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principle of the Full Bench ruling in *Shrinivas v. Hanmant* <sup>(1)</sup> and the plaintiffs were bound to bring the suit under article 118 of the Limitation Act within six years from the time when the adoption of defendant 1 became known to them. The fact that the Legislature has prescribed that the period of limitation for such a suit should run from the time when the adoption becomes known to the person contesting it and not from the time when the adopted boy succeeds to the property of his adoptive father is decisive of the question of limitation and supports the view taken by the lower Courts in this case. The same view was taken by Davies, J., in *Parvatki v. Saminatha*. <sup>(2)</sup>

For these reasons we confirm the decree of the lower Appellate Court with costs.

*Decree confirmed.*

(1) (1899) 24 Bom. 260.

(2) (1896) 20 Mad. 40.

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Jacob.*

THE AHMEDABAD MUNICIPALITY (ORIGINAL PLAINTIFF), APPELLANT, v. SULEMANJI ISMALJI (ORIGINAL DEFENDANT), RESPONDENT.\*

*Municipality—Bombay District Municipal Act Amendment Act (Bom. Act II of 1884), section 30 (1)—Executory contract—Breach—Binding character—Suit for damages.*

In a suit for damages for breach of an executory contract, it is open to the defendant to show that it is not binding on him inasmuch as it is not binding on the plaintiff.

\* Second Appeal No. 588 of 1902.

(1) Section 30 of the Bombay District Municipal Act Amendment Act (Bom. Act II of 1884):

30. The President of a Municipality may, on behalf of the Municipality, enter into any contract or agreement in such manner and form as, according to the law for the time being in force, would bind him if such contract or agreement were on his own behalf; provided that the amount or value of such contract or agreement shall not exceed five hundred rupees.

Every other contract or agreement on behalf of a Municipality shall be in writing and shall be signed by the President and by two other Commissioners and shall be sealed with the common seal of the Municipality.

No contract or agreement not executed as in this section provided shall be binding on a Municipality.

SECOND appeal from the decision of Lalshankar U. Trivedi, Additional First Class Subordinate Judge of Ahmedabad, with Appellate Powers, reversing the decree of Vadilal T. Parikh, Joint Subordinate Judge.

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Suit to recover damages for breach of an executory contract. The plaintiff Municipality on the 23rd September, 1899, advertised an auction to be held on the 5th October, 1899, of a contract to supply firewood to the Water-works at Ahmedabad for one year commencing from the 1st December, 1899. At the auction-sale the defendant offered to take for Rs. 14,850 the contract to supply firewood for one year commencing from the 1st December, 1899, and signed the *bilam yádi* (memorandum of auction-sale). As the amount involved was more than Rs. 500, the General Committee of the Municipality had to sanction the auction under section 30 of the District Municipal Act Amendment Act (Bom. Act II of 1884). The Sanitary Committee, therefore, submitted the defendant's proposal for the acceptance of the General Committee on the 5th October, 1899. The defendant on the 16th October, 1899, wrote to the Secretary of the Municipality that he was given to understand that the sanction of the General Committee would be obtained within a week from the date of the auction and that he should be informed of the acceptance of his offer within two days to enable him to fulfil the contract. The Secretary replied on the 25th October, 1899, that the business of the contract would be placed before the general meeting at the end of the month. The general meeting was held on the 27th October, 1899, when it directed the Sanitary Committee to make further inquiry as to more favourable terms. The Sanitary Committee then held another auction on the 13th November, 1899, for the supply of firewood up to the 1st January, 1900. One Popat took the contract and agreed to supply fuel on receipt of Rs. 37 daily. The defendant's rate was about Rs. 41 per day. The Sanitary Committee by their report, however, informed the General Committee that terms proposed by the defendant for one year's contract were quite reasonable and the General Committee having, thereupon, sanctioned the defendant's terms, the plaintiff on the night of the 30th November, 1899, informed the defendant by a telegram that

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his offer was accepted and a letter also was sent to him to the same effect. The letter reached the defendant on the 2nd December, 1899. On the 5th December, 1899, the defendant wrote a letter to the plaintiff in the following terms:—

I have received from you an *ya'di* (*i.e.*, memorandum), dated the 30th November, 1899. In reply to the same I have to write as follows: I do not agree to what you write about the contract for the supply of 'Kathi' (*i.e.*, fuel) at the Water-works. I had in connection with the said contract for the supply of 'Kathi' (fuel) caused inquiries to be made at your place. In reply to the same Ráo Sáhob Pranjivandas, Secretary (of the Municipality), wrote to me in his letter dated the 25th October, 1899, that the said matter has been (would be) placed before (a meeting of) the General Committee (to be held) on date the 27th October, 1899, (for them) to approve the contract. I, therefore, got my men Abdul Husen Chui and Sha.khbbhai to be present on my behalf on that day at the time when (the meeting of) the Committee was held. And on that day the General Committee did not approve of my contract and the Municipal Secretary and the other Commissioner sahebs informed my men who were present (there) of the same and said to them as follows:—Your contract has not been approved of. You are, therefore, free. Thus ended the conversation between the Municipality and me in connection with the contract. Nearly a month thereafter you now send me another notice about the contract having been approved of. I do not agree to the same. And the approval of the Municipality without an offer on my part is of no use. I am not, therefore, going to supply 'Kathi' (fuel) and am not bound to supply the 'Kathi' (fuel). May the same be known to you . . .

In the year 1900 the plaintiff sued to recover Rs. 1,685 from the defendant as damages for breach of the contract. The sum claimed represented the difference which the plaintiff had to pay to other contractors over and above the amount of Rs. 14,850 for which the defendant had offered to take the contract on the 5th October, 1899.

The defendant answered, *inter alia*, that the contract was broken by the plaintiff and not by him (defendant); that the plaintiff attempted to enter into new contracts with other persons at lower rates and when none was found to accept the contract at a lower rate, the contract in suit was sanctioned by the General Committee on the 30th November, 1899, and he was informed of the same at Godhra by a telegram at 11 P. M. of the same day; that it was, therefore, impossible for him to fulfil the contract from the 1st December, 1899, at Ahmedabad; that on the

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2nd December, 1899, he got a letter from the plaintiff; that on the 13th November, 1899, the plaintiff made a contract with another person for the month of December at a lower rate; that the plaintiff also entered into a contract with a third person for the month of January, 1900, at a lower rate; that the rate of firewood having subsequently risen, the plaintiff unjustly brought the present suit, and that if the General Committee had sanctioned the defendant's contract at an earlier date, he (defendant) would have been in a position to fulfil the contract.

The Subordinate Judge found that the defendant had broken the contract in suit and he awarded to the plaintiff the amount claimed as damages for breach of the contract.

On appeal by the defendant the Judge reversed the decree and dismissed the suit on the following among other grounds:—

It is undisputed that defendant lives at Godhra. On the night of the 30th November, 1899, plaintiff sent a telegram to defendant at Godhra and on 1st December a registered letter was sent to him. . . It is beyond doubt that defendant got the information about the acceptance at about midnight preceding 1st December, 1899. It was physically impossible for defendant to be present at Ahmedabad on 1st December to fulfil the terms of the contract. Under section 6 (2) of the Contract Act (Act IX of 1872), the defendant's proposal should be considered to have been revoked, particularly when plaintiff gave contract for December, 1899, to Popat on 13th November, 1899. I therefore hold that there was no contract binding on defendant and that under the above circumstances of the case plaintiff is not entitled to any damages.

The plaintiff preferred a second appeal.

*Lalubhai A. Shah*, for the appellant (plaintiff).

*Gokuldas K. Parekh*, for the respondent (defendant).

JENKINS, C. J.—We affirm the decree of the lower Appellate Court on the ground that as this suit is brought by the Municipality for breach of an executory contract, it is open to the defendant to show that it is not binding on him inasmuch as it is not binding on the plaintiff. It is not binding on the plaintiff because the formalities prescribed by section 30 of the Bombay District Municipal Act Amendment Act, 1884, have not been complied with. The appellant must pay the costs of this appeal.

*Decree confirmed.*