

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

**Ramchandra and ors. Vs. Union of India (Uoi), Through the General Manager,
Western Rly., Bombay**

**Ramchandra and ors. Vs. Union of India (Uoi), Through the General Manager,
Western Rly., Bombay**

SooperKanoon Citation : sooperkanoon.com/752954

Court : Rajasthan

Decided On : Aug-22-1960

Reported in : AIR1961Raj162

Judge : C.B. Bhargava, J.

Acts : Indian Independence Pakistan Courts (Pending Proceedings) Act, 1952 -
Sections 4; Code of Civil Procedure (CPC) - Sections 20; Limitation Act, 1908 -
Sections 14; Indian Independence (Rights, Properties and Liabilities) Order, 1947 -
Schedule - Article 8; [Constitution of India](#) - Article 294

Appeal No. : First Appeal No. 28 of 1955

Appellant : Ramchandra and ors.

Respondent : Union of India (Uoi), Through the General Manager, Western Rly.,
Bombay

Advocate for Def. : D.P. Gupta, Adv.

Advocate for Pet/Ap. : V.P. Tyagi, Adv.

Judgement :

C.B. Bhargava, J.

1. This is a plaintiffs' appeal against the judgment and decree of the learned Civil Judge, Alwar dated 4th April 1955 dismissing their suit for recovery of Rs. 5461/-.
2. The suit was filed initially on 28th January, 1953 in the Court of Civil Judge, Jaipur against the respondent. The learned Civil Judge, Jaipur returned the plaint for presentation to the proper court on 4-10-1954. It was again filed in the Court of Civil Judge, Alwar on 11-11-1954.
3. The plaintiffs' case was that they were members of a joint Hindu family and were carrying on their business at Talora, District Bogra now in East Pakistan. On 3-8-1942 they had booked a consignment of betel-nuts weighing 43 maunds 16 seers from Talora to Jaipur. The consignment never reached its destination and therefore, the plaintiffs suffered a loss of Rs. 3038/- on account of the nondelivery of the goods. The suit for the recovery of this amount was filed in the court of the Sub-Judge, Bogra who dismissed the suit,

On appeal the suit was decreed by the learned District Judge, Bogra on 31-1-1947. The defendant filed an appeal before the High Court which was disallowed by the High Court, Dacca on 22-1-1952. The plaintiffs, therefore, claimed Rs. 5461/- which included Rs. 3038/- the price of the goods and costs of litigation and future interest from 31-1-1947 to 28-1-1953.

The plaintiffs further claimed the benefit of Section 14 of the Indian Limitation Act for the period spent in prosecuting the suit in the court of the Civil Judge, Jaipur from 28-1-1953 to 4-11-1954 as under Section 4 of the Indian Independence Pakistan Courts (Pending Proceedings) Act (No. IX of 1952) (hereinafter called the Act) the suit could be filed within one year from the commencement of the Act or within one year from the date of the decree, whichever was later, and the present suit had been filed beyond that period.

4. The defendant contested the claim and inter alia pleaded that it was barred by limitation and that the plaintiffs were not entitled to the benefit of section 14 of the Indian Limitation Act. That the suit was not maintainable as it was not filed on the original cause of action, but was filed on the basis of the decree passed by a court in Pakistan, It was also pleaded that the Union of India was not liable as no liability

to pay the suit amount had devolved upon it under any law.

5. The learned Civil Judge framed issues arising out of the pleadings of the parties on question of facts as well as of law and dismissed the suit on a decision of the following issues only:

Issue No. 1:-- Are the plaintiffs entitled to get tile benefit of section 14 of the Limitation Act?

Issue No. 2: Is suit within limitation? Issue No, 3: Is the suit maintainable on the basis of a decree passed by a Court of Pakistan? Issue No. 4: Is file suit within jurisdiction of this Court?

Issue No. 9 : Is Union of India, Successor Government and is liable for payment?

The learned Civil Judge held under issues Nos. 1 and 2 that the plaintiffs were not entitled to the benefit of Section 14 of the Indian Limitation Act and the suit was therefore, barred by limitation. Issues Nos. 3 and 4 were decided in favour of the plaintiffs. Issue No. 9 was decided against the plaintiffs and the finding of the learned Civil Judge was that the Union of India was not the Successor Government and is not liable to pay the suit amount. The plaintiffs have now come in appeal against this judgment.

6. In this appeal it is contended that the suit was filed within limitation in the Court of the Civil Judge, Alwar and the plaintiffs were entitled to the benefit of Section 14 of the Indian Limitation Act. The period from 28-1-1953 to 4-11-1954 during which the suit remained pending in the court of the Civil Judge, Jaipur should be excluded from the period of limitation. In regard to the liability of the Union of India reliance is placed on Article 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1942 and Article 294(b) of the Constitution of India.

7. On behalf of the respondent it is argued that the provisions of Section 4 of the Act are quite clear and if in ignorance of this provision instead of filing the suit at Alwar the plaintiffs filed the suit in the court of the Civil Judge, Jaipur, they cannot claim benefit under Section 14 of the Indian Limitation Act. In the alternative it is argued that the Civil Judge, Jaipur ordered the plaint to be returned on 4-10-1954

and thereafter it was not taken back by the plaintiffs till 4-11-1954, and in the absence of any explanation on the record on behalf of the plaintiffs, they are not entitled to the exclusion of the period from 4-10-1954 to 4-11-1954.

Further there is no ground for excluding the period from 4-11-1954 to 11-11-1954 when the suit was instituted is the court of the Civil Judge, Alwar. It is therefore, submitted that even if the time from 28-1-1953 to 4-10-1954 is excluded the suit is still barred by limitation. In regard to the liability of the Union of India it is argued that payment of compensation for non-delivery of goods was exclusively the liability of the Dominion of Pakistan and therefore, the Union of India cannot be held liable for the payment of the suit amount.

Learned counsel has also challenged the finding of the court below on issue No. 3 and his argument is that the suit as framed was not maintainable as it was not founded on the original cause of action but was filed on the basis of a decree passed by the courts in Pakistan. For the appellant the reply to the last contention of the respondent is that the plaint if read as a whole shows that all the material facts constituting the original cause of action have been mentioned in it and if some further facts leading to the litigation which culminated in the decree by the High Court, Dacca have also been mentioned it cannot be said that the suit is not based on the original cause of action.

8. I therefore, proceed to determine the point of limitation first. Mr. Tyagi has urged that it was not due to any ignorance of law that the suit was instituted in the court of the Civil Judge, Jaipur but it was rightly done so, and the learned Civil Judge was in error in returning the plaint for presentation to the proper court and at any rate he suggests Section 4 of the Act was capable of this interpretation that the suit could be filed both at the place provided under the general law as well as at the place provided in this section and therefore, if the plaintiffs rightly or under this mistaken belief filed the suit in the court of the Civil Judge, Jaipur they are entitled to the benefit of S. 14 of the Indian Limitation Act. He has further argued that the period which is to be excluded under Section 14 of the Limitation Act should be from the date of the institution of the suit to the time the proceedings come to an end and according to the learned counsel the proceedings come to an end only

when the plaint is returned to the plaintiffs for presentation to the proper court and not on the date the order for the return of the plaint is passed. In this connection he has referred to Explanation 1 to Section 14 of the Indian Limitation Act and relied upon *Jafar Uddin v. Debi Prasad*, AIR 1939 All 590 and *The Muslim Bank v. Hasan Shiraza*, AIR 1951 Hyd 57. The question, therefore, which arises is as to whether the court of the Civil Judge, Jaipur had the jurisdiction to entertain the suit or not, which again depends upon the meaning to be given to Section 4 of the Act.

9. Section 4 of the Act is as follows: 'Notwithstanding anything contained in Section 3 of the Indian Limitation Act, 1908 (IX of 1908), any person in whose favour a decree to which this Act applies has been passed may, within one year from the commencement of this Act, or within one year from the date of the decree, whichever is later, institute a fresh suit or other legal proceeding in respect of the cause of action on which such decree was based, and any such suit or other legal proceeding may, notwithstanding anything contained in Section 20 of the Code of Civil Procedure, 1908 (Act V of 1908), or in any other law or in any agreement to the contrary relating to the place of suing, be instituted in any court otherwise competent to try it, within the local limits of whose jurisdiction the person instituting it voluntarily resides or carries on business or personally works for gain'.

According to the respondent the only court which had jurisdiction to entertain the suits of the nature described in Section 4 was the court within the local limits of whose jurisdiction the person instituting it voluntarily resided or carried on business or personally worked for gain and the other courts which could have jurisdiction under Section 20 of the Code of Civil Procedure had no jurisdiction left to entertain such suits. In other words the contention is that this Act provided a special remedy and for that purpose created a special forum and the courts exercising jurisdiction under the general law had no jurisdiction to entertain such suits.

10. In exercise of the powers conferred by Section 9 Indian Independence Act, 1947, the Governor General promulgated the High Courts (Bengal) Order, 1947. Article 13(3) of that Order provided that:

'Subject to the preceding provisions of this Article, all proceedings pending on the appellate side of the High Court in Calcutta immediately before the appointed day, shall, where the court of origin is, as from that day, situated in the Province of East Bengal, stand transferred by virtue of this Order to the High Court of East Bengal'. It was further provided in Article 13(5) that:

'Subject to the following provisions of this. Article with respect to appeals, any order made, by the High Court of East Bengal in proceedings transferred to that High Court by virtue of this Article shall for all purposes have effect not only as an order of that court but also as an order made by the High Court in Calcutta'.

The effect of this article was that all appeals pending on the appellate side of the High Court in Calcutta immediately before 15-8-1947 were transferred to the High Court of East Bengal where the proceedings had originated at a place which was situated in East Bengal and further the decrees so passed by the High Court were to be treated for all purposes as if they were the decrees of the High Court in Calcutta. Thereafter it was felt that the courts in Pakistan were not properly dealing with the cases against the Dominion of India and there were also difficulties in defending cases in courts in Pakistan that the Act No. IX of 1952 was passed, and it was provided in Section 3 of the Act that:

'Notwithstanding anything contained in any of the orders referred to in Section 2 no decree to which this Act applies shall be given effect to by any court or authority in India in so far as such decree imposes any liability or obligation on any Government of India'.

The decrees to which this Act applied also included decrees referred to in clause (3) of Article 4 of the Indian Independence (Legal Proceedings) Order, 1947 or Paragraph 5 or Paragraph 6 of Article 13 of High Courts (Bengal) Order, 1947. The effect of Section 3 therefore, was that the decrees passed by the High Court in Pakistan which could be executed in India as if they were passed by the High Court in Calcutta ceased to be executable. However, the Act provided another remedy by way of a suit to the decree holder under S, 4 of the Act. Now the question is whether the provision of Section 4 viz.,

'Notwithstanding anything contained in Section 20 of the C. P. C. or in any other law or in any agreement to the contrary relating to the place of suingworks for gain'

barred the jurisdiction of the courts ordinarily competent to entertain such suits or provided an additional forum. It is evident that Section 4 did not expressly bar the jurisdiction of the courts which were otherwise competent to take cognisance of the suits by virtue of Section 20 of the Code of Civil Procedure.

It is also evident that no special tribunals for the trial of such suits were brought into existence under the Act. The only departure which Section 4 of the Act brought into being was that the courts which under Section 20 of the Code of Civil Procedure could not entertain the suits on the ground that the plaintiffs resided or carried on business within its jurisdiction or personally worked for gain became competent to take their cognisance.

To my mind the intention of the Legislature in enacting this provision in Section 4 was to create an additional forum which was hitherto not available to the plaintiffs under the general law. It was meant to bring justice nearer home to those who wanted to institute suits on the basis of decrees obtained in East Pakistan. That being so the suit instituted by the plaintiffs in the court of Civil Judge, Jaipur cannot be said to have been wrongly instituted in that court.

11. Mr. Gupta referred to a passage from Maxwell on Interpretation of Statutes, 10th Edition on page 132 that:

'Where, indeed a new duty or cause of action is created by statute, and a special jurisdiction out of the course of the common law is prescribed there is no ouster of the jurisdiction of the ordinary courts, for they never had any',

In my opinion this has no bearing on the facts of the present case, as no new duty or cause of action was created. The cause of action already existed and it was only a new forum which was provided under the Act. It will be pertinent to state here that the consignment was booked from Talora and was to be delivered at Jaipur. It was not so delivered.

In order to reach the destination the goods had to be transmitted through Bengal Assam Railway, B, N. Railway and B. B. and C. I. Railway, as the breach of contract took place at Jaipur and a part of the cause of action arose there the court at Jaipur had jurisdiction to entertain and try the suit. Though the plaintiffs have not said so in the plaint yet there could not be any other reason for filing the suit at Jaipur.

Whatever view may be taken of the matter whether the suit was rightly instituted in the court of the Civil Judge, Jaipur or was done under the mistaken belief that Section 4 of the Act did not bar the jurisdiction of the court within whose jurisdiction a part of the cause of action had arisen provisions of Section 14 of the Indian Limitation Act would apply. It is not disputed that the suit was based on the same cause of action and till the date when it was ordered to be returned for presentation to the proper court i.e., 4th October, 1954, the plaintiffs were prosecuting the proceedings with due diligence.

12. The next question that arises is whether the plaintiffs are entitled to the exclusion of time from 4-10-1954 to 4-11-1954 when the plaint was returned to them. That again depends upon the meaning to be given to the words 'the day on which that suit or application was instituted or made and the day on which the proceedings therein ended', used in Explanation 1 to Section 14 of the Indian Limitation Act.

In cases where a plaint is ordered to be returned for presentation to the proper court the argument of the learned counsel for the appellant is that the proceedings come to an end when the plaint is actually returned and endorsement is made by the court. On the other hand Mr. Gupta for the respondent contends that the proceedings come to an end as soon as an order for the return of the plaint is passed by the court. Both sides have cited cases in support of their respective contentions. Learned counsel for the appellants has referred to AIR 1939 AH 590 wherein it was observed that:

'The court has seisin of the plaint up till it is actually returned to the plaintiff even after the order directing the return of the plaint has been passed. Hence, proceedings come to an end within the meaning of Section 14 of the Act not on the

date on which the order directing the return of the plaint is recorded but on the date on which the plaint is actually returned to the plaintiff'.

In AIR 1951 Hyd 57 it was held that:

'The endorsement of the dates of presentation and return are imperative under the law. This endorsement is a part of the Court's duty; therefore, until the endorsement is made, the proceedings cannot be said to have come to an end. The reason why an endorsement by the Court has been considered to be essential is in order to know as to whether the same plaint which was filed in the original court has been taken back and represented in the Court of competent jurisdiction. Ordinarily, no doubt, the plaintiff cannot take advantage of his own delay, but where there has been a delay on the part of the court in making the endorsement as required by the Civil P. C. he is entitled to an exclusion of the period till the date the actual endorsement was made.'

In *Basavanappa v. Krishnadas Goverdhaudhas*, AIR 1921 Bom 379 it was observed that:

It was first argued that the proceedings ended on the 15th January, instead of 25th January when the plaint was returned. Clearly when a party is ordered to take back his plaint and present it in the proper Court, the proceedings do not end until the party gets back his plaint.

The case *Nagindas Kapurchand v. Maganlal Panachand*, AIR 1922 Bom 160 was also relied upon.

13. On behalf of the respondent reference was made to *Maneklal Mansukhbhal v. Suryapur Mills Co. Ltd.*, AIR 1928 Bom 252, particularly to the observations made by Crump, J. that:

'But, as to the final period between 30-10-1926 and 23-11-1926 I have grave doubts whether the plaintiff was properly entitled to the credit of that period. It seems to me that under Section 14 we have to consider when the suit in the First Class Subordinate Judge's Court was at an end. That is the plain meaning of the first explanation to that section, and, so far as the records go, I think that period

was at an end as soon as the Court made an order for the return of the plaint. It may be that there were certain ministerial acts left to be performed after that order was made. That we do not know. All that we do know is that those acts might have required some time, and if that time was necessary for the purposes of the Court, then I should be prepared to exclude that period also, following the decisions of Sir Norman Macleod in AIR 1921 Bom 379; AIR 1922 Bom 160. But I do not think that those decisions lay down as a broad proposition that any time that elapses between the order directing the return of the plaint, and the actual withdrawal of the plaint, from the Court should be excluded. To hold anything of that kind would be to allow a party to delay indefinitely and to take the advantage of his own delay'.

In *Rattanlalji v. Dali Chand*, AIR 1954 Hyd 39 it has been held that

'Returning the plaint without any of the endorsements as laid down in Clause (2) of Rule 10 is anirregularity'.

In *Ram Lakhan v. Mst. Tulsha*, AIR 1954 All 199 the previous case relied on by the appellants was considered and it was observed that:

'According to this Explanation, the period up to the day on which the proceedings therein ended' is to be excluded. This phrase was interpreted in the case of *Jafar Uddin v. Debi Prasad*, AIR 1939 All 590, to mean that the period upto the day of the actual return of the plaint was to be excluded. While agreeing that in majority of cases the period right up to the date of the actual return of the plaint should be excluded, I am not prepared to hold as a hard and fast rule, applicable to all cases, that exclusion should extend up to the date of the actual return of the plaint. The period shall vary according to the circumstances of each case. After an order for the return of the plaint is passed, office has to go through certain formalities before the plaint is actually returned. An endorsement has to be made on the back of the plaint under Order 7, Rule 10(2), C. P. C. Entries have to be made in certain registers and it is only then that the plaint can be returned. Office may take several days for going through all these formalities. The actual period required for observing all these formalities will depend upon the state of work in each office. But it is conceivable to think of cases where the delay may take place not on

account of the office but on account of the plaintiff himself. The plaintiff may feel dissatisfied with the order directing the return of the plaint, may be contemplating an appeal and may even refuse to take back the plaint when offered to him by the office. His refusal may continue for months together. In such cases it will not be proper to hold that the period right up to the date of the actual return of the plaint is to be excluded. In such cases, the date on which the plaint was tendered to the plaintiff by the office will be 'the day on which the proceedings therein ended'.

14. A consideration of these cases will reveal that in some cases the view taken is that the proceedings come to an end when the plaint is actually returned for presentation to the proper court, while in other cases it has been held that such a broad proposition cannot be laid down and if some acts are to be done by the court for the purpose of returning the plaint and it takes sometime after an order for the return of the plaint is passed the proceedings will be deemed to be pending till that date, but it cannot be laid down as a hard and fast rule that the proceedings only come to an end when the plaint is returned to the plaintiff.

As pointed out in these cases if that were to be so the position would be that the plaintiffs by their own laches and negligence would be able to prolong the pendency of the proceedings by not taking any steps to take back the plaint. With all respect I agree with the latter view expressed in AIR 1928 Bom 252. If the proceedings are therefore kept pending by the plaintiffs' own laches they cannot take advantage of the provisions of Section 14 of the Indian Limitation Act.

It is only for the period which is required by the court for returning the plaint after an order has been passed in that behalf that the plaintiffs can claim exclusion. In the instant case as mentioned earlier the order for the return of the plaint was passed on 4-10-1954 but the plaint was actually returned on 4-11-1954.

No explanation has been offered by the plaintiffs as to why the plaint was not returned to them till 4-11-1954 but it appears from the endorsement on the plaint that the plaintiffs were asked by the court to furnish a copy of the plaint and it was on 4-11-1954 that the plaintiffs filed the required copy on which the plaint was returned to them. It is not clear as to whether it was due to the laches of the plaintiffs that the copy of the plaint was filed after so many days or because they

could not obtain it earlier.

15. I would have decided this question on the present material but there is yet another argument put forward on behalf of the appellants viz., that the plaintiffs before filing a suit had served a notice under Section 80 C. P. C. on the defendant and by virtue of the provisions of Section 15(2) of the Indian Limitation Act they are entitled to the exclusion of that time. It is alleged in the plaint that a notice under Section 80C. P. C. was given to the defendant

This allegation is denied by the defendant and an issue is also framed on that point. A copy of the notice is also produced by the plaintiffs but unfortunately the issue on the point has not been decided by the court below and unless it is established that a notice according to the requirement of law was given to the defendant I cannot decide that the plaintiffs are entitled to the exclusion of this time. As this question will have to be decided by the court below I leave the other matter i.e., the exclusion of period from 4-10-1954 to 4-11-1954 also, for the decision of the trial court.

The parties will be at liberty to produce such evidence as they may deem necessary to show that the period spent between 4-10-1954 and 4-11-1954 was reasonably spent or not or that it was due to the negligence of the plaintiffs that a month's time was spent in the plaint being returned to them. Mr. Gupta had invited my attention to the fact that the proceedings in the court of the Civil Judge, Jaipur were not instituted in good faith by the plaintiffs and had referred to the observations in *Madhavrao Narayanrao v. Ram Krishna Govind Bhanu*, AIR 1958 SC 767 that:

'Both the courts below have viewed the controversy under Section 14 of the Limitation Act, as if it was for the defendant to show mala fides on the part of the plaintiff when he instituted the previous suit and was carrying on the proceedings in that court. In our opinion, both the courts below have misdirected themselves on this question. Though they do not say so in terms, they appear to have applied the definition of 'good faith' as contained in the General Clauses Act, to the effect that a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not. But, the Indian Limitation Act

contains that 'nothing shall be deemed to be done in good faith which is not done with due care and attention' -- (S. 2 (7))'

I have already said that the suit in the court of the Civil Judge, Jaipur was rightly instituted and therefore, the question of want of due care and caution does not arise in this case; but even if that question were to arise the plaintiffs would be justified in the circumstances of this case in claiming the benefit of Section 14 of the Indian Limitation Act as the provisions of Section 4 of the Act are not so clear as to bar the jurisdiction of the courts under the general law.

16. As regards the liability of the Union of India learned counsel for the appellants relied on Art. 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1947 which provides:

'(i) Any contract made on behalf of the Governor-General in Council before the appointed day shall, as from that day,--

(a) if the contract is for purposes which as from that day are exclusively purposes of the Dominion of Pakistan, be deemed to have been made on behalf of the Dominion of Pakistan instead of the Governor-General in Council; and

(b) in any other case, be deemed to have been made on behalf of the Dominion of India instead of the Governor-General in Council; and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights or liabilities of the Dominion of Pakistan or the Dominion of India, as the case may be'.

The effect of this Article therefore, is that if the contract is not exclusively for purposes of the Dominion of Pakistan, then the liability would be of the Dominion of India. In this case as the goods were to pass through the railways lying within the territory of the Dominion of Pakistan as well as the territory of the Dominion of India and were to be delivered at a place within the Dominion of India it cannot be said that the contract was exclusively for the purpose of the Dominion of Pakistan.

Therefore, for this contract it was the Dominion of India which was liable and according to Article 294(b) of the [Constitution of India](#) all liabilities of the Dominion

of India before the commencement of the Constitution became the liability of the Union of India. In this view of the matter it would be the liability of the defendant to pay the suit amount.

17. Now coming to the respondent's contention that the suit as framed is not maintainable in view of the provisions of Section 4 of the Act which permits a suit in respect of the cause of action on which the decree was passed and on the basis of the decree itself, learned counsel invited my attention to paragraphs 7 and 10 of the plaint and has laid much stress on the fact that the suit was filed on the basis of the decree passed by the Dacca High Court

It may be stated that the pleadings are to be read as a whole and not torn from its context. In paragraph 2 of the plaint it was alleged that the consignment was booked on 3-8-1942. That it contained betelnuts which weighed 43 maunds 16 seers. The number of the railway receipt is also mentioned and the place of the destination is also given. In paragraph 3 it is mentioned that the goods were not delivered at Jaipur and the plaintiffs therefore, gave a notice under Section 77 of the Railways Act.

In paragraph 4 it is mentioned that on account of the non-delivery of the goods the plaintiffs suffered a loss of Rs. 3038/- which was the price of the goods. In subsequent paragraphs the facts which led to the filing of a suit at Bogra till its conclusion in Dacca High Court are mentioned. It is true that the suit is not entirely based on the original cause of action but at the same time it cannot be said that it is not based in respect of the cause of action on which the decree was passed. All the necessary facts which constitute the original cause of action are contained in the plaint and it would be quite wrong and unjust to non-suit the plaintiffs on this technical ground.

I, therefore, hold that the suit is properly framed and contains the grounds constituting the original cause of action. As the question of limitation is yet to be decided by the trial court in the light of the observations made above I accept this appeal, set aside the judgment and decree of the court below and send the case back to it for the determination of the issue of limitation and the remaining issues. The costs of this appeal shall abide the result of the suit.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com