

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 634 OF 2018

M/s. SGM Properties & Investments Pvt. ...Applicant
Ltd.

Office at Bharat House, 3rd Floor, 104,
Bombay Samachar Marg, Fort, Mumbai 400
023, now at 15/16, Bhpen Chambers,
Ground Floor, 9, Dalal Street, Fort, Mumbai
400 001.

Versus

1. Basantkumar Bilasrao Rungta ...Respondent
carrying on business at Room No.58/B,
the 4th Floor, 9/13/15 Dalal Street, Fort,
Mumbai 400 023.

2. The Court Receiver, High Court,
Bombay, M.G. Road, Mumbai

Pravinchandra N. Shah - Advocate for the applicant.
Vishal Kanade a/w Jimish Shah i/b Divya Shah Associates -
Respondent -1.

CORAM : DAMA SESHADRI NAIDU, J.

DATED: 20th AUGUST 2019.

JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by the
consent of the parties.

2. This Civil Revision Application is in the face of concurrent findings. Though it is under Section 115 of CPC, it raises a question of law. To be precise, a question of law and fact: limitation.

3. To put the issue in its proper perspective, I need to touch upon the facts in the earlier rounds of litigation. For the preceding litigation provides the background for the Court to reckon whether the respondent's suit is barred by the limitation.

4. SGM Properties and Investments Pvt., Ltd., ("the Company") is the landlord; it purchased the property in March 1982. As its title is not in dispute, we leave it at that. By the time the Company purchased the property, it was occupied by, as the Company asserts, three persons: the cousins. The company treated them as trespassers "in an illegal occupation." So it wanted their eviction. For that purpose, it filed SC Suit No.685 of 1990. In that suit, on 30th January 1990, the Company sought an interim relief of injunction. Even this relief does not affect our discussion.

5. The fact remains that the suit was filed in January 1990. On 31st January 1990, Bansantkumar Bilasria Rungta, one of the occupants, received the notice. Though the other two defendants were also served soon, they did not contest the suit. So we will exclude from the reckoning the chronology that concerns the other two.

6. Rungta, as the sole contesting-defendant, filed his vakalatnama on 24.02.1990. Then, on 10.04.1992, he took out a notice of motion. As the second defendant, he wanted the trial Court to injunct the Company, among other things, from interfering with his possession. The next month, that is on 26.05.1992, the company took out its own notice of motion 2888 of 1992. It wanted the trial Court to appoint a receiver under Order 40 of CPC.

7. The Trial Court disposed of both the notices of motion: one by the Company and the other by Rungta. Through a common order, dated 24.08.1994, the trial Court appointed a receiver. Through the same order, it also secured Rungta's interest as was sought—his possession was protected.

8. But pending the Company's suit, Rungta filed RAE Suit No. 2074 of 1996. In November 1996, he sued for a declaration that he is a tenant. In that suit, the Company, as the defendant, among other things, raised two objections: that the receiver is a necessary party, and that the suit is barred by limitation.

9. The trial Court has declared Rungta to be the tenant. And it overruled the Company's specific objection about limitation. Aggrieved, the Company filed an intra-court Appeal: Appeal No. 392 of 2008. The Appellate Bench of the Small Cause Court concurred with the trial Court and dismissed the appeal. As a

result, the Company has invoked Section 115 of CPC and filed this Civil Revision Application.

Submissions:

Petitioner's:

10. Shri Pravinchandra Shah, the learned counsel for the Company, has submitted that this case raises a pure question of law—that is, limitation. If this Court rules on that, it obviates all discussion on the merits. According to him, the Company's suit for eviction has still been pending, and all issues relevant on either side have already been raised in that suit. To elaborate, Shri Shah has brought to my notice, first, Article 58 of the Limitation Act. In that statutory background, he contends, next, that when a right to sue accrues to a person, he ought to sue the opponent in three years.

11. In this context, Shri Shah terms as merit-less Rungta's claim that he had the cause of action accruing to him either on the termination of the suit proceedings initiated by the Company or, in the alternative, when the Trial Court in that suit appointed the receiver.

12. At any rate, Shri Shah has stressed that the courts below have concurrently erred on a material question of law and that has affected their respective jurisdictions. So the orders impugned are amenable to revision under Section 115 of CPC. To support his contentions, Shri Shah has relied on *Khatri Hotels Private Limited*

*v. Union of India*¹, *Peter Francis Conceicao v. Candolina Conceicao*², and *Board of Trustees of Port of Kandla v. Hargovind Jasra*³.

Respondent's:

13. Shri Vishal Kanade, the learned counsel for the respondent- plaintiff, has submitted that this Court ought not to interfere with the concurrent findings of the courts below. According to him, none of the grounds the Company raised in this Civil Revision Application affect the jurisdiction of the courts below. In other words, the Company has established no jurisdictional error for inviting this Court's indulgence under Section 115 of CPC.

14. According to Shri Kanade, under Article 58 of the Limitation Act, the right to sue has a distinct legal connotation. According to him, there should have been a real, rather than a perceived, threat to Rungta's status as a tenant. The Company's mere denial about his status would not have provided Rungta with a right to sue the Company. That denial, Shri Kandae insists, does not amount to a cause of action.

15. To elaborate, Shri Kanade has submitted that once the company has sued, Rungta took all steps to defend himself. And for that purpose, he has filed the written statement and asserted his

1(2011) 9 SCC 126
22016 (6) Bom C.R. 727
3(2013) 3 SCC 182

status. Therefore, the Company's allegation that Rungta is a trespasser must first receive judicial acceptance before it provides Rungta the cause of action to sue. That is, unless the Company has its suit decreed, its assertion about Rungta's status does not amount to a material denial.

16. In the alternative, Shri Kanade has submitted that when the trial Court, in the Company's suit, appointed the receiver, he took symbolic possession. Thus, the receiver has started to exercise his powers under Order 40, Rule 1 of CPC. Only then has Rungta faced a real threat to his status as a tenant. Consequently, Rungta must establish his status as a tenant before a court of law. Precisely for that purpose, Shri Kanade submits, he has sued. And Rungta filed that suit well-within three years after the trial Court appointed the receiver.

17. In the end, Shri Kanade urges this Court not to interfere with the concurrent findings of the courts below.

Discussion:

18. The first plea: mere filing of a suit with a particular assertion does not amount to an effective denial of Rungta's status as a tenant. The suit must have culminated in a decree. That is, the Company's assertion must have received judicial imprimatur.

19. The second plea: Rungta faced the first challenge to his possession when the trial Court appointed a receiver under Order 40, Rule 1 of CPC. The receiver took symbolic possession of the

property. So that, in the alternative, has provided the right to Rungta to sue—for the first time.

(a) What is en did the Right to Sue Accrue

20. Let us examine. The Schedule to the Limitation Act provides for the limitation affecting a person's right to sue. Part III relates to "Suits Relating to Declarations." It has three Articles: Article 56 concerns declaration over a forged instrument; Article 57 over an adoption. And Article 58 is residuary. All other declarations must be sought in three years—in three years "when the right to sue first accrued."

Description of suit	Period of limitation	Time from which period begins to run
To obtain any other declaration	Three Years	When the right to sue first accrues

21. The expression "right to sue" has not been defined. But the same stands judicially interpreted on more than one occasion. In *State of Punjab v. Gurdev Singh*⁴, the Supreme Court has held that the expression "right to sue" ordinarily means the right to seek relief under any legal proceedings. Generally, the right to sue accrues only when the cause of action arises; that is, the right to prosecute and to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or "when

there is a clear and unequivocal threat to infringe that right” by the defendant against whom the suit is instituted.

22. In *Rukhmabai v. Laxminarayan*⁵, a three-Judge of the Supreme Court has noticed the earlier judgments and summed up the legal position. According to it, “the right to sue under Article [58 of 1963 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit.” Every threat by a party to such a right, however ineffective or innocuous it may be, cannot be a clear and unequivocal threat to compel him to sue. Whether a particular threat gives rise to a compulsory cause of action depends upon the question “whether that threat effectively invades or jeopardizes the said right.”

23. As noted by the Supreme Court in *Hargovind Jasraj*, while enacting Article 58 of the 1963 Act, the legislature has designedly departed from the language of Article 120 of the 1908 Act. The word ‘first’ has been used between the words ‘sue’ and ‘accrued’. This would mean if a suit is based on multiple causes of action, the limitation will run from the date when the right to sue first accrues. To put it differently, successive violations of the right will not give rise to fresh causes of action; and the suit attracts dismissal if it is beyond the period of limitation counted from the day when the right to sue “first” accrued.

24. In *Pune Municipal Corporation v. Dhananjay Prabhakar Gokhale*⁶, this Court has held that the cause of action for filing a suit to cancel an instrument arises when the facts which entitled the plaintiff to have an instrument cancelled or set aside first become known to him. In that case, the fact-finding court has found that the plaintiff came to know about the instrument only in December 1988 and, then, sued in three years. The court has, besides, also found that the deceased defendant committed fraud on the plaintiff.

25. So the precedential position as enunciated in *Gurdev Singh, Rukhmabai, and Hargovind Jasraj* is that when there is a clear and unequivocal threat to infringe a person's right, that person has a right to sue. The force of that threat depends on whether it effectively invades or jeopardizes the other person's right on the issue that is threatened to be violated or infringed. As Article 58 has used the word 'first' between the words 'sue' and 'accrued', successive violations of the right will not give rise to fresh causes of action. And the suit attracts dismissal if it is beyond the period of limitation counted from the day when the right to sue "first" accrued.

When has the first right to sue "first" arisen?

26. To answer this question, we should address Rungta's specific assertions. He has contended that mere filing of a suit with a particular assertion does not amount to an effective denial of his 62016 (6) Bombay CR 727,

status as a tenant. The suit must have cumulated in a decree, that is the Company's assertion must have received judicial imprimatur.

27. If we take that line of argument to its logical end, once the Company's claim in the suit finds judicial acceptance, it results in a decree. Then, a decree does not provide a fresh cause of action for Rungta to go into another round of litigation. The judicial directive binds. He must, first, get the decree set aside if he can. For that purpose, he may have to take measures like an appeal. So, Rungta's contention that mere pleadings do not amount to an assertion, much less a denial of one's status fails.

28. We may examine the effect of pleadings—to be precise, the effect of an assertion in the pleadings—from the consequences that flow when those pleadings are put to the test in the suit. To determine at the threshold, say, whether a suit is maintainable, we should only look at what the plaintiff, the *dominus litis*, has pleaded. The defendant's counter assertions play no role. But to determine the plaintiff's relief, the rival pleadings matter. That is, the court frames issues not merely based on the plaint averment but based on the pleas on both sides. So a defendant's counter assertion provides as much ground as the plaintiff's initial assertion does for the court to frame the issues.

29. Under Order 14, Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. Material propositions are those propositions of law or

fact which a plaintiff must allege to show a right to sue or a defendant must allege to constitute his defence. And each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

30. Here, the Company filed the suit in January 1990 and denied Rungta his alleged status as the tenant. It has, in fact, considered him a trespasser. So it pleaded. The landlord's hostile assertion—before a judicial forum, at that—has provided to Rungta the cause of action. Rungta did file his written statement. He denied the plaintiff's assertion that he is a trespasser; instead, he set up a counter-assertion, that he is a tenant. So one of the questions the suit could be, and perhaps is, whether Rungta is a tenant or a trespasser.

31. So to be explicit, the material proposition as affirmed by the Company is that Rungta is a trespasser. And it was denied by Rungta. So it formed the subject of a distinct issue. Then, Rule 2 of Order 14 declares that the trial court must pronounce judgment on all issues.

Has the Receiver's Appointment Upset Rungta's Apple Cart?

32. The second plea Rungta has taken is, if at all there is any challenge to his status as a tenant, that came for the first time when the trial Court appointed a receiver. According to him, when the court appointed the receiver, Rungta had his right to sue

materialised for the first time. To support his contention, Rungta maintains that the receiver took symbolic possession of the property. From then, in three years, Rungta has filed his suit.

33. I am afraid even this plea must fail. The Company has never disputed the Rungta's possession over the property, and the receiver's taking symbolic possession is a *non sequitur*—beside the point. So I conclude that the trial court's appointing the receiver has not upset Rungta's scheme of things. Then, what follows is this: (a) the Company's assertion in the suit that Rungta is not a tenant but a trespasser has given Rungta his right to sue for the first time; (b) the Company's assertion need not receive any judicial acceptance before it transforms itself into a cause of action; (c) the Company's assertion is a clear and unequivocal threat to infringe Rungta's right as an alleged tenant; it has in fact effectively invaded or jeopardized Rungta's claim to be a tenant; (d) so the Company's filing the suit has provided Rungta a cause of action for the first time; (e) other subsequent developments may have provided Rungta later causes of action. And Rungta filed the suit beyond three years after his receiving the suit summons or, at least, after his receiving a plaint copy.

What follows?

34. That said, I must also note that with the dismissal of Rungta's suit as not maintainable on the grounds of limitation does not affect his claim to be the tenant, rather than a trespasser.

As I see from the issues framed by the trial Court in Suit No.685 of 1990, there is a specific issue framed about Rungta's status: "Do the defendants prove that they are not the trespasser, there is in possession as tenant."

35. As both the Courts below have erred in interpreting Article 58 of the Limitation Act, I consider it a jurisdictional failure in their deciding a question of law or at least a mixed question of fact and law.

Conclusion:

36. As a result, I set aside the Appellate Bench's order, dated 5th May 2018, and declare that RAE Suit No. 2074 of 1996 is barred by limitation. As a matter of abundant caution, I also declare that this order does not prejudice the rights of either party before SC Suit No.685 of 1990 on any aspect, including the defendant's status.

37. As Rungta's suit now stands dismissed for want of limitation, the parties may apply to the trial Court for the return of documents, if any.

The Civil Revision Application is allowed.

[DAMA SESHADRI NAIDU, J.]