

## APPELLATE CIVIL.

1921

Oct. 25

Before Mr. Justice Broadway and Mr. Justice Abdul Qadir.

KARTAR SINGH, ETC. (DEFENDANTS)—

*Appellants,*

*versus*

BHAGAT SINGH (PLAINTIFF)—*Respondent.*

Civil Appeal No. 611 of 1921.

*Indian Limitation Act, IX of 1908, article 120—Limitation—  
Suit to recover money under an award—money originally recovered  
by plaintiff under a decree passed on the award, but refunded on  
the decree being set aside on appeal—date when the right to sue  
accrues—fresh cause of action.*

Plaintiff and defendant in 1909 submitted a dispute to arbitration; an award was duly made and a decree passed in terms of it on the 19th October 1909. In execution of the decree plaintiff realised Rs. 4,000 on 14th January 1911. The decree was set aside on appeal to the Chief Court on 4th August 1913, and on 4th May 1915 the Rs. 4,000 were refunded to the defendant. On 25th February 1919, plaintiff brought the present suit claiming the Rs. 4,000 and interest as due to him under the award. The question was whether the suit was barred by limitation.

*Held*, that on the annulment of the satisfaction a fresh cause of action arose, and that the claim was therefore within time under article 120 of the Indian Limitation Act.

*Mulhuncerappa Chetty v. Adaikappa Chetty* (1), followed.

*Ranee Surnomoyee v. Shoshee Mookhee* (2), referred to.

*Soni Ram v. Kanhaiya Lal* (3), distinguished.

*Miscellaneous appeal from the order of M. V. Bhide, Esquire, District Judge, Ferozepore, dated the 29th November 1920, reversing the decree of Lala Ralla Ram, Subordinate Judge, 2nd class, Ferozepore, dated the 10th June 1920, and remanding the case for decision on the merits.*

MEHR CHAND Mahajan, for *Appellants.*

MANOHAR LAL, for *Respondent,*

(1) (1920) I. L. R. 48 Mad. 845.

(2) (1868) 12 Moo. I. A. 244.

(3) (1918) I. L. R. 35 All. 227 (P. C.).

The judgment of the Court was delivered by—

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BROADWAY, J.—There was a dispute between two brothers, Bhagat Singh and Ranjit Singh, which dispute they referred to arbitration under an agreement dated the 15th January 1909. The arbitrators gave their award on the 25th July 1909 under which Bhagat Singh was entitled to recover a sum of Rs. 4,000 from Ranjit Singh. On the 26th July 1909 Ranjit Singh applied to the Court to have the award filed and a decree in accordance with the terms of the award was duly passed on the 19th October 1909.

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Bhagat Singh realised the sum of Rs. 4,000 in execution on the 14th January 1911. Ranjit Singh, in spite of his having asked the award to be filed and a decree in accordance therewith having been passed, preferred an appeal to the Chief Court and on the 4th August 1913 the order and the decree of the trial Court, dated 19th October 1909, were set aside, a direction being made that the case was to proceed as from that date. On the 4th May 1915, Ranjit Singh or his representatives (for he is now dead) applied to the Court under section 144, Civil Procedure Code, for a refund of the money, he having withdrawn his application and under the provisions of section 144 Bhagat Singh was made to refund it. Bhagat Singh applied to have the award filed, but his application was allowed to go by default, and on the 25th February 1919 he brought the present suit against the heirs of Ranjit Singh claiming Rs. 4,000 as due under the award and Rs. 500 as interest. The trial Court dismissed the suit holding that it was barred by time. On appeal the learned District Judge held that the suit was within time and remanded the case for trial on the merits under Order XLI, rule 23, Civil Procedure Code. The defendants have thereupon come up to this Court on appeal and on their behalf we have heard. Mr. Mehr Chand Mahajan and Mr. Manohar Lal appeared for the plaintiff-respondent.

It has been admitted that the Article applicable to the suit is 120 of the Limitation Act, which prescribes the period of six years from the date "when the right to sue accrues." Mr. Mehr Chand contended that in this case the right to sue accrued on the 25th July

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1909, *i.e.*, the date of the award, and that subsequent proceedings and the recovery by the plaintiff-respondent of the money due to him under the award although set aside or annulled, neither gave the plaintiff-respondent a fresh cause of action, nor could be regarded a sufficient excuse for extending the period. We are, of course, in agreement with the Privy Council decision reported as *Soni Ram v. Kanhaiya Lal* (1), which is to the effect that where once time has begun to run no subsequent disability or inability to sue stops it. The question, however, which is before us is whether the action of the appellants themselves is not sufficient in equity to enable us to hold that the suit is within time. In our opinion the view taken by their Lordships of the Madras High Court in the case reported as *Muthuveerappa Chetty v. Adaikappa Chetty* (2) is correct, and that on the annulment of the satisfaction in this case, a fresh cause of action arose and the statute began to run against them. It seems to us that when the original claim was satisfied in execution, there was an end of the statute running against them. Mr. Mehr Chand sought to distinguish that case from the present one by pointing out that there the annulment had been brought about by a separate suit, whereas here the annulment was the result of the Appellate Court's decision in the arbitration proceedings. While recognising the difference we are unable to see that there is any real distinction so far as the proposition laid down in the Madras decision is concerned. We would note that that decision proceeds on *Ranee Surnomoyee v. Shoshee Mookhee* (3). So long as the decree in his favour stood, Bhagat Singh was in the position of a person whose claim had been satisfied, and any suit brought by him might have been successfully met by a plea to that effect. It was not till the 4th August 1913 when the Chief Court promulgated its decision that Bhagat Singh could possibly be held to have been in a position to take other action. The present suit is within time even if the 4th August 1913 be regarded as the date from which his right to sue commences.

We accordingly dismiss this appeal with costs.

*Appeal dismissed.*

(1) (1916) I. L. R. 35 All. 227 (P. O.). (2) (1920) I. L. R. 43 Mad. 345.  
(3) (1868) 12 Moo. I. A. 241.