such application in the case of a minor.*

*Held*, that where a special or local law (in the instant case Indian Succession Act) has not provided for any period or limitation, the provisions of the Limitation Act, 1963 do not stand automatically excluded. In this context, at the most, four different situations may arise. The concerned law may not have prescribed a period of limitation or it may have prescribed the same period as that found in the Schedule or while it prescribed a period, the schedule may not have prescribed any or lastly, the concerned law may have prescribed a different period. Where the concerned law has not provided for any period of limitation, the provisions of the Act will generally apply. Section 29(2) is only supplemental in its character in so far as it provides for the application of section 3 to such cases as would not come within its purview. The only other object of this subsection is to make sections 4 to 24 applicable when computing the period of limitation under a special or local law exactly in the same manner as they would be applicable when computing the period of limitation for similar proceedings under the general law which would be governed by the provisions of the Limitation Act. All this, however, does not mean that where a local or special law has not prescribed for a period of limitation, the provisions of the Act in contradistinction to the provisions of this Section 29 would not apply. The position is made further clear if the provisions of section 3 and the newly added clause (j) of section 2 of the Act are read together. Clause (j) lays down that 'period of limitation' means the period of limitation prescribed for any suit, appeal or application by the Schedule and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act. Section 3 then says that subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred, and application

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made after the prescribed period shall be dismissed although limitation has not been set up as a defence. It cannot be disputed that the District Judge while dealing with an application for the revocation of a probate acts as a Civil Court and that the provisions of Article 137 of the Act clearly govern the situation and the applicant could file the application only within three years from the date when the right to apply for setting aside the probate accrued to him. This right obviously accrues right from the time the probate was granted. Since at the starting point of time of this period of limitation, the applicant was under a legal disability on account of his minority, he, in terms of Section 6 of the Act could certainly make the application in question within the same period after the cessation of his disability i.e., on his attaining majority. This is the outer limit of time for him to initiate the proceedings and if the application is actually filed after the expiry of three years when the applicant attains majority, the same would be barred by time.

(Para 3).

*(This case was referred to a larger Bench by Hon'ble Mr Justice I. S. Tiwana on February 15, 1982, for decision of an important question of law involved in this case.*

*The Division Bench consisting of Hon'ble the Acting Chief Justice Mr. Prem Chand Jain and Hon'ble Mr. Justice I. S. Tiwana finally decided the case on 8th February, 1985).*

*First Appeal from Order of the Court of Shri Ved Parkash Aggarwal, District Judge, Ambala, dated 9th June, 1977, accepting the application made by Subash Chand and revoking the Probate granted in favour of Hari Narain respondent on 4th November, 1969, leaving the parties to bear their own costs.*

Manmohan Singh Liberhan, Advocate, for the Appellant.

R. C. Setia, Advocate, for the Respondent.

#### JUDGMENT

I. S. Tiwana, J.

(1) What is the period of limitation for filing an application under section 263 of the Indian Succession Act for the revocation of a probate, is the precise question that needs to be settled by this Division Bench, on a reference. The astounding proposition of law put forth by the learned counsel for the respondent-applicant that

no period of limitation governs such an application and its sustenance on the basis of certain observations in *Aswini Kumar Chakravarty and another v. Sukhaharan Chakravarty and others* (1), lead to the making of the present reference. The following facts bring out clearly the controversy in question.

(2) Hari Narain appellant (since dead and now represented by his legal representatives) succeed in obtaining a probate from the Court of the District Judge, Ambala on 4th November, 1969 to the estate of his father Piara Lal on the basis of the latter's will dated 25th July, 1962. This probate has since been revoked by the said Court on an application dated 12th March, 1974 filed by respondent Subhash Chander, son of a predeceased daughter of Piara Lal. The grounds pleaded for this revocation were that at the time of grant of the probate on 4th November, 1969, he was a minor and during those proceedings, neither he was represented by any guardian *ad litem*, nor was any citation served or effected on him. The lower Court has accepted these pleas and as a result of the same, has passed the order under appeal revoking the probate. The case of the appellant all through was that due citation had been effected on the father of the respondent. He, however, did not dispute the factum of respondent's minority at the relevant time. Further plea raised on his behalf was that the application of the respondent dated 12th March, 1974 was not filed within the period of limitation. The lower Court after recording the evidence of the parties treated the application as within limitation primarily for the reason that on 4th of November, 1969, that is, the date on which the probate had been granted, the respondent was a minor and he acquired knowledge about the same only in February, 1974 and thus, his application dated 12th March, 1974 was not barred by any period of limitation.

(3) Shri Liberhan, the learned counsel for the appellant, contends with some amount of force that Article 137 of the Limitation Act, 1963 (the Act for brevity's sake) clearly covers the facts of the instant case and in the light of the period prescribed therein, the application could be filed by the respondent at the most within a period of 3 years from the date of his attaining majority which he admittedly did on 28th March, 1970. The stand of the learned counsel for the respondent, as already indicated, is that there is no prescribed period of limitation for filing such an application for the revocation of a probate. In order to sustain this argument of his,

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(1) AIR 1931 Cal. 717.

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the learned counsel has referred to certain judgments delivered earlier to the coming into force of the Act, but we find it wholly unnecessary to refer to these judgments, as we are firmly of the opinion that the controversy in hand practically stands resolved by the authoritative pronouncement of their Lordships of the Supreme Court in *The Kerala State Electricity Board v. T. P. Kunhaliumma*, (2). The question raised in that case was, whether the residuary Article 137 of the Act would apply to the proceedings filed under sections 10 and 16(5) of the Telegraph Act, 1885, read with section 51 of the Electricity Act, 1910, relating to the claim of compensation. While answering the question, their Lordships, after a thorough analysis of the provisions of the Act, held:

*The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two Judge Bench of this Court in Athani Municipal Council case (A.I.R. 1969 S.C. 1335) (supra) and hold that Article 137 of the 1963 Limitation Act is not confined to application contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a Court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Act."*

Faced with this verdict of the final Court, Mr. Setia, learned counsel for the respondent, sought to contend that as the special or local law in the instant case, i.e., the Indian Succession Act, did not provide for a different period of limitation than what has been provided for in the Schedule to the Act, cannot apply to these proceedings. Firstly, we find no scope for examining this argument in any great depth in the light of the above quoted precedent and secondly, we cannot subscribe to the view that where a special or local law, as in the case in hand, has not provided for any period of limitation, the provisions of the Act stand automatically excluded. In this context, at the most, four different situations may arise. The concerned law may not have prescribed a period of limitation or it may have prescribed the same period as that found in the Schedule or while it prescribed a period, the schedule may not have prescribed any or

lastly, the concerned law may have prescribed a different period. Where the concerned law has not provided for any period of limitation, the provisions of the Act will generally apply. Section 29(2) is only supplemental in its character in so far as it provides for the application of section 3 to such cases as would not come within its purview. (See *Kaushalya Rani v. Gopal Singh*, (3). The only other object of this sub-section is to make sections 4 to 24 applicable when computing the period of limitation under a special or a local law exactly in the same manner as they would be applicable when computing the period of limitation for similar proceedings under the general law which would be governed by the provisions of the Limitation Act (see *Gram Panchayat, Murthal v. The Land Acquisition Collector* (4). All this, however, does not mean that where the local or special law has not prescribed for a period of limitation, the provisions of the Act in contradiction to the provisions of this section 29—would not apply. The position is made further clear if the provisions of section 3 and the newly added clause (j) of section 2 of the Act are read together. Clause (j) lays down that “period of limitation prescribed for any suit, appeal or application by the Schedule, and ‘prescribed period’ means the period of limitation computed in accordance with the provisions of this Act. The law Commission, in its Third Report (Para 22) while recommending the addition of this clause to the statute in this regard has observed as under:—

“The expression ‘period prescribed’ occurring in Section 4 has been construed differently by different Courts. Some Courts take the view that it means only the periods of limitation prescribed in the Schedule to the Act and does not attract the extension of the periods of limitation under the sections which is obviously not correct. As the expression occurs in other sections also, it would be better if a new definition clause for ‘period prescribed’ is inserted to the effect that it means the period of limitation computed in accordance with the provisions of the Act.”

Section 3 then says that subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall of dismissed, although limitation has not been set up as a defence. We are thus firmly of the opinion there being no controversy between the parties

(3) AIR 1964 S.C. 260.

(4) AIR 1972 Pb. 36.

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about the fact that the District Judge while dealing with the application in question was acting as a Civil Court—that the provisions of Article 137 of the Act clearly govern the situation and the respondent could file application only within three years from the date when the right to apply for the setting aside of the probate accrued to him. This right obviously accrued to him right from the time the probate was granted in favour of the appellant. Since at the starting point of time of this period of limitation, the respondent was under a legal disability on account of his minority, he, in terms of section 6 of the Act could certainly make the application in question within the same period, i.e. 3 years after the cessation of his disability, i.e., on his attaining majority on 28th March, 1970. In the light of this provision of law, he could file the application upto 27th March, 1973. This was the outer limit of time for him to initiate the present proceedings, but he actually filed the application on 12th March, 1974. The ignorance on the applicant's part if it is accepted for argument's sake, about the accrual of the right in his favour for getting the probate set aside could not postpone the starting point of limitation. He had to make this application within 3 years from the cessation of the legal disability from which he suffered on the date the right to apply had accrued to him. Thus, his application was apparently barred by limitation and had essentially to be dismissed in the face of section 3 of the Act.

(4) In the light of the discussion above, we while setting aside the order under appeal, dismiss the application of the respondent as barred by time, but with no order as to costs.

N.K.S.

Before S. S. Kang, J.

BIRU RAM AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 5141 of 1978.

February 21, 1985.

*Demobilized Armed Forces Personnel (Reservation of vacancies in the Punjab State Non-Technical Services) Rules 1968—Rules 3 and 5—Punjab State Cooperative Service Class II Rules, 1950—Rule*