

certain part of it is payable. It is for this ground chiefly that we consider that the reasoning in the judgments of this Court to which we have been referred is not correct reasoning and with due respect to the learned Judges who decided those cases we feel un-animously that we cannot accept that reasoning.

Moreover the fact that in all cases the previous Act, Act II of 1901, allowed an appeal is also to be taken into account and where the previous Act allowed an appeal in all cases it is not probable that the present Act would take away the right of appeal.

For these reasons we answer this reference in the affirmative and we hold that an appeal does lie to the District Judge under section 242 (1)(d) of the Agra Tenancy Act, Act III of 1926, against the decision of the revenue court in a suit for recovery of arrears of revenue brought under section 223 of that Act if the defendant pleads that he is not liable to pay any revenue at all. We allow to the appellant the costs of the hearing before the Full Bench in both cases.

REVISIONAL CIVIL

Before Mr. Justice Mulla

ZAFAR UDDIN (PLAINTIFF) *v.* DEBI PRASAD AND ANOTHER
(DEFENDANTS)*

1939
April, 5

Limitation Act (IX of 1908), section 14, explanation I—Exclusion of period of pendency of former suit—"Date on which the proceedings therein ended"—Return of plaint for presentation to proper court—Time up to actual return of plaint, and not only up to the order for return, to be excluded.

Where a plaint is returned for presentation to the proper court, the proceedings in the first court come to an end within the meaning of explanation I to section 14 of the Limitation Act, not on the date on which the order directing the return of the plaint is passed but on the date on which the plaint is actually returned to the plaintiff; the court has seisin of the plaint, even after passing the order for return, until the plaint is actually returned. The period to be excluded under section

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14, therefore, extends up to the date of the actual return of the plaint and not merely up to the date of passing of the order for return.

Messrs. *Mansur Alam* and *Shah Jamil Alam*, for the applicant.

Mr. *A. P. Pandey*, for the opposite parties

MULLA, J.:—This is a plaintiff's application in revision under section 25 of the Small Cause Courts Act. The suit out of which it arises was brought by the plaintiff to recover a certain amount from the defendants on the allegation that he had carried out certain repairs to some carriages of the defendants in accordance with an agreement between the parties. The suit was filed in the court of small causes at Meerut on the 30th of March, 1935, which was admittedly the last date of limitation. One of the grounds taken by the defendants was that the Meerut court had no jurisdiction inasmuch as the agreement between the parties had taken place at Muzaffarnagar. The learned Small Cause Court Judge upheld that plea and consequently directed the return of the plaint to the plaintiff for presentation to the proper court. This order was passed on the 18th of September, 1935. The plaint was, however, actually returned to the plaintiff on the 23rd of September, 1935, and he proceeded on the same date to file it in the court of small causes at Muzaffarnagar. The learned Judge of the small cause court of Muzaffarnagar has now held that the suit is barred by time because the plaintiff had not given any explanation as to why he did not get back the plaint from the court on the very day on which the order was passed and did not present it on the same day to the proper court. Upon this preliminary ground the suit has been thrown out. Hence this application in revision.

Having regard to the admitted facts of the case and the large volume of authority bearing upon them I have not the slightest doubt that the learned Small

Cause Court Judge went wholly wrong in deciding the question of limitation against the plaintiff. He seems to be of the opinion that under section 14 of the Limitation Act the plaintiff was entitled to exclude only the period ending on the 18th of September, 1935, that is, the date on which the small cause court at Meerut passed the order directing his plaint to be returned for presentation to the proper court. The first question therefore is whether the learned Judge was right in holding this opinion. Explanation I to section 14 of the Limitation Act which has an important bearing upon the question under consideration provides that "In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made and the date on which the proceedings therein ended shall both be counted." The answer to the question set out above depends upon the true interpretation of "the date on which the proceedings therein ended". If the true interpretation is that the proceedings always come to an end on the date on which the court passes an order directing the plaint to be returned the view taken by the learned Small Cause Court Judge would be right. I find, however, that there is a large volume of authority against that view and it has been held by almost all the High Courts that the proceedings do not necessarily come to an end when the court records an order that the plaint should be returned for presentation to the proper court. It has been pointed out in some cases that under order VII, rule 10 which governs the returning of a plaint for presentation to the proper court something further has to be done by the court before the plaint is actually returned to the plaintiff. An endorsement has to be made upon the plaint about the date of its presentation and return, the name of the party presenting it and a brief statement of the reasons for returning it. It is thus pointed out that the court has seisin of the plaint up till it is actually returned to

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the plaintiff, even after the order directing the return of the plaint has been passed. It is mainly upon this ground that the various High Courts have arrived at the conclusion that proceedings come to an end within the meaning of section 14 of the Indian Limitation Act, not on the date on which the order directing the return of the plaint is recorded but on the date on which the plaint is actually returned to the plaintiff. In support of this view reference may be made to the case of *Bisheshar Singh v. Ram Daur Singh* (1). The authority of this case was accepted and followed by the Madras High Court in the case of *Sinnakaruppan v Muthiah Chettiar* (2) and by a Bench of the Calcutta High Court in the case of *Mohendra Prosad Singh v. Nanda Prosad Singh* (3). The Bombay High Court also arrived at the same decision in the case of *Basvanappa v. Krishnadas* (4). It is thus clear that the learned Small Cause Court Judge in this case took a thoroughly erroneous view of the law applicable to the facts before him. As this is a revision under section 25 of the Small Cause Courts Act the powers of this Court are not limited by the conditions laid down in section 115 of the Code of Civil Procedure. The learned Small Cause Court Judge has taken an erroneous view of the law which has resulted in substantial injustice and I think that is a sufficient ground for interference in revision.

The result therefore is that I allow this application and setting aside the judgment and decree passed by the Small Cause Court Judge direct that the suit shall be re-tried by him in accordance with law. The plaintiff shall have his costs in this Court from the opposite party.

(1) Weekly Notes 1887 p. 302.

(3) (1913) 17 C.W.N. 1043.

(2) (1925) 92 Indian Cases, 373.

(4) (1920) I.L.R. 45 Bom. 443.