



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7673 OF 2019

SAGAR SHARMA & ANR.

Appellant(s)

VERSUS

PHOENIX ARC PVT. LTD. & ANR.

Respondent(s)

J U D G M E N T

R. F. Nariman, J.

1) By our judgment dated 11.10.2018 in B.K. Educational Services Private Limited vs. Parag Gupta and Associates (2018 SCC OnLine SC 1921 in paragraphs 2, 20, 38, 43, 48 & 49) we had made it clear that the Insolvency and Bankruptcy Code's coming into force on 01.12.2016 is wholly irrelevant to the triggering of any limitation period for the purposes of the Code. However, we find that in the impugned judgment the following statement is made:

"13. Admittedly, 'I&B Code' has come into force since 1st December, 2016, therefore, the right to apply accrued to 1st Respondent on 1st December, 2016. Therefore, we hold that the application under Section 7 was not barred by limitation."

2) We had also made it clear beyond any doubt that for applications that will be filed under Section 7 of the Code,

Article 137 of the Limitation Act will apply. However, we find in the impugned judgment that Article 62 (erroneously stated to be Article 61) was stated to be attracted to the facts of the present case, considering that there was a deed of mortgage which was executed between the parties in this case. We may point out that an application under Section 7 of the Code does not purport to be an application to enforce any mortgage liability. It is an application made by a financial creditor stating that a default, as defined under the Code, has been made, which default amounts to Rs. 1,00,000/- (one lakh) or more which then triggers the application of the Code on settled principles that have been laid down by several judgments of this Court.

3) Article 141 of the Constitution of India mandates that our judgments are followed in letter and spirit. The date of coming into force of the IBC Code does not and cannot form a trigger point of limitation for applications filed under the Code. Equally, since "applications" are petitions which are filed under the Code, it is Article 137 of the Limitation Act which will apply to such applications.

4) Accordingly, we set aside the judgment under appeal and direct that the matter be determined afresh. It will be open for both sides to argue the case on facts on the footing that Article 137 of the Limitation Act alone will apply.

5) The appeal is allowed in the aforesaid terms.

6) The NCLT order dated 29.01.2019 shall remain stayed until further orders from the NCLAT.

7) Mr. Rakesh Dwivedi, learned Senior Counsel, wishes to raise a plea based on Section 22 of the Limitation Act before the NCLAT. We record this statement.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(V. RAMASUBRAMANIAN)

New Delhi;
September 30, 2019.