

[3 Mad. 76.]

APPELLATE CIVIL.

The 28th September, 1880.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

Vythilinga Pillai and others.....(Plaintiffs) Petitioners

versus

Thetchanamurti Pillai.....(Defendant) Counter-Petitioner.*

Suit for rent—Registered contract—Compensation—Limitation.

A suit to recover arrears of rent upon a registered contract is governed by Article 116,† Schedule II, Act XV, 1877. Compensation is used in the same sense in that article as in the Contract Act, Section 73.‡

[77] THIS was a petition under Section 622 of the *Civil Procedure Code* for revision of a decree of the Subordinate Judge of *Negapatam* in a Small Cause suit, dismissing petitioners' claim as barred by *Limitation*.

V. *Bhashyam Ayyangar* for the Petitioners.

M. A. *Tirunarayanachari* for the Counter-Petitioner.

The Court (KINDERSLEY and MUTTUSAMI AYYAR, JJ.) delivered the following

Judgment :—This suit was brought on the Small Cause side of the Subordinate Judge's Court to recover Rupees 432-6-11 on account of arrears of rent due in and before the year 1876.

The Subordinate Judge dismissed the suit as barred by the Act for the *Limitation* of suits, more than three years having elapsed since the cause of action arose.

* C.M.P., No. 444 of 1880 for revision of the decree of the Subordinate Judge of *Negapatam*, in S.C.C. No. 372 of 1880, dated 28th April 1880.

† [Art. 116 :—

Description of suit.	Period of limitation.	Time from which period begins to run.
For compensation for the breach of a contract in writing registered.	Six years	... When the period of limitation would begin to run against a suit brought on a similar contract not registered.]

‡ [Sec. 73 :—When a contract has been broken, the party, who suffers by such breach, is entitled to receive from the party, who has broken the contract, compensation for any loss or damage, caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it, is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.]

The agreement to pay rent was in writing registered, and the question is whether the period of *Limitation* for a suit brought for breach of such agreement is three years or six years.

We observe that the second schedule of Act XV of 1877, in Articles 101 to 114, allows only the period of three years for suits on the breach of certain kinds of contracts, including contracts to pay rent; and Article 115² allows the same period for a suit for compensation for the breach of any contract not in writing registered, and not otherwise provided for. Then Article 116 allows six years for a suit for compensation for the breach of a contract in writing registered. Here the words "not otherwise provided for" do not occur; and the period is to commence when the period of *Limitation* would begin to run against a suit brought on a similar contract not registered. These terms appear to us large enough to cover contracts for payment of rent, as well as other contracts when in writing registered.

It was argued that a suit for arrears of rent was not a suit for "compensation" for breach of contract. But "compensation" is the general term used also in the *Indian Contract Act*, Section 73, to denote the payment which a party is entitled to claim on account of loss or damage arising from breach of contract. The effect in this place is to exclude suits for specific performance.

The judgment of the Subordinate Judge will be set aside under Section 622 of the *Code of Civil Procedure*, and he will be directed to dispose of the suit upon the merits.

NOTES.

[LIMITATION—SUIT FOR ARREARS OF RENT—

- (1) Art. 116 was held to apply to such suits in (1880) 3 Mad. 77; (1887) 15 Cal. 221, (1891) 14 Mad. 465.
- (2) But the *Allahabad High Court* does not treat a suit for rent as a suit for compensation for a breach of contract :—(1903) A. W. N. 210.
- (3) The application of the general Limitation Act may be excluded by special or local law such as the Bengal Tenancy Act of 1885 or the Madras Estates Land Act.

See (1890) 17 Cal. 469.]

* [Art. 115 :—

Description of suit.	Period of limitation.	Time from which period begins to run.
For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Three years ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.]