

Deutsche Asiatische Bank Vs. Hira Lall Burdhan and Sons

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Court : Kolkata

Decided On : Aug-21-1918

Reported in : 47Ind.Cas.398

Judge : Lancelot Sanderson, C.J. and ;John Woodroffe, J.

Appellant : Deutsche Asiatische Bank

Respondent : Hira Lall Burdhan and Sons

Judgement :

Lancelot Sanderson, C.J.

1. This is an appeal from a judgment of my learned brother Mr. Justice Chaudhuri and the facts may be gathered from the plaint to this effect; a suit was brought by the Deutsche Asiatische Bank, which is a German Bank which used to carry on business in Calcutta and is now in liquidation under the orders of the Government of India, and the defendants are Messrs. Hira Lall Burdhan and Sons who carry on business as merchants in Calcutta. The suit was brought in respect of four promissory-notes which were made payable on demand, and their respective dates were 4th of June 1914, 11th of June 1914, 30th of June 1914 and 30th of June 1914. These notes were endorsed to the plaintiff Bank, and it is agreed that the cause of action in respect of the notes which were payable on demand would arise on the dates of the notes. Consequently, the periods within which a suit or Suits in respect of the notes would have to be brought would expire in June 1917. The suit was brought on the 9th of May 1918, and, therefore, prima facie it was out of time. But the appellants allege that a certain period ought to be excluded from the time specified by the Act of Limitation. They refer to the fact that the war with Germany broke out on the 4th of August 1914, and that thereby they, the plaintiffs, were debarred from suing in Civil Court in this country, and they allege that it was not until the 1st of November 1915 that the plaintiff Bank obtained a license from the Governor-General in Council to carry on their business in British India with a power to sue for the recovery of debts which were owing to the Bank. Consequently they urge that the period from the 4th of August 1914 to the 1st of November 1915 ought to be excluded from the time prescribed by the Act of Limitation. The learned Judge has come to the conclusion that that period cannot be excluded, and I think that the learned Judge has come to a right conclusion.

2. I need not deal with all the reasons that the learned Judge has relied upon in his judgment, but I am not sure that I am prepared to adopt all the reasons which he has given. There is no doubt that when the war broke out on the 4th of August 1914, the plaintiff Bank being an enemy alien had no right to sue in Civil Courts in this country until the Bank obtained a license or authorization from the Crown or from the

Governor-General in Council as the representative of the Crown.

3. I think it is clear further that in the circumstances of this case the right of the plaintiff Bank to recover upon the promissory notes was suspended for the time being. In November 1915 the license which was given to the plaintiff Bank was as follow: It was addressed to Deutsche Asiatische Bank, and authorized them to carry on their business to the extent and in the manner therein specified, and one of the clauses was: 'To continue legal proceedings already instituted and with the sanction in each case of the said Controller to institute further suits for the recovery of debts due to the Company.'

4. After that license was given, it was within the power and the right of the plaintiff Bank to sue in the Civil Courts of this country for the recovery of debts owing to the Bank.

7. Now, in the case of each of the notes the time for the purpose of the Limitation Act began to run from a date in June 1914, which was before the outbreak of the war, and the question is whether there is any statutory provision or common law rule which would avail the plaintiffs in their contention that the period between the 4th of August 1914 and November 1915 ought to be excluded in computing the period prescribed by the Limitation Act within which the suit should be brought, Section 9 of the Limitation Act, IX, of 1908, provides as follows: 'Where once time has begun to run, no subsequent disability or inability to sue stops it.' Now, prima facie that section covers this case, because I think that either, the words 'disability' and 'inability' would be applicable to the position of the plaintiff Bank at the time the war broke out I think it can truly be said that the plaintiff Bank by reason of the outbreak of the war 'disabled' from suing, or it may be said that by reason of the outbreak of the war the plaintiff Bank suffered from 'inability' to sue. Prima facie, the words of the section will cover this case. But the learned Advocate General on behalf of the plaintiff Bank argued that the section was not intended to deal with the contingency of the outbreak of war but was intended to deal only with such disability or inability as might be referred to in the Act itself and he drew our attention to the 'disability' which is referred to in Section 8 and also in Section 7. I am not prepared at present to accede to that argument, for I think the section is in accordance with the general rule that once the time for the purpose of limitation has begun to run, 'disability' to sue will not avail to stop it, in the absence of express statutory provision.

8. But even if the learned Advocate General's argument on that point is correct, there remains the word 'inability', to which the above argument does not apply, unless the word 'inability' means no more than 'disability', for the learned Advocate-General has drawn our attention to the fact that Section 9 is the only section in the Act where the word 'inability' occurs. We are bound to give some meaning to the word 'inability' I do not think we are entitled to assume that the Legislature in enacting this section, when it used the word 'disability' and the word 'inability' meant exactly the same thing for the sake of the two words. Consequently I do not see how we can escape from the conclusion that this case is covered by Section 9. I agree, therefore, with the conclusion at which the learned Judge has arrived.

9. As regards there being any common law rule, which would avail the plaintiffs upon this point, I do not know of any and even if there were, here we have express statutory provision which I think would have the effect of overriding any such rule.

10. As regards the question of hardship to which the learned Advocate-General referred, I do not think that he was referring to any hardship in this particular case but that he was referring to other oases where it might arise. In this case there is no doubt that there is no hardship inasmuch as although the plaintiff Bank's business in Calcutta was put an end to in August 1914 when its officers were interned, the Governor-General in Council appointed a gentleman, whose name was Mr. Gros, so long ago as December 1914 for the purpose of liquidating assets and paying debts of the Bank, and then in November 1915 the Governor-General in Council gave an express authority to the plaintiff Bank to institute proceedings in order that it might recover the debts which were owing to it, and if this suit had been brought within a reasonable time from November 1915, there can be no doubt that the suit could have been brought within the time specified by the Act of Limitation. Instead of that, a period of time, which extended from November 1915 to May 1918, was allowed to pass before the suit was brought. In these circumstances, I think in this particular case there has been no hardship.

11. In my judgment for the reasons that I have stated above, this appeal should be dismissed with costs.

12. We think that in this case the appeal I must be treated as an appeal from a decree, and we leave it to the discretion of the Taxing Officer to do what is right in respect of the taxation of costs. We may say for his guidance that as far as the appeal is concerned, it was not a long matter and that the appeal was disposed of in less than three hours. With reference to this question I may mention that the appellant himself in the memorandum of appeal purports to appeal from a decree.

John Woodroffe, J.

13. The general rule is that when limitation has commenced to run it will continue to run. Has anything been shown to us which creates an exception to this general rule by reason of the suspension of rights due to the existence of the state of war? There is, in my opinion, none shown nor does Section 15 of the Limitation Act apply, for the word 'order' there clearly; refers to orders of Civil Courts and not to the condition of things with which we have here to do. As the suit is admittedly barred unless the period mentioned in the plaint is excluded. I am of opinion that this appeal should be dismissed with costs.