

## LETTERS PATENT APPEAL.

Before Addison A. C. J. and Din Mohammad J.  
 MODERN CHEMICAL WORKS, LIMITED,  
 BARODA (PLAINTIFFS) Appellants  
*versus*  
 MANMOHAN NATH DAR (DEFENDANT)  
 Respondent.

1935

June 17.

## Letters Patent Appeal No. 37 of 1935.

*Indian Limitation Act, IX of 1908, Schedule I, Articles 117, 120 : Liquidation of Company — Call-order made by Baroda Court — Suit in Delhi Court — for arrears of unpaid calls — Limitation.*

The Modern Chemical Works, Limited, Baroda, having been put into liquidation by the Baroda Court in 1925, the Liquidating Court, Baroda, passed an order on 14th July, 1927, to issue a call of Rs.20 per share, the call-money to be paid on or before 1st November, 1927. The Liquidators were authorized to recover the amounts due inside the State by execution of the order and outside the State by instituting suits for their recovery, if they were not paid on or before the 1st November, 1927. The Liquidators brought the present suit in the Delhi Court on 31st October, 1933. A Single Bench of this Court held that the suit was barred by time under Article 117 of the Indian Limitation Act.

*Held*, that the call-order made by the Baroda Court on 14th July, 1927, was not a foreign judgment within the meaning of Article 117, though it might be enforced in the same manner as a judgment, and that the suit was governed by Article 120 and was, therefore, within time.

*Ex parte* Whinney — *In re Sanders* (1) and *Westmoreland Green and Blue Slate Company v. Feilden* (2), relied upon.

*London, Bombay and Mediterranean Bank, Limited v. Hormasji Pestanji Framji* (3), dissented from.

(1) (1884) L. R. 13 Q. B. D. 476. (2) (1891) 3 Ch. D. 15.

(3) (1871) 8 Bom. H. C. R. 200.

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*Letters Patent Appeal from the judgment passed by Agha Haidar J. in C. A. No.1583 of 1934, on 23rd January, 1935, affirming that of Mr. R. B. Beckett, District Judge, Delhi, dated 19th May, 1934 (who affirmed that of Lala Pars Ram, Subordinate Judge, 3rd class, Delhi, dated 8th March, 1934), dismissing the plaintiffs' suit as barred by limitation.*

BISHEN NARAIN, SHAMSHER BAHADUR and KISHEN DAYAL, for Appellants.

DIN DAYAL and VISHNU DUTT, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.—The Modern Chemical Works, Limited, Baroda, were put into liquidation by the Baroda Court in June, 1925. On the 14th July, 1927, the liquidating Court in Baroda passed an order to issue a call of Rs.20 per share, the call-money to be paid on or before the 1st November, 1927. The Liquidators were authorised to recover the amount due inside the State by execution of the order, and outside the State by instituting suits for its recovery if the moneys were not paid on or before the fixed date, the 1st November, 1927. The Liquidators brought the present suit in the Delhi Court on the 31st October, 1933. The trial Judge held that it was a suit on a foreign judgment and was thus governed by Art. 117 of the Limitation Act which allows a period of six years from the date of the judgment, *i.e.* from the 14th July, 1927. The suit was thus barred by time if Art. 117 applied. The contention before him was that it was not a suit on a foreign judgment and that the residuary Article 120 applied. This gives a period of six years from the date when the right to sue accrues. As the payment had not to be made till the 1st November, 1927, the suit would be within time

under Art. 120, as it was brought within six years of the 1st November, 1927.

The suit having been dismissed and the appeal also dismissed by the District Judge there was an appeal to this Court which was heard by Agha Haidar J. He held that it was a suit on a foreign judgment and that it was barred by time under Art. 117 of the Limitation Act. Against this decision this Letters Patent Appeal has been admitted and has come before us for hearing.

There is no doubt as to the law in England. In paragraph 1103 of the 5th Volume of Halsbury's Laws of England (second edition) it is stated that such an order is generally called a "balance-order" and that it can be enforced in the same way as a judgment. The question came before Mathew and Cave JJ. in *Ex parte Whinney—In re Sanders* (1). It was held by them that a "balance-order" is not a "final judgment" within the meaning of the Bankruptcy Act and, therefore, a bankruptcy notice cannot be issued in respect of such an order. It was explained that certain statutes and rules have given the power to enforce an "order" in the same way as a "judgment." But that when it is said that an "order" may be enforced in the same manner as a "judgment," this makes it clear that the "order" is not a "judgment." These learned Judges, therefore, concurred in finding that a balance or call-order was not a final judgment, which meant a final judgment in an action. The same conclusion was reached by Kekewich J. in *Westmoreland Green and Blue Slate Company v. Feilden* (2). He pointed out that it was true that a

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balance-order was a matter of record, but still it did not fulfil the conditions of a judgment. There was an appeal from his decision which was dismissed by Lindley, Bowen and Fry LJJ.

The law in India is similar to that in England. Under section 199 of the Indian Companies Act all orders made by a liquidation Court may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced. The same distinction is, therefore, apparent in the Indian Act as well as in the Baroda Act that these orders are not decrees, though they may be enforced in the same manner as if they were decrees. This would not entitle them to be taken beyond the jurisdiction and sued upon as foreign judgments.

Agha Haidar J., however, relied on the *London Bombay and Mediterranean Bank, Ltd. v. Hormasji Pestanji Framji* (1) in which it was held that the Courts in India treat a call-order made by the Court of Chancery in England upon a contributory of a company registered in England, and being wound up under the authority of the Court of Chancery, as a foreign judgment, and would not allow the liability of a defendant sued upon such order to be disputed, unless it be shown that the Court had no jurisdiction to make the order, or that the defendant had no notice of it, or that it is not in its nature a final order. This decision was given in 1871 and was prior in point of time to the two English cases mentioned in which it was held that a balance-order was not a judgment. This decision, therefore, is not one which can be followed. There is little or no reasoning contained in

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it, and that only in the concluding part of the judgment as follows:—

“ An order to have the force of a foreign judgment to which this Court can give effect must be final; but the balance-order is clearly final.”

We are, therefore, of the opinion that the call-order made by the Baroda Court was not a foreign judgment and that Art. 117 is thus not the appropriate Article.

Further, it is clear from the plaint and from the order of the liquidating Court in Baroda that the suit was not a suit based on a foreign judgment. All that the plaint said was that the money was due for the reasons stated and that the cause of action arose after the passing of the order of the liquidating Court in Baroda. The plaint is one to collect the money due for the call, sanctioned by the liquidating Court, and is in the form of an ordinary action. This was also the intention of the liquidating Court which authorised the Liquidators to institute suits to recover sums due from persons living outside the jurisdiction of the Baroda Court. It was not disputed before us that Art. 120 would apply, as held in *Harchand Rai v. Rang Lal* (1), if the suit was not one on a foreign judgment.

For the reasons given we accept this appeal, set aside the orders of the trial Court and the Single Judge of this Court and remand the suit to the original Court for disposal in accordance with law. Costs will abide the event.

A. N. C.

*Appeal accepted.*

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