

(1943) 02 BOM CK 0018
In the Bombay High Court
Case No : First Appeal No. 70 of 1941

Bai Shanta

APPELLANT

Vs

Trikamlal Vrijavallabhdas Shah

RESPONDENT

Date of Decision : 23-02-1943

Acts Referred:

Limitation Act, 1908 — Section 19

Citation : (1943) 45 BOMLR 957

Hon'ble Judges : Weston, J; John Beaumont, J

Bench : Division Bench

Judgement

John Beaumont, Kt., C.J.—This is an appeal from the Extra Joint First Class Subordinate Judge of Ahmedabad The suit was for a sum of money, the principal sum claimed being Rs. 7,000, and the learned Judge dismissed the suit on the ground that the plaint disclosed no cause of action.

2. The plaint alleges in paragraph 1 that the defendant did business in the name of Kumudchandra Kantilal, and that allegation is admitted in the written statement. Then the plaint alleges certain advances to the defendant made by plaintiff No. 1, and other advances made by plaintiff No. 2, the plaintiffs being husband and wife, and then it is alleged that on March 17, 1936, the debt owing to the two plaintiffs by the defendant was Rs. 5,000, and a further sum of Rs. 2,000 was on that date advanced by plaintiff No. 2, making altogether a debt of Rs. 7,000, and that by an agreement of that date certain security was given for the Rs. 7,000. The learned Judge was not unnaturally puzzled as to what the plaint really meant : whether the plaintiffs were suing on the original advances, or only on the agreement of March 17, 1936. Accordingly he directed the pleader for the plaintiffs to state whether the plaintiffs sued only upon the agreement of March 17, 1936, or alternatively upon the earlier loan bonds, and that agreement also, and the plaintiffs' pleader put in a purshis saying that the plaintiffs sued only on the agreement of March 17, 1936, and that the earlier transactions were referred to merely as matters of historical interest. The course adopted by the

learned Judge may not have been strictly regular; he ought really to have told the pleader to amend the plaint. But it is not an uncommon practice in the mofussil to require a pleader to say what his pleading really means, and I think we must hold the plaintiffs bound by the statement that they are only suing on the agreement of March 17, 1936. It is in fact difficult to see how they could be suing on anything else, because there is no allegation of any debt due to the plaintiffs jointly, except under that agreement. The learned Judge in his judgment has translated the agreement of March 17, 1936, and nobody has questioned the accuracy of the translation. It appears that Rs 2,000 were advanced on the date of the agreement by the wife, and that amount was advanced on the security of certain cotton goods lying in the shop of the defendant firm. Then comes this statement: "Besides, a debt of Rs. 5,000 is due from the firm of Shah Kumudchandra Rajnicant to you, to you that is, to Vyas Achratlal Nathubhai and Saubhagyavanti Shanta" (that is plaintiffs Nos. 1 and 2), Then it goes on to provide for the whole sum of Rs. 7,000, being secured by the defendant on the property of his uncle which was then in the possession of his aunt. What that interest amounted to is not shown; but it looks rather as if the defendant had an interest as reversioner in the estate of his uncle, subject to the widow's estate of his aunt, in which case the defendant's interest was in law only a spes successionis. Agreeing to give a spes successionis as security for a debt, if and when the hope matured, would not be inconsistent with the defendant having given a promise to pay the amount.

3. The learned Judge held that the agreement did not constitute the relationship of creditor and debtor between the plaintiffs and the defendant, and certainly there is no express promise in the agreement to pay. But it is argued in this Court, though the argument does not seem to have been raised in the lower Court, that the passage, which I have read from the agreement, amounts to a plain acknowledgment of Rs. 5,000 as due from the defendant to the plaintiffs, and that from that acknowledgment a promise to pay can be implied. In England there have been a great many cases dealing with the question whether an acknowledgment of a debt amounts to a promise to pay. That question was relevant under the Limitation Act, 1623, which barred the right to recover simple contract debts after a period of six years and which contained no exception in relation to acknowledgments of debts, The Courts held that if there was an unequivocal acknowledgment of a debt, a fresh promise to pay that debt would be implied, which gave a new cause of action, and provided a fresh starting point of limitation. u/s 19 of the Indian Limitation Act, it is provided that where, before the expiration of the period prescribed for a suit, an acknowledgment of liability in respect of the property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. It is quite clear on the language of that section that the acknowledgment need not amount to a promise to pay, and that has been recently affirmed by the Privy Council in *Rama Shah v. Lal Chand* (1940) L.R. 67 IndAp 160 . In *Maniram v. Seth*

Rupchand (1906) L.R. 33 IndAp 165 the Privy Council was dealing with the question whether an acknowledgment in a debtor's application for probate of the will of his deceased creditor was sufficient to take the case out of the Indian Limitation Act. The acknowledgment in question did not involve an express promise to pay; but the Privy Council expressed the view that there being a perfectly plain acknowledgment of the debt, an implied promise to pay would follow as in the English cases, and their Lordships saw no reason for drawing any distinction in this respect between the English and the Indian law. I must confess that I am not very clear as to why a promise to pay was necessary in that case, which, arose u/s 19. But, putting it at the lowest, we have a clear expression of the Privy Council's opinion that an unequivocal acknowledgment of a debt does involve an implied promise to pay it, and in *Chunilal v. Laxman* ILR (1921) 46 Bom. 24 a bench of this Court accepted that principle, and held that an acknowledgment signed in a khata that a certain sum was due, involved an implied promise to pay the amount. It seems to me that that principle is right. It is, I think, only just to hold that if a man unequivocally acknowledges that a debt is due from him, he should be taken impliedly to promise to pay it. Of course, he may couple his acknowledgment with some expression, which shows that he was not promising to pay. But, if there is no qualification, I think the acknowledgment of the debt should be held to involve an implied promise to pay. I see no reason why we should not follow *Chunilal v. Laxman* (supra).

4. It is strenuously argued in this case that we must read the agreement of March 17, 1936, as a whole, and, so reading it, that we cannot find any plain acknowledgment of this debt. But, I think, the agreement, read as a whole, does contain an acknowledgment of a debt due to the plaintiffs jointly of Rs. 5,000. I do not find any acknowledgment of a debt due to the plaintiffs jointly of the Rs. 2,000 advanced by the wife, and I do not think it possible to say that there is any implied promise to pay that amount, even to plaintiff No. 2, because it was advanced on certain security. Taking the agreement as a whole, I think that it was not intended that there should be any personal liability as to the Rs. 2,000, but as the agreement acknowledges the Rs. 5,000 as due to the plaintiffs jointly, and does no more than provide for a contingent security as to that, I see no reason why the acknowledgment of indebtedness of Rs. 5,000 by the defendant to the plaintiffs does not involve a promise to pay that amount. This suit was filed on March 10, 1939, so, if the agreement of March 17, 1936, constitutes a fresh cause of action, the suit is in time. We are not therefore dealing with a case of a time-barred debt to which Section 25, Sub-section (3), of the Indian Contract Act, applies.

5. In my opinion, the agreement of March 17, 1936, does contain an implied promise to pay to the plaintiffs jointly a sum of Rs. 5,000, and the suit will have to go back to the lower Court to deal with it on the basis of that opinion. It may, of course, be that the defendant has some defence on the merits, and it may be that an account will be necessary. Those matters are not at present for determination. All we can do is to decide that under the agreement of March 17,

1936, the plaintiffs had a good cause of action for the Rs. 5,000 at the time when the suit was filed. We remit the matter to the lower Court to be dealt with on that basis. The defendant to pay the costs of the appeal in the proportion of 5 to 2.

Weston, J.

6. I agree.