

CIVIL REFERENCE.

*Before Mr. Justice Heaton and Mr. Justice Shah.*SATYABHAMABAI KOM JANARDAN KHARE, PLAINTIFF, v. GOVIND
alias BABU BIN JANKU BADE, DEFENDANT.

1914.

April 7.*Limitation—Exclusion of time—Excuse of delay—Time taken up in proceedings before a conciliator—Non-granting of certificate owing to Government ending the conciliation system.*

The plaintiff advanced money on a bond which became due on the 31st May 1910. He applied to the conciliator for a certificate on the 28th March 1913, but before the certificate could be had Government abolished the conciliation system with effect from the 30th May 1913. The plaintiff filed a suit to recover the money on the 30th June 1913; and he claimed to exclude from the period of limitation the time between the 28th March and 30th May 1913:—

Held, that though the plaintiff was not entitled to deduct the time from 28th March to 30th May 1913, he was entitled to such extension of time as might be necessary to give him a reasonable opportunity to enable him to file the suit in time.

THIS was a reference made by B. R. Mehendale, Subordinate Judge of Dapoli, under Order XLVI, Rule 1 of the Civil Procedure Code.

The reference was in the following terms:—

Defendant passed plaintiff a money bond on 31st May 1907 making the amount repayable in three years, *i. e.*, on 31st May 1910. On 28th March 1913 plaintiff applied to a conciliator, under section 39 of the Dekkhan Agriculturists' Relief Act. Government Notification No. 3478, dated 10th May 1913, abolished the conciliation system with effect from 30th May 1913. On this date neither an agreement had been effected under sections 44—45 of the Dekkhan Agriculturists' Relief Act between defendant and plaintiff on the application filed by the latter, before him, by the conciliator; nor had a certificate been given to plaintiff-applicant under section 46 of the same Act. Plaintiff brought her suit on 30th June 1913, alleging, among other things, that the time from 28th March 1913 to 30th June 1913 spent before the conciliator saved the claim from the statute of limitation.

The question submitted for reference accordingly is:—

In computing the period of limitation prescribed for the suit in which it was necessary to file a conciliator's certificate under section 47 of the

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Dekkhan Agriculturists' Relief Act, can the time intervening between the application made by the plaintiff, under section 39, and the conciliators ceasing to work, by reason of Government Notification No. 3478, dated 10th May 1913, be excluded?

The only provision of law as to the period of time spent before the conciliator, being excluded in computing the period of limitation for any suit, is contained in section 48 of the Dekkhan Agriculturists' Relief Act. But that section is concerned with the time between the application on the one hand, and grant of certificate on the other.

It does not contemplate any possibility, however arising, of the making of an agreement under sections 44—45 of the Act or of a grant of certificate under section 46 of the Act, being rendered impossible.

There are provisions of law, which, to some extent, give relief against hardships arising from the statute of limitation in the case of appeals and certain kinds of applications. But for obvious reasons these provisions cannot apply to suits. And no authority has been cited by the learned pleader for plaintiff, nor am I aware of any, on the strength of which I could hold that the period spent before the conciliator between the date of application and the conciliators ceasing to work by reason of the Government Notification, can be excluded, in computing the period of limitation.

In my own humble opinion, therefore, I am not in favour of excluding such time and would answer the question in the negative.

As the matter, however, is not free from reasonable doubt and a wrong decision on the point may be of considerable consequence to more than one litigant, I have ventured under Order XLVI, Rule 1, to make the said reference for favour of decision on the point by their Lordships.

S. S. Patkar, Government Pleader, for the plaintiff.

G. S. Rao (*amicus curiæ*), for the defendant.

SHAH, J. :—The facts are stated in the reference. The question submitted for our opinion is whether the plaintiff is entitled to deduct the time between his application to the Conciliator and the termination of the Conciliation system in the District (*i. e.*, from 28th March to 30th May 1913).

As no certificate is granted by the Conciliator, it is quite clear that section 48 of the Dekkhan Agriculturists' Relief Act has no application. There is no other statutory provision corresponding to section 48 to cover a

case of this kind. The period of limitation applicable, therefore, would be the period prescribed under the Limitation Act, unless the plaintiff could claim to have an extension of the time in any other way.

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It is clear that the plaintiff's suit would be in time if filed on the 31st May 1913. The local Government cancelled the appointments of Conciliators in the District with effect from the 30th May 1913. The plaintiff had made his application to the Conciliator for a certificate which it was obligatory upon him to obtain at the time. Up to 30th May 1913, he could not have filed his suit without a certificate from a Conciliator. All of a sudden by the Government Notification he was called upon to file his suit on the 31st May, which it was practically impossible for him to do. Under these circumstances we think the plaintiff is clearly entitled to the benefit of the rule that where the law creates a limitation, and the party is disabled to conform to that limitation without any default in him, and he has no remedy over, the law will ordinarily excuse him. But this rule is subject to the limitation that it will excuse him so far as it is necessary and not beyond. The cases of *Mayer v. Harding*⁽¹⁾ and *The Queen v. Justices of Surrey*⁽²⁾ are fair illustrations of the application of this principle under somewhat different circumstances.

The plaintiff in this case would be entitled to such extension of time as would be necessary to secure him a reasonable opportunity to file the suit in time, which it became practically impossible for him to do in virtue of the Government Notification. It is not possible to lay down any general rule as to what period would be sufficient to constitute a reasonable opportunity. It must depend upon the circumstances of each particular case, which must be duly proved. Thus though the

(1) (1867) L. R. 2 Q. B. 410.

(2) (1880) 6 Q. B. D. 100.

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plaintiff in this case is not entitled to deduct the time from 28th March to 30th May 1913, he is entitled to such extension of time as may be necessary to give him a reasonable opportunity to enable him to file the suit in time.

We are indebted to Mr. G. S. Rao for having argued the case on behalf of the defendant at our request.

Order accordingly.

R. R.

CIVIL REFERENCE.

Before Mr. Justice Heaton and Mr. Justice Shah.

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RUPCHAND MAKUNDAS, PLAINTIFF v. MUKUNDA
MAHADEV, DEFENDANT.*

Limitation—Limitation Act (IX of 1908), section 4—Exclusion of time—Certificate of conciliator—Time taken up in obtaining conciliator's certificate—Abolition by Government of the conciliation system—Closing of the Court during vacation—Suit filed on the opening day is suit filed in time—Dekkhan Agriculturists' Relief Act (XVII of 1879), section 48.†

The plaintiff advanced money on two bonds which became due on the 24th February 1910. He applied for a conciliator's certificate on the 13th February 1913 and obtained it on the 26th April 1913. From the 28th April to the 8th June 1913 the Court was closed for the Summer Vacation. In the meanwhile, Government abolished the conciliation system with effect from the 30th May 1913. The plaintiff filed the present suit to recover the money on the 9th June 1914 and claimed to exclude the time taken up in the conciliation proceedings :—

Held, that the suit, though filed on the 9th June 1913 when the conciliation system was abolished, was substantially one to which the provisions of

* Civil Reference No. 15 of 1913.

† The section runs as follows :—

48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded.