

Amar Chand Inani vs Union Of India on 13 October, 1972

Equivalent citations: 1973 AIR 313, 1973 SCR (2) 684, AIR 1973 SUPREME COURT 313, 1973 (1) SCC 115, 1972 2 SCWR 805, 1972 SCD 1112, 1973 2 SCR 684

Author: Kutttyil Kurien Mathew

Bench: Kutttyil Kurien Mathew, A.N. Grover

PETITIONER:

AMAR CHAND INANI

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 13/10/1972

BENCH:

MATHEW, KUTTYIL KURIEN

BENCH:

MATHEW, KUTTYIL KURIEN

GROVER, A.N.

MUKHERJEA, B.K.

CITATION:

1973 AIR 313

1973 SCR (2) 684

1973 SCC (1) 370

ACT:

"Indian Limitation Act, 1908--S. 4, 14, 15(a) read with S. 80 of the Civil Procedure Code--Whether the Notice period to the Railways is to be excluded for the purpose of limitation.

HEADNOTE:

Art. 22, Indian Limitation Act, 1908, provides a period of one year for a suit for compensation for injury to the person from the date when the injury was sustained. In the present case, the injury was sustained by the Appellant on January 1, 1958, while travelling by train from Ambala Cantt.. to Delhi and the suit should have been filed on January 1, 1959; but as the Appellant had to serve a notice under S.80 of the C.P.C. before filing the suit, the notice was served on the General Manager on December 29, 1958. The

suit was originally filed in Karnal Court on March 2, 1959 as March 1, 1959 was a holiday. Later, the suit was transferred to the Sub-Judge's Court at Panipat which by its order returned the plaint for presentation to the proper Court, as the Mohri Railway Station where the injury was sustained, was outside the jurisdiction of that Court. The plaint was, ultimately, filed before SubJudge's Court at Ambala.

The trial Court dismissed the suit on the ground of limitation and the High Court also confirmed the decision. Before this Court, Counsel for the appellant raised the following points :-(1) The suit could not have been instituted without giving 2 months' notice U/S 80 of C.P.C. and if this period of 2 months is excluded for the purpose of limitation, 'the suit was within time. (2) that if the Karnal Court was not the proper Court in which the suit should have been filed, the appellant was entitled to the benefit of S.4 of the Limitation Act; (3) that the Karnal Court had jurisdiction to entertain the plaint and therefore, that was the proper Court for the purpose of S. 4 of the Act; (4) that under S. 14 of the Act, the Appellant was to get the benefit of excluding the period during which he was prosecuting the suit at Karnal and Panipat.

Dismissing the appeal,

HELD : (i) S.80 of the C.P.C. provides, among other things, that no suit shall be instituted against the Railways until the expiration of two months after notice in writing has been delivered. S.80 only prescribes, a condition precedent for the institution of the suit and has nothing to do with the period of limitation for a suit. The appellant cannot wait till the 29th of December 1958 as the period of limitation was to expire on January 1, 1959. [687B]

(ii)Section 4 of the Limitation Act provides that where the period of limitation prescribed for any suit expires on a day when the Court is closed, the suit may be instituted on the reopening day. In the present case, if the Karnal Court was not the proper Court, the plaintiff would not be entitled to the benefit of S.4. He can get the benefit of S.4 only if the suit were filed in the proper Court. [687E] Maqbul Ahmed and Others v. Pratap Narain Singh and Others, 62 I.A. 80, referred to.

685

(iii)The appellant cannot get the benefit of s. 14 of the Limitation Act because even if the appellant was entitled to get an exclusion of the time during which he was prosecuting the suit in the Karnal and Panipat Court, the suit would not be in time as the filing of the suit in the Karnal Court was beyond the period of limitation. [688B-C]

(iv)Further, the appellant's contention that the filing of the suit at the proper Court at Ambala was a continuation of the suit filed at Karnal and Panipat, has no force, because when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be

deemed to be instituted in the proper Court only when the plaint was presented in that Court. The suit instituted at the proper Court at Ambala was not a continuation of the suit filed in the Karnal Court. [688E]

Hirachand Succaram Gandhi & Co. v. G.I.P. Ry. Co. A.I.R, 1928 Bombay 421; Bimla Prasad Mukerji v., Lakshmi Devi & Ors. A.I.R. 1926 Calcutta 355 and Ram Kishun v. Ashirbad, I.L.R. 29 Patna, 699, referred to.

(v) Whether Karnal Court was the proper Court and had jurisdiction entertain the plaint or not in the facts and circumstances of the case the appellant had never raised these contentions before the trial Court or in the High Court. Therefore, he cannot be allowed to raise these points for the first time before this Court. [690A]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1270 of 1969.

Appeal by special leave from the judgment and decree dated November 21, 1968 of the Punjab & Haryana High Court at Chandigarh in Regular First Appeal No. 372 of 1961. Bishen Narain and B. P. Maheshwari, for the appellant. Gobind Das and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by MATHEW, J. This appeal, by special leave, is from the judgment of the High Court of Punjab and Haryana dismissing the appeal filed by the plaintiff against the decree dismissing his suit for recovery of damages to the tune of Rs. 1 lakh. The plaintiff is an advocate practicing at the Ajmer bar. On the night between December 31, 1957 and January 1, 1958, the plaintiff was travelling by 2 Dn. Passenger train from Ambala Cantt. to Delhi. While the train was at Mohri Railway Station, the Janatha Express train coming from Delhi collided with it and as a result the plaintiff sustained serious injuries on his head and in the spine. The plaintiff filed the suit claiming damages under several heads. The trial Court found that the claim for damages was well founded to the extent of Rs. 33,503.00, but dismissed the suit on the ground that it was barred by limitation. The High Court, on appeal by the plaintiff, confirmed the finding of the trial Court that the suit was barred by limitation and dismissed the appeal.

The main question, in this appeal, is whether the suit was filed within the period of limitation.

There is no dispute that the Article applicable to the suit is Art. 22 of the Indian Limitation Act, 1908, hereinafter called the 'Act', which provided a period of one year for a suit for compensation for injury to the person from the date when the injury was committed. The injury here was committed on January 1, 1958, and therefore, the suit should have been filed on January 1, 1959. But the plaintiff had to issue a notice under s. 80 of the Civil Procedure Code before filing the suit. The plaintiff issued the notice and it was served on the General Manager of the Railway in question on December 29, 1958. The suit was filed in the Court of the Senior Subordinate Judge of Karnal, hereinafter called the 'Karnal Court', on March 2, 1959, as March 1, 1959, was a day on which the Court was not open. For ministerial purposes, the suit was subsequently transferred to the Court of

the Subordinate Judge, Panipat, hereinafter referred to as the 'Panipat Court', which by its order dated October 28, 1959, returned the plaint for presentation to the proper court. That was on the basis of its finding that Mohri Railway Station, where the injury was committed, was not situate within territory jurisdiction of the Court. The plaint was thereafter presented in the Court of the Senior Subordinate Judge, Ambala, hereinafter referred to as the 'trial Court', on October 29, 1959, together with an application under s. 14 of the Act.

Before the trial Court as well as the High Court, the appellant contended that, by virtue of s. 4 of the Act, the suit filed on March 2, 1959, was within time, as March 1, 1959, was a day on which the Court was not open and that in any event, the suit was not barred by limitation as the appellant could not have filed the suit before the expiration of two months after the delivery of the notice under s. 80 of the Civil Procedure Code. Both the Courts overruled these contentions.

Counsel for the appellant submitted that the suit could not have been instituted without giving 2 months' notice as required by s. 80 of the Civil Procedure Code and, if the period of 2 months is calculated from the date of the service of the notice, the suit need have been filed only on March 3, 1959, and therefore, the suit was filed within time. Under s. 15(2) of the Act, the plaintiff was entitled to exclude the period of notice. That means, the plaintiff could have filed the suit within one year and 2 months from the date on which the injury was committed. But according to counsel, as the plaintiff could not have filed the suit before the expiry of the period of notice, and that period expired only on March 2, 1959, as there were only 28 days in February, 1959, and so the suit was within time. We find no force in this argument.

Section 80 of the Civil Procedure Code provides, among other things, that no suit shall be instituted against the Central Government, where it relates to a Railway, until the expiration of two months next after notice in writing has been delivered to or left at the office of the General Manager of the Railway. It was not open to the plaintiff appellant to wait till the 29th of December, 1958, for delivery of the notice and say that till the expiration of the two months from that date, no suit could be filed and that the suit is, therefore, within the period of limitation though filed after 1 year and 2 months from the date when the injury was committed. Section 80 only prescribes a condition precedent for the institution of the suit and has nothing to do with the period of limitation for a suit except that under s. 15(2) of the Act, the period of notice can be deducted in calculating the period of limitation. It was contended for the appellant that even if the Karnal Court was not the proper Court in which the suit should have been filed, the plaintiff was entitled to the benefit of s. 4 of the Act. Section 4 of the Act provides that where the period of limitation prescribed for any suit expires on a day when the Court is closed, the suit may be instituted on the day the Court re-opens. But, if the Karnal Court was not the proper Court in which the suit should have been filed, the plaintiff would not be entitled to the benefit of s. 4. The decision of the Privy Council in *Maqbul Ahmad and Others v. Pratap Narain Singh and Others*(1) is an authority for this proposition. In that case the Privy Council said "... the language of s. 4 is such that it seems to their Lordships to be impossible to apply it to a case like the present. What it provides is that, where the period of limitation prescribed expires on a day when the Court is closed, the application may be made on the day when the Court reopens. In 'their Lordships' view that means the proper Court in which the application ought to have been made....."

If the plaintiff had filed the suit in the trial Court on March 2, 1959, then, certainly the suit would have been within time under s. 4, as that was the proper Court in which the suit should have been filed. As the Karnal Court had no jurisdiction to entertain the plaint, it was not the proper Court. The fact that the plaintiff would be entitled to take advantage of the provisions of s. 14 of (1) 62 I. A. 80.

L499Sup.C.I./73 the Act would not, in any way, affect the question whether the suit was filed within the time as provided in s. 4 in the Karnal Court. Section 14 of the Act only provided for the exclusion of the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it Even if the plaintiff was entitled to get an exclusion of the time during which he was prosecuting the suit in the Karnal and Panipat, the suit would not be within time as the filing of the suit in the Kamal Court was beyond the period of limitation. It was, however, argued by counsel for the appellant that the suit instituted in the Trial Court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Kamal Court must be deemed to have been filed in the trial Court; We think there is- no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was Presented in that Court, the suit can be deemed to be instituted 'in the proper Court only when the plaint was presented in that Court. In other words, the suit instituted in the trial Court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court (see the decisions in *Hirachand Succaram Gandhi and others v. G.I.P. Ry. Co.*(1), *Bimla Prasad Mukherji v. Lal Moni Devi and Others*(2) and *Ram Kishun v. Ashirbad*(3). Therefore, the presentation of the plaint in the Karnal Court on March 2, 1959, cannot be deemed to be a presentation of it on that day in the trial Court. Counsel for the appellant contended that the Karnal Court had jurisdiction to entertain the plaint presented to it on March 2, 1959, and, therefore, that was the proper Court for the purpose of s. 4 of the Act and that the suit was filed within time. He said that although the order passed by the Panipat Court on October 28, 1959, holding that it had no jurisdiction to entertain the plaint and returning it for presentation to the proper Court, was not appealed from, the appellant is not precluded from challenging the finding in the order that Mohri Railway Station is not within the jurisdiction of the Karnal Court. On the other hand, counsel for the respondent contended that since an order passed under Order 7, rule 10 of the Civil Procedure Code, returning a plaint for presentation in the proper Court, was appealable under (1) A.I.R. 1928 Bom. 421. (2) A. I. R. 1926 Calcutta 355. (3) I. L. R. 29 Patna 699.

Order 43, rule 1 (a), the appellant is precluded from challenging the correctness of the finding of the Court that Mohri Railway Station was not within its jurisdiction as no appeal was preferred from that Order by the appellant. Counsel said that as that order has become final, it would constitute res judicata and the appellant cannot challenge its correctness in an appeal from the decree. Counsel further said that s. 105 of the Civil Procedure Code which enables a party to challenge the correctness of an inter- locutory order whether appealable or non-appealable when an appeal is preferred from the decree in the case, has no application for the reason that the order passed by the Panipat Court cannot be deemed to be an order passed in the suit in which the decree was passed by

the trial Court, but a final order which terminated the proceedings in the Panipat Court. To put it in other words, the argument was, that since the suit in the trial Court was not a continuation of the suit which was filed in the Karnal Court, the order returning the plaint cannot be deemed to be an order passed in the suit as instituted in the trial Court and, therefore, there is no question of challenging that order under s. 105 of the Civil Procedure Code in an appeal against the decree passed by the trial Court. In support of the contention, counsel referred to the rulings which have already been referred to in this judgment holding that a suit instituted by the presentation of a plaint in pursuance to an order passed under Order 7, rule 10 of the Civil Procedure Code is not a continuation of the suit as instituted in the Court which had no jurisdiction to entertain it. The rulings of this Court in *Satyadhan Ghosal and Others v. S. M. Deorajin Debi and Another*(1) and *Arjun Singh v. Mohindra Kumar and Others*(2) were also referred to by Counsel to show that the order passed by the Panipat Court returning the plaint for presentation to the proper Court was a final order and operated as *res judicata* precluding the appellant from challenging its correctness in this appeal. We do not think it necessary to decide the question whether the order passed by the Panipat Court returning the plaint for presentation in the proper Court would operate as *res judicata* and preclude the appellant from contending in this appeal that the Karnal Court had jurisdiction to entertain the suit, for the reason that the appellant never raised the contention before the trial Court that Karnal Court was the proper Court for instituting the suit on the ground that Mohri Railway Station was within its jurisdiction. On the other hand, by invoking s. 14 of the Act, he impliedly asserted that the Karnal Court had no jurisdiction to entertain the plaint because that section proceeds on the basis that the Court in which the proceeding was pending was unable to entertain the proceeding from defect of jurisdiction, or cause of a like nature. (1) [1960] 3 S. C. R. 590.

(2) [1964] 5 S. C. R. 946.

To put it differently, the appellant had no case either in the trial Court, or in the High Court in the appeal from the decree, that Karnal Court was the proper Court for filing the suit. No doubt, he invoked the provision of s. 4 of the Act and sought to bring the case within its purview both in the trial Court and in the High Court, but that was on the basis that even if the Karnal Court had no jurisdiction to entertain the plaint, he was entitled to the benefit of s.

4. In these circumstances, we do not think that the appellant should be permitted to urge before this Court that the Karnal Court had jurisdiction to entertain the suit for the reason that Mohri Railway Station was within its jurisdiction and show that the suit as filed on March 2, 1959, was filed in the proper Court for the purpose of s. 4 of the Act.

As the suit was barred by limitation, we do not think it necessary to consider the question whether the appellant is entitled to get any further amount by way of damages. We dismiss the appeal but, in the circumstances, the parties will bear their costs.

S.C.

Appeal dismissed.