

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

NANALAL LALLUBHAI (ORIGINAL DEFENDANT), APPLICANT v. CHHOTALAL NARSIDAS (ORIGINAL PLAINTIFF), OPPONENT².

1925.

March 31.

Provincial Small Cause Courts Act (IX of 1887), Schedule II, Article 24—Award—Suit to recover money awarded—Jurisdiction—Limitation—Indian Limitation Act (IX of 1908), Schedule I, Article 120.

In July 1919, an oral award was made under which Rs. 350 were awarded to the plaintiff. On March 8, 1924, the plaintiff filed a suit in the Court of Small Causes, Surat, to recover the said amount. The defendant admitted the award but pleaded (1) that the Small Cause Court had no jurisdiction as the case was one to contest an award falling within item 24 of the Second Schedule of the Provincial Small Cause Courts Act; and (2) that the suit was barred by limitation.

Held, (1) that the Small Cause Court had jurisdiction to entertain the suit inasmuch as the award being admitted and the plaintiff only seeking to recover what was awarded to him it was not a suit to contest an award.

Simson v. McMaster⁽¹⁾, referred to.

(2) that the suit being a suit to enforce an award was governed by Article 120 of the Limitation Act, 1908, and was therefore not barred.

Rajmal Girdharlal v. Maruti Shivram⁽²⁾ and *Fardunji Edalji v. Jamsedji Edalji*⁽³⁾, discussed.

CIVIL application under extraordinary jurisdiction praying for the revision of the decision of K. V. Desai, First Class Subordinate Judge of Surat, in Small Cause Civil Suit No. 477 of 1924.

Suit to recover money.

The plaintiff, Chhotalal Narsidas, filed a suit in the Court of Small Causes at Surat to recover Rs. 416-4-0. The claim was based on an oral award made in July 1919, under which Rs. 350 were to be paid to the plaintiff by defendant, Nanalal. The suit was filed on March 8, 1924.

¹ Civil Application No. 146 of 1924 under extraordinary jurisdiction.

⁽¹⁾ (1890) 13 Mad. 344.

⁽²⁾ (1920) 45 Bom. 329.

⁽³⁾ (1903) 28 Bom. 1.

1925.

NANALAL
LALLUBHAI
v.
CHHOTALAL
NARSIDAS.

The defendant admitted the award but pleaded that the suit was barred by limitation and that the Small Cause Court had no jurisdiction as the case came within Article 24 of the Second Schedule of the Provincial Small Cause Courts Act.

The Small Cause Court Judge held that the Court had jurisdiction to entertain the suit and that it was not barred by limitation under Article 120 of the Limitation Act. He, therefore, decreed the plaintiff's claim.

The defendant applied to the High Court.

M. B. Dave, for the applicant.

H. V. Divetia, for the opponent.

MACLEOD, C. J.:—The plaintiff filed this suit as a Small Cause suit to recover money awarded to him against the defendant by an oral award delivered in July 1919. The suit was filed on March 8, 1924. The defendant pleaded: (1) that the Small Cause Court had no jurisdiction as the case came within item 24 of the Second Schedule of the Provincial Small Cause Courts Act; (2) that the suit was barred by limitation. The Judge decreed the plaintiff's claim. Now item 24 in the Second Schedule refers to a suit to contest an award. The award in this case is admitted. The plaintiff is only seeking to recover what was awarded to him. It is, therefore, not a suit to contest an award, and the Small Cause Court had jurisdiction. Reference may be made to *Simson v. McMaster*⁽¹⁾.

Then the defendant says that this is a suit for money; the period of limitation is, therefore, three years. The plaintiff says that a suit to enforce an award comes under Article 120. In *Rajmal Girdharlal v. Maruti Shivram*⁽²⁾, the plaintiff applied to file an award made on an arbitration out of Court. The application was

⁽¹⁾ (1890) 13 Mad. 344.

⁽²⁾ (1920) 45 Bom. 329.

numbered as a suit, but it was summarily rejected without trying the validity of the award, on the ground that treated as a suit it was time-barred. The plaintiff next filed a regular suit to enforce the award. It was objected to as being barred by *res judicata*, as well as by limitation. It was held that a suit to enforce an award was a suit not provided for by any other Article of the Indian Limitation Act, so that the time was six years under Article 120. The petitioner relies upon the decision of this Court in *Fardunji Edalji v. Jamsedji Edalji*⁽¹⁾. The question there was whether a suit on an award was a suit for specific performance. So far as we can gather, there was no question of limitation argued before the Court, nor was it decided that a suit to enforce an award is in reality a suit to recover money directed by the award to be paid to the successful party, so that the period of limitation for such a suit was three years and not six.

The rule, therefore, must be discharged with costs.

Rule discharged.

J. G. B.

(1) (1903) 28 Bom. 1.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

D. S. APTE AND ANOTHER (ORIGINAL APPLICANTS), APPELLANTS v. TIRMAL HANMANT SAVNUR (ORIGINAL OPPONENT), RESPONDENT ^o.

Decree—Execution—Civil Procedure Code (Act V of 1908), section 48, clause 1 (b)—“Subsequent order” means any order made by a competent Court.

A decree was passed on May 28, 1903, in the Subordinate Judge's Court. On September 8, 1908, the final decree was passed by the High Court. On June 9, 1911, the Subordinate Judge made an order that the amount should be recovered by annual instalments of Rs. 125 each, the first instalment to

* Second Appeal No. 357 of 1924.

1925.

NANALAL
LALLUBHAI
v.
CHHOTALAL
NARSIDAS.

1925.

April 3.