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ACCRUAL OF RIGHT TO SUE VIS-A-VIS ARTICLES 113 AND 137 OF THE SCHEDULE OF THE LIMITATION ACT, 1963

22 June 2020

A three-judge bench of the Supreme Court (SC), vide its judgment dated 5 June 2020 passed in *Shakti Bhog Food Industries Limited v The Central Bank of India & Anr* (Civil Appeal No. 2514 of 2020) (SC Judgment), held that accrual of right to sue under Article 113 of the Schedule of the Limitation Act, 1963 (the Act) did not necessarily arise when the right to sue *first* accrued but rather, when there was a clear and unequivocal threat of infringement of rights. Subsequently, the Calcutta High Court (HC), vide a judgement dated 11 June 2020 passed in *In the Goods of: Hanuman Prasad Agarwal AND Suresh Agarwal v Satyanarain Agarwal & Ors* (GA No 990 of 2018 with TS No 7 of 2016) (HC Judgment) arrived at the same finding in respect of matters covered under Article 137 of the Schedule of the Act.

FACTS IN THE MATTER BEFORE THE SC

- In July 2000, it came to the notice of Shakti Bhog Food Industries Limited (the Appellant) that it was being overcharged interest and commission in respect of certain facilities availed by it from the Central Bank of India (Bank). It immediately brought this to the knowledge of the Bank and asked for a refund of the excess amount charged.
- Initially, the Bank informed the Appellant that it was looking into the matter. However, subsequently, vide a communication dated 8 May 2002 issued to the Appellant, the Bank took the stand that the interest and commission had been charged by it as per applicable policy and the Appellant was not entitled to any refund.
- There was further exchange of communication between the parties, where they stuck to their respective stands. In these circumstances, in February 2005, the Appellant filed a suit against the Bank seeking rendition of true and correct accounts of the commission and interest charged by it and refund of the excess amount charged.
- The Bank, being the defendants in the suit, filed an application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (CPC) for rejection of plaint on the ground that the suit was time barred.
- The trial court applied Article 113 of the Schedule of the Act, which is the residuary entry governing suits in respect of which there is no specific entry in

the Schedule. Article 113 provides a limitation period of 3 years from "when the right to sue accrues". The trial court held that at best, the right to sue could be taken to accrue in favour of the Appellant in October 2000, which was till the time the Appellant availed the credit facilities from the bank. This would mean that the suit had to be filed by October 2003, rendering the instant suit barred by limitation. The plaint was therefore rejected and the suit dismissed.

- This view was affirmed by the first appellate court and the second appellate court, which was the Delhi High Court. Aggrieved, the Appellant filed a Special Leave Petition before the SC.

FINDINGS OF THE SUPREME COURT

- The issue for consideration before the SC was whether the present suit was liable to be rejected under Order VII Rule 11(d) as barred by limitation.
- At the outset, the SC reiterated that while deciding an application under Order VII Rule 11, only the plaint as a whole could be looked at.
- The SC thereafter examined Article 113 in light of other entries in the schedule of the Act and observed that unlike other articles, Article 113 does not specify any event as the starting point of computation of limitation. Further, as opposed to entries like Article 58 which require limitation to be calculated from when the right to sue "first" accrues, Article 113 merely requires limitation to be computed from the when right to sue accrues.
- This being the position, the SC held that the decisions of the courts below seemed to have been founded on a premise that limitation for the purposes of Article 113 had to be computed from when the cause of action first arose. This reading of the entry was against the legislative intent. In the scheme of the Limitation Act, wherever it was intended that the period of limitation be calculated from the occurrence of an event earliest in point of time, it had been specified. The legislature had consciously worded Article 113 liberally. For the purposes of Article 113, the right to sue would only arise when there was a clear and unequivocal threat of infringement of rights.
- The SC further held that the trial court had failed to read the plaint as a whole and did not consider specific averments in the plaint stating that the cause of action arose from May 2002 onwards when the bank asserted that there was no infirmity in the interest and commission charged by it. Even if it was assumed that the right to sue arose in May 2002, the suit was within limitation. In any event, since limitation is a mixed question of fact and law, courts were required to be circumspect while considering applications for rejection of plaint on the ground of the suit being time barred.
- In these circumstances, the SC allowed the appeal and restored the plaint to the file.

JUDGMENT OF THE HC

- These proceedings pertained to the last Will and Testament dated 16 April 1989 (will) of one Hanuman Prasad Agarwal (testator). The testator had died on 13 June 1993.

- Suresh Kumar Agarwal, one of the sons of the testator and the executor named in the will, filed an application for probate before the HC in September 2014. The application for probate was converted into a suit upon objections being raised against its grant by other legal heirs of the testator.
- One Mr Satyanarain Agarwal (applicant), another son of the deceased, filed an application in February 2018 for rejection of the application for probate on the ground that it was time barred. It was argued that Article 137 of the Limitation Act, which applied to grant of probate and letters of administration, required the application to be filed for grant thereof within three years of the death of the testator. In the instant case, the application had inexplicably been filed after 22 years and was liable to be rejected.
- The HC considered Article 137 of the Schedule of Limitation Act, which is the residuary entry dealing with all applications not specifically covered in the Schedule of the Limitation Act. Article 137 provides a limitation period of three years from “when the right to apply accrues”.
- While Article 137 was found to be applicable to applications for grant of probate, the HC rejected the contention of the applicant that the right to apply contemplated thereunder accrues from the death of the testator. Instead, the right to apply was held to accrue when “the dispute arises or when it becomes necessary to apply for grant of probate”.
- The court further held that while Section 293 of the Indian Succession Act requires a cooling-off period of 7 days and 14 days from the testator’s death to apply for grant of probate and letters of administration respectively, there is no outer limit prescribed. This pointed towards a deliberate legislative attempt to ensure that the Will is given effect to without limitation coming in the way. As such, Article 137 could not be construed in a manner defeating the legislative intent.
- Although the matter was last heard on 4 March 2020, the Hon’ble Judge took judicial cognisance of and relied on the decision of the Supreme Court in *Shakti Bhog*, which was rendered on 5 June 2020, given the similarity in language of Articles 113 and 137.
- In view of the aforesaid, the application for rejection of probate was dismissed.

KEY TAKEAWAYS

The aforesaid decisions have considerable significance. Articles 113 and 137, being residuary provisions, apply to all suits and applications in respect of which there is no specific entry and have very wide coverage. Further, the application of Article 137 is not restricted to proceedings covered by CPC. An illustrative list of matters covered by the aforesaid articles is as follows:

ARTICLE 113	ARTICLE 137
Suit under Section 68 (b), (d) and (d) of the Transfer of Property Act, 1882	Application for execution of decree granting permanent injunction

Suit to set aside fraudulent transfer under Section 53 of the Transfer of Property Act, 1882	Applications under Section 7 and 9 of the Insolvency and Bankruptcy Code, 2016 (IBC)
Suit for compensation under Section 70 of the Indian Contract Act, 1872	Applications for rectification of share register under Section 59 of the Companies Act, 2013
Suit for dissolution of partnership	Application of revocation of grant of probate

The decisions clarify that limitation for the purposes of Articles 113 and 137 would start running when there is a clear and unequivocal threat to one's rights and not merely when the breach happened. In other words, it is when there is a threat to redressal of the breach that the right to sue/apply arises. The decisions affirm that courts are not to mechanically compute limitation from the time the breach surfaces, which is often seen to be the case.

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