

Union of India,
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Raunaq Singh,
—
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76 of the Act is not comprehensive enough to cover the case of loss, it is comprehensive to cover the case of loss so far as section 74A of the Act is concerned. The courts would ordinarily presume that a word used in different parts of a statute carries the same meaning. It is observed on page 322 of Maxwell on the Interpretation of Statutes, Tenth Edition—

“It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act.”

In the circumstances, I am of the view that the word ‘damage’ as used in section 74A of the Act is not comprehensive enough to cover the case of loss of part of the goods consigned. The railway administration consequently cannot escape its liability by relying on the provisions of section 74A of the Act.

The appeal, accordingly, fails and is dismissed, but, in the circumstances of the case, I leave the parties to bear their own costs.

B.R.T.

Before D. Falshaw, C. J. and A. N. Grover, J.

THE STATE OF PUNJAB AND ANOTHER.—Appellants

versus

BHAGAT RAM.—Respondent

Letters Patent Appeal No. 16 of 1960.

1963
—
Sept., 4th.

Limitation Act (IX of 1908)—Art. 181—Whether applicable to an application under section 88 of the Lunacy Act (IV of 1912).

Held, that article 181 of the Indian Limitation Act 1908, applies only to applications which are made under

the Code of Civil Procedure. As there is no provision in the Indian Lunacy Act, 1912 which makes the provisions of the Code of Civil Procedure applicable to all proceedings before the District Court, it must be held that article 181 cannot be made applicable to the application which had been filed under section 88 of the Lunacy Act.

Appeal under Clause 10 of the Letters Patent from the order of the Hon'ble Mr. Justice Kapoor, dated the 22nd day of October, 1959 passed in F.A.O. No. 41 of 1959 modifying that of Shri Manohar Singh, District Judge, Hoshiarpur, dated the 3rd November, 1958 to the extent that Bhagat Ram would pay a sum of Rs. 1,800 to the Punjab Government with proportionate costs throughout.

S. M. SIKRI, ADVOCATE-GENERAL, for the Appellants.

RAJ KUMAR, ADVOCATE, for the Respondent.

JUDGMENT

GROVER, J.—This is an appeal under clause 10 of the Letters Patent against a judgment of a learned Single Judge by which he modified the order of the first Court directing the payment of certain amounts by Bhagat Ram to the Punjab Government in respect of the maintenance charges of his wife, Maya Wanti, who had been ordered on 23rd July, 1952, to be detained in the Mental Hospital at Amritsar. On 9th October, 1957, the Additional District Magistrate, Amritsar, instituted an application under section 88 of the Indian Lunacy Act, 1913, praying that maintenance charges in the aggregate sum of Rs. 2,865.16 nP, be awarded against Bhagat Ram, the husband, who was bound to maintain his wife, Maya Wanti, while she was in the Mental Hospital. The learned District Judge after deciding all the points that were raised but which it is unnecessary to state, held that Bhagat Ram was liable to pay Rs. 2,865.16 nP. towards the costs of maintenance of Maya Wanti up to 31st May, 1957, and directed him to pay the aforesaid amount to

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the Punjab Government. He was also burdened with costs.

Before the learned Single Judge, one of the points taken was that the claim was barred by time under article 181 of the First Schedule to the Indian Limitation Act. Certain cases were cited before him, i.e., *Ananta Charan Padhan v. Nimai Bahubalendra* (1), *Shah and Co. v. Ishar Singh-Kirpal Singh* (2) and *Union of India v. Firm Kiroo Mal Nawal Kishore* (3), in support of the contention that article 181 was applicable. It has been observed by the learned Judge that Mr. H.S. Doabia, who appeared on behalf of the State, was not able to cite any authority to the contrary. It was consequently held that the claim for the period beyond three years from the filing of the application would be barred by limitation. Accordingly a decree was made only for an amount of Rs. 1,800 with proportionate costs. The present appeal has been filed by the Punjab State.

It is somewhat unfortunate that the counsel who appeared on behalf of the State before the learned Single Judge did not refer to several decisions including one of the Supreme Court. According to these Article 181 would not be applicable to such proceedings. In *Sha Mulchand & Co., Ltd. (in liquidation) v. Jawahar Mills, Ltd.*, (4), it was observed at page 369—

“Learned advocate, however, strongly relies on article 181 of the Limitation Act. That article has, in a long series of decisions of most, if not all, of the High Courts, been held to govern only applications under the Code of Civil Procedure. It may be that

(1) A.I.R. 1927 Pat. 177.

(2) A.I.R. 1954 Cal. 164.

(3) I.L.R. 1952 Punjab 524—A.I.R. 1952 Punj. 423.

(4) (1963) S.C.R. 351.

there may be divergence of opinion even within the same High Court but the preponderating view undoubtedly is that the article applied only to applications under the Code."

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After referring to a number of authorities, it was further observed—

"This long catena of decisions may well be said to have, as it were, added the words 'under the Code' in the first column of that article."

Although the matter was not finally decided but the trend of observations of their Lordships is that article 181 would be applicable only to applications which were made under the Code of Civil Procedure. In *Kalinath Chatterjee v. Nagendra Nath Chatterjee* (5), after examining a good deal of case law as also considering the observations of the Supreme Court, S. R. Das Gupta and N. K. Sen, JJ., have expressed the view that article 181 does not apply to an application for probate and that the application contemplated in article 181 is confined to the type of applications filed under the Code of Civil Procedure. In *Mst. Anguri Devi v. Bal Ram Ganpat Rai* (6), I had occasion to discuss the judgment of the Supreme Court and other case law while sitting with Bhandari, C.J. It was pointed out by me that since there was no mention of the Code in article 181 a good deal of controversy arose whether that article was confined to applications made under the Code or that it governed applications made under other enactments. After referring to the observations in the Supreme Court decision and several other cases we came to the conclusion that article 181 would govern an application

(5) A.I.R. 1959 Cal. 81.

(6) I.L.R. (1960) 1 Punjab 373=A.I.R. 1960 Punj. 204.

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under the Arbitration Act as the Limitation Act and the Civil Procedure Code apply to arbitrations under that Act,—*vide* sections 37 and 41, respectively. Mr. Raj Kumar Aggarwal, who appears for the respondent Bhagat Ram, sought to derive support from our decision in *Mst. Anguri Devi's case* (6) but that is clearly distinguishable as admittedly there are no provisions in the Lunacy Act equivalent to sections 37 and 41 of the Arbitration Act. All that section 89 of the Lunacy Act provides is that if an application is made under section 88, the Court shall enquire into the matter in a summary way and then make an order for the recovery of the cost of maintenance. Sub-section (2) is to the effect that such order shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person mentioned therein. This provision is quite different from section 41 of the Arbitration Act which says *inter alia* that subject to the provisions of that Act and the rules made thereunder the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court and to all appeals under that Act. As there is no provision in the Lunacy Act which makes the provisions of the Code of Civil Procedure applicable to all proceedings before the District Court, it must be held that article 181 cannot be made applicable to the application which had been filed under section 88 of the Lunacy Act.

The result is that the appeal is allowed, the order of the learned Single Judge is set aside and that of the District Judge restored. In the circumstances the parties are left to bear their own costs.

D. FALSHAW, C.J.—I agree.

B.R.T.