S. Brahmanand And Ors vs K. R. Muthugopal (D) And Ors on 21 October, 2005

Equivalent citations: AIR 2006 SUPREME COURT 40, 2005 AIR SCW 5447, 2006 (1) ALL LJ 303, 2006 (1) AIR JHAR R 107, 2006 (1) AIR KANT HCR 36, (2005) 9 JT 149 (SC), 2006 SCFBRC 48, (2006) 1 CLR 77 (SC), 2005 (8) SLT 100, 2005 (9) JT 149, (2006) 1 JCR 50 (SC), (2006) 37 ALLINDCAS 28 (SC), 2005 (2) CTLJ 287, 2005 (8) SCALE 587, (2005) 6 ANDH LT 569, 2005 (12) SCC 764, 2005 (10) SRJ 527, ILR(KER) 2006 (1) SC 381, (2005) 4 CURCC 117, (2006) 1 CIVILCOURTC 109, (2005) 4 KER LT 809, (2006) 1 MAD LW 614, (2005) 4 RECCIVR 508, (2006) 1 ICC 479, (2005) 8 SCALE 587, (2006) 1 WLC(SC)CVL 234, (2006) 1 ALL WC 79, (2006) 1 LANDLR 554, (2005) 8 SCJ 307, (2005) 6 ANDHLD 74, (2005) 7 SUPREME 361, (2006) 62 ALL LR 350, (2006) 1 ALL RENTCAS 20, (2006) 1 CAL HN 136, (2006) 2 CIVLJ 183

Bench: B. N. Srikrishna, C. K. Thakker

CASE NO.:
Appeal (civil) 6202-6203 of 2004

PETITIONER:
S. Brahmanand and Ors.

RESPONDENT:
K. R. Muthugopal (D) and Ors.

DATE OF JUDGMENT: 21/10/2005

BENCH:
B. N. Srikrishna & C. K. Thakker

JUDGMENT:

J U D G M E N T SRIKRISHNA, J.

These two appeals by special leave impugn the common judgment of the High Court of Kerala rendered in First appeals AS Nos. 393/97 (E) and 281/97 (E) setting aside the decree made by the trial court in OS No. 647/95.

The appellants before us were the plaintiffs before the trial court in Original Suit No. 647/95 and the respondents were the respective defendants in the said suit. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the suit before the trial court i.e. as Plaintiffs and Defendants.

The Facts:

On 10.3.1989 an agreement was entered into between Defendants 1 and 2 (K.R. Muthugopal and V. Rajan, respectively) on the one hand, and Plaintiffs 1, 2 and 3 (S. Brahmanand, S. Vinod and G. Ratna Bai, respectively), on the other hand, for sale of the suit property which comprised two shops and one godown in Kozhikode. The preambulatory part of the agreement makes it clear that as on the date of the agreement a stranger, by name, Thazhekeepattu Moosakutty had filed two suits O.S. Nos. 98/87 and 99/87 before the II Additional Sub Judge, Kozhikode, alleging that there was an agreement to sell the suit property to him of which there was a breach, and seeking specific performance of the alleged agreement of the sale of the suit property. By the agreement of sale dated 10.3.1989 the parties specifically recorded that, the Defendants had not made any such agreement of sale of the suit property to the said Moosakutty. According to the Plaintiffs and the Defendants, the suit property was originally let out to Bhatt family (of which Defendants 3 & 4 are members) who refused to vacate it on the request made by the Defendants 1 and 2 (i.e. the landlords). A suit for eviction was filed against the said Bhatt family and a decree for eviction was made. Even before the decree could be executed, two suits had been filed in which Moosakutty alleged that the Plaintiffs had entered into an agreement to sell the suit property to him and sought specific performance. Agreement dated 10.3.1989 broadly referred to the developments and the fact that as on the date of the agreement an interim injunction had been issued by the civil court in O.S. Nos. 98/87 and 99/87 restraining the transfer of the suit property to third parties. The agreement shows that the parties were well aware of the pending litigation and yet the Plaintiffs (purchasers) under the agreement had offered to purchase the same for a total consideration of Rupees six lakhs only, which was accepted "subject to the restrictions contained in the interim orders mentioned above". Clauses (1), (3), (5) and (9) of the agreement are relevant and are reproduced as under:

"(1). That the first parties agreed to sell and the second parties agree to purchase the said properties for a total consideration of Rs.6,00,000/- (Rupees six lakhs only) immediately after the interim order in O.S. 99/88 and O.S. 98/88 imposing restriction on alienation is evicted by the Court."

"(3) That the second parties shall tender the valuable amount of Rs.5,78,000/- (Rupees five lakh seventy eight thousand only) to the first parties immediately on the termination of the proceedings in court as mentioned above, when the first parties shall cause the sale deed executed and registered in favour of the second parties with all the valid title deeds."

"(5) That the sale would be complete when the parties comply with the conditions herein."

> "(9) That the first parties do hereby covenant undertake and make the second party believe that the first parties have good title to the said properties and it is free from all encumbrances, charges attachments, claims and demands whatsoever and is not affected by any notice or scheme for acquisition or requisition proceedings apart from the temporary legal impediment imposed on transfer in O.S. 98/88 and O.S. 99/88 mentioned above and if there is found any defect in title the first parties shall be liable to pay back all money received from the second parties along with all damages incurred by the second parties of such defects of title of the first parties. It is also decided that the advance amount will be the first charge over the properties."

On 10.6.1992 the suits filed by Moosakutty, O.S. Nos. 98/87 and 99/87 were dismissed and interim orders granted therein stood vacated. Though, Moosakutty made an application for continuation of the injunction order till he was able to file an appeal, this prayer was rejected by the civil court, but the order of status quo continued for a period of two weeks from the date of dismissal of the suits i.e. upto 24.6.1992.

On 11.6.1992 the Plaintiffs were put in possession of the godown by one Dandayudhan, who was the constituted attorney of Defendants 1 and 2. On 18.6.1992, First Defendant addressed a letter to the First Plaintiff and what he said therein is very material. He said:

> "Dear Brahmanand, Trust this will find you all quite well. I am in receipt of your letter-dated 12.6.92. It is indeed gratifying to know that the two suits filed by Bhatt have been dismissed. Dandayudhan gave me information 10th itself and I immediately intimated him to hand over keys of the godown to you as a token of our intention to fulfill our commitments under the agreement. Personally, I am not for delaying matters any more. However, it appears that Bhatt has filed an injunction petition to get injunction till appeal is filed.
>
> My friends here are saying that we might as well await the result of the petition before going ahead with registration. Otherwise it may create further problems. Knowing Bhatt, I am sure you will agree that it is advisable to wait for things to be more clear, now that you are in possession of the godown.
>
> It is a pity that Bhatt can got hold of people like Moosakutty to harass us. I look forward to coming to Calicut shortly along with Rajan, to conclude the registration as soon as I get information from Dandayudhan in the matter.
>
> In the meanwhile please be in touch with Dandayudhan With best wishes, Yours faithfully, Sd/-
>
> (K.R. Muthugopal)"

The Proceedings in the Trial Court and the High Court:

On 20.6.1992, one R. Latha, sister of Defendant 4 filed a suit O.S. No. 382/92 in which she claimed partition in respect of the suit property, with a prayer to restrain the Defendants "from alienating by way of sale, mortgage or lease and/or transferring possession of the plaint schedule property in any manner to any other persons and from causing any loss or damage in any manner to the buildings standing in the plaint schedule property". An order was passed therein on 2.7.1992 directing "to maintain status quo until further orders".

On 24.8.1995, Defendants 1 and 2 abruptly cancelled the power of attorney in favour of Dandayudhan. During the night of 31.8.1995 possession of the suit godown was taken over by the Defendants by breaking open the locks. According to the Plaintiffs, on 1.9.1995 when the First Plaintiff went to the shop, as usual, he found the defendants and other strangers present therein, who tried to attack him and caused apprehension about his life. An altercation followed during which the First Plaintiff was told that Defendants 1 and 2 had sold the suit property to Defendants 3 and 4 and that the Plaintiffs may seek their remedy anywhere. This gave an apprehension to the Plaintiffs that the Defendants were intent upon refusing to execute and register the document and complete the conveyance of the suit property to them. With this apprehension, the Plaintiffs made enquiries in the office of the Sub Registrar and learnt that the suit property had already been sold by Defendants 1 and 2 to Defendants 3 and 4 during the period from 30.8.1995 to 31.8.1995. On 4.9.1995 the Plaintiffs issued a notice to Defendants 1 and 2 calling upon them to execute the sale deed and complete the conveyance of the suit property to them. The Plaintiffs brought a suit for specific performance on 15.9.1995, which is numbered as O.S. No. 647/95. The Bhatts, who were alleged to be the purchasers of the property, were also impleaded as Defendants 3 and 4 to the suit. On 18.10.1995, Moosakutty's appeal was dismissed as settled out of court and all interim orders made therein came to be vacated. On 2.1.1996, Lata's suit O.S. No. 382/92 was dismissed for non-payment of court fee.

The Subordinate Judge, Kozhikode tried Original Suit No. 647/95 and rendered the judgment on 31.3.1997. The following issues were framed by the trial court:

"1. Whether there was a sale agreement between the plaintiffs and defendants 1 and 2 on 10.3.89 in respect of the plaint schedule property as alleged?

2. Whether defendants 3 and 4 are bona fide purchasers of the plaint schedule property without notice of the sale agreement?

3. Whether the plaintiffs are entitled to specific performance of the sale agreement as alleged?

4. Reliefs and costs?

Additional Issue :

5. Whether the suit is barred by limitation?"

With regard to Issue No. 1 the trial court discussed the evidence in detail and came to the conclusion that the defence set up by the Defendants was wholly unbelievable and that from the evidence adduced in the case, it could safely be found that the agreement dated 10.3.1989 in respect of the suit property had been executed by Defendants 1 and 2, as contended by the Plaintiffs, upon payment of consideration of Rs. 22,000/- as advance, as recited in the document. The trial court also held that there was clinching evidence to prove that Defendants 1 and 2 had put the Plaintiffs in possession of the godown, after the 10.3.1989 agreement in June, 1992.

With regard to the second issue, the trial court totally disbelieved the defence set up by the defendants and held, "thus the evidence only leads us one way, that is to the fact that defendants 3 and 4 had due knowledge of the sale agreement, prior to their entering into a deal for purchase of the plaint schedule properties. It is also clear from the evidence that the sale deeds were not taken by them in good faith."

The trial court held in favour of the Plaintiffs on all issues. According to the trial court, the suit was for specific performance of an agreement in respect of which no date had been fixed and, therefore, the cause of action would arise only when the Plaintiffs had notice that the performance had been refused. The trial court was of the opinion that the second part of Article 54 of the Limitation Act, 1963 was applicable and since the Plaintiffs notice of the refusal of performance by the Defendants 1 and 2 arose only on 31.8.95/ 1.9.1995, the suit filed on 15.9.1995 was within limitation. On this finding, the learned judge of the trial court decreed the suit as prayed for, since the learned judge was satisfied that the Plaintiffs were willing to perform their part of the agreement and the defendants were not.

On appeal to the High Court, the High Court agreed with the trial court judgment on all the issues, but differed only on the finding with regard to limitation. The High Court took the view that the agreement dated 10.3.1989 was one in which a date was fixed for performance and, therefore, the suit was hopelessly barred by limitation. In this view of the matter, the High Court set aside the decree and dismissed the suit.

Thus, on all the issues that were raised in the suit, the findings in favour of the Plaintiffs were confirmed by the High Court in appeal. The only question which has been argued before us, and which we need to consider is the issue of limitation.

Submissions:

Mr. R.F. Nariman, learned counsel for the Plaintiffs vehemently contended that the High Court was wrong in reversing the decree on the ground of limitation. His submissions were as follows.

On reading the agreement of 10.3.1989 as a whole, it is clear that no date for specific performance was fixed until the cloud on the vendors' title was removed. In other words, the date of performance was only after the dismissal of the two suits. This meant that the date fixed for performance would arise only after the final dismissal of Moosakutty's suits and the appeals therein. In the alternative, he contended that letter dated 18.6.1992 can be read to show the true common intention of the parties, which was that the date of performance was extended until the difficulty created by Moosakutty's appeal and the injunction therein was resolved and that "it is advisable to wait for things to be more clear". He, therefore, contends that this letter would suggest that whatever the parties might have originally intended, after the letter of 18.6.1992 the time had been extended. That even if clause (1) of the agreement alone must be looked at, vacating an injunction is not a certain event, and, therefore, the first part of Article 54 of the Limitation Act, 1963 would not apply.

In his submissions, the catena of judgments ending with the judgments of this Court holding that the first part of Article 54 of the Limitation Act, 1963 would apply to an agreement wherein no date was fixed, but the performance was with reference to a future contingency, has been wrongly decided and we should refer the matter to a larger Bench for an authoritative exposition of the law. The expressions "date" and "time" have been used differently, as evident from a contrast of the language used in Articles 53 and 54 of the Limitation Act, 1963. Finally, that even if the two expressions are interchangeable, the construction of the expression "date" is ambiguous and in such circumstances the interpretation of the statute must be in favour of preserving the remedy and against the dismissal of a suit.

Mr. Rao, learned counsel, who appeared for Respondents 3 and 4 (the Bhatt family) contends that the expressions "date" and "time" used in the Schedule to the Limitation Act are interchangeable; the maxim id certum est quod certum reddi potest ('That is certain which can be reduced to a certainty.') clearly applies to a situation like this; the expression "date" is interchangeable with "day" or "time". He relied on a series of judgments, including two judgments of this Court, in support of his contention. He also refuted the argument that there was any ambiguity in interpreting the language used in Article 54 of the Limitation Act, 1963; that the High Court had on a careful reading of the agreement ascertained the intention of the parties, and there was no reason for this Court to take any different view of the matter.

It would be useful to set out the provisions of Article 54 before critically appraising the arguments presented to us on both sides.

"Article Description of suit Period of limitation Time from which period begins to run For specific performance of a contract.

Three years The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

Though, at first blush, it may appear that the use of the expression "date" used in this Article of the Limitation Act, 1963 is suggestive of a specific date in the calendar, we cannot forget the judicial interpretation of this expression over a long period of time. Different High Courts took different views of the matter, which has been a subject matter of controversy. Some interpreted the expression strictly and literally, while others have taken an extended view.

In Kashi Prasad v. Chhabi Lal and Ors. the High Court dealing with Article 113 of the Limitation Act, 1908, which was in pari materia with Article 54 of the Schedule to the Limitation Act, 1963, took the view that the force of the word "fixed" implies that the date should be fixed definitely and should not be left to be gathered from surrounding circumstances of the case. It must be a date clearly mentioned in the contract whether the said contract be oral or in writing.

In Alopi Parshad and Anr. v. Court of Wards and Ors. , also the court was concerned with Article 113 of the Limitation Act, 1908. A suit for specific performance was brought on an agreement of sale where the time for performance of the contract was "after passing of a decree". Though no date for performance was fixed for the agreement, the trial Court had opined that time must be held to have begun to run from the date on which the decree was passed in view of the maxim certum est quod certum reddi potest ("That is sufficiently certain which can be made certain"). The Lahore High Court was of the view that statutes of limitation must be strictly construed and that the respondents before it had failed to bring a case specifically within the purview of the first part of Article 113 and that the case did not fall within the first part but fell within the second part of Article 113. The judgment of the Allahabad High Court in Kashi Prasad (supra) was approvingly referred to and followed. This judgment was taken in appeal before the Privy Council and approved by the Privy Council in Lala Ram Sarup v. Court of Wards .

In Kruttiventi Mallikharjuna Rao v. Vemuri Pardhasaradhirao , a contract was entered into on 18.7.1934, and the vendor promised to execute the sale deed when both his brothers who were studying elsewhere returned to the village for the next vacation, i.e., in May-June 1935. The High Court held that this was "too indefinite to be regarded as fixing a "date" for the performance of the contract and the period of limitation must be computed from the date of refusal to perform".

In R. Muniswami Goundar (died) and Anr. v. B.M. Shamanna Gouda and Ors. interpreting the expression "date fixed" in Article 113 of the Limitation Act, 1908 the doctrine of id certum est quodi certum reddi potest was pressed into service along with its exposition in Broom's Legal Maxims and it was held that it was wide enough to include a date which though at the time when the contract was made was not known, but could be ascertained by an event which subsequently was certain of happening.

In Hutchegowda v. H.M. Basaviah , upholding the view in Muniswami Goundar (supra), it was held that an agreement to execute the sale deed "after the 'Saguvali chit' is granted fell within the first part of Article 113 of the Limitation Act, 1908.

In Purshottam Sava v. Kunverji Devji and Ors. the judgment of the Madras High Court in R. Muniswami Goundar (supra) was followed and it was held that the expression "date fixed" can be interpreted as meaning either the date fixed expressly or a date that can be fixed with reference to a future event which is certain to happen.

In Lakshminarayana Reddiar v. Singaravelu Naicker and Anr. it was held that the phrase occurring in the third column of Article 113 of the Limitation Act, 1908 "the date fixed for the performance" must be not only a date which can be identified without any doubt as a particular point of time, but it should also be a date which the parties intended should be the date when the contract could be performed.

In Shrikrishna Keshav Kulkarni and Ors. v. Balaji Ganesh Kulkarni and Ors. , the agreement for sale of a property stated that the sale was to be executed after the attachment which the creditors had brought was raised. Noticing the fact that there was absence of any indication as to when the attachment would be raised, the court treated it as a case in which no date was fixed for performance of the contract and, therefore, falling within the second part of Article 54 of the Limitation Act, 1963.

P. Sivan Muthiah and Ors. v. John Sathiavasagam arose from a suit for specific performance with an alternative prayer for recovery of advance paid under the agreement of sale. Referring to Article 54 of the Limitation Act, 1963 the court took the view that the expression "date fixed"

> could mean either the date expressly fixed or the date that can be fixed with reference to a future event, which is certain to happen. If the date is to be ascertained depending upon an event which is not certain to happen, the first part of Article 54 would not be applicable, and in such an eventuality, it is only the latter part of Article 54 that could be invoked by treating it as a case in which no date had been fixed for performance and the limitation would be three years from the date when the plaintiff had notice that performance is refused. This was a case where performance was due after the tenants in the property had been vacated. The court took the view that since eviction of the tenants was an uncertain event, the time must be deemed to have run only from the date when the plaintiffs had notice that the performance had been refused by the defendants.
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> In Ramzan v. Hussaini a suit was filed for specific performance of a contract of sale in respect of a house. The property was mortgaged and according to the plaintiff, the defendant had agreed to execute a deed of sale on the redemption of the mortgage by the plaintiff herself, which she did in 1970. In spite of her repeated demands, the defendant failed to perform his part, which resulted in a suit being filed. The question that arose before this Court was whether the agreement was one in which the date was "fixed" for the performance of the agreement or was one in which no such date was fixed. This Court answered the question in the affirmative by holding that, although a particular calendar date was not mentioned in the document and although the date was not ascertainable originally, as soon as the plaintiff redeemed the mortgage, it became an ascertained date. This Court also agreed with the view

expressed in the Madras High Court in R. Muniswami Goundar (supra) and held that the doctrine id certum est quod certum reddi potest is clearly applicable. It also distinguished Kruttiventi Mallikharjuna Rao (supra) and Kashi Prasad (supra) as cases that arose out of their peculiar facts.

In Tarlok Singh v. Vijay Kumar Sabharwal the parties by agreement determined the date for performance of the contract, which was extended by a subsequent agreement stipulating that the appellants shall be required to execute a sale deed within 15 days from the date of the order vacating the injunction granted in a suit. The suit was initially dismissed and, thereafter, a review application was also dismissed as withdrawn on 22.3.1986. On 23.12.1987 a suit was filed for perpetual injunction. In that suit, an application came to be made under Order 6 Rule 17 CPC for converting it into a suit for specific performance of an agreement dated 18.8.1984. This amendment was allowed on 25.8.1989. It was held that since the amendment was ordered on 25.8.1989, the crucial date for examining whether the suit was barred by limitation was 25.8.1989. Since the injunction was vacated when the original suit was initially dismissed, and the review application came to be dismissed on 22.3.1986, it was held that it was a situation covered by the first part of Article 54 and, in any event, on 25.8.1989 the suit was barred by limitation.

Supplementary Contentions:

Mr. Nariman, learned counsel strongly urged that, the view taken by the Allahabad High Court in 1933 and followed by the Lahore High Court in 1938 had been expressly affirmed by the Privy Council in its judgment in Lala Ram Sarup (supra). Unfortunately, in none of the judgments of the High Courts decided subsequently was the fact noticed that the decision of the Lahore High Court had been expressly affirmed by the Privy Council, nor was this noticed in the two judgments of this Court in Ramzan (supra) and Tarlok Singh (supra). Mr. Nariman contended that if the Privy Council judgment had been noticed, then perhaps none of the judgments of the High Court would have been able to take a contrary view on the interpretation of Article 54 of the Limitation Act, 1963, since the Privy Council had already interpreted Article 113 of the Limitation Act, 1908, which was in pari materia. He, therefore, urged that we should take a different view of the matter, and if we feel ourselves bound by the judgments of this Court in Ramzan (supra) and Tarlok Singh (supra), the matter should be referred to a larger Bench.

The argument, thus, presented, no doubt, is attractive, but upon deeper consideration, we decline to follow the course suggested by the learned counsel for two reasons. Judgments which have held the field for a fairly long time ought not to be disturbed unless there is a prepondering necessity dictated by the demands of justice to overturn them. It is true that no judgment after 1940 seems to have noticed that the judgment in Alopi Parshad (supra) delivered by the Lahore High Court was expressly affirmed by the Privy Council in Lala Ram Sarup (supra). It is also possible

> that if this fact had been brought to the notice of the High Courts, the course of the decisions might have taken a different turn. Perhaps, the view of this Court might also have been different, if its attention was drawn to the judgment of the Privy Council. Nonetheless, we feel that the judgments in Ramzan (supra) and Tarlok Singh (supra) being judgments of a coordinate Bench, we are bound by the observations therein. We do not see the necessity of referring the matter to a larger Bench at this juncture since we are of the view that for the disposition of this case it is not necessary to go into the larger issue urged by Mr. Nariman. We are satisfied that the Plaintiffs are entitled to succeed on an altogether different ground arising from the facts of the case.

A careful perusal of the letter dated 18.6.1992 leaves one in no doubt as to what exactly the Defendants had in mind when this letter was written. Doubtless, in the original agreement dated 10.3.1989, the date for performance had been fixed differently under clauses (1) and (3). Clause (1) stated that the sale would take place "immediately after the interim order in O.S. 99/88 and 98/88 imposing restriction on alienation is vacated by the court". These two suits were the suits of Moosakutty. Clause (3), however, said that the time for performance would be "immediately on the termination of the proceedings in court as mentioned above, when the first parties shall cause the sale deed executed". Perhaps, in the light of the authorities cited at the Bar ending with the two judgments of this court in Ramzan and Tarlok Singh (supra), it is possible to say that the expression "date fixed" need not be a calendar date, but time period fixed with reference to a certain event, the happening of which is definite. The High Court seems to have judged by this test and reversed the trial court's judgment and dismissed the suit.

In our judgment, the High Court went wrong in not giving full effect to the import of letter dated 18.6.1992. What does this letter convey? By the time this letter was written, the two suits filed by Moosakutty had been dismissed by the trial court, but he had moved an application for interim relief, after obtaining a status quo order from the trial court. In the light of this situation, the Defendants 1 and 2 represented to the Plaintiff 1 and assured him that they (Defendants 1 and 2) still have the intention of standing by their promise and as a token of their intention to fulfill their commitments under the agreement, Dandayudhan had been informed immediately to hand over the keys of the godown to the Plaintiffs. Finally, the letter says:

> " Personally, I am not for delaying matter any more. However it appears that Bhatt has filed an injunction petition to get injunction till appeal is filed.
>
> My friends here are saying that we might as well await the result of the petition before going ahead with registration. Otherwise it may create further problems. Knowing Bhatt, I am sure you will agree that it is advisable to wait for things to be more clear, now that you are in possession of the godown."

Further, the letter says:

> "I look forward to coming to Calicut shortly along with Rajan, to conclude the registration as soon as I get information from Dandayudhan in the matter."

Both the parties knew that the suits, which were dismissed on 10.6.1992 resulting in the interim injunction granted by the trial court being vacated, were technically filed by Moosakutty, but that Moosakutty had been put up by the Bhatts (Defendants 3 and 4), who were unsuccessful in the eviction petition against them. In these circumstances, the Defendant's representation to the Plaintiffs would amount to a request for forbearance from insisting on performance or pursuing legal action pursuant thereto until the things "become more clear".

Thus, this was a situation where the original agreement of 10.3.1989 had a "fixed date" for performance, but by the subsequent letter of 18.6.1992 the Defendants made a request for postponing the performance to a future date without fixing any further date for performance. This was accepted by the Plaintiffs by their act of forbearance and not insisting on performance forthwith. There is nothing strange in time for performance being extended, even though originally the agreement had a fixed date. Section 63 of the Indian Contract Act, 1872 provides that every promisee may extend time for the performance of the contract. Such an agreement to extend time need not necessarily be reduced to writing, but may be proved by oral evidence or in some cases, even by evidence of conduct including forbearance on the part of the other party. Thus, in this case there was a variation in the date of performance by express representation by the Defendants, agreed to by the act of forbearance on the part of the Plaintiffs. What was originally covered by the first part of Article 54, now fell within the purview of the second part of the Article. Pazhaniappa Chettiyar v. South Indian Planting and Industrial Co. Ltd. and Anr. was a similar instance where the contract when initially made had a date fixed for the performance of the contract but the Court was of the view that "in the events that happened in this case, the agreement in question though started with fixation of a period for the completion of the transaction became one without such period on account of the peculiar facts and circumstances already explained and the contract, therefore, became one in which no time fixed for its performance." and held that was originally covered by the first part of Article 113 of the Limitation Act, 1908 would fall under the second part of the said Article because of the supervening circumstances of the case.

In the present case, it was only on 31.8.1995/1.9.1995 that the plaintiffs realised that there was a refusal to perform, when they were forcibly evicted from the godown. It is only then that the Plaintiffs had notice of refusal of performance. Counted from this date, the suit was filed within 15 days and, therefore, was perfectly within the period of limitation. We, therefore, disagree with the High Court on this issue of limitation and hold that the suit filed by the Plaintiffs was within the period of limitation and was not liable to be dismissed under Section 3 of the Limitation Act. All other issues concurrently have been held in favour of the Plaintiffs. Hence, there is no impediment to the Plaintiffs succeeding in the suit.

Conclusion:

> In the result, we allow the appeals and set aside the impugned judgment of the High Court and affirm the decree made by the trial court in favour of the

Appellants-Plaintiffs. Considering the utterly dishonest defence raised by the Defendants and the fact that Defendants 3 and 4 colluded with Defendants 1 and 2, we think that the original Defendants 1 to 4 (present Respondents in both the appeals), need to be imposed with costs. Defendants 1 and 2 shall together pay a sum of Rs. 50,000.00 and Defendants 3 and 4 shall together pay a sum of Rs. 50,000.00 to the appellants.