

GOTHAMCHAND JAIN

v.

ARUMUGAM @ TAMILARASAN
(Civil Appeal No. 8308 of 2013)

SEPTEMBER 18, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Limitation Act, 1963 – Art. 54 – Law of limitation in the Union Territory of Pondicherry, erstwhile French Establishment – Suit for specific performance of contract filed at Pondicherry in 1991 – Suit resisted on the ground of limitation – Applicability of the provisions of the Limitation Act, 1963, vis-à-vis, Article 2262 of the French Code Civil – Held: The Limitation Act was passed by the Parliament on 5.10.1963 – Since by that time, the Union Territory of Pondicherry had become part of India, the Limitation Act automatically extended to the then Pondicherry and consequently, came into force in the Union Territory of Pondicherry on 1.1.1964 – Consequently, it is not Article 2262 of the French Code Civil that applied to the suit in question, but Art.54 of the Limitation Act – Said suit having been filed beyond the period of limitation prescribed u/Art.54 of the Limitation Act, was clearly barred by limitation – French Code Civil – Art. 2262.

The applicability of the provisions of the Indian Limitation Act, 1963, vis-à-vis, Article 2262 of the French Code Civil, said to be the governing law of limitation in the Union Territory of Pondicherry, erstwhile French Establishment, came to be considered in the instant appeals.

The appellant had filed a suit for specific performance of the contract before the Additional Subordinate Judge, Pondicherry in the year 1991. The suit was resisted, *inter*

A *alia*, on the ground of limitation. The trial Court held that Article 2262 of French Code Civil was applicable to the Union Territory – Pondicherry which provided that the limitation for original cause of action is thirty years and accordingly, the suit claim was not time barred. The High Court, however, held that it is Article 54 of the Indian Limitation Act, 1963 that would apply in the matter of filing of the suit in Pondicherry and not Article 2262 of the French Code Civil and that consequently, the suit filed for specific performance of the contract, was not saved by Article 54 of the Indian Limitation Act which provided that the suit be filed within three years of the date of agreement. Hence the present appeal.

Dismissing the appeal, the Court

D HELD:1.1. The *de jure* merger of the erstwhile French Territory of Pondicherry took place on 16.8.1962 following the Treaty of Cession concluded between France and India on 28.5.1956 establishing the cession of the French Establishments by France to India in full sovereignty. The Limitation Act, 1963 was passed by the Parliament on 5.10.1963. By that time, the Union Territory of Pondicherry had become part of India. Clause 2 of Section 1 of the Limitation Act, 1963 says that it extends to the whole of India except the State of Jammu and Kashmir. Since the Union Territory of Pondicherry having become part of India, the Limitation Act automatically extended to the then Pondicherry. The Limitation Act, 1963, consequently, came into force in the Union Territory of Pondicherry on 1.1.1964. [Paras 8, 10] [186-B-C; 187-F-H]

G 1.2. By virtue of the Limitation Act, 1963, the French Law of Limitation which had been in force till 1.1.1964, was impliedly repealed by the Limitation Act, 1963. The Pondicherry (Extension of Laws) Act, 1968, as amended, has adopted several legislations in the State of

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Pondicherry, but the Act which governs limitation is the general law of the land that is the Indian Limitation Act. Consequently, it is not Article 2262 of the French Code Civil that applies to the suit in question, but Section 54 of the Indian Limitation Act, 1963. Under such circumstances, as rightly held by the High Court, the suit filed beyond the period of limitation prescribed under Article 54 of the Indian Limitation Act, 1963 is clearly barred. [Paras 11, 14] [188-A-B; 189-H; 190-A-C]

Syndicate Bank v. Prabha D. Naik and Another (2001) 4 SCC 713: 2001 (2) SCR 714 – relied on.

Justiniano Augusto De. Piedade Barreto v. Antonio Vicente Da Fonseca (1979) 3 SCC 47: 1979 (3) SCR 494 – held overruled.

Case Law Reference:

2001 (2) SCR 714 relied on Para 5

1979 (3) SCR 494 held overruled Para 12

CIVIL APPELLATE JURISDICITON : Civil Appeal No. 8308 of 2013.

From the Judgment & Order dated 25.08.2011 of the High Court of Judicature at Madras in S.A. No. 383 of 2010.

R. Nedumaran, Movita for the Appellant.

V. Prabhakar, R. Chandrachud, Jyoti Prashar for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J.1. Leave granted.

2. We are, in this appeal, concerned with the applicability of the provisions of the Indian Limitation Act, 1956, vis-à-vis,

A Article 2262 of the French Code Civil, said to be the governing law of limitation in the Union Territory of Pondicherry, erstwhile French Establishment.

B 3. Appellant herein preferred a suit, being OS No. 295 of 1991 before the Additional Subordinate Judge, Pondicherry. The suit was resisted, *inter alia*, on the ground of limitation, which was ultimately decreed in favour of the plaintiff. However, on the plea of limitation, the trial Court held as follows:

C “12. On Issue No. 3: - Article 2262 of French Code Civil shows that the limitation for original cause of action is thirty years and it is a well settled law that the said provision is applicable to the Union Territory – Pondicherry. Accordingly, suit claim is not time barred. Hence this issue is answered in the negative and in favour of the plaintiff.”

D 4. Defendant took up the matter in appeal before the IIInd Additional District Judge, Pondicherry, but the judgment/decreed of the trial Court dated 25.11.1994 was confirmed. The matter was carried in appeal to the High Court by filing Second Appeal No. 383 of 2010. Following substantial questions of law were framed by the High Court:

F “1. Whether the lower appellate Court has committed an error in law in pronouncing a Judgment without considering and answering the question regarding readiness and willingness on the part of the respondent/plaintiff to perform his part of the contract?

G 2. Whether the lower appellate Court has committed an error in not advertng to the issue regarding limitation when the same has been specifically raised in the trial Court and also in the grounds of appeal?

3. Whether the Courts below have erroneously held that the Limitation Act, 1963 is not applicable to the case?”

H 5. The question of limitation was the primary issue which

was raised before the High Court. It was submitted that provisions of the Indian Limitation Act govern the law of limitation, so far as the Union Territory of Pondicherry is concerned and not Article 2262 of the French Code Civil. Placing reliance on the judgment of this Court in *Syndicate Bank v. Prabha D. Naik and Another* (2001) 4 SCC 713, which dealt with the applicability of the provisions of the Indian Limitation Act, 1963, vis-à-vis, Article 535 of the Portuguese Civil Code in the Union Territory of Goa, Daman and Diu, the High Court took the view that it is Article 54 of the Indian Limitation Act, 1963 that would apply in the matter of filing of the suit in Pondicherry and not Article 2262 of the French Code Civil. Consequently, it was found that the suit filed for specific performance of the contract, was not saved by Article 54 of the Indian Limitation Act which provided that the suit be filed within three years of the date of agreement. The appeal was accordingly allowed and the judgment and decree of the trial Court was reversed by the High Court. Hence the present appeal.

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6. Shri R. Nedumaran, learned counsel appearing for the appellant, submitted that the High Court was not justified in reversing the concurrent finding arrived at by the trial Court without examining the other two substantial questions of law framed by the High Court. Learned counsel also submitted that the concurrent finding of facts ought not have been reversed by the High Court, placing reliance on the judgment of this Court in *Syndicate Bank* (supra). That was a case where this Court was examining the scope of the Limitation Act, vis-à-vis, the Portuguese Civil Code and not the provisions of the French Code Civil, which is one applicable to the present case.

7. Shri V. Prabhakar, learned counsel appearing for the respondent, on the other hand, contended that the ratio of the decision in *Syndicate Bank* (supra) would squarely apply to the facts of the present case and the provisions are *pari materia* and the High Court has rightly held that the law that is applicable is the Limitation Act, 1963 and, if that be so, the suit was

A hopelessly barred. Under such circumstances, learned counsel further submitted that there was no reason for considering the other two substantial questions of law, since the suit was rightly dismissed on the ground of limitation.

B **Discussion**

8. We may notice that *de jure* merger of the erstwhile French Territory of Pondicherry took place on 16.8.1962 following the Treaty of Cession concluded between France and India on 28.5.1956 establishing the cession of the French Establishments by France to India in full sovereignty. The Parliament enacted the Pondicherry (Administration) Act, 1962 (Act 49 of 1962) to provide for the administration of Pondicherry and for matters connected therewith. The said Act came into force on 15.12.1962. Section 4 of the Pondicherry (Administration) Act, 1962 deals with continuance of existing laws and their adaptation, which reads as under:

"4.Continuance of existing laws and their adaptation.-

(1) All laws in force immediately before the appointed day in the former French Establishments or any part thereof shall continue to be in force in Pondicherry until amended or repealed by a competent Legislature or other competent authority:

Provided that references in any such law to the President or Government of the French Republic shall be construed as references to the Central Government, references to the Governor of the French Establishments in India, to the Commissioner of the Republic for the French Establishments in India, to the Chief Commissioner for the French Establishments, to the Chief Commissioner of the State of Pondicherry or to the Chief Commissioner, Pondicherry shall be construed as references to the Administrator of Pondicherry and references to the State of Pondicherry shall be construed as references to Pondicherry.

(2) For the purpose of facilitating the application of any such law in relation to the administration of Pondicherry and for the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution, the Central Government may, within three years from the appointed day, by order, make such adaptations and modifications, whether by way of repeal or amendment, as may be necessary or expedient and thereupon every such law shall have effect subject to the adaptations and modifications so made."

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9. By the Fourteenth Amendment to the Constitution, which came into force on 20.12.1962, in the First Schedule to the Constitution under the heading "II. The Union Territories", after entry 8, the following entry was inserted, namely:

"9. Pondicherry : The territories which immediately before the sixteenth day of August, '96, were comprised in the French Establishments in India known as Pondicherry, Karaikal, Mahe and Yanam."

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Later, by the Pondicherry (Alteration of Name) Act, 2006, instead of "Pondicherry", the word "Puducherry" was inserted with effect from 1.10.2006.

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10. The Government of Union Territories Act, 1963 (Act 20 of 1963) was enacted to provide for Legislative Assemblies and Ministries for the Union Territories. It received the assent of the President on 10.5.1963. The Limitation Act, 1963 was passed by the Parliament on 5.10.1963. By that time, the Union Territory of Pondicherry had become part of India. Clause 2 of Section 1 of the Limitation Act, 1963 says that it extends to the whole of India except the State of Jammu and Kashmir. Since the Union Territory of Pondicherry having become part of India, the Limitation Act automatically extended to the then Pondicherry. The Limitation Act, 1963, consequently, came into force in the Union Territory of Pondicherry on 1.1.1964.

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A 11. The question that we have to consider is whether, by
 virtue of the Limitation Act, 1963, the French Law of Limitation
 which had been in force till 1.1.1964, was in any manner
 repealed or modified by the Limitation Act, 1963. We can draw
 considerable sustenance from the ratio laid down by this Court
 B in *Syndicate Bank* (supra), wherein, we have already indicated,
 this Court considered the interaction between the provisions of
 the Indian Limitation Act, 1963 vis-à-vis Article 535 of the
 Portuguese Civil Code. In that case, this Court held as follows:

C “20. In any event, as noticed above, the
 Portuguese Civil Code, in our view, could not be read to
 be providing a distinct and separate period of limitation
 for a cause of action arising under the Indian Contract Act
 or under the Negotiable Instruments Act since the Civil
 Code ought to be read as one instrument and cause of
 D action arising therefrom ought only to be governed
 thereunder and not otherwise. The entire Civil Code ought
 to be treated as a local law or special law including the
 provisions pertaining to the question of limitation for
 enforcement of the right arising under that particular Civil
 E Code and not dehors the same and in this respect the
 observations of the High Court in *Cadar Constructions* 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, stands approved. A contra
 F approach to the issue will not only yield to an absurdity but
 render the law of the land wholly inappropriate. There would
 also be repugnancy insofar as application of the Limitation
 Act in various States of the country is concerned: Whereas
 G in Goa, Daman and Diu, the period of limitation will be for
 a much larger period than the State of Maharashtra — the
 situation even conceptually cannot be sustained having
 due regard to the rule of law and the jurisprudential aspect
 of the Limitation Act.”

H 12. This Court also held that it cannot but hold that in the

wake of the factum of the Limitation Act coming into existence from 1.1.1964, Article 535 of the Portuguese Civil Code cannot but be termed to be impliedly repealed and it is on this score that the decision of this Court in *Justiniano Augusto De. Piedade Barreto v. Antonio Vicente Da Fonseca* (1979) 3 SCC 47, stood overruled. This Court also held that there is one general law of limitation for the entire country, being the Act of 1963, and the Portuguese Civil law cannot be termed to be a local law or a special law applicable to the State of Goa, Daman and Diu, prescribing a different period of limitation within the meaning of Section 29(2) of the Limitation Act and the question of saving of local law under the Limitation Act, 1963 does not and cannot arise.

13. We may, in this case, refer to the Pondicherry (laws) Regulation, 1963 (No. 7 of 1963) which deals with the regulation to extend certain laws to the Union Territory of Pondicherry. Reference may also be made to the Pondicherry (Extension of Laws) Act, 1968. By virtue of those legislations, the Indian Contract Act, 1872, the Transfer of Property Act, 1882 and various other enactments were brought into force in Pondicherry. It is, therefore, to be seen as to whether specific legislations containing the subjects under which the cause of action had arisen, would govern the field or the procedural law assuming it would have its due application in replacement of the governing statute. This question was also pointedly considered by this Court in *Syndicate Bank* (supra) and the Court took the view that the cause of action of the suit, namely, money lent and advanced in terms of the agreement stands squarely governed by the Contract Act read with the Negotiable Instruments Act by reason of the admitted execution of the promissory note and, as such, cannot be said to be governed by the Portuguese Civil Code. The Court held that the Portuguese Civil Code cannot be read to be providing distinct and separate period of limitation for cause of action arising under the Indian Contract Act and other related laws.

14. Pondicherry (Extension of Laws) Act, 1968, as

- A amended, has adopted several such legislations in the State of Pondicherry, but the Act which governs limitation is the general law of the land that is the Indian Limitation Act. Consequently, it is not Article 2262 of the French Code Civil that applies to the suit in question, but Section 54 of the Indian
- B Limitation Act, 1963. Under such circumstances, as rightly held by the High Court, the suit filed beyond the period of limitation prescribed under Article 54 of the Indian Limitation Act, 1963 is clearly barred. Since the suit itself is barred by the law of limitation, the other questions of law framed by the High Court
- C were rightly not answered. The appeal, therefore, lacks in merits and accordingly dismissed.

B.B.B.

Appeal dismissed.