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Cadar Constructions Vs. Tara Tiles

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Court : Mumbai

Decided On : Oct-12-1983

Reported in : AIR1984Bom258; 1984(2)BomCR530; 1984MhLJ603

Judge : Jahagirdar and;Kamat, JJ.

Acts : Extension of Jurisdiction to Goa, Daman and Diu Act, 1981 - Sections 7(2); Goz, Daman and Diu Civil Courts Act, 1965 - Sections 22; Limitation Act, 1963 - Sections 19 and 29(2) - Schedule - Article 14; Portugues Civil Code - Article 535

Appeal No. : Letters Patent Appeal No. 18 of 1983

Appellant : Cadar Constructions

Respondent : Tara Tiles

Advocate for Def. : U.S. Kolwalkar, Adv.

Advocate for Pet/Ap. : B. Reis, Adv.

Judgement :

Jahagirdar, J.

1. This Letters Patent appeal seeks to challenge an order passed by a learned single Judge of this Court on 23rd December 1932 holding that the suit originally filed by the respondents hereinafter referred to as 'the plaintiff'. Was within time.

By the said judgment the learned single Judge held that the suit was governed by the provisions contained in what can be called the Portuguese Civil Code and not by the provisions of the Indian Limitation Act. Hereinafter referred to as 'the Limitation Act'. The facts leading to the aforesaid judgment of the learned single Judge as well as this Letters Patent appeal may be briefly stated.

2. The plaintiff filed a suit. Being Civil Case No. 17 of 1971. in the court of the Civil Judge. Senior Division Panaji. For recovery of a sum of over Rs. 10.000 on the ground that the said amount was due to him on taking accounts. The amount was due to him for the goods which had been supplied by him to the defendant. The suit was filed on 14th of April 1971. In the plaint it had been specifically mentioned by the plaintiff that during the period from 19th April 1967 to 31st March 1968 the plaintiff had sold to the defendant flooring tiles and like material totally worth Rs. 27.521.54 inclusive of a sum of Rs. 350 towards the transport charges for the same. After crediting to the defendant's account a total sum of Rs. 19,000 comprising, among others, of a payment of Rs. 5,000 made on 15th of April 1968, the defendant was said to be liable in the sum of Rs. 8,521. Inclusive of the interest up to the filing of the suit, the claim in the suit was to the tune of Rs. 10.032. A decree for the principal sum of Rs. 8.521 was prayed for along with interest on the same.

3. This suit was resisted by the defendant by contending that the facts were not admitted. In paragraph 2 of the written statement it was contended on behalf of the defendant that the value of the good mentioned by the plaintiff was not admitted. However, the defendant specifically mentioned as follows:__

'It is admitted that the defendants paid on account of the said supply the total amount of Rs. 19,000/-. In other words the plaintiff's averment that payment to the tune of Rs. 19,000 had been made by the defendant was admitted by the latter. The defendant, however, did not choose to deny the fact of the payment of Rs. 5,000 made on 15th of Aril 1968. We are mentioning these facts has been advanced before us. We will revert to that argument later in this judgment. It was also contended on behalf of the defendant that the suit was barred by limitation.

4. The learned trial Judge by his judgment and order dated 1st of March 1976 decreed the suit overruling the objection on the point of limitation taken by the defendant. The learned trial Judge also found, on merits, that a sum of Rs. 8,521 was due to the plaintiff from the defendant. As contended by the plaintiff.

5. the defendant preferred an appeal, being First civil Appeal No. 15 of 1976, which was partly allowed by the learned Judicial Commissioner by his judgment and order.D/- 5-12-1979. The learned Judicial Commissioner while allowing the appeal only partly adopted a procedure which, with great respect can be called as somewhat unusual. He confirmed the findings of the trial Court on all issues except on the issue of limitation. The learned Judicial Commissioner made an observation that if Article 14 of the Limitation Act applied the suit would be barred by time. However being unable to decide the question as to whether the provisions contained in the Portuguese Civil Code relating to the limitation applied, the learned Judicial Commissioner thought it fit to remit the issue of limitation to the trial Court for disposal in accordance with law. Normally one would have thought that if there is in this case. The highest Court of the territory should dispose of the same without remitting the same to the trial Court.

6. After remand, the learned trial Judge by his judgment and order dated 14th of April 1981 held that Article 535 of the Portugues Civil code applied to the suit filed by the plaintiff and, therefore, the period of limitation was 30 years from the date of the accrual of the cause of action. While so holding the learned trial Judge relied upon a judgment of the supreme court in Justiniano Augusto De piedade Barreto v. Antonio vicente Da Fonseca. : [1979]3SCR494 . Wherein, according to the learned trial Judge, the Supreme Court has held that the period of limitation provided in the Portugues Civil Code would apply to suit of the type in the present case. Thereafter First Civil Appeal No 15 of 1976. Which had been kept for final, hearing and disposal pending the receipt of the finding of the trial Court on the question of limitation. Was taken up for final hearing by Rege J.. who by his judgment and order dated 23rd of December 1982 confirmed the finding of the learned trial Judge on the question of limitation. On other questions the learned Judicial Commissioner had already concurred with the findings given by the learned trial Judge. The appeal therefore, had necessarily to be dismissed. This

was done by Rege J.by his aforesaid judgment. It is against this judgment that the present letters Patent judgment that the present letters Patent appeal has been preferred by the original defendant.

7. Mr. Kolwalkar, the learned advocate appearing for the respondent plaintiff. Has taken a preliminary objection to the maintainability of the present Letters Patent Appeal. According to Mr. Kolwalkar. This Letter Patent Appeal is not maintainable because when the suit was originally filed in the year 1971 there was only one appeal allowed to the parties to the suit. He invited our attention to the provisions contained in the Goa. Daman and Diu Civil courts Act. 1965. Section 22 of the said Act provides that in all suits decided by a Civil Judge of which the amount or value of the subject matter exceeds ten thousand rupees the appeal from his decision shall be direct to the High Court. High court itself has been defined in the said Act to mean the Judicial Commissioner's court constituted by the Goa. Daman and Diu(Judicial Commissioner's Court) Regulation, 1963. According to Mr. Kolwalkar after the original appeal was entertained and disposed of though by a Judge of the High Court. no further appeal would lie. It is not possible for us to accept this interpretation of the provisions contained in the Civil Courts Act of 1965. Moreover, one also cannot forget that subsequently a material change has taken place in the law.

8. The Parliament has passed a law called 'The High Court at Bombay (Extension of jurisdiction to Goa. Daman and Diu) Act. 1981' In this Act 'appointed day' has been defined to mean the date on which the said Act comes into force. The Central Government by a notification has fixed 30th of October 1982 as the appointed day. Section 7 of this Act mentions that all proceedings Commissioner immediately before the appointed day shall stand transferred to the High Court at Bombay. Thereafter sub-section (2) of Section 7 is in the following terms:--

Every proceeding transferred under sub-section (1) shall be disposed of by the High Court at Bombay as if such proceedings were entertained by that High Court:'

In order to allay any confusion that may arise by the use of the words 'High court at Bombay'. It may be mentioned that by the said Act the jurisdiction of the High Court of Judicature at Bomaby was extended to the Union Territory of Goa.

Daman and Diu and from the appointed day the Court of the Judicial commissioner was abolised. Section 9 olf the said Act provides that on and from the appointed day there shall be established a permanent bench of the High Court at Bombay at Panaji and such Judges of the High Court at Bombay.being not less than two in number as the Chief Justice of that High court may from time to time nominate. Shall sit at Panaji in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in this Union territory.

9. When Mr. Justice Rege. therefore, delivered the judgment in appeal, naturally he delivered that judgment as a Judge of the Bombay High court. In view of the provisions contained in subsection (2) of section 7 of the Extension of Jurisdiction Act of 1981, that judgment has to be regarded as a judgment passed by a single Judge of this Court under Clause 15 of the Letters Patent. The present Letters Patent Appeal therefore. Is maintainable.

10. We have already briefly mentioned the facts leading to the present litigation. The cause of action leading to the suit was non-payment of the amount due from the defendant to the plaintiff on account of goods supplied by the plaintiff to the defendant. The question is whether Article 14 in the Schedule to the Limitation Act applies or the provisions relating to the period of limitation in Article 535 of the Portuguese Civil Code applies to the present case. This argument has arisen because of the decision of the Supreme Court in Justinion's case : [1979]3SCR494 (supra) before we proceed to discuss the argument advanced by the respective claims. it would be advisable to briefly refer to the legislative history of this Union Territory.

11. It is now a matter of common historical knowledge that on 19th of December 1961. This Union Territory was liberated, conquered in international law. by the Government of India. By the Constitution (12th Amendment) Act, passed by the Parliament, this Union Territory was made a part of the Republic of India with effect from 20th of December 1961. Due to the integration of the Union territory. Naturally, several difficulties arose and in order to remove those difficulties the President of India issued directions and promulgated regulations from time to time.

We may refer to the relevant ones for understanding the points arising in this Letters Patent appeal. The Goa. Daman and Diu (Laws) Regulation 1962. hereinafter referred to as Regulation No. 12 of 1962. Was promulgated by the President of India. Section 3 of this regulation provides that the Acts mentioned in the Schedule of that Regulation shall extend to this Union Territory.subject to the modifications. Also mentioned I the Schedule, Mere extension of the Acts as mentioned above does not automatically bring into force the said Acts. Sub-section (2) of Section 3 of the said Regulation provided that the provisions of eac Act mentioned in the Scheduler shall come into force in the Union Territory on such day as the Administrator by notification in the Government Gazette appoint. Provision was also made for bringing into force the different Acts on different dates and also different provisions of the same Act on different dates. What is important for our purposes is the provision contained in Section 4 of the said regulation which is in the following terms:--

'Any law in force in Goa. Daman and Diu o4 any area thereof corresponding to any Act referred to in Section 3 or any part thereof shall stand repealed as from the coming into force of such Act or part in Goa. Daman and Diu or such area as the case may be.'

Sub-section (2) of Section 4, however, provided that despite the repeal as mentioned in sub-section (1) of that section, anv right. Privilleve. Obligation or liability acquired accrued or incurred under any law so repealed shall not be effected. It is common ground that before Union Territory what has been called the Portugues Civil Code. It provided for the rights and liabilities of the persons. It also provided for the periods within which the said rights could be enforced or the periods after the expiry of which the liabilities could be extinguished.

12. The Portuguese Civil Code continued in this Union Territory by virtue of Section 5 contained in the Goa, Daman and Diu (Administration) Act. 1962. This provision provided that the existing laws will continue to be in force in this Union Territory until amended or repealed by a competent legislature or other competent authroity. This Act, namely the Administration Act of 1962 actually replaced an earlier ordinance which has been promulgated on 5th of Mav 1962.

13. We have already made a reference to Regulation No. 12 of 1962 and the fact that it provided for the extension of certain laws mentioned in the Schedule to that regulation to this Union Territory. We have also mentioned that the laws were to come into force on such dates which would be fixed by the Lieutenant Governor of the Union Territory. We may mention that the Negotiable Instruments Act. Being Act 26 of 1881. Was mentioned in the Schedule to Regulation No. 12 of 1962. By a notification issued by the Lieutenant-Governor this Act was brought into force in this Union Territory with effect from 1st of December 1965. We may now briefly refer to another regulation being Goa. Daman and Diu (Laws) No. 2 Regulation. 1963 which regulation is called Regulation No. 11 of 1963. Provisions similar to those contained in Regulation No. 12 of 1962 are to be found in this regulation of 963. In the Schedule to this regulation are to be found the Indian Contract Act. Sale of Goods Act and the Transfer of Property Act. By an appropriate order issued by the Lieutenant governor of this Union Territory. The Transfer of Property Act was brought into force in this Union Territory on 1st of November 1965. Similarly, the Contract Act and the Sale of Goods Act were brought into force in the Union Territory on 1st of December 1965. The position is thus clear. Namely that under the competent legislation and in exercise of the powers conferred by the said legislation the Transfer of Property Territory on 1st of November 1965 and one month thereafter the Negotiable Instruments Act the contract Act and the Sale of Goods Act were also brought into force in the Union Territory.

14. As far as the Limitation Act is concerned, S 1 (2)of that Act itself mentions that it extends to the whole of India except the State of Jammu and Kashmir.

'The whole of India' comprised nature which the Union Territory on the date on which the Limitation Act was passed. This Act came into force on 1st of Jan. 1964. We may also mention that by the Goa. Daman and Diu (Extension of the Code of Civil procedure and the Arbitration Act) Act of 1965. The Code of Civil Procedure. 1908 was extended to this Union Territory. This Act was to come into force on such day as the Central Government was to notify. The date notified is 15th of June 1966. Therefore, the Code of Civil produce came into force in this Union Territory on 15th of June 1966.

15. At this state we proceed to consider the law laid down by the Supreme Court in Justiniano's case : [1979]3SCR494 . In order to understand the law laid down by the Supreme Court in the aforesaid case it would be better to know the facts involved in that case. In fact the judgment covers two cases which went to the Supreme Court and they were Civil Appeals Nos. 1818 and 2038 of 1969. Both these appeals were disposed of by common judgment dated with of March 1979. In one of the cases the plaintiff had been prosecuted and that prosecution had ended in an order of acquittal passed on 6th of April 1960. The plaintiff thereafter filed a suit on 25th of November 1965. That suit was for damages for malicious prosecution. In the Portuguese Civil Code, Art. 2361 provided that anyone who offends or violates rights of another person is compelled to indemnify the person offended for all damages caused to him. The cause of action, therefore, in that suit for damages for malicious prosecution arose on 6th of April 1960 on which day the order of acquittal passed on 6th of April 1960. The plaintiff thereafter filed a suit on 25th of November 1965. That suit was nor damages for malicious prosecution. In the Portuguese Civil Code, Art. 2361 provided that anyone who offends or violates rights of another person is compelled to indemnify the person offended for all damages caused to him. The cause of action, therefore, in that suit for damages for malicious prosecution arose on 6th of April 1960 on which day the order of acquittal had been passed in favor of the plaintiff. The question of the period beyond which a suit could not be filed was agitated in tht suit. The rival claimants. Were Art. 535 of the Portugues Civil Code and Art. 74 of the Limitation Act. It had been contended by the defendant that Art. 74 in the Schedule to the Limitation Act applied to the suit and that Article provided for a period of one year from the date on which the plaintiff was acqutted. The plaintif, however had relied upon Art: 535 of the portuguese Civil Code which provided for a period of 20 years for filing the suit from the date of the accrual of the cause of acction. This case went to the Supreme Court as Civil Appeal No. 1818 of 1969.

16. Two important features of this case must be noted at this state itself. We have already mentioned the various dates on which the different laws relevant for our purposes came into force in this Union Territory. The cause of action for the suit filed by the plaintiff for damages for malicious prosecution arose before the Limitation Act had come into force in this Union Territory. In fact it arose even

before 20th of December 1961. Similarly that suit was also filed before the Code of Civil Procedure came into force in this Union Territory.

17. Referring to the second case which went to the Supreme Court. we notice that the cause of action was provided in that case by the failure of the defendant to pay certain amount as per the promissory note which was executed on 24th of November 1962. This promissory note had provided that the amount would be payable at the end of six months. The suit was filed on 2nd of January 1967. This would be necessarily after the coming into force of the Negotiable Instruments Act in this Union Territory. However, the cause of action itself had been provided under the relevant portuguese Code before the coming into force of the Negotiable Instruments Act. We have already seen above that with the coming into force of the Negotiable instruments Act the corresponding provisions of the Portuguese Code stood repealed with the reservation, however, that any right acquired under the repealed law could be enforced despite the repeal. Therefore, the cause of action for the second suit was necessarily a cause of action arising under the Portuguese Code.

18. Thus we see that in both the cases which were before the Supreme Court the causes of action had arisen under the Portuguese Civil Code which contained provisions relating to the rights and liabilities of the parties as also the provisions providing for the period of limitation within which a suit should be filed and also the period after the expiry of which the liability of a property was to be extingusihed. The question before the Supreme Court was whether the provisions contained in the Portuguese Civil Code relating to the period of limitation were saved by Sec. 29(2) of the Limitation Act. 1963, the latter provision states that where any special or local law prescribes for any suit appeal or application a period of limitation different from the period prescribed by the Schedule. The provisions of S. 3 of the Limitation Act. 1963 shall apply as if such period were the period prescribed by the Schedule. Sec. 3 of the Limitation Act imposes a bar on suits, among other. Instituted beyond the period of limitation mentioned in the Schedule to the Act. The Supreme Court has laid down that the periods provided for in the Portuguese Civil Code were local law within the meaning of Sec. 29(2) of the Limitation Act and therefore they were saved by the said provision and continued to be in force. The

Supreme Court said:--

'Now there is only one general law of limitation for the entire country and it is the Limitation Act. 1963. All other laws prescribing periods of limitation are either special or local laws. They are special laws if they prescribe periods of limitation for specified cases. They are local laws if their applicability is confined to specified areas.'

Proceeding further. it was stated:--

'We therefoer, arrive at the conclusion that the body of provisions in the Portuguese Civil code dealing with the subject of limitation of suits etc. and in force in the Union Territory of Goa. Daman and diu only is 'local law' within the meaning of S. 29(2) of the Limitation Act. 1963 as if the Schedule to the limitation Act is amended mutatis mutandis .No question of repugnancy arises.'

In the view which the Supreme Court took, it was naturally held that both the suits had been filed within the period of limitation prescribed by law. that is the Portuguese Civil Code.

19. If this is so, can it be said that the present suit is also governed by the provisions relating to the period of limitation contained in the Portuguese limitation contained in the Portuguese Civil Code? An answer to this question will depend upon whether the Portuguese Civil Code provided for periods of Limitation for rights and liabilities arising outside the said code. The Portuguese Civil Code is, undoubtedly, a local law as held by the Supreme Court but it is also a special law in the sense that it provided for the period so limitation for the enforcement of the right arising under that Code itself. It is patent that the Portuguese Civil Code could not provide for a period of limitation for the enforcement of the rights arising under that Code itself. It is patent that the Portuguese Civil Code could not provide for a period of limitation for a cause of action which arose outside the provisions of that Code. The Code was a detailed enactment enumerating the various rights and liabilities of the citizens. Correspondingly it also provided for the period during which the rights could be enforced or the period after which the liabilities stood extinguished. We are saving that it was a special law because it provided for the

period of limitation for enforcing the rights arising under that Code itself.

20. Section 417 of the Code of Criminal Procedure 1898 provided for an appeal from an order of acquittal in a case instituted upon complaint. Such an appeal however lay if on an application made by the complaint in that behalf, the High Court granted special leave to appeal. Thereafter. Sub-sec. (4) of Sec. 417 said that an application for the grant of special leave to appeal shall not be entertained by the High Court after the expiry of sixty days from the date of the order of acquittal. This provision relating to the period within which an application for the grant of special leave to appeal had to be fifed wa should to be a special law by the Supreme Court in Kaushalya Rani v. v. Gopal Singh. : [1964]4SCR982 which was approvingly referred to by the Supreme Court in Justiniano's case. The provision contained in Section 417 (4) applied to an appeal which was to be preferred under the provisions of the Criminal Procedure code itself. In that sense it was a special law. A special law therefore seems to be that law which provides for a period of limitation for a right arising under that law itself.

21. If, therefore, a cause of action arises outside the provisions of the Portuguese Civil Code, a suit based upon that cause of action naturally could not be governed by the provisions relating to the period of limitation contained in the Portuguese Civil Code. In Ganexama Bicu Naik Valingonkar v. Joan Manual Dias. (First Civil Appeal No. 27 of 1975 decided on 24/30 June 1983) Couto J. noticed such a possibility arising . In that case a gift deed was sought to be avoided by undue inflience. The concept of undue influence was unknown to the Portuguese Civil Code. The question arose whether a suit to avoid the gift deed on the ground of undue influence was governed as far as the limitation is concerned, by the provisions contained in the Portuguese Civil Code or the provisions contained in the Limitation Act. Couto J. observed as follows:--

'The provisions of limitation mentioned by Mr. Usgaonkar are in the Chapter regulating the contract in the Portuguese Civil Code and so, once the said Chapter had been replaced by the Indian Contract Act. It appears that the provisions relating to the limitation embodied in the said Chapter for the purpose of getting the declaration of nullity of a contract are special provisions concerning contracts

only and, as such, stand also repealed.'

22. After examing the relevant provisions of the Portuguese Civil Code and the effete of the repeal of the provisions in the said Code as a result of the coming into force of the Indian Contract Act in the Union Territory. Couto J. proceeded to mention as follows:--

'Then. Arts. 689 and 690 of the Code provide for special periods of limitation in case of error and coercion respective;u. The Indian Contract Act covers all these aspects. Namely, the conditions of validity of a contract. This being the position, it is manifest that the provisions of the Civil Code which deal with the validity of a contract had been repealed and it necessarily follows that the periods of limitation existing in the Civil Code to declare the nullity of a contract entered into under the Portuguese law are also repealed.'

In our opinion. With great respect. this is the correct exposition of the law. If after the coming into force of a particular Indian statue if one may call it so in the Union Territory the corresponding provisions of the Portuguese Civil Code stand repealed, then a cause of action for a suit cannot arise under the Portuguese Civil Code. In such a case naturally, the period of limitation also provided for the causes of action arises under the Code cannot become enplicable. In any case the periods limitation provided in the Portuguese Civil Code will cease to apply to the suits based upon the cause of action arising outside the said Code. We have already mentioned earlier as to how different Acts have come into force in this Union Territory.

23. We are not unaware that this question did not arise before the Supreme Court while deciding Justiniano's case : [1979]3SCR494 . The question in fact, could not have arisen because the cause of action in both the suits in that case had arisen under the Portuguese Civil Code. Naturally the period of limitation provided in the Portuguese Civil Code was made applicable despite the fact that the Limitation provided in the Portuguese Civil Code , Naturally the period of limitation provided in the Portuguese Civil code was made applicable despite the fact that the Limitation Act had come into force in were filed. The two civil suits before the Supreme Court covered by the judgment in Justiniano's case had been earlier

decided by the learned Judicial Commissioner of this Union Territory. The facts can be called after reading the judgment of the learned Judicial Commissioner reported in Justiniano Augusto Dc P Barretto v. Antonio vicente DaFornseca, AIR 1969 Goa 124.

In a later judgment delivered on 18th August 1983 in Costs & Company Private Limited v. Metal Box Company of India Limited. (First Civil Appeal No. 85 of 1979) Couto J. distinguished his earlier judgment in Ganexama Bicu naik's case and struck what apparently is a different note. In Costa & Company's case the plaintiff were respondents before this High Court. They had filed a suit against the appellants-defendants in circumstances herein after mentioned. The plaintiffs supplied to the defendants large quantity of flattened tall cans along with similarly large number of plain lids, which were utilised by the defendants in their business. When the plaintiffs called upon the defendants to effect payment of the price of the cans and the lids amounting. To over Rs. 34,000, the defendants originally requested for time to effect the payment or to allow them to make the payment in instalments. Subsequently when the suit was filed, the question of limitation was naturally raised by the defendants. Reliance was placed on behalf of the defendants on the judgment delivered by Couto J. in Ganexama Bicu Naik's case and it was contended that the suit should have been filed within the period preCouto J. referred to the judgment of the Supreme Court in Justiniano's case and held that the provisions relating to the period of limitation provided in the Portuguese Civil Code applied to the suit which led to the appeal in Costa & Company's case. While explaining this view which the learned Judge took he, mentioned as follows:--

'As I already observed what was held by me in the aforesaid case of Ganexama Bicu Naik Valingonkar v. Joao Manuel Dias is that the provisions regulating the limitation for suits dealing with the validity of a contract are not regulated by the special provisions governing the limitation for such suits and occurring in the chapter of the Civil code dealing with the validity of the contracts. Nowhere it was held in the aforesaid judgment it was held in the aforesaid judgment of mine that the other general provisions regulating the limitation and appearing in the Civil Code are not attracted.'

It was held that Article 535 of the Portuguese Civil Code applied and therefore. The suit which was filed beyond the period of limitation prescribed under the Limitation Act but within the period prescribed by Art. 535 of the Portuguese Civil code was within time For the reasons which we have mentioned earlier in this judgment, we are of the opinion, with great respect that the view expressed by Couto J. in Ganexama Bicu Naik's case is the correct view and we prefer the same to the view which the learned Judge has expressed in costs & Company's case. It is true that the learned Judge has correctly shown the distinction between the facts of the two cases but that distinction,in our opinion, should not make any difference to the law which, according to us is correct as per the discussion in the earlier part of this judgment. Actually an extension of the view expressed by Couto J. in Ganexama Bicu Naik' s case would necessarily be the same which we have adopted. In other words, once the provisions in the Portuguese Civil Code dealing with the substantive rights and liabilities stand repealed as a result of the extension of corresponding Indian statues to this Union Territory, the periods of limitation. If any, provided in the Portuguese Civil Code in respect of those rights and liabilities will cease to apply to any suits for which the causes of action arose outside the port.

We may now summarise our elusions in this regard.

Provisions in the Portuguese Civil Code or other Codes in force in Union Territory relating to the of limitation are local laws within the meaning of Sec. 29(2) of the Indian Limitation Act. 1963 as pointed out by the Supreme Court in Justiniano's case.

But they are also special laws dealing with the rights and liab ility under the Codes themselves of they form a part.

If any cause of action arise under the Portuguese law in force in Union Territory then the period limitation for the suit based upon cause of action will be the period mentioned in the relevant Portugues If, however, the relevant provision in the Portuguese law has been repaid and the cause of action has been repaid and the cause of action has arisen before the repeal of the law then, not standing the repeal, a suit based upon that cause of action can be filed even in that case the

relevant provide relating to the period of limitation was be the provisions in the Code itself.

If, however, the cause of action has arisen outside the Portuguese law then that part of the law dealing with the period of limitation will not apply on the other hand a suit filed on basis of the cause of action arising out side the Portuguese law will be governed by the provisions of the Indian Limitation Act. 1963.

In the light of the view which we have thus taken. It must be have that the suit filed by the plaintiff in the present case will be governed by Article 14 of Schedule to the Limitation and applies the suit is barred by time entitled to show even in this Letter Patent appeal, that the said finding erroneous on the facts of this case is undoubtedly right in this contend with the object of showing that was within time. Mr. Kolwalkar in our attention again in the averments the plainti which we have already marised. That a payment had made by the defendant on 15th of 1968 has been mentioned in paragraph of the plaint and this fact has not been denied by the defendant in the Write loudly admitted that such a payment was made because in the written statement 'it is admitted that the defendants paid on account of the said supply the total amount of Rs. 19,000/-'

Section 19 of the Limitation Act provides that where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. This however, is subject to the proviso tht acknowledgement of the payment appears in the handwriting of, or in a writing singed by, the person making the payment. In the instant case. Exhibit 33. Which is on record, shows that a payment of Rs. 5,000 was made by the defendant on 15th April 1968. That payment was acknowledge by Receipt No. 216. One Mulla Abdul Gani, examined as a witness on behalf of the defendant was working with the defendant till the end of December 1968. His duty deposition. Which is at Exhibit 48, in reply to pointed questions he has stated as follows:--

'I do not remember well whether in one occasion the said Mr. Shirgaonkar (plaintiff's partner) and I sat together to make any accounts on orders of Mr. Kadar,

May be it happened so. I am shown now the writing produced at Ext. 33, It is true that the writing at the bottom of the said paper is in may lognhand. I say that whatever is written from the words 'May 5' till the end of the page. Is my handwriting.

From this it is clear that the payment was made in the handwriting of the person who has been examined by the defendant himself as his onw witness.

Mr. Reis appearing for the defendant however, has protested that this payment is not covered by Sec. 19 of the Limitation Act. He has referred us to Sant Lal v. Kamal Prasad : [1952]1SCR116 and Harkubai v. Shankerbhai : AIR1944 Bom37 . These two authorities lay down that an acknowledgement or a payment must be in writing. There is no difficulty in accepting this propositions of the Limitation Act itself. But on a proper appreciation of the evidence which is on record we have no difficulty in holding that the payment which was made on 15th of April 1968 was made on behalf of the defendant and the said payment is evidenced by the writing of the accountant who was working in the firm of the defendant and who had been examined as defendnat's witness. The decree of the court below. Therefore can be sustained on merits.

In the result this Letters Patent appeal is dismissed with costs.

24. Appeal dismissed.

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