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PANNALAL

v.

MURARILAL

February 27, 1967

B [K. N. WANCHOO, R. S. BACHAWAT AND V. BHARGAVA, JJ.]

Indian Limitation Act (9 *of* 1908), *Art.* 164—*"Knowledge of the decree", meaning of.*

The appellant had dealings with the respondent in respect of a *ruqqa* and a mortgage. The respondent filed two suits against the appellant for recovery of the moneys due on the *ruqqa* and the mortgage respectively. C The summons in the suits was not duly served on the appellant and the suits were decreed *ex-parte*. The appellant then filed an application to set aside the *ex-parte* decree in the suit on the *ruqqa*. The court passed an order on 16th August 1958, setting aside that *ex-parte* decree and also informed the appellant, who was present in court on that day, of the passing of the *ex-parte* decree in the mortgage suit. On 16th April 1959, the appellant filed an application for setting aside the *ex-parte* decree in the mortgage suit. The trial court and the High Court held that the D application was barred by limitation under Art. 164 of the Indian Limitation Act, 1908, as more than 30 days had expired after the appellant had knowledge of the *ex-parte* decree.

In appeal to this Court,

HELD: The application was rightly dismissed.

E Under Art. 164 of the Limitation Act, the period of 30 days is counted, when the summons is not duly served, from the date when the applicant had knowledge of the decree; and the expression "knowledge of the decree" means knowledge of the particular decree which is sought to be set aside. It is a question of fact in each case whether the information conveyed is sufficient to impute the knowledge, and, the test is not what the information would mean to a stranger, but what it meant to the defendant F in the light of his previous dealings with the plaintiff and the facts and circumstances known to him. [759 B; 760 B-D]

Pundlick Rowji v. *Vasantrao Madhav Rao* 11 B.L.R. 1296; *Kumud Nath Roy Chowdhury* v. *Jotindra Nath Chowdhury* I.L.R. 38 Cal. 394; *Bapurao Sitaram Karmarkar* v. *Sadhu Bhiva Gholap* I.L.R. 47 Bom. 485 and *Batulan* v. *S. K. Dwivedi*, I.L.R. 33 Patna, 1025, approved.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 866 of 1964.

Appeal by special leave from the judgment and order dated April 7, 1964 of the Allahabad High Court in F.A.F.O. No. 367 of 1959.

H *S. G. Patwardhan, Rameshwar Nath* and *Mahinder Narain* and *Prayag Das Agarwal*, for the appellant.

J. P. Goyal and *Raghunath Singh*, for the respondents.

The Judgment of the Court was delivered by

Bachawat, J. This appeal incidentally raises a question of interpretation of art. 164 of the Indian Limitation Act, 1908. The respondent instituted two suits against the appellant in the court of the First Civil Judge, Kanpur. Suit No. 25 of 1958 was for the recovery of moneys due on a mortgage for Rs. 50,000. Suit No. 22 of 1958 was to recover a sum of Rs. 8,000 due on a *ruqqa*. On May 15, 1958, both the suits were decreed *ex-parte*. The appellant filed an application to set aside the *ex-parte* decree passed in Suit No. 22 of 1958. This application was numbered as miscellaneous case No. 104 of 1958. On August 16, 1958, the First Civil Judge, Kanpur, passed an order setting aside this *ex-parte* decree on certain conditions. The order sheet in O.S. No. 22 of 1958, Misc. Case No. 104 of 1958 on August 16, 1958 stated :

> "Heard parties counsel, accept the applicant's affidavit and hold that due to non-service applicant was prevented from being present. Allowed on condition of payment of Rs. 150—as costs within a month and on condition that allotment shall continue.
>
> Sd/- K. N. Goyal
> 16-8-58
>
> Applicant is hereby informed of connected decree of 25 of 1958 as well.
>
> Sd/- K. N. Goyal
> 16/8."

An appeal by the appellant from this order was dismissed on September 25, 1958. On February 5, 1959, an advocate employed by the appellant to file a civil revision petition against the appellate order, obtained a certified copy of the order dated August 16, 1958. On February 24, 1959, a civil revision petition was filed by the appellant against the appellate order. On April 16, 1959, the appellant filed an application in the court of the First Civil Judge, Kanpur, under O.9, r. 13, C.P.C., for the setting aside of the *ex-parte* decree passed in Suit No. 25 of 1958. The Civil Judge dismissed the application. An appeal from this order filed by the appellant was dismissed by the High Court. Both the courts held that the summons in Suit No. 25 of 1958 was not duly served on the appellant but as more than 30 days had expired after the appellant had knowledge of the *ex-parte* decree, the application was barred by limitation under art. 164 of the Indian Limitation Act, 1908. The appellant now appeals to this Court by special leave.

Under O.9, r. 13, C.P.C., a decree passed *ex-parte* against a defendant is liable to be set aside if the summons was not duly

A served or if the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing. If the summons is not duly served, the defendant suffers an injury and he is entitled *ex-debito justitiae* to an order setting aside the *ex-parte* decree provided he applies to the court within the prescribed period of limitation. Under art. 164 of the Indian Limitation
B Act, 1908, the period of limitation for an application by a defendant for an order to set aside a decree passed *ex-parte* was 30 days from "the date of the decree or when the summons was not duly served, when the applicant had knowledge of the decree". The onus is on the defendant to show that the application is within time and that he had knowledge of the decree within 30 days
C of the application. If the defendant produces some evidence to show that the application is within time, it is for the plaintiff to rebut this evidence and to establish satisfactorily that the defendant had knowledge of the decree more than 30 days before the date of the application.

In *Pundlick Rowji* v. *Vasantrao Madhavrao*(1), Davar, J.,
D held that the expression "knowledge of the decree" in art. 164 means knowledge not of a decree but of the particular decree which is sought to be set aside, a certain and clear perception of the fact that the particular decree had been passed against him. On the facts of that case, Davar, J., held that a notice to the defendant that a decree had been passed against him in the High Court Suit No. 411 of 1909 in favour of one Pundlick Rowji with
E whom he had no dealings was not sufficient to impute to him clear knowledge of the decree in the absence of any information that the decree had been passed in favour of Pundlick Rowji as the assignee of a promissory note which he had executed in favour of another party. This case was followed by the Calcutta High Court in *Kumud Nath Roy Chowdhury* v. *Jotindra Nath Chow-*
F *dhury*(2). In *Bapurao Sitaram Karmarkar* v. *Sadbu Bhiva Gholap*(3), the Bombay High Court held that the evidence of two persons who had been asked by the plaintiff to tell the defendant about the decree and to settle the matter was not sufficient to impose knowledge of the decree on the defendant within the meaning of art. 164. Macleod, C.J. said :

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> "We think the words of the article mean something more than mere knowledge that a decree had been passed in some suit in some Court against the applicant. We think it means that the applicant must have knowledge not merely that a decree has been passed by some Court against him, but that a particular decree has been
H passed against him in a particular Court in favour of a particular person for a particular sum. A judgment-

(1) 11 B.L.R. 1296.
(2) I.L.R. 38 Cal. 394, 403.
(3) I.L.R. 47 Bom. 485.

> debtor is not in such a favourable position as he used to be when he had thirty days from the time when execution was levied against him. But we do not think that the Legislature meant to go to the other extreme by laying down that time began to run from the time the judgment-debtor might have received some vague information that a decree had been passed against him."

This decision was followed in *Batulan* v. *S. K. Dwivedi*(1) and other cases. We agree that the expression "knowledge of the decree" in art. 164 means knowledge of the particular decree which is sought to be set aside. When the summons was not duly served, limitation under art. 164 does not start running against the defendant because he has received some vague information that some decree has been passed against him. It is a question of fact in each case whether the information conveyed to the defendant is sufficient to impute to him knowledge of the decree within the meaning of art. 164. The test of the sufficiency is not what the information would mean to a stranger, but what it meant to the defendant in the light of his previous dealings with the plaintiff and the facts and circumstances known to him. If from the information conveyed to him, the defendant has knowledge of the decree sought to be set aside, time begins to run against him under art. 164. It is not necessary that a copy of the decree should be served on the defendant. It is sufficient that the defendant has knowledge of the material facts concerning the decree, so that he has a clear perception of the injury suffered by him and can take effective steps to set aside the decree.

In this case, in his application for setting aside the *ex-parte* decree, the appellant stated that he got the information of the passing of the *ex-parte* decree in suit No. 25 of 1958 for the first time from the respondent on April 13, 1959. It has been shown conclusively that this statement is false. The respondent filed an affidavit stating that the appellant was directly informed of the passing of this *ex-parte* decree by the First Civil Judge on August 16, 1958. This statement was not denied by the appellant. The courts below concurrently found that the appellant was personally present in the court of the First Civil Judge on August 16, 1958 when the learned judge informed him that an *ex-parte* decree had been passed against him in Suit No. 25 of 1958. The appellant was informed that suits Nos. 22 and 25 of 1958 were connected suits. The appellant knew that he had dealings with the respondent in respect of a *ruqqa* and a mortgage. He knew that the suit No. 22 of 1958 was filed on the *ruqqa*. From the information conveyed to him by the Civil Judge on August 16, 1958, it must have been clear to the appellant that an *ex-parte* decree had been passed against him in favour of the respondent in suit No. 25

(1) I.L.R. 33 Pat. 1025, 1050-8.

A of 1958 on the basis of the mortgage. The appellant had thus on August 16, 1958 clear knowledge of the decree passed against him in suit No. 25 of 1958 which he now seeks to set aside. Time began to run against him from August 16, 1958 under art. 164 of the Indian Limitation Act, 1908. The application filed by him on April 16, 1959 was, therefore, clearly barred by limitation
B and was rightly dismissed by the courts below.

In the result, the appeal is dismissed with costs.

V.P.S. *Appeal dismissed.*