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29th of November, 1909. We have only to consider, therefore, whether he was bound to have taken cognizance of the notice posted on the notice-board of the court on the 18th of October, 1909, at a time when the court was closed on account of the annual vacation. We are of opinion that the appellant should not be considered bound to have taken cognizance of that notice until the date the courts re-opened after the vacation, that is, until the 17th of November, 1909. We hold, therefore, that the period requisite for obtaining the copy in this case extended from the 13th of October to the 17th of November, 1909, and if this period be excluded under the provisions of section 12 of the Limitation Act, the appeal was within time when presented to the lower appellate court on the 1st of December, 1909. We, accordingly, allow this appeal, set aside the order and decree of the lower appellate court and remand the case to that court with directions to re-admit the appeal under its original number in the register and to dispose of it according to law. Costs here and hitherto will abide the event.

Appeal allowed—Cause remanded.

Before Mr. Justice Tudball and Mr. Justice Piggott.

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July, 29.

KULDIP DUBE (PLAINTIFF) *v.* MAHAUL DUBE AND OTHERS (DEFENDANTS).*

Award—Act No. 1 *of* 1877 *(Specific Relief Act), section* 30*—Specific performance —Suit to recover money payable under an award—Act No. IX of* 1908 *(Indian Limitation Act), schedule* 1, *articles* 113, 116, 120*—Limitation.*

* By the terms of an award it was provided, *inter alia*, that the defendants should pay to the plaintiff the sum of Rs. 350 on or before the 27th of June, 1904, and in default of such payment the plaintiff could recover from the defendants Rs. 350 with interest at 12 per cent. per annum.

Held that a suit to recover on default of payment by the stipulated date, the sum abovenamed with interest was not a suit for specific performance of a contract, and as such governed by article 113 of the first schedule to the Indian Limitation Act, 1908, but was governed by either article 116 or article 120.

Sukho Bibi v. *Ram Sukh Das* (1), *Raghubar Dial* v. *Madan Mohan Lal* (2), *Sheo Narain* v. *Beni Madho* (3), *Sornavalli Ammal* v. *Muthayya Sastrigal* (4)

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* Second Appeal No. 146 of 1911 from a decree of Guru Prasad Dube, Second Additional Judge of Gorakhpur, dated the 21st of November, 1910, confirming a decree of Lal Gopal Mukerji, city Munsif of Gorakhpur, dated the 20th of March, 1909.

(1) (1883) I. L. R., 5 All., 263.
(2) (1893) I. L. R., 16 All., 3.
(3) (1901) I. L. R., 23 All., 285.
(4) (1900) I. L. R., 23 Mad., 593.

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Talewar Singh v. *Bahori Singh* (1) and *Bhajahari Saha Banikya* v. *Behary Lal Basak* (2) referred to.

BY an award dated the 12th of January, 1904, it was provided, amongst other things, that one party should pay to the other the sum of Rs. 350 on or before the 27th of June, 1904, and in default of such payment being made the party to whom it was due was entitled to recover the same with interest at the rate of 12 per cent. per annum. The present suit was to recover this sum of Rs. 350 with interest, as well as other moneys alleged to be due under the terms of the award. As regards the sum of Rs. 350 the court of first instance (city Munsif of Gorakhpur) held that its recovery was barred by article 113 of the first schedule to the Indian Limitation Act, 1908, and on appeal this finding was upheld by the additional District Judge. The plaintiff thereupon appealed to the High Court.

Mr. *M. L. Agarwala*, for the appellant.

Munshi *Gobind Prasad*, for the respondents.

TUDBALL and PIGGOTT, JJ.—The parties to this suit are members of one and the same family. On the 9th of January, 1904, they executed an agreement by which they submitted various differences which had arisen between them to the arbitration of one Phullu Dube and on the 12th of January, 1904, the arbitrator delivered an award which was signed by the parties in token of their acceptance. This award contained a number of provisions regarding the family property and the debts due on the same; but we are now concerned only with one provision, according to which the defendants (strictly speaking Dudhnath, father of the first three defendants and grand-father of the fourth) was bound to pay Rs. 350 to the plaintiffs by the 27th of June, 1904. In default of such payment it was provided by the award that the plaintiffs should be entitled to recover this amount with interest at 12 per cent. per annum. The suit is one for recovery of this amount with interest, as well as for other moneys alleged to be due to the plaintiffs in consequence of the provisions of the award. The court of first instance went into the whole question of accounts between the parties and finally decreed the plaintiff Kuldip Dube a sum

(1) (1904) I. L. R., 26 All., 497. (2) (1906) I. L. R., 33 Calc., 981.

of Rs. 125-8-0 with proportionate costs and future interest at 6 per cent. per annum on account of certain payments made in accordance with provisions contained in the award in satisfaction of certain family debts, but dismissed the claim for Rs. 350 and interest as barred by limitation. The plaintiff appealed, and there was a cross objection by the defendants regarding another item in the account. The court of first appeal, the learned Additional Judge of Gorakhpur, affirmed the decision of the first court, and the plaintiff, Kuldip Dube, comes to this court in second appeal. His memorandum raises a small question as to costs, which was not pressed in argument and which will practically be disposed of by the order we propose to pass as to the costs of the suit as a whole. The one question for determination before us is whether the claim for Rs. 350 and interest in accordance with the provisions of the award of the 12th of January, 1904, is or is not barred by limitation. This money was payable on or before the 27th of June, 1904, and this suit was instituted in the court of first instance on the 8th of February 1909. The contention on behalf of the defendants, which has found favour in both the courts below, is that the period of limitation applicable is three years, in accordance with article 113 of the second schedule to the Indian Limitation Act. If the suit can in fact be regarded as one "for specific performance of a contract" within the meaning of the said article, it should presumably have been brought within three years of the date fixed for the payment of the money, namely, the 27th of June, 1904. On the other hand, the plaintiff appellant contends before us that the suit is either governed by article 116 (for compensation for the breach of a contract in writing registered), or is one falling under article 120 of the same schedule, as being a "suit for which no period of limitation is provided elsewhere." In either case the suit would fall within a six years' period of limitation and would be well within time.

We have been referred to a number of cases on the subject.

In *Sukho Bibi* v. *Ram Sukh Das* (1) and again in *Raghubar Dial* v. *Madan Mohan Lal* (2) it was held, in each case by two Judges of this court, that a suit for the recovery of a balance of

(1) (1888) I. L. R., 5 All., 263. (2) (1893) I. L. R., 16 All., 3.

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money due under the terms of an award is virtually a suit for the specific enforcement of the award, and is therefore subject to the limitation prescribed by article 113 of the second schedule to the Indian Limitation Act of 1877. The point was discussed at some length in the latter of these two judgements, and the decision turns upon an express finding that the suit then before the court was not one for compensation for the breach of a contract. These cases were considered by a bench of this court in *Sheo Narain* v. *Beni Madho* (1). That was a suit for recovery of possession over immovable property; the learned Judges held that the mere fact that such a suit was brought upon a title established by a certain award would not make it a suit for specific performance. They did not find it necessary to dissent from the two older rulings of this court already referred to; but it is clear that they doubted them, for they relied upon a Madras case—*Sornavalli Ammal* v. *Muthayya Sastrigal* (2)—in which these rulings are distinctly dissented from. A later case of our own court is that of *Talewar Singh* v. *Bahori Singh* (3). The facts of this case are worth noting because the *ratio decidendi* is significant. It appears that certain matters in dispute between the parties had been referred to arbitration, and that the arbitrator delivered an award in accordance with a compromise entered into by the parties themselves. This award directed, amongst other things, that each party should transfer certain immovable property to the other, and the suit was by one of the parties concerned for recovery of the property agreed to be conveyed. It was held that this was a suit for specific performance of a contract within the meaning of article 113 of the second schedule of the Indian Limitation Act. The plaintiff had at the time of his suit no valid title to the property which he claimed; what he possessed under the terms of the award was a right to compel the opposite party to give him a valid title deed by executing a conveyance in his favour. Such a suit may perhaps be a suit for "specific performance" in the strictest sense of the words. It does not seem quite clear how far the learned judges who decided that case relied on the fact that the award before them was based upon a compromise entered into

(1) (1901) I. L. R., 23 All., 285. (2) (1900) I. L. R., 23 Mad., 593.
(3) (1904) I. L. R., 26 All., 497.

by the parties and might therefore be held to partake in a special sense of the nature of a contract. It would seem, however, that they accepted the position taken up in the older rulings of this court that, by reason of the operation of section 30 of the Specific Relief Act (Act I of 1877), a suit for the specific performance of the terms of an award should be regarded as a suit for the specific performance of a contract within the meaning of article 113 of the schedule to the Limitation Act. In any case the principle underlying the decision is that an award is the outcome of a contract to refer to arbitration and that the Legislature has seen fit to limit suits for the specific performance of a contract to a period of three years, even though such contract be in writing registered, and though a longer period would have been allowed for a suit in which the plaintiff confined himself to seeking damages for breach of the terms of the registered contract. The Calcutta High Court had occasion to consider the older rulings of this court in the case of *Bhajahari Saha Banikya* v. *Behary Lal Basak* (1). The remarks of MOOKERJEE, J., at pages 885 and 886 of the report are of great interest. He doubted the correctness of the Allahabad decisions on the ground that there was nothing in section 30 of the Specific Relief Act, which necessarily placed awards on the same footing as contracts for purposes of limitation ; but he admitted the general principle that "the jurisdiction of the court in enforcing the specific performance of the provisions of an award is founded on the principle that the award is the outcome of a contract to refer to arbitration," and he did not base his dissent from the broad proposition laid down in *Sukho Bibi* v. *Ram Sukh Das* entirely on that ground. He pointed out that, when a court orders the defendant to pay money to the plaintiff which the former ought to have paid under the terms of an award but had not paid, the court is not really enforcing specific performance at all, but is directing payment of compensation for non-compliance with the terms of the award.

It seems to us that this remark is peculiarly apposite to the facts of the case now before us and furnishes the true basis for the decision of the same. All that section 30 of the Specific Relief Act lays down is that when the question is one of specific

(1) (1906) I. L. R., 33 Calc., 881.

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performance, the court has the same powers, and should proceed upon the same principles, in the case of an award as in the case of a contract. The way to consider the question then is to take the terms of the award before the court and to see whether, if these *same terms* had been embodied in a contract between the parties, the suit before the court is or is not one in which specific performance of those terms is claimed and ought to be decreed. In the present case the terms were that the defendants should pay the plaintiff Rs. 350 on or before the 27th of June 1901. The defendants failed to do so, and the plaintiff claims that, under a further provision contained in the document itself, he is entitled to recover Rs. 350 with interest at 12 per cent. per annum. Had the same suit been brought with reference to a contract in writing registered which embodied the same terms, no one would have dreamt of describing the suit as one for specific performance of the contract. It would clearly be a suit for compensation for breach of contract in a case in which the penalty for such breach was prescribed by the contract itself (*vide* sections 73 and 74 of the Indian Contract Act), and it would be subject to a limitation period of six years under article 116 of the schedule to the Indian Limitation Act. We are, therefore, clearly of opinion that the suit before us is not one for specific performance at all, and that article 113 of the schedule to the Indian Limitation Act does not apply. We do not think that we are precluded from arriving at this decision by the older rulings of this court to which reference has been made. In the first place, those rulings have been distinguished, and their authority shaken, by the later rulings of this court which we have also considered. In the second place, it is not necessary for us to determine the broad question whether or not a suit to enforce the specific performance of the provisions of an award is a "suit for the specific performance of a contract" within the meaning of article 113 aforesaid. In so far as this proposition appears to be laid down by rulings of this court, we leave it undisturbed. We say the suit before us is not a suit for specific performance at all; and this must be a question to be determined in each case upon the pleading set forth in the plaint taken in connection with the terms of the award or other document upon which the plaintiff's suit is based.

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Nor is it necessary for us to determine whether article 116 or article 120 of the schedule to the Indian Limitation Act governs this case. If the correct view be that an agreement to refer a matter to arbitration is in effect a contract to do whatever the arbitrator shall direct, it may be that the suit before us is a suit for compensation for breach of contract, and is governed by article 116 because based upon a registered instrument. Otherwise, it is a suit of a nature for which provision is not elsewhere made and must be referred to the provisions of article 120. In either case the period of limitation is the same, and the suit is within time.

We accordingly set aside the decrees of both the courts below, and give the plaintiff a decree for a further sum of Rs. 543-10-0 in addition to the sum of Rs. 125-8-0 awarded by the first court. The plaintiff will get his costs in this court. In the lower appellate court the defendants respondents should bear the costs of their cross-objections which were dismissed ; otherwise the parties will pay and receive costs in both the courts below in proportion to failure and success. The decree will carry interest at 6 per cent. per annum from the date of the first court's decision as directed in the decree of the said court.

Appeal allowed.

Before Mr. Justice Tudball and Mr. Justice Piggott.

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July, 29.

SALIG RAM AND ANOTHER (PLAINTIFFS) *v.* CHAHA MAL (DEFENDANT).*

Act No. IX of 1872 (*Indian Contract Act*), *section* 212—*Principal and agent—Suit for compensation for loss caused by negligence of agent—Jurisdiction—Civil Procedure Code* (1908), *section* 20(*c*).

The plaintiffs who were grain-dealers, ordered the defendant, who was a commission agent at Karachi, to purchase some grain for them. The latter did so, and the plaintiffs sent him some money on account. In accordance with the direction of the plaintiffs the railway receipt for the goods purchased was sent by value payable post. By some mischance it did not arrive. The defendant instructed the railway authorities not to deliver the goods till the balance due to him was paid. The balance was paid by the plaintiffs to the defendant's agent at Delhi. The Railway officials at Hathras refused to deliver the goods without the defendant's consent and delay occurred. In the meantime the price of the particular kind of grain fell and the speculation resulted in a loss to the

* First Appeal No. 7 of 1911 from an order of H. M. Smith, Additional Judge of Aligarh, dated the 23rd of September, 1910.