

IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 52 OF 2002.

Chandrakant Raghunath Naik
r/o H. No. 174, Near
Bhagwati Temple, Pernem.

... Appellant.

Versus

1. Asst. Collector of Customs,
Customs Division, Margao.
2. The Collector of Customs,
Customs Division, Margao.
3. Government of India through
the Collector of Customs,
Panaji.
4. Subhash V. Palekar,
r/o H.No. 9, Kondal Wada,
Pernem.

... Respondents.

Mr. Arun Bras De Sa, Advocate for the Appellant.

Mr. J.S. Vaz, Addl. Central Govt. Standing Counsel for
the Respondents 1 to 3.

Coram: P.V. HARDAS, J.

Date: 30th January 2003.

ORAL ORDER.

The unsuccessful plaintiff no. 1 assails the concurrent finding of facts recorded by two Courts below in the present Second Appeal. The plaintiff no. 1/appellant had filed a suit against the respondents 1 to 3/defendants and the learned trial Court, by its Order, dated 30th November 1999, dismissed the suit under Section 9 of the Code of Civil Procedure. The learned trial Court, thus, held that the suit had been filed after 10 years challenging the Order dated 30th June 1988. The appellant, therefore, filed Miscellaneous Civil Appeal No. 13 of 2000, which also

came to be dismissed, by the IInd Additional District Judge, South Goa, Margao, by Judgment, dated 9th April 2002. The learned lower appellate Court came to the conclusion that the suit of the plaintiff no. 1 was barred by limitation and, therefore, rightly dismissed by the trial Court. Hence, the present Second Appeal.

2. I have heard Mr. D'Sa, the learned counsel appearing on behalf of the appellant and Mr. Vaz, the learned counsel appearing on behalf of the respondents 1 to 3.

3. Mr. D'Sa, the learned counsel appearing on behalf of the appellant, has urged before me that a civil suit challenging the Order passed by the Assistant Collector of Customs and Central Excise, Goa, dated 30th June 1988, was maintainable. Without going into the maintainability of the said Civil Suit, the question is whether the suit filed by the appellant/plaintiff no. 1 was barred by limitation.

4. In the prayer clause the plaintiff no. 1 has sought for a declaration that the Order passed by the Assistant Collector of Customs, Panaji, Goa, dated 30th June 1988, be declared null, void, inoperative and unexecutable. In paragraph 5 of the plaint, it is stated that the cause of action for the suit arose on

10th February 1998, when the defendant no. 1 compelled the plaintiffs/forced them to deposit the amount of penalty imposed, by the Order, dated 30th June 1988. It is an admitted fact that the appellant/plaintiff no. 1 being aggrieved, by the Order, dated 30th June 1988, had preferred an appeal to the Customs, Excise and Gold (Control) Appellate Tribunal, Bombay Bench, where the Tribunal had directed the appellant/plaintiff no. 1 to deposit Rs. 20,000/- and Rs. 10,000/- respectively. Since the appellant/plaintiff no. 1 did not comply with the direction of the Tribunal, the Tribunal dismissed the said appeal under Section 129-E of the Customs Act. It is not the case of the appellant/plaintiff no. 1 that the Order passed by the Tribunal was either without jurisdiction or was in excess of jurisdiction. The limitation prescribed for seeking declaratory relief is three years, when the right to sue first accrues. In the present case, the right to sue accrued for the first time on 30th June 1988 and, therefore, a civil suit challenging the aforesaid Order, dated 30th June 1988, ought to have been filed within three years thereof. The civil suit ultimately came to be filed on 21st March 1998, that is, practically after ten years. It is urged by Mr. D'Sa, the learned counsel appearing on behalf of the appellant, that the cause of action arose when the Tribunal dismissed the appeal on 20th August 1997 and, thus, the suit filed by the appellant/plaintiff no. 1

was within the prescribed period of limitation. The appellant/plaintiff no. 1 has not challenged the Order of the Tribunal in the suit. What is challenged in the suit is the Order of the second respondent, dated 30th June 1988. The challenge simpliciter to the Order, dated 30th June 1988, in a suit filed nearly ten years thereafter, is obviously beyond the period of limitation. The learned lower appellate Court, therefore, according to me, has rightly held that the suit filed by the appellant/plaintiff no. 1 was hopelessly barred by limitation.

5. This Second Appeal, thus, does not involve any question of law, much less a substantial question of law warranting any interference in appeal. The Second Appeal is, thus, dismissed in limine, confirming the Orders of the two Courts below dismissing the suit of the appellant/plaintiff no. 1, with no order as to costs.

(P.V. HARDAS)
JUDGE.

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