

**Puranda Behera Vs. Dr. Narayan Shankar Behera**

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**Court :** Orissa

**Decided On :** Mar-20-1991

**Reported in :** 1991(I)OLR455

**Judge :** A. Pasayat, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 14, Rule 2(1); Code of Civil Procedure (CPC) (Amendment) Act, 1976

**Appeal No. :** Civil Revision No. 561 of 1989

**Appellant :** Puranda Behera

**Respondent :** Dr. Narayan Shankar Behera

**Advocate for Def. :** P.K. Misra, N.C. Pati, B. Sahoo, N.C. Sahoo, B.K. Nayak and A.K. Nanda

**Advocate for Pet/Ap. :** S.S. Basu, P.K. Khuntia and R. Mitra

**Disposition :** Revision allowed

**Judgement :**

**A. Pasayat, J.**

1. Dismissal of a suit on the ground that it is barred by law of limitation, has brought the plaintiff before this Court.

2. The genesis of the order was a petition filed by the defendant purported to be one under Order 14, Rule 2 of the Code of Civil Procedure, 1908 (in short the 'Code') to determine the issue relating to limitation as a preliminary issue, and to dismiss the same on the ground of limitation. Though another prayer relating to jurisdiction of the Court was raised, the same was abandoned. The learned Subordinate Judge, Sundargar was of the view that question relating to limitation was a question of law and could be decided as a preliminary issue. He referred to certain statements alleged to have been made by the plaintiff and held that on the facts it was established that the suit which was one for specific performance of a contract was barred by limitation. The sole question to be decided in this, revision application, is whether the issue relating to limitation could be taken up for hearing, as preliminary issue. Order 14, Rule 2(1) of the Code, as it stands- now after amendment by Act 104 of 1976 reads as follows :

'Notwithstanding, that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues.'

The provisions impetrate pronouncement of judgment of S issues, notwithstanding, that a case may be on a pre-liminary issue. Exceptions are carved out in Sub-rule (2) which inter alia provide that where issues both of Law and of fact arise in the same suit, and the Court is of opinion that the case- or any part thereof may be disposed of on an issue of law only, where it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force, it may try that issue first. The plea of limitation may be at the best a mixed question of fact and law and cannot be a pure question of law and factual aspects have to be gone into to arrive at a conclusion whether bar of limitation applies.

3. The object of enactment of Order 14, Rule 2 of the Code is to avoid piecemeal trial of the suit and only where the suit can be disposed of by determination of a pure issue of law exercise permitted under Sub-rule (2) can be undertaken. The position has been succinctly laid down in the case of *Madhabananda Ray and Anr. v. M/s Spencer and Company Ltd* : 64.(1987) CLT 560: , In that decision reference was made to an earlier decision of this Court where plea of limitation was raised in

the prayer for adjudication of the suit on a preliminary issue, in the case of Ram Saraf v. Mani Del and Anr. : ILR 1970 Cuttack 152. While attempt should be taken to avoid protracted litigation, yet unless point in issue goes to the very root of jurisdiction of the Court or bar created under a statute, piecemeal trial has to be avoided and adjudicated as imperated under Order 14, Rule 2 of the Code has to be undertaken. Therefore, the conclusions of the learned Subordinate judge do not stand to reason and order dated 11-4-1989 is set aside. The learned Subordinate Judge would now take up trial of the suit for its disposal in accordance with law.

The Civil Revision is accordingly allowed. No costs.

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