

CIVIL REVISION.

Before Mitter J.

ANISUDDIN AHMAD

r.

1931
Jan. 12.

KALIPADA RAY CHAUDHURI.*

Limitation—“Period prescribed for a suit,” meaning of—*Acknowledgment*
—*Period, if extended when court is closed*—*Indian Limitation Act (IX of 1908), s. 19.*

On a true construction of section 19 of the Limitation Act, the words “period prescribed for a suit” can have reference only to the period prescribed in the Schedule I of the Act.

Special provision, which has been made applicable to suits, by reason of the court being unable to entertain a suit, an application or an appeal, on a day the court is closed, cannot be made applicable to acknowledgment under section 19 of the Act.

Bai Hemkore v. Masamalli (1) followed.

Abdul Ghani v. Chiranji Lal (2) dissented from.

CIVIL RULE obtained by the defendant.

The facts appear fully from the judgment.

Bijankumar Mukherji for the petitioner.

The words “period prescribed for a suit” in section 19 of the Limitation Act, must mean a period mentioned in schedule I of the Limitation Act. This is made clear from the wording of sections 4 and 5, where the same phrase appears. Therefore, acknowledgment must be within three years. *Abdul Ghani v. Chiranji Lal* (2) gives no reason for differing from *Bai Hemkore v. Masamalli* (1) which lays down the law very clearly and forcibly.

Pannalal Chatterji for the opposite party. The words “period prescribed for a suit” is the period prescribed in schedule I, and that must be read along

*Civil Revision, No. 1315 of 1930, against the decree of the Munsif of Sealdah, dated July 22, 1930.

(1) (1902) I. L. R. 26 Bom. 782.

(2) (1927) I. L. R. 49 All. 726.

with the previous sections of the Act. See sections 4, 5 and 12. The schedule is sometimes modified as in section 12.

[MITTER J. Look at it from a practical point of view. You cannot file a suit on a Sunday, but there is nothing to prevent one from acknowledging a debt on a Sunday.]

The word "prescribed" means what has been laid down before. The schedule is a part of the substantive section 3 of the Act.

[MITTER J. Section 3 does not lay down any period.]

I rely on *Abdul Ghani v. Chiranji Lal* (1).

MITTER J. This Rule was obtained by the defendant and was issued under section 25 of the Provincial Small Cause Court Act for the revision of the judgment and decree of the Court of Small Causes at Sealdah decreeing the plaintiff's suit. The plea of the defendant was that the suit was barred by the statute of limitation. This plea was negatived by the Small Cause Court Judge, who decreed the plaintiff's suit as has already been stated. In order to consider the soundness of the contention raised in this Rule by the petitioner, it is necessary to give a few facts. The suit was brought by the plaintiff on a hand-note said to have been executed by the defendant on the 30th Chaitra, 1331 B.S. The period of limitation prescribed for the suit is 3 years from the date when the hand-note was executed. On the 1st Baisakh 1335 B. S., beyond the period of 3 years, there was an acknowledgment by the defendant of his liability under the hand-note and the contention before me is that, as the acknowledgment of the liability was after the expiry of the period of limitation, the plaintiff cannot save limitation by such acknowledgment. The Munsif held that as the court was closed on the 30th Chaitra, 1334 B.S., and that the suit, if any,

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instituted on the hand-note, would not have been barred by the statute of limitation as well on the 1st Baisakh, 1335 B.S., having regard to the provisions of section 4 of the Limitation Act, the acknowledgment must be held also to have been made within the period prescribed for the suit. Section 19 of the Limitation Act, so far as is material, runs as follows:—"Where, "before the expiration of the period prescribed for "a suit or application in respect of any property or "right, an acknowledgment of liability in respect of "such property or right has been made in writing " * * * a fresh period of limitation shall be "computed from the time when the acknowledgment "was so signed." It is argued for the petitioner that the words "prescribed for a suit" must refer to the period prescribed for the suit in the schedule to the Limitation Act. That seems to me to be the correct contention, for, in order to find out what the period is which is prescribed for a suit, one has to look into the schedule to the Limitation Act. It is argued for the opposite party by Mr. Pannalal Chatterji that the words "prescribed for a suit" must refer to the period which is prescribed for the suit not merely by the first schedule to the Act, but the first schedule read with the provisions under sections 4 to 25 of the Act, and in support of this contention reliance has been placed on a decision of Mr. Justice Lal Gopal Mukherjee of the Allahabad High Court in the case of *Abdul Ghani v. Chiranji Lal* (1), where the learned Judge states that if it was intended that the words "period prescribed" referred to the "period prescribed in the schedule alone," adequate words would have been used for that purpose. This decision undoubtedly supports the contention of the opposite party. But I am unable to agree with this contention, seeing that section 4 is a special provision which saves limitation in suits where the last date of limitation falls on a holiday and the reasoning, underlying the provisions of

section 4 which are made applicable to suits, appeals or applications, is that it is not possible for a litigant to file a suit or an appeal or an application on a date on which the court is closed. That argument certainly does not apply to the case of an acknowledgment, for an acknowledgment can be made on a Sunday or on days which are *dies non*. On a true construction of the language of section 19 of the Act, I have no doubt that the words "period prescribed for a suit" can have reference only to the period prescribed at the end in the schedule. In section 4, similar language is used. Section 4 of the Act states:—"Where the period of limitation prescribed for any suit expires on a day when the court is closed * * *." The words "period prescribed for any suit," it is conceded, must refer to the period prescribed at the end in the schedule. Special provision which has been made applicable to suits by reason of the court being unable to entertain a suit, an application or an appeal on a day the court is closed cannot be made applicable to acknowledgment under section 19 of the Act. It is satisfactory to note that this view has been adopted in a Bombay case by Sir Lawrence Jenkins, who was then the Chief Justice of the Bombay High Court, and his opinion is entitled to very great weight. In that case, namely in the case of *Bai Hemkore v. Masamalli* (1), the learned Chief Justice was dealing precisely with the point which is in controversy in the present Rule, and it was pointed out that the period referred to in section 19 of the Limitation Act is a period which must be determined by schedule II to the Act and that, though the right of suit might have been subsisting on the day by reason of that day being a holiday in the sense that the suit could under the circumstances have been instituted on the particular day, that was not because the period of limitation prescribed for the suit had not expired, but because, notwithstanding the expiration of that

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period, there is a special right under the provisions of section 5 of the Act of 1877, which corresponds to section 4 of the present Act to institute a suit on the day on which the court re-opened. Following the view taken by the learned Chief Justice of the Bombay High Court and Mr. Justice Aston, I hold that this Rule must be made absolute, and the plaintiff's suit must be dismissed.

There will, however, be no order as to costs in this Rule.

S. M.

Rule absolute.