
SECTION 29 OF THE LIMITATION ACT VIS-A-VIS PORTUGUESE LAWS

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ABSTRACT

Confusion on the applicability of the special law and then sudden repeal of it leads to denial of the suit where a valid cause of action arises. The judiciary has to be cautious of the measures while taking the action of repealing a special law. If the purpose of the code is to preserve the encompass diversity in the field, then the approach should be taken in a holistic manner rather being blind-sighted on a particular approach for repealing and not weighing the other one possible which saves the law.

Introduction

Subsection (2) of section 29 of the Limitation Act has given rise to several questions of interpretation and application of the Portuguese Civil Code. In earlier cases, it has been a point of contention and was impliedly repealed in the *Syndicate Bank v Prabha D. Naik and Another*.¹ This short note critically analyses how the Supreme Court approached the law and how it repealed the law erroneously. It goes into the aspect of interference of the doctrine of implied repeal in the functioning of the Parliament.

Section 29(2) of the limitation act deals with special or local laws that prescribe a limitation period for any suit, appeal, or application. According to the first half, the sub-section consists of two parts, where a special or local law prescribes a period different from that prescribed in the Limitation Act. Section 3 would be applicable as if that period had been set out in the Schedule to the Limitation Act.² In other words, the suit, appeal, or application to which the special or local law applies must, under section 3, be dismissed if it is instituted or made after the expiry of that particular period. The second half of section 29(2) provides that the provisions contained in sections 4 to 24 apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.³

Portuguese Civil Code: local law as well as special law

As held by the *Cadar Construction v Tara tiles*,⁴ the Portuguese Civil code is a local law as well as special law as it provided for the period of limitation for the enforcement of the rights arising under that code itself. A suit cannot be filed under the civil code when the cause of action arises outside the ambit of the civil code as the period of the limitation for the right is governed by the Limitation Act or any other limitation act corresponding to the right. However, the code provides a detailed enactment enumerating the various rights and liabilities of the citizens and the period of limitation corresponding to every right enumerated. Thus, it was considered a special law because it provided for the period of limitation for enforcing the rights arising under that Code itself.⁵ It is “local law” as viewed within the meaning of Section 29(2) of the Limitation Act, 1963.

¹ (2001) 4 SCC 713.

² Limitation Act No. 36 of 1963, Section 29(2).

³ LAW COMMISSION OF INDIA, THE LIMITATION ACT, 1963, REPORT NO. 89, 82 (March, 2019).

⁴ AIR 1984 Bom 258.

⁵*Id.*

The approach for deciding whether it is local or special law was considered in the syndicate bank case.⁶ It was contended that it should be treated as local law as the Code has been the guidance of the law of contracts for the common person for her/his day-to-day business and personal obligation creating the rights and liabilities which could be discharged within 30 years in terms of Article 535 of the Civil Code. It was also applicable only in the Union Territory of Goa, Daman, and Diu.⁷ However, the Court held that the Portuguese civil law could not be termed to be a local law or a special law applicable to the State of Goa, Daman and Diu, prescribing a different period of limitation within the meaning of section 29(2) of the Limitation Act. Thus, saving the civil code is not applicable.⁸

The Court was erroneous in the reasoning as the Portuguese Civil Code is a special law with reference to the Limitation Act, 1963. It is a code which is for special cases, in special circumstances, in contradistinction to the general rules of the law laid down, as applicable generally to all cases with which the general law deals.⁹ By way of Article 535, the Code lays down a bar of time i.e, 30 years, in respect of the special cases i.e. the cause of action arising under the code itself, which is local law to only Goa, Daman and Diu. Thus, it would be a special law contained within the general law i.e. the Limitation Act 1963. Thereby, it should not have been impliedly repealed.

Intention of the Legislature

The doctrine of implied repeal was used by the Supreme Court in *Syndicate Bank v Prabha D. Naik*.¹⁰ The focal point of discussion was the applicability of the provisions of the Indian Limitation Act, 1963 in relation with the Article 535 of the Portuguese Civil Code, which was the governing law of Limitation in the State of Goa, Daman and Diu.

The limitation laws in article 535 were held to be repealed by the Court using implied repeal doctrine. According to the Supreme Court in that decision,¹¹ “the doctrine of implied repeal is done where a particular provision could not have been intended to subsist and if left subsisting, the resultant effect would be an absurdity courts cannot but declare it to be so on the ground of repeal by implication?”. The Court applied the principle in the facts of the case by using a

⁶ *Syndicate Bank v Prabha D. Naik and Another*, (2001) 4 SCC 713

⁷ *Id.*

⁸ *Id.*

⁹ *Kaushalya Rani v Gopal Singh*, AIR 1964 SC 260.

¹⁰ (2001) 4 SCC 713.

¹¹ *Id.*

hypothetical example by letting Article 535 to subsist. If the appellant bank has its branches in other parts of the country and a similar situation of default of payment by a debtor arises, then even though the period of limitation is prescribed under the Limitation Act but the appellant would have the liberty to institute a claim for enforcement and the remedy continues for a much longer period i.e. 30 years. In other cases where the code is not applicable, the debtor can bona fide and validly extinguish a claim of creditor within a specific period prescribed by the Limitation Act i.e. 3 years but a debtor situated in that particular place by way of the Civil code cannot claim such extinguishment or bar of remedy of creditor until the expiry of a much longer period of time i.e. 30 years. This situation was considered anomalous.¹²

This approach is very problematic as it counters the legislative purpose of the to enact the law. The sum total of the consequences of Section 29(2) is to “preserve the unity in diversity in our laws of limitation”. The very purpose of the section is to preserve those special or local laws and diversity.¹³ Based on that example expressed above, every special law will be subject to doctrine of implied repeal as a particular region has different limitations from that of country. The doctrine is counter to the purpose of legislation.

A presumption lies against a repeal by implication. The reason of this rule is based the legislature while enacting a law has complete knowledge of the existing laws on the same subject matter. Therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation.¹⁴ When the new legislation contains a repealing section mentioning the previous legislations which it expressly repeals, the presumption against implied repeal of other laws further strengthens based on the principle of ‘expressio unius (persone vel rei) est exclusion alterius (the express intention of one person or thing is exclusion of another). The provisions need to be shown inconsistent or repugnant to the provisions of the other act that the two cannot stand together for rebutting the presumption. Necessary questions to be asked are: (1) whether there is direct conflict between the two provisions (2) whether the legislature intended to lay down an exhaustive Code in respect of the subject matter by replacing the earlier law. (3) whether the two laws co-exist in the same field.¹⁵

¹² *Id.*

¹³ *Syndicate Bank v Prabha D. Naik and Another*, (2001) 4 SCC 713

¹⁴ *Northern India Caterers (P) Ltd v State of Punjab*, AIR 1967 SC 1581.

¹⁵ *State of M.P v Kedia Leather & liquor Ltd*, (2003) 7 SCC 389.

In the Syndicate Bank case,¹⁶ the Court held that first there will be repugnancy insofar as application of the Limitation Act in various States of the country is concerned as to the rule of law and jurisprudential aspect of the Limitation Act. However, it failed to consider that whether legislature intended to lay down Limitation act, 1963, an exhaustive code in respect of the subject matter replacing Portuguese civil code or any other special law prescribing limitation period prescribing different than that mentioned in the Schedule. The Supreme Court held that since there is no special reference mentioned in the Limitation Act, even after formation of the state of Goa, Daman & Diu within the Indian Territory, of exclusion of the Portuguese civil code. Hence, in the absence of which no contrary intention be deduced, nor any contra inference be drawn. But this is not sufficient enough to answer that whether the legislature intended to repeal the Portuguese civil code while enacting the Limitation Act. In fact, from what we can deduce is that there are special laws that the Parliament would have to keep describing for many areas of the law and the fact that special or local laws keep changing regularly makes it difficult for Parliament to sit down and decide which law to be excluded. Thereby, Section 29(2) was enacted to **encompass such diversity where limitation periods are different**. Thus, the intention of the legislature is not to exclude these special or local laws.

The effect of the repealing the Portuguese Civil Code

The supreme Court in Syndicate bank overruled the position held in Justiniano,¹⁷ which was also relation to the question that the provisions of the Portuguese Civil code relating to the limitation be repealed by the Limitation Act, 1963, by necessary implication or whether they are saved by Section 29(2) of that Act. The Court came to the final decision in Justiniano case that “body of provisions in the Portuguese Civil Code dealing with the subject of limitation of suits etc. and in force in the Union Territory of Goa, Daman and Diu only is “local law” within the meaning of Section 29(2) of the Limitation Act, 1963. No question of repugnancy arises.”¹⁸ Thus, it held the Portuguese Civil code relating to limitation to continue in force in the Union Territory of Goa, Daman and Diu. This position was overruled and the Court said that the code cannot be termed as local law or special law applicable to the State of Goa, Daman and Diu prescribing a different period of limitation within the meaning of Section 29(2) of the

¹⁶ Syndicate Bank v Prabha D. Naik and Another, (2001) 4 SCC 713.

¹⁷ AIR 1979 SC.

¹⁸ *Id.*

Limitation Act and in any event, question of saving a local law under the Limitation Act of 1963 does not and cannot arise.

The effect of this overrule is barring many people from filing the suit for recovery of payment in the Union Territory. The cases where cause of action arose under the Portuguese Civil Code where people were on the belief that they would not be barred by the Article 535 cannot claim action under the same due to repeal of the civil code. The purpose of the law is to deliver justice but it is barring people to get justice from the Court. It would be unfair to the people doing business in the State of Goa and Union Territory of Daman and Diu that the other states are being allowed to follow their local laws or state laws. In this case, instead of repealing the law, it would have been better that since the cause of action arose outside the scope of Portuguese Civil Code, therefore limitation period under Article 535 of Portuguese Civil Code would not be applicable, rather Indian Limitation Act, 1963 and thus suit be barred by limitation period. The repeal of the code has given rise to the above possible problems with regard to filing of the suit.

Court interfering in the role of legislature

Through the use of the doctrine of implied repeal in the *Syndicate Bank case*,¹⁹ the Court repealed the Article 535 of the Portuguese Civil Code. It was used in the absence of the express intention of the legislature as to whether it intended to continue the application of the Portuguese Civil Code.

The problem with above approach is that the Court is functioning in place of Parliament by repealing the laws. It could have held the case to be barred by limitation as cause of action arose out of Indian Contract Act rather than Portuguese Civil Code. By taking the role of legislature, the Court is essentially making laws or striking them down, which is essentially the role of legislature.

The doctrine of implied repeal questions the wisdom of the legislature. It creates confusion with the intention of the legislature. Let's say there is another state following a local or special law for the limitation and similar situation arises as to the intention of the legislature not clear as to continuance of the local law. If the intention can be gathered from mere legislation itself, then there is no need to use the doctrine. However, if it is not determinable that what is the intention of the legislature with regard to that special law, the Court takes over the role of Parliament by

¹⁹ *Syndicate Bank v Prabha D. Naik and Another*, (2001) 4 SCC 713.

using doctrine of implied repeal. The repeal of law which falls within the ambit of Parliamentary functions, would fall within the ambit of the judiciary functions. Further if in the above taken example, if the Court does not use the doctrine of repeal, then Court would itself be creating inequality towards different communities by exercising the doctrine of implied repeal for some communities' civil code and not in the case of others. And it cannot be challenged as well because it is the judicial function and judicial function cannot be questioned on the ground of Article 14 of the Constitution. Therefore, there can be chaos with further usage of the doctrine of implied repeal.

Thus, Court's usage of doctrine of implied repeal in the Syndicate Bank was problematic for the future cases as well as independency of the Parliament to make laws.

Conclusion

To avoid confusion in other special or local laws, the scrutiny of the applicability of code being Special or local law to be saved by section 29(2) be looked in a very rational manner and should have consistency. The Court should not strike down those laws, on which people had been doing business and sudden repeal of them bar the institution of suit, appeal or application of the concerned cause of action. With regard to doctrine of implied repeal, the usage of it should be in the rarest of rare cases. This helps better functioning of the legislature and avoid people having going through long process of litigation to get their remedy.