VASHDEO R BHOJWANI

v.

ABHYUDAYA CO-OPERATIVE BANK LTD & ANR.

(Civil Appeal No. 11020 of 2018)

SEPTEMBER 02, 2019

[R. F. NARIMAN AND SURYA KANT, JJ.]

Limitation Act, 1963:

s.23 and Article 137 – Applicability of the Limitation Act – To the application u/s.7 of Insolvency and Bankruptcy Code, 2016 – It was held in the impugned order that as the default continued, no period of limitation would be attracted – Appeal to Supreme Court – Held: Limitation Act is applicable to the applications filed u/s.7 – Petition u/s. 7 filed after 3 years from the date of default, would be barred u/Art. 137 of the Limitation Act – The limitation would not be saved by virtue of s.23 of the Limitation Act – Appeal allowed – Insolvency and Bankruptcy Code, 2016 – s.7.

B.K. Educational Services Private Limited vs. Parag Gupta and Associates, **2018 (14) SCALE 482;** *Balkrishna Savalram Pujari and Others vs. Shree Dnyaneshwar Maharaj Sansthan & Others,* **[1959] Suppl. 2 S.C.R. 476 – relied on.**

Case Law Reference

2018 (14) SCALE 482	**relied on**	**Para 3**
[1959] Suppl. 2 S.C.R. 476	**relied on**	**Para 4**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11020 of 2018

From the Judgment and Order dated 05.09.2018 of the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insolvency) No. 372 of 2018

Anand Landge, Jay Kishor Singh, Advs. for the Appellant.

Rajeev K. Panday, Rajeev Maheshwaranand Roy, P. Srinivasan, Hrishikesh Chitaley, Ashish Verma, Chandra Prakash, Advs. for the Respondents.

A The Judgment of the Court was delivered by

R. F. NARIMAN, J.

1. In the facts of the present case, at the relevant time, a default of Rs. 6.7 Crores was found as against the respondent No.2. The respondent No.2 had been declared a NPA by Abhyudaya Co-operative Bank Limited on 23.12.1999. Ultimately, a Recovery Certificate dated 24.12.2001 was issued for this amount. A Section 7 petition was filed by the Respondent No.1 on 21.07.2017 before the NCLT claiming that this amount together with interest, which kept ticking from 1998, was payable to the respondent as the loan granted to Respondent No.2 had originally been assigned, and, thanks to a merger with another Cooperative Bank in 2006, the respondent became a Financial Creditor to whom these moneys were owed. A petition under Section 7 was admitted on 05.03.2018 by the NCLT, stating that as the default continued, no period of limitation would attach and the petition would, therefore, have to be admitted.

2. An appeal filed to the NCLAT resulted in a dismissal on 05.09.2018, stating that since the cause of action in the present case was continuing no limitation period would attach. It was further held that the Recovery Certificate of 2001 plainly shows that there is a default and that there is no statable defence.

3. Having heard learned Counsel for both parties, we are of the view that this is a case covered by our recent judgment in *B.K. Educational Services Private Limited* vs. *Parag Gupta and Associates*, 2018 (14) Scale 482, para 27 of which reads as follows:-

> "27. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."

4. In order to get out of the clutches of para 27, it is urged that Section 23 of the Limitation Act would apply as a result of which limitation

would be saved in the present case. This contention is effectively answered by a judgment of three learned Judges of this Court in *Balkrishna Savalram Pujari and Others* vs. *Shree Dnyaneshwar Maharaj Sansthan & Others*, [1959] Supp. (2) S.C.R. 476. In this case, this Court held as follows:

> "… …. In dealing with this argument it is necessary to bear in mind that s.23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that s.23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued..." (at page 496)

Following this judgment, it is clear that when the Recovery Certificate dated 24.12.2001 was issued, this Certificate injured effectively and completely the appellant's rights as a result of which limitation would have begun ticking.

5. This being the case, and the claim in the present suit being time barred, there is no debt that is due and payable in law. We allow the appeal and set aside the orders of the NCLT and NCLAT. There will be no order as to costs.

Kalpana K. Tripathy Appeal allowed.