(1953) 03 KL CK 0018

In the High Court Of Kerala

Case No : A.S. No. 381 of 1124 (Tr)

Abubacker Oommerkutty APPELLANT

Vs

I.S. and C. Machado RESPONDENT

Date of Decision : 09-03-1953

Acts Referred:

Limitation Act, 1908 — Article 72, 85, 19

Citation : (1953) 03 KL CK 0018

Hon'ble Judges : Kishi, C.J;M.S. Menon, J

Bench : Division Bench

Advocate : N.K. Narayana Pillai, for the Appellant; T.K. Joseph, for the Respondent

Judgement

M.S. Menon, J.—The only contention that was urged before us in this appeal against the decision of the District Court of Quilon in O.S. No. 8 of 1122 was that the suit was barred by limitation. The Plaintiffs and Defendant are merchants, and the suit was for the balance .due as per the account maintained in respect of the dealings between the parties.

2. If the account can be considered as mutual, open and current, it is admitted that the suit was within time. The contention before the lower Court that even if it was mutual, open and current, the suit was barred by limitation because the Malayalam year should be the basis of the reckoning, has not been agitated before us. The lower Court has held, and rightly, that the account was kept according to the "English" year and that the year which is material is the year according to which the account has been kept.

3. The object of Article 85, Indian Limitation Act, 1908, of which Article 72, Travancore Limitation Act, 6 of 1100 is a copy was as pointed out by Rankin, C.J., in The Tea Financing Syndicate Ltd. Vs. Chandra Kamal Bez Barua, "to apply to a certain type of cases the old Common Law of acknowledgment, to exempt they Plaintiff from the principle that limitation rights against each item from its date and to provide that if the last item is within time, it will draw all the previous

items after it however old they may be although there has been Mo acknowledgment sufficient to comply with/the conditions imposed by Section 19 of the Act."

4. We have scrutinised the account-Ex. A (p. 106) and Ex. B (P. 10) - in the light of the arguments advanced by the learned Advocate for the Appellant and the principles that can be considered as well settled, namely:

1. that an account is open when the balance I is not struck or though struck is not accepted or acknowledged to be correct;

2. that a shifting balance though a test of mutuality is nothing more than a test and. that an account is mutual so long as the transactions on each side create independent obligations on the other; and

3. that a running or continuous account is an account current;

and have come to the conclusion that the account must be deemed to be matual, open and current.

5. The learned advocate for the Appellant contended that the suit was in effect though not in form a suit for the recovery of the sum of Rs. 1505 advanced on 9-8-1943. According to him that advance was an independent transaction and the period of limitation should be calculated from the date of the advance. We cannot find our way to agree. We are also not prepared to accept his contention that the transactions through Krishna Pillai were not transactions with the Defendant.

6. The advance of Rs. 1505 on 9-8-1943 appears to be just one item in a course of dealings between the Plaintiffs and the Defendant and even as a cash advance it does not stand alone. There is Anr. advance of Rs. 285/- on the very next day, that is, on 10-8-1943.

7. The last entry on page 106 of Ex. B is dated 20-8-1943. It follows that the period of limitation applicable to the case should be three years from 31-12-1943, the close of the year in which the last item admitted or proved is entered in the account, and that the decision of the lower Court is correct.

8. We dismiss the appeal with costs.

