IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

First Appeal No. 188 of 2005.

In the matter of:
Sadharan Bima Corporation, Sadharan Bima Bhaban, 33, Dilkusha Commercial Area, Dhaka and another.
..... appellants.
-Versus-
Messrs Ahad Jute Mills Ltd. and others.
..... respondents.
Mr. Tufailur Rahman, with
Mrs. Sufia Ahmed, Advocates
....For the appellants.
Mr. Hassan Shaheed Quamruzzaman, Advocate
…For the respondent No. 1.

The 29th March, 2016.

Present:
Mr. Justice Soumendra Sarker
With
Mr. Justice Quazi Reza-Ul Hoque
And
Mr. Justice J. N. Deb Choudhury.

J. N. Deb Choudhury, J:

This First Appeal has been filed against judgment and decree dated 19.10.2003 passed by the learned Joint District Judge, Arbitration Court, Dhaka in Money Suit No. 55 of 1990.

This First Appeal was taken up for hearing by a Division Bench of the High Court Division, while that Bench passed the following order:-

"During hearing of the matter the learned Advocate for the respondent No. 1 submitted by referring to the observations made in Shadharan Bima Corporation and others vs. Golden Twisting Factory & others, 66 DLR 224, "that the law of limitation runs

from the cause of action of a suit and that should be in all cases for 3(three) years not from the date of occurrence", whereas Article 86(b) specified the provision as- "On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers"- "the period of limitation is 3(three) years" and time from which periods bearings to run is- "The date of the occurrence causing the loss", which to us seems to contradicts the aforesaid judgment, so for adjudication of this present dispute the Honorable Chief Justice may kindly be request to permit to constitute a Full Bench for hearing of the matter, as per Article 1 of Chapter-VII (Reference to Full Bench) as per Supreme Court of Bangladesh (High Court Division) Rules, 1973.

Let the matter be placed before the Honorable Chief Justice for Constitution of a Full Bench for a day."

In view of the above order, the matter has been placed before the Hon'ble Chief Justice who has been pleased to constitute the present Full Bench for hearing the instant First Appeal.

The respondent as plaintiff on 22.08.1990 filed Money Suit No. 55 of 1990 in the Court of Joint District Judge, Arbitration Court Dhaka, for realization of Tk. 42,99,352.00 against loss covered by the insurance policy dated 24.04.1987.

The plaintiff's case in short is that it obtained an insurance policy firstly on 24.10.1983 and thereafter on 24.04.1987 covering the period from 12.01.1987 to 12.01.1988. Further case of the plaintiff is that a fire broke out in the Jute Mill

on 25.03.1987 and the same has duly been informed to the defendant-insurer. The insurer appellant on 31.03.1987 appointed surveyer who filed a report assessing the loss as Tk. 29,53,822.25. The plaintiff on different occasion requested the defendant for payment of the amount of loss; but, the defendant lastly on 07.04.1990, refused to pay the amount and accordingly filed the suit.

The defendant Nos. 1 and 2 contested the suit by filing written statement and contended *inter-alia,* that the suit as filed is barred by limitation and also stated that the plaintiff violated the term Nos. 13 and 19 of the policy and thereby not entitled to get any amount from the defendant insurer and accordingly prayed for dismissal of the suit.

The trial Court framed as many as four issues including an issue as to whether the suit as filed is barred by limitation or not.

By the impugned judgment and decree the trial Court decreed the suit in part and directed the defendant to pay Tk. 29,53,822.00 with interest. Being aggrieved the defendant Nos. 1 and 2 as appellants filed the instant First Appeal.

Mr. Tufailur Rahman, with Mrs. Sufia Ahmed, the learned Advocates appearing for the defendant-appellants submit that he will press only one ground concerning limitation in filing of the suit. Assailing that ground he referred to Article 86(b) of the Limitation Act, 1908 (herein after referred to as the Limitation Act) and submits that the date of occurrence as has been stated even in the plaint was 25.03.1987 and the suit has been filed on 22.08.1990 and in view of Article 86(b) of Limitation Act, the suit is barred by limitation and the trial Court without considering the said article most illegally held that the suit is not barred by limitation and accordingly decreed the suit in part, and as such,

prays for setting aside the impugned judgment and decree on allowing the appeal.

On the other hand Mr. Hassan Shaheed Quamruzzaman, the learned Advocate appearing for the plaintiff-respondent submits that in view of the decision reported in 66 DLR 224 a Division Bench of this Court held that the law of limitation runs from the cause of action of a suit and that should be in all cases for 03(three) years not from the date of occurrence. He further submits that in view of the first part of clause-(b) of Article 86 of the Limitation Act, it appears that the proof of loss has to be determined first and accordingly on relying on this decision, submits that the trial Court committed no illegality in holding that the suit is not barred by limitation.

We have heard the learned Advocates of both the sides, perused the plaint, written statement, depositions, exhibits and the memorandum of appeal.

The only question as raised in the instant first appeal is, as to whether, the suit as filed, is barred by limitation or not. For considering the same we have gone through the Article 86(b) of the Limitation Act, which reads as follows:

Description of suit	Period of limitation	Time from which period begins to run.
86(b). On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.	Three years	(b) The date of the occurrence causing the loss.

The decision referred to by the learned Advocate for the respondent in the case of Sadharan Bima Corporation and others vs. Golden Twisting Factory & others, 66 DLR 224, their Lordships held that;

> *"In appreciating such submission made by the learned Advocate we find that the entire gamut can be unfolded if the law as quoted above, is read together with first part of clause (b) of Article 86 of the Limitation Act which shows that the question of proof of the quantum of loss is very much pertinent and in determining the quantum of loss the question of assessment and evaluation and verification about the claim ought to have been made as it has been done in the instant case by two surveyors as also by the police officer during investigation including the Fire Service men and upon accumulating all those report the quantum of loss can be assessed which necessarily take sufficient time for the purpose, therefore, before assessment of a claim for specific amount cannot be made by the plaintiff and that too has to be either accepted or refused by the insurer himself, in the event of acceptance of the claim no question of filing of a suit arises rather it is only in the event of refusal of claim, institution of suit necessitates.*
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> *In the instant case we find that the cause of action of the suit necessarily arose on the date of refusal of the claim of the plaintiff by defendant Nos. 1-3 on 09.03.2000 and the suit was instituted on 07.08.2000 and that before refusal of the claim of the plaintiff by the defendant a cause of action does not arise and a suit cannot be*

instituted, therefore, in our opinion, the law of limitation as quoted above, runs from the cause of action of a suit and that should be in all cases for 03(three) years not from the date of occurrence as submitted by the learned Advocate for the appellants, therefore, we find that the instant suit has been filed well within the prescribed period of limitation as such in no way hit by clause (b) of Article 86 the limitation Act. Since all the questions raised by the learned Advocate for the appellants have already been answered therefore, in our opinion, the appeal itself is without substance."

While dealing with Article 86(b) of the Limitation Act, their Lordships mainly considered the first part of clause (b) of Article 86 of the Limitation Act in holding the starting point of limitation, as to be after proof of the quantum of loss.

Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint, shall be rejected summarily.

The cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief

prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.

It has been held by the Appellate Division in the case of Surat Sarder and others vs. Afzal Hossain and others, 49 DLR (AD) 99 that;

> *"The term "cause of action" has not been defined in the Code of Civil Procedure. Rule 1(e) of Order VII of the Code only provides that besides other particulars, mentioned in different clauses of Rule 1, the plaint shall contain the "facts constituting the cause of action and when it arose". The cause of action for the suit ordinarily thus, means the cause which leads the plaintiffs to bring a legal action. The incidence of cause of action must be antecedent to the bringing of the suit at a time when the right to sue arose for the first time. It consists of the entire set of facts which gives rise to a legal action and is to be proved to entitle the plaintiff to succeed in the suit. It has little relation either to the defence to be taken by the defendant or the nature of relief to be prayed for by the plaintiff in the suit."*

And also in the case of Tar Muhammad & Co. vs. Federation of Pakistan and others, 9 DLR 197, a Division bench of the then Dacca High Court, held that;

> *Now the cause of action, as it means, denotes a bundle of essential facts which is necessary for the plaintiff to prove before he can succeed in his suit. It has no relation whatever to the defence which*

may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely in the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

Thus it appears that cause of action does not mean only the date of refusal; but, every fact which would be necessary for the plaintiff to prove his case.

We have considered the first part of clause (b) of Article 86 of the Limitation Act, which under the heading "Description of Suit" and described the policy of insurance, when the sum insured is payable after proof of the loss has been given to or received by the insurers. Here words "Payable" and "has been given to" are very significant, which means that the sum insured is payable when the proof of loss has been informed to the insurers. In other words it means that the amount of insurance is payable when the loss occurred has been communicated to the insurer with proof or the insurer got the information of the occurrence. All these are thus related to intimation to the insurer about the occurrence, and after such communication, the sum insured became payable. The word "loss" has been mentioned in the first and third part of Article 86(b) of the Limitation Act and the word "loss" referred to as an information of the loss to the insurer resulting from an occurrence and thus making the policy of insurance payable. The word "payable" as mentioned in the first part of the Article, relates to cause of action of the suit i.e. the plaintiff after intimation of proof of loss to the insurer the sum insured has become payable and the plaintiff thus entitle to get the same. The starting point of

limitation also made clear if we consider Article 86(a) of the Limitation Act. The first part of that Article under the heading "Description of suit" provides that "On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers" and the third part of the that Article provide that "The date of the death of the deceased". It thus made it clear that the starting point for the purpose of filing such suit begins from the date of occurrence.

From a plain reading of the third part of Article 86(b) of the Limitation Act, which is under the heading "Time from which period begins to run" provides that it shall run from the date of the occurrence causing the loss accordingly there is no doubt that the suit have to filed within three years from the date of occurrence causing the loss. In the instant case the date of occurrence that is the fire broke out in the mill on 25.03.1987, and as such, the suit as filed on 22.08.1990 is hopeless barred by limitation. The view taken by a Division Bench of the High Court Division in the case of Sadharan Bima Corporation and others vs. Golden Twisting Factory & others, 66 DLR 224 and the reasons stated therein are not acceptable in view of the clear provision of Article 86(b) of the Limitation Act. In the present case the third part of Article 86(b) of the Limitation Act is very clear and there is hardly any scope to interpret the same in any other way.

As we have already held that the language of Article 86(b) of the Limitation Act is very much clear on this point so there cannot be any cause for holding that the limitation shall run from the date of cause of action of the suit i.e. when the claim has been refused, rather in view of this Article, the limitation

for filing of the suit shall run from the date of occurrence causing the loss, i.e. from 25.03.1987.

In view of the above, we cannot agree with the decision as mentioned above reported in 66 DLR 224.

Accordingly, we find that the suit as filed is hopelessly barred by limitation, and as such, the suit is liable to be dismissed on this ground.

Accordingly, the appeal is allowed without any order as to cost.

The judgment and decree dated 19.10.2003 passed by the learned Joint District Judge, Arbitration Court, Dhaka in Money Suit No. 55 of 1990 is hereby set aside and the suit stand dismissed.

Send down the Lower Court's Record with a copy of this judgment to the concerned Court immediately.

Soumendra Sarker, J:

I agree.

Quazi Reza-Ul Hoque, J:

I agree.