

*Law of Limitation*

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## **SUPREME COURT ON LIMITATION AS DEFENCE IN TIME-BARRED SUITS**

The Supreme Court (“**SC**”) in the *S. Shivraj Reddy* case<sup>1</sup> held that even if the plea of limitation is not set up as a defence, the court has to dismiss the suit if it is barred by limitation.

### **Brief Facts:**

S. Raghuraj Reddy, S. Shivraj Reddy, Dhanraj Reddy, B. Narayan Reddy and M. Balraj Reddy had constituted a partnership firm named “Shivraj Reddy & Brothers” (“**Firm**”) in Hyderabad on August 15, 1978. Subsequently, Balraj and Shivraj passed away.

Raghuraj instituted a suit in 1997 to dissolve the Firm and rendition the accounts. The Second Additional Chief Judge, City Civil Court, Hyderabad (“**Trial Court**”) allowed the suit and passed decree of dissolution of the Firm. It also granted liberty to Raghuraj to file separate application seeking appointment of an Advocate Commissioner for taking accounts of the Firm and for other appropriate reliefs.

Aggrieved, in 1999, the other surviving partners of the Firm (“**Appellants**”) appealed before the Single Judge, Andhra Pradesh High Court, Hyderabad (“**HC**”). The HC held that Raghuraj’s suit before the Trial Court was barred by limitation as Balraj had expired in 1984. Therefore, the firm stood dissolved immediately on Balraj’s death and since the suit (before the Trial Court) was filed in 1996, it was barred by limitation.

Raghuraj appealed to the Division Bench of the HC, which dismissed the above order and observed that the plea of limitation was never raised during the pleadings in the Trial Court and hence should have not been dealt with. The Appellants appealed before the SC.

### **SC’s Analysis & Judgment:**

The SC:

- Relying on the *V.M. Salgaocar* case,<sup>2</sup> where it was held that “*The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence,*” observed that even if the plea of limitation is not set as a defence, the court must dismiss the suit, if it is barred by limitation.<sup>3</sup>

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<sup>1</sup> *S. Shivraj Reddy (Died) Through His LRS and Another v. S. Raghuraj Reddy and Others*, 2024 LiveLaw (SC) 411. A copy of the Judgement can be accessed [here](#).

<sup>2</sup> *V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao and Another*, (2005) 4 SCC 613.

<sup>3</sup> Paragraph 16 of the Judgement.

- Observed that upon the death of Balraj, the Firm stood dissolved under Section 42(c) of the India Partnership Act, 1932<sup>4</sup> unless a contract was signed by the parties to the contrary.<sup>5</sup>
- Observed that since no such averments were made by Raghuraj,<sup>6</sup> “[t]he business activities even if carried on by the remaining partners of the firm after the death of [Balraj], would be deemed to be carried in their individual capacity.”<sup>7</sup>
- The period of limitation for filing suit for rendition of account is three years from the date of dissolution. Since Balraj expired in 1984 and the suit was instituted in 1996, it was clearly time-barred.<sup>8</sup>

Accordingly, the SC allowed the appeal and restored the judgement of the Single Judge of the HC.

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<sup>4</sup> Section 42 of the Partnership Act, 1932.

<sup>5</sup> Paragraph 19 of the Judgement.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Paragraph 20 of the Judgement.