

REVISIONAL CIVIL.

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Justice Sir Lal Gopal Mukerji*

CANTONMENT BOARD, ALLAHABAD (DEFENDANT) *v.*
HAZARILAL GANGAPRASAD (PLAINTIFF)*

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Cantonments Act (II of 1924), section 273—“Any act done in pursuance of the Act”—Goods supplied on contract to Cantonment Board—Suit for price—Limitation—When “cause of action arises”—Limitation Act (IX of 1908), article 52.

A suit for the recovery of price of goods supplied to a Cantonment Board is not a suit against the Board in respect of any act done, or purporting to have been done, in pursuance of the Cantonments Act, or of any rule or bye-law made thereunder, within the meaning of section 273(1) of the Act. Such a suit, therefore, is not governed by sub-section (3) of section 273 of the Act, which prescribes a limitation of six months, but is governed by the Limitation Act, article 52.

No doubt, under section 12 of the Cantonments Act the Cantonment Board was empowered to contract, and the purchase made by the Board was by virtue of the power vested in it by the Act; but the plaintiff's suit was in respect of a private contract; it was in respect of an act done in the exercise of the power granted to the Board under the Act, as distinct from an act done by the Board in pursuance of the Act itself, or of any rule or bye-law made thereunder and having the force of law.

Per SULAIMAN, C.J.—Even supposing that the case were covered by section 273 of the Cantonments Act, under sub-section (3) the period of limitation would be only six months but the starting point of limitation would be the date on which the cause of action arose, which, in a case of sale of goods on credit, would not be the date of supply of the goods but might well be the date of an express or implied refusal to pay the price.

Mr. K. Verma, for the applicant.

Mr. Shiva Prasad Sinha, for the opposite party.

SULAIMAN, C.J.:—This is an application in revision by the Cantonment Board of Allahabad from a decree of the court of small causes granting a relief for recovery of money to the plaintiff. The plaintiff is a

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shopkeeper, who alleged that he had supplied certain materials to the Board between July, 1928, and January, 1930, but had not been paid the full amount of the price. He claimed nearly Rs.300 as the amount of the balance with interest. His case was that after having supplied the goods he waited patiently for some time but the Board did not make any further payment, in consequence of which he was obliged to sue the Board after serving notice upon it as required by law. The Board denied the receipt of all the materials alleged to have been supplied by the plaintiff and also pleaded that the claim was barred by six months' rule of limitation. The Board, however, did not assert that prior to the refusal contained in the reply to the notice served upon it by the plaintiff there had been any other refusal by the Board to pay the amount. The plea of limitation has been overruled by the court below.

The learned advocate for the applicant relies strongly on a number of rulings of this Court under section 326 of the U. P. Municipalities Act (Act II of 1916), in which a wider meaning to a somewhat similar expression used in that section has been given. Under that section no suit can be instituted against a Board in respect of an act done in its official capacity after the expiry of six months after the accrual of the cause of action. It must, however, be admitted that there are other rulings in which a somewhat contrary opinion has been expressed. If the question had arisen under section 326 of the Municipalities Act we might have felt compelled to refer this case to a larger Bench.

But the relevant section which we have to consider in this case is section 273 of the Cantonments Act (Act II of 1924). The words in that section are not identical with the words in section 326 of the Municipalities Act, and, therefore, the rulings relied upon by the learned counsel for the applicant are not directly in point.

Under section 273, sub-section (1) "No suit shall be instituted against any Cantonment Authority . . . in respect of any act done, or purporting to have been done, in pursuance of this Act or of any rule or bye-law made thereunder, until the expiration of two months after notice in writing . . ." Then sub-section (3) provides that "No suit, such as is described in sub-section (1), shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises." Thus a different period of limitation is prescribed for suits of the nature mentioned in sub-section (1) and the starting point of limitation for such suits is always the date on which the cause of action arises.

The first question is whether a suit for recovery of price of materials supplied to the Board can be treated as a suit against the Board "in respect of any act done, or purporting to have been done, *in pursuance of this Act or of any rule or bye-law made thereunder.*" It seems to me that the plaintiff is not suing the Board for any act done by the Board in pursuance of the Cantonments Act; nor is he suing the Board for any act done by the Board or purporting to have been done by the Board under any rule or bye-law made under the Cantonments Act. The suit is for the recovery of the price of the goods supplied by the plaintiff to the defendant which is still unpaid. The cause of action for the suit is not the action of the Board in omitting to pay the price of the goods, but would ordinarily arise from the fact that goods were supplied by the plaintiff to the Board.

No doubt, under section 12 of the Cantonments Act a Cantonment Board is empowered to acquire and hold property both movable and immovable and to contract. It is also clear that the purchase made by the Board was by virtue of the power vested in it under the Cantonments Act. But I am unable to regard the suit of

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the plaintiff against the Board as a suit in respect of an act done by the Board in pursuance of the Act itself, as distinct from an act done in the exercise of the power granted to the Board under the Act. In my opinion section 273, sub-section (1) does not contemplate the class of suits on private contracts, for which specific rules of limitation are prescribed in the Indian Limitation Act. It contemplates actions brought against the Board in respect of acts done in pursuance of the Act itself or done in pursuance of any rule or bye-law that has the force of law.

This view is strengthened by another consideration. A large variety of suits can be filed against a Cantonment Board, and, in the absence of any provision to the contrary, they would be governed by the Indian Limitation Act. Now in the third column of schedule I there are different starting points prescribed for different classes of action. They are not always the same, much less is the date of the accrual of the cause of action the starting point for all such suits. It is, therefore, quite clear that there can be a variety of actions which under the first schedule of the Limitation Act would have to be brought within different periods from dates other than the date when the cause of action arises. But in section 273, sub-section (3), where the period of limitation is reduced, the starting point of limitation is made identical for all classes of actions and is, therefore, not necessarily the same as those mentioned in the third column of the first schedule. The result would be that the provisions of the Indian Limitation Act in cases falling under sub-section (1) of section 273 would be entirely replaced by sub-section (3) of that section. The period of limitation would be only six months, but the date from which the time would begin to run would not necessarily be the date mentioned in the third column of an article applicable to a corresponding case against private persons, but the starting point would be the date on which the cause of action arises.

If goods are supplied to a Board on credit, without there being any fixed date for payment of the price, it may well be argued that the cause of action to recover the price thereof does not arise till there has been an express or implied refusal by the Board to pay the amount. The period of six months would then begin to run not necessarily from the date when the goods were supplied but from the date when the right to sue accrued. If article 52, which would be applicable to a suit against a private person and under which the starting point is the date of the delivery of the goods, were completely replaced by section 273, sub-section (g), then the cause of action would not necessarily arise from the date of the delivery of the goods, particularly when the goods were supplied on credit, that is to say, on an implied assurance that the price would be paid in due course.

In view of these considerations I am of opinion that the present case is not governed by section 273 at all and that, therefore, article 52 of the Limitation Act applies, and I am further of opinion that even if it were covered by that section, the starting point of limitation in this case would not be the date of the delivery of the goods.

MUKERJI, J.:—I entirely agree and would add just a few words. By enacting section 273, sub-section (1) of the Indian Cantonments Act, 1924, the legislature has taken trouble to define a particular class of cases and has required that for those cases a previous notice would be necessary for a correct institution of a suit, and it is further provided in sub-section (g) that the period of limitation would be a special period, namely, six months from the date on which the cause of action arises. This period of six months is subject to a certain exception as regards immovable property, with which we are not concerned here. If the argument of the learned counsel for the applicant held good, it would not have been necessary for the legislature to take trouble to define the

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nature of the suit in sub-section (1) of section 273. It would have been enough to say that barring the cases of immovable property or suits for a declaration of title to immovable properties, all suits instituted against a Cantonment Board would be governed by a rule of six months' limitation, the starting point being the date on which the cause of action arises. As My Lord the CHIEF JUSTICE has pointed out, the suit for recovery of the value of goods supplied does not fall within the description of suits mentioned in section 273, sub-section (1) of the Cantonments Act. It is not a suit for an act done by the Cantonment Authority in pursuance of the Cantonments Act or of any rule or bye-law made thereunder. It follows that the ordinary rule of limitation applies and not the special rule of limitation mentioned in sub-section (3) of section 273.

In the case of the interpretation of what may be said to be a corresponding section in the Municipalities Act, namely, section 326 of the U. P. Municipalities Act of 1916, there is a conflict of opinion, but we are not interpreting the Municipalities Act, and I, therefore, do not feel it necessary to refer to those cases. If there be any conflict in the interpretation of section 326 of the Municipalities Act, it will be settled when another case arises.

I agree that the decision of the suit was correct and article 52 of schedule I of the Limitation Act applied.

BY THE COURT:—The application in revision is dismissed with costs.

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
 Justice Sir Lal Gopal Mukerji*

RAM KALI AND ANOTHER (DECREE-HOLDERS) *v.* BIRBHADRA-
 MAN TEWARI AND ANOTHER (JUDGMENT-DEBTORS)*

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Limitation Act (IX of 1908), article 182—Application for execution of decree against a deceased person—Not an application "in accordance with law" nor one "to take some step in