
(1943) 01 CAL CK 0029
In the Calcutta High Court

Bhabani Prosanna Lahiri

APPELLANT

Vs

Sarojini Debya

RESPONDENT

Date of Decision : 22-01-1943

Acts Referred:

Limitation Act, 1963 — Article 116

Citation : AIR 1944 Cal 106

Judgement

the Government to agree to pay Rs. 10,000 for the past profits in respect of three of the hats and to make future payments according to the profits of these hats.

7. The plaintiff's case is that the defendant also received payment of this sum of Rs. 10,000 from the Government for and on behalf of all the cosharers on a written authority given him in this respect by them, that by the terms of the written authority the defendant was required to make payments to the several cosharers in proportion to their respective shares, that the defendant was thus liable to pay to the plaintiff Rs. 3218-12-0, that out of this he paid only Rs. 800 and did not pay the balance of Rs. 2918-12-0 in spite of repeated demands. The plaintiff claimed damages at 25 per cent, on this balance and laid her claim in this suit at us. 3648-7-0.

8. The defendant received payment of Rs. 10,000 on 23rd February 1934 and the present suit was instituted on 22nd February 1940. The written authority referred to by the plaintiff in her plaint the terms of which, according to her, gave her the right to claim and put the defendant under the liability to pay her share of the money severally to her is a registered document. The case of the defendant is that besides the trouble taken and the expenses incurred by him in respect of the three hats in question, he had to fight the Government in respect of a fourth hat and obtained a decree for Rs. 38,000 in respect of its past profits as also for the future recurring profit of Rs. 6000 per annum, that in consideration of all these troubles and expenses incurred by him and the benefits conferred on the cosharers including the plaintiff they agreed to allow the

defendant to retain the sum of Rs. 10,000 now in question in the plaintiff's suit, that accordingly the plaintiff has no right to claim any portion of this sum, that the terms of the power of attorney which require the defendant to pay the amount to the several cosharers in proportion to their respective shares were fraudulently inserted therein without the knowledge and consent of the defendant, that the plaintiff's claim was barred by limitation and that the plaintiff had no title to the estate as asserted by the defendant in Title Suit No. 276 of 1935 in the Subordinate Judge's Court of Rangpur.

9. Admittedly the plaintiff's husband was a cosharer of the zemindari having 5 as. 3 gds. share in it. In Title Suit No. 276 of 1935 referred to in para. 4 of the defendant's written statement in the present case the plaintiff's title to this 5 as. 3 gds. share by inheritance from her husband was denied by the present defendant on the allegation that her marriage with her alleged husband was invalid. At the hearing of the suit the defendant by his cross-examination got from a witness of the plaintiff that she had adopted a son. On this, at the time of the argument, the defendant gave up his case that the plaintiff was not the legally married wife of her alleged husband and wanted to make a new case that she ceased to have title to the estate after this adoption. The plaintiff met this case by setting up an ante-adoption agreement whereby her title to the estate remained unaffected by the adoption. The learned Subordinate Judge did not allow the defendant to make a new case at the time of the argument. He decreed the plaintiff's claim in full, holding: (1) that as the claim was based on a contract embodied in a registered power of attorney, Article 116, Limitation Act, applied to this suit and it was not therefore barred by limitation (2) that the defendant failed to establish the agreement alleged by him by which, according to him, the other proprietors agreed to give up their shares of money in favour of the defendant (3) that the defendant accepted and acted upon the terms of the power of attorney with full knowledge of them. On appeal by the defendant the learned District Judge confirmed this decree and upheld the findings arrived at by the learned Subordinate Judge. Mr. Sen Gupta appearing in support of the appeal before us assails this decree on three grounds, namely: (1) That the Court of appeal below was wrong in applying Article 116, Limitation Act, to the present case, that the claim in the present case should be governed by Article 89 of the said Act; (2) that in view of the admitted fact that the plaintiff had adopted a son, the Court of appeal below should have held that the plaintiff had no title to the money claimed by her; (3) that in any case the Court of appeal below should have held that the claim for damages was not maintainable; that such a claim could be sustained only under the provisions of the Interest Act; but that in the facts of this case the provisions of that Act had no application.

10. The defendant admittedly received payment from the Government on the authority of the power of attorney, dated 5th September 1983, and admittedly the plaintiff was one of the executants of this document. This is a registered document and is Ex. 1 in the present case. In para. 5 of her plaint the plaintiff based her claim to her share in the money on the basis of the terms agreed upon

by the parties and incorporated in this document. The terms in question stand thus:

We hereby authorise our said attorney to withdraw and receive payment.... and pay and make over to us in proportion to our respective shares as above set forth such amount out of the said sum of Rs. 10,000 as is due thereto within a week of the encashment of the said cheque.

11. This power of attorney was executed by eight persons and consequently the defendant became the agent of these eight persons jointly under this power. His liability as agent to his principals would have been a joint liability to these eight persons. His several liability to each one of these eight persons was a matter of special agreement and such several liability was created by the special terms agreed upon by the parties and incorporated in the registered document. The present claim of the plaintiff for her share of the money alone is supportable only by the terms of this registered document and the plaintiff expressly bases her claim on these terms. Her suit, therefore, is, in my opinion, a suit for compensation for the breach of a contract in writing registered within the meaning of Article 116, Limitation Act. The Court of appeal below has not, in my opinion, committed any error in applying that article to the facts of this case.

12. As regards the second point urged by Mr. Sen Gupta, the alleged admission by the plaintiff's witness that the plaintiff had adopted a son does not even refer to the date of this adoption. The defendant did not make any case of cessation of her title on adoption in his written statement. He assailed her title alleging defect in her marriage with her alleged husband. This case was given up at the hearing and the defendant wanted to make a new case which certainly involved questions of facts other than those elicited by the defendant on cross-examination of the plaintiff's witness. The plaintiff had no opportunity of meeting this new case. Further, the plaintiff's claim was based on the special contract incorporated in the registered document referred to above. Admittedly, she was a party to that document and admittedly it was on the authority of the power derived from her that the defendant could receive the money. In these circumstances the Courts below were right in disallowing the defendant to make the new case as above stated.

13. As regards the claim for damages, it must be conceded that no such damages will be payable u/s 78, Contract Act. That section allows compensation "for any loss or damage caused" to the party who suffers by the breach of a contract. The loss or damage must arise in the usual course of things from such breach. The law does not regard collateral or consequential damages arising from delay in the receipt of money: *Graham v. Campbell* (1878) 7 Ch. D. 490

14. Admittedly there was no stipulation for interest in this case. Mr. Gupta appearing for the plaintiff respondent relies on the provisions of the Interest Act (Act 32 of 1839) in support of the plaintiff's claim for damages. Mr. Sen Gupta for the appellant contends that the provisions of the Interest Act would not help

the plaintiff as in this case neither was there a sum certain payable nor was such sum payable at a certain time. His contention is that in Order to bring the case within the provisions of the Interest Act there must be a sum certain and a time certain and these certainties must exist at the time the promise is made. It would not suffice if the certainty comes into existence at any later period. Section, Interest Act (Act 82 of 1839) runs thus: "... upon all debts or sums certain, payable at a certain time the Court ... may ... allow interest ... from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time"

15. As the preamble of this Act shows, this is really an extension of certain provisions of Lord Tenterden's Act (1833, 3 and 4 Will. IV, C. 42, Section 28) concerning the allowance of interest to British India. In fact, Section 1, Interest Act, 1839, is almost identical in terms with Section 28, Lord Tenterden's Act. The English decisions on that section of Lord Tenterden's Act, therefore, will be relevant for guidance. According to the decision in *Merchant Shipping Co. v. Armitage* (1874) 9 Q.B. 99, if the sum becomes payable at a time fixed by reference to a contingent event which may or may not happen, it is not payable by the written instrument at a time pertain within the meaning of Section 28 of Lord Tenterden's Act. As was pointed out by the Judicial Committee in *Maine and New Brunswick Electrical Power Co. Ltd. v. Alice M. Hart* AIR 1929 P.C. 185, the above decision "was treated as authoritative by the Court of appeal in *L.C. and D. Ry. Co. v. S.E. Ry. Co.* (1892) 1 Ch. 120 and was viewed with benevolence by Lord Herchell in the House of Lords" in the same case: *L.C. and D. Ry. Co. v. S.E. Ry. Co.* 1893 A.C. 429 . The same view was taken by the Judicial Committee in interpreting the Indian Interest Act itself in *Juggomohan Ghose v. Manick Chand* (1857) 7 M.I.A. 263 where their Lordships pointed out that a .sum certain was not payable by the written instrument at a certain time if its payment was contingent upon events which might never happen and the amount payable was capable of ascertainment only if and when those events happened and the time for the happening of those events, if they ever would happen, might be indefinitely postponed. In this case their Lordships had before them written contracts in the nature of wagers.

16. These are ample authorities in support of Mr. Sen Gupta's contention about the requirements of the Interest Act (Act 82 of 1839). The question, therefore, is whether these requirements are present in the case before us. In the case before us, there is no doubt that the sum payable was certain and was capable of definite ascertainment. In *Juggomohan Ghose v. Manick Chand* (1857) 7 M.I.A. 263 their Lordships of the Judicial Committee while considering the question what is meant by a "sum certain", and a "time certain," observed:

With respect both to amount and time of payment, it was argued that the maxim *id certum est quod certum reddi potest* must be applied, and, in a reasonable sense, this is true... It was argued also that in respect of both time and amount it was a question of degree and in the same reasonable sense that every statute

is to be construed, not captiously, but with a view to the expressed intention of the Legislature: this is true also.

Later on their Lordships observed:

The statute, by the qualifications which it imposes of certainty in time and amount, by requiring that this certainty and the obligation itself to pay the principal, should be created by a written instrument, by making the interest run from the time at which the principal is payable, and, finally, by giving the jury a discretion as to the allowance of interest even where all these circumstances concur, seems to have been framed, not simply on the principle of compensation to the creditor, but also on that of penalty to the debtor for not paying punctually at a time when he must have known the debt or sum, specific in amount, was to be paid.

17. In the present case, no uncertainty attached to the amount payable. There was no uncertainty in this respect at the very time the promise was made. There was a writing in this case; no contingency as to the time of payment and no uncertainty of amount were responsible for the conduct of the debtor in not making payment punctually. In the facts of this case, it cannot be said that there was any uncertainty anywhere which would cause any hesitation in an honest debtor to pay. The debtor could not have been in the least doubt at the very date of his promise as to the amount payable and as to the time for payment.

18. In my opinion, therefore, on a proper construction of the terms of the written contract it must be held that a sum certain was payable at a certain time in this case within the meaning of Section 1, Interest Act (Act 82 of 1889). The decision of the Judicial Committee in AIR 1938 67 (Privy Council) does not affect the view taken above. It was conceded in that case that the amount claimed was not a sum certain. In my opinion, therefore, the Courts below did not commit any error in allowing damages in this case. The amount of damages allowed does not even amount to interest at the rate of 4 per cent, per annum. I therefore agree that this appeal should be dismissed with costs.