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The appeal therefore must be accepted, the decree of the trial Judge set aside and the suit dismissed with costs. The cross-objections must be dismissed.

BHIDE J.

BHIDE J.—I agree.
N. F. E.

*Appeal accepted.***REVISIONAL CIVIL.***Before Broadway and Harrison JJ.*

DHARMAN RAM-LADHA RAM (PLAINTIFF)

Petitioner

versus

GANGA RAM (DEFENDANT) Respondent.

Civil Revision No. 286 of 1928.

Indian Limitation Act, IX of 1908, sections 4 and 14—whether applicable—where suit is instituted in a wrong Court.

The plaintiff instituted a suit on a balance struck by defendant on the 5th of September 1924. The suit ought to have been instituted by the 5th of September 1927 in the Court of Small Causes, but it was filed on the 7th of October 1927 in the Court of the Senior Sub-Judge who sent it to the Court of a Subordinate Judge. This Subordinate Judge ordered the plaint to be returned for presentation in the Court of Small Causes, allowing the presentation to be made by 10th of October and it was presented in that Court on that date. The Small Cause Court dismissed the suit as barred by limitation. Plaintiff relied on the provisions of sections 4 and 14 of the Limitation Act to bring the suit within limitation.

Held, that the suit was barred by limitation as under section 4 of the Limitation Act the plaint should have been presented in the proper Court and section 14 could not be invoked under the circumstances of the case.

Govindasami Padayachi v. Sami Padayachi (1), and *Bano Mal v. Bano Mal* (2), followed.

(1) 1923 A. I. R. (Mad.) 114.

(2) (1920) 55 I. C. 55.

Basvanappa v. Krishnadas (1), dissented from.

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Application for revision of the decree of Lala Jeshta Ram, Judge, Small Cause Court, Jhang, dated the 11th January 1928, dismissing the plaintiff's suit.

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BADRI NATH, for Petitioner.

LAL CHAND MALHOTRA, for Respondent.

BROADWAY J.—The plaintiff petitioner in this case instituted the suit on a balance struck in his account book by the defendant respondent on the 5th of September, 1924. The suit ought to have been filed on the 5th of September, 1927, in the Court of Small Causes at Jhang. As a matter of fact it was filed on the 7th of October, 1927, in the Court of the Senior Subordinate Judge, who sent it to the Court of a Subordinate Judge. On the 8th of October, this Subordinate Judge ordered the plaint to be returned for presentation in the Small Cause Court, allowing the presentation to be made by the 10th of October. The plaintiff thereupon presented the plaint in the Court of Small Causes on the 10th of October, 1927. The suit was dismissed as barred by limitation on the 11th of January, 1928, and a petition for revision was filed in this Court on the 10th of April, 1928. This petition came before a Single Judge on the 23rd of November, 1928, when the question of limitation was argued at some length and as there was a conflict of authority, the case was referred to a Division Bench. It has now been argued by Mr. Badri Nath on behalf of the petitioner and Mr. Malhotra on behalf of the respondent.

In order to bring the suit within limitation section 4 of the Limitation Act had to be invoked by the plaintiff. Under section 4 the plaint should have

(1) (1920) I. L. R. 45 Bom. 443.

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been presented in the proper Court. It was, as already stated, presented in the wrong Court and in order to bring the suit within limitation the plaintiff seeks the aid of section 14 of the Limitation Act. The question whether section 14 can be so invoked was considered at considerable length in *Govindasami Padayachi and another v. Sami Padayachi* (1). The view therein taken was that section 14 could not be invoked by the plaintiffs in such circumstances. Various authorities were discussed in the judgment of Venkatasubra Rao J., and the only case that takes an opposite view is *Basvanappa v. Krishnadas* (2). The only other case which has been cited by the counsel for the respondent is *Bano Mal v. Bano Mal* (3), in which the Madras view was adopted.

After hearing counsel and a consideration of the cases cited I would accept the view taken by the Madras High Court and adopt the reasoning on which it is based. In this view the suit was barred by limitation and the petition is, therefore, dismissed with costs.

HARRISON J.

HARRISON J.—I agree and while realising that the result is unfortunate and perhaps inequitable, the wording of the two sections appears to be so clear as not to allow of any other interpretation. The first thing to be done is to calculate the period of limitation and after the last date has been ascertained, advantage may be taken of a holiday under section 4, but section 14 does not apply after the calculation has been made.

A. N. C.

Revision dismissed.

(1) 1923 A. I. R. (Mad.) 114. (2) (1920) I. L. R. 45 Bom. 443.
 (3) (1920) 55 I. C. 55.