

(1985) 03 MAD CK 0037
In the Madras High Court

B.K. Dastur and Another

APPELLANT

Vs

N. Rajaram and Another

RESPONDENT

Date of Decision : 20-03-1985

Acts Referred:

Citation : (1986) 99 LW 859 : (1987) 1 MLJ 398

Hon'ble Judges : Mohan, J

Bench : Division Bench

Judgement

Mohan, J.—Defendants 2, 3 and 4 are appellants in this appeal.

2. The appeal arises out of O.S. No. 1184 of 1976 on the file of the Second Assistant Judge, City Civil Court, Madras. The suit was filed on foot

of a promissory note, Ex. A1, dt.21st February, 1970, executed by the first defendant (N. Bhala Rao) and one Clubwallah. Both of them were

partners of Ramjal Finance Corporation. They had borrowed a sum of Rs. 20,000 agreeing to pay interest at 12 per cent per annum, for which

amount they had executed the said promissory note. The endorsement was made that -he interest had been paid till 31st December, 1972. The

later endorsement is dated 12th August, 1973. Subsequently Clubwallah died on 17th February, 1974 Mrs. Clubwallah also died in February,

1975. On 31st January, 1976 an endorsement was made that interest had been paid up to that date. After the death of Clubwallah, the firm Ramjal

Finance Corporation was dissolved, and the first defendant is now carrying on the business under a different name. The first defendant is being

sued as one of the executants of the promissory note and as a partner of the dissolved firm he is personally liable and the second defendant is liable

as the person in whose custody the estate of Clubwallah had vested. Therefore,

for the amount due under the promissory note, viz., Rs. 20,000

towards principal and Rs. 50 towards interest from 1st February, 1976 with future interest, the suit has come to be filed.

3. The first defendant submitted to a decree on 26th June, 1976, and prayed for payment of the decree amount in instalments of Rs. 750 per

month, the first of such instalment was to commence from 27th July, 1976, as per his endorsement made on the plaint. When the suit was taken up

for trial, the plaintiff made an endorsement on 28th September, 1977 acknowledging receipt of various instalments paid totalling to Rs. 11,250.

4. As regards the second defendant, one of the important points that was raised was that Rajmal Finance Corporation did no doubt consist of first

defendant and Clubwallah as partners. However, the same was dissolved on 31st December, 1972. The endorsement alleged to have been made

on 13th March, 1973 to the effect that interest has been paid up to 31st December, 1978 was not that of Clubwallah and therefore the suit was

barred by limitation. As a matter of fact, Clubwallah discharged all the liabilities undertaken by him and therefore the first defendant alone was

liable. Though Clubwallah was alive till 17th January, 1974 there was no demand on him during his life time nor was any demand made on his

mother Mrs. Mary Clubwallah Jadhav till her death. The second defendant was not informed before the suit claim. Hence, the suit was not

maintainable, and the suit is liable to be dismissed.

5. The third defendant in his written statement contended that the suit was barred by limitation, which stand was adopted by the fourth defendant.

6. On these pleadings the following issues were framed for trial:

1. Is the suit as framed not maintainable?

2. Is the suit barred by limitation?

3. To what relief?

Additional Issue: 1. Is the suit barred by limitation so far as defendants 3 and 4 are concerned?

7. On issue No. 2, the learned trial Judge came to the conclusion that the question of payment and acknowledgment u/s 19 of the Indian Limitation

Act does not loom large in this case, as there has been acknowledgement of payment by the partnership even on 3rd February, 1973 by

Clubwallah and the suit can be laid against the estate of Clubwallah in the hands of the second defendant or defendants 3 and 4 and the suit cannot be personally laid against the second defendant or defendants 3 and 4. He answered issue No. 1 and additional issue against defendants 2 to 4 in favour of the plaintiff. Under issue No. 3 he decreed the suit as prayed for with costs, less Rs. 11,250 against the first defendant and against the estate of the deceased Clubwallah in the hands of defendants 2 to 4 and not against defendants 2 to 4 personally. Aggrieved by this judgment and decree defendants 2 to 4 have come up in appeal contending that there cannot be a decree against the estate of Clubwallah in the hands of defendants 2 to 4.

8. The only point urged by Mr. V. Nataraj, Learned Counsel for the appellants, is one of limitation. We would state that the endorsement on 13th

February, 1973 assuming that it has been made by Clubwallah cannot save limitation for the suit which came to be filed on 12th February, 1976.

This is because that endorsement merely acknowledges the payment of interest made up to 31st December, 1972. In such a case, it is Section 19

of the present Limitation Act, corresponding to old Section 20, alone would apply. The categoric ruling on this point is found in Shyam Ballav

Nandi Vs. Dologobind Sahu and Another, . To the same effect is the decision reported in Rangaswami v. Srinivasa Mudaliar (1910) 8 I.C. 249. In

Marina Ammayi Vs. (Changanti) Sundayya and Others, , a similar question arose and it was held that it is only the date of payment that is material.

For all these reasons it is submitted that the Court below is wrong in its interpretation of the endorsement, dated 13th February, 1973. Reckoned

from the date 31st December, 1972, the suit filed on 12th February, 1976 is clearly barred by limitation.

9. u/s 45 of the Partnership Act the estate of the deceased partner will not be liable because after the death of one of the partners, the partnership gets dissolved. Therefore, it is urged that the Court below is wrong in decreeing against the estate of Clubwallah.

10. Mr. N. Sivamani, Learned Counsel for the first respondent (decree-holder) would urge that where the endorsement would clearly show that

any further sum was due under the promissory note, that would be a case of acknowledgement of liability within the meaning of Section 18 of the

Limitation Act. This was the view taken by this Court in Mangapathi Naidu Vs. M.K. Krishnaswami Naidu and Others, . To the same effect is the ruling in Venkatakrishniah v. Subbarayudu ILR (1917) Mad. 698 : 3 L.W. 576. Though that case related to a mortgage, the principle laid down therein would squarely apply. In L.R.M.L.L. Lakshmanan Chettiar Vs. V.AR. Alagappa Chettiar and Others, , the difference between Sees. 18 and 19 of the Limitation Act has been clearly pointed out and the observations contained in that judgment will freely advance the case of the first respondent decree-holder.

11. Lastly, it is submitted that the decision reported in Jyoti Prasad Vs. Ram Chandra, , categorically lays down that if any payment is made towards interest it means towards the liability under the promissory note. If therefore the endorsement made on 13th February, 1973 is to the effect that the payment was made towards interest, it is nothing more than liability due under the promissory note. Examined in the light of these cases it is clear that Section 18 alone would apply and the period of limitation must be reckoned from the date of endorsement, viz., 13th February, 1973. So reckoned, the suit filed on 12th February, 1976 is within limitation and the contrary submission has to be rejected. It is not correct to state that the estate of the deceased partner cannot be proceeded against. If there are assets of the deceased partner those assets can be proceeded against.

12. Having regard to the above arguments only two points arise for determination:

(1) When one of the partners in a partnership dies, does it mean that the assets of the partner cannot be proceeded against for his prior liability?

(2) Whether the suit is barred by limitation?

13. As regards the first of the points I may straightway say that the contention of the Learned Counsel for the appellant is not well founded. Section

45 of the Partnership Act reads. as follows:

(1) Notwithstanding the dissolution, of a firm, the partners continue to be liable as such to third parties for any act done by any of them which

would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution; provided that the estate of a partner

who dies, or who is adjudicated an insolvent, or of a partner who not having

been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under Sub-section (1) may be given by any partner.

A careful reading of this clearly suggests that it does not prevent the rights of the deceased partner being proceeded against. The liability incurred

under Ex. A1 promissory note was one incurred by the partnership. The estate of Clubwallah, the erstwhile partner of Ramjal Finance Corporation

is admittedly in the hands of the appellants, viz., defendants 2, 3 and 4. They can be proceeded against. That is my answer to point No. 1.

13-A. As regards point No. 2, I would rather do well to extract the endorsement made on the reverse of Ex. A1. It reads:

Paid interest till 31st December, 1972.

The point that is to be noted is first and foremost there are no words to the effect ""PAID TOWARDS INTEREST"" in which event alone the ruling

in *Jyoti Prasad v. Ram Chandra* AIR 1963 A11. 579 would apply. It will be enough to extract the head note:

An endorsement in the handwriting and signature of the debtor on the back of the promissory note acknowledging that interest is being paid

impliedly amounts to an admission that some principal is also due as set out in the pronote itself on the back of which the endorsement is made.

This is so even if no interest in fact is paid.

Therefore this ruling does not apply.

14. The next case relied on by the Learned Counsel for the respondents is *Mangapathi Naidu Vs. M.K. Krishnaswami Naidu and Others*, . In that

case the learned Judge held as follows:

A mortgage was dated 5th June, 1909. A suit was instituted on the basis of the mortgage on 27th July, 1944 to enforce the mortgage. There were

two endorsements of payments on the bond dated 30th July, 1920 and 29th July, 1932. On the question whether the words implied that there was

an outstanding balance still due under the mortgage and whether the endorsement of 1942 operated as an acknowledgment of liability u/s 19 of the

Limitation Act and therefore would save limitation for the suit,

Held, (1) that the endorsement could not be construed as acknowledgment of a

liability, there being nothing in the endorsement suggesting that any further sum was due. The Tamil expression means ""paid and endorsed"" and not paid ""towards"" a debt.

It is impossible to state in this case that Section 18 of the Limitation Act would apply at all, because there is absolutely no acknowledgement of

liability. As to what exactly is the distinction between the two sections, viz., Sees. 18 and 19 of the Limitation Act has been clearly brought out by

a Division Bench of this Court in L.R.M.L.L. Lakshmanan Chettiar Vs. V.AR. Alagappa Chettiar and Others, . At page 237 the Division Bench

observes as under:

In this connection we need only refer to Sections 18 and 19 of the Limitation Act, 1963, Section 18 deals with the making of an acknowledgement

of a liability before the expiration of the period prescribed for a suit or application in respect of a property or right. Section 19 deals with payment

on account of a debt or of interest of a legacy being made before the expiration of the prescribed period by the person liable to pay the debt or

legacy or by his agent duly authorised in that behalf, and a fresh period of limitation being computed from the time when the payment was made.

The difference between the two sections has been succinctly set out in Parasuraman and Others Vs. Purushothaman and Co. and Others, , and we

may quote the relevant passage as we are in respectful agreement with the same. The passage runs thus:

There is certainly a difference between Sections 18 and 19. As in the case of an acknowledgment u/s 18, a payment u/s 19 is also required to be

recorded in writing. But, u/s 18, the writing must contain within itself an admission of existing liability, while u/s 19, it is sufficient if the writing

merely records the fact of payment. An endorsement of payment need not imply an acknowledgment of liability; whereas an acknowledgment for

the purpose of Section 18 must: be by the person against whom the property or right in question is claimed or by some person through whom he

derives title or liability, a payment for the purpose of Section 19 need only be by the person liable to pay the debt. An acknowledgment u/s 18 only

operates against the person who makes the acknowledgment and those claiming under him, but subject to the provisions of Sub-section (2) of

Section 20, a payment u/s 19 saves limitation against all the persons who are

liable for the debt.

Thus, it may be seen that while u/s 18 there should be an acknowledgment of liability, u/s 19 an endorsement of, payment need not imply an

acknowledgment of liability. The mere fact of payment as evidenced by the endorsement will have the effect of extending the period of limitation.

In addition to this, the other distinction can be gathered from Mitra's Limitation Act, 9th Edition, Volume-I. At page 572, it is observed:

Distinction between Sections 18 and 19 : Where the plaint in a suit on a promissory note is filed beyond limitation and there is no averment or claim

for extension on the ground of acknowledgment or part-payment the suit must be held to be barred. As in the case of a payment u/s 19 an

acknowledgment u/s 18 should also be in writing. But while u/s 18 the writing must carry, on admission of a subsisting liability, all that Section 19

requires is that the writing should record the fact of the payment. It may well be that a writing which records a payment may also amount to an

acknowledgment if the foregoing test is satisfied. Thus in one case an account showed three debit entries. A payment had been made within three

years towards the account without specifying any of the debt items, but a suit was filed beyond three years of the date of the last item. On the

counterfoil of the receipt, the debtor had written "received the duplicate" and the receipt showed that the amount was paid towards the account

relating to the three items. The Court held that though the payment may not save limitation u/s 19 as the sum paid was not sufficient to cover the

interest due on the three debts, it would still amount to a valid acknowledgment of liability u/s 18 as the use of the word "towards" in itself implied

that more remained to be paid and that was tantamount to an acknowledgment of liability u/s 19. A mere endorsement of payment without anything

more will not however operate as an acknowledgement and it will be too broad a proposition to lay down that every endorsement of payment on

the bond itself implies an acknowledgment of a subsisting liability for the debt. Thus an endorsement by the debtor on the back of a bond in his

own handwriting stating that a certain amount was paid on a certain date does not amount to an acknowledgement of liability.

A number of other distinctions also exist. While Section 18 applies to any right or property. Section 19 covers cases of debts and legacies only.

While u/s 19 the acknowledgment should be signed by the person acknowledging u/s 19, it may suffice if the payment is acknowledged in the handwriting of the person making the payment without need for his signature Whereas Section 18 requires only a writing admitting a subsisting liability regarding the debt or right claimed, Section 19 requires a payment as well as a writing recording the same. An acknowledgment u/s 18 need not be addressed to the person entitled but payment u/s 19 has to be made to the person entitled. Moreover whereas u/s 18 the fresh period of limitation falls to be computed from the date of signing the acknowledgment u/s 19 the period is computed from the date when the judgment is made and not from the date when it is recorded.

Where therefore in this case, what is acknowledged is the payment of interest till 31st December, 1972, that endorsement takes place on 13th February, 1973. In such a contingency how is it to be construed for the purpose of limitation. There is a direct authority on this point. In *Shyam Ballav Nandi Vs. Dologobind Sahu and Another*, it was held by a Division Bench as follows:

The material date u/s 20 for the purpose of computing limitation is the date of payment and not the date upon which the payment is endorsed.

...A mere acknowledgement of a payment is not in itself an acknowledgement of liability within the meaning of Section 19. If an endorsement acknowledged a liability to pay the debt then it would, be within that Section 19, but a mere endorsement of payment such as that Rs. 5 has been paid merely acknowledged the fact of payment and not a liability for any debt, and therefore is not an acknowledgment, of liability within Section 19;

It may also be noted that one of the cases relied on by Mr. Sivamani, Learned Counsel for the first respondent was also considered in this ruling and it was observed thus:

Counsel also referred to the case in *Venkatakrishniah's case* ILR (1917) Mad. 698 : 3 L.W. 576. In that case a payment made by a mortgagor who was able to write, was recorded on the back of the mortgage bond by a servant of the creditor and signed by the debtor. The endorsement ran as follows : Rs. 378 paid towards this document (signed by the debtor)". Nearly Rs. 1,500 was due on the date of payment, and it did not

appear whether the payment was made towards principal or towards interest. It was held that the endorsement amounted to an acknowledgment

of liability within the meaning of Section 19 though the payment was not good as a part payment within the meaning of Section 20 of the Act. It is

to be observed that in the endorsement relied upon it was expressly stated that the sum was to be paid towards this document, and that is a point

of distinction between the Madras case and the present case. In the present case in the material endorsement all that is said is that Rs. 5 had been

paid towards interest. The Madras case is to some extent at variance with the Allahabad Full Bench case, and in my view must be regarded as a

case decided upon its very special and particular facts.

16. In *Abdul Hussain v. Rev. Livesay* AIR 1945 Nag. 181, it was observed that where the endorsement was "paid...towards satisfaction of

pronote" that endorsement would amount to an acknowledgment within the meaning of Section 19. Again at page 182 it was observed as follows:

There was also no substance in the contention that Sections 19 and 20, Limitation Act, are mutually exclusive and in *Venkatakrisniah's* case ILR

(1917) Nad. 698 : 3 L.W. 576, *Srinivasa Iyengar, J.*, made the following observations is which we respectfully concur:

Acknowledgments u/s 19 have an operation which is different from the operation of part payments u/s 20. The distinction between the effects of

acknowledgements and part-payments has often been pointed out in England: See *Bolding v. Lane* (1863) 1 De.J.S. 122 and (1886) 11 A.C.

639, and the same distinction appears to have been made in the enactment of Sections 19 and 20. At any rate, it is impossible not to give effect to

an acknowledgment which fulfils the requirements of Section 19 though the acknowledgment may evidence also an ineffectual payment u/s 20. The

two sections deal with two different matters. They can be read together and there is no inconsistency.

In AIR 1940 63 (Privy Council) , a case in which there was the endorsement "'paid Rs. 100 today in this pronote (sgd) Lal Chand Bahri, 24th

January, 1933": on the promissory note, their Lordships of the " Judicial Committee of the Privy Council held that limitation was saved u/s 20, but

there was no decision to the effect that the endorsement on that document amounted to an acknowledgement u/s 19, Limitation Act. In fact, their

Lordships observed that in the Limitation Act, Section 19 which deals with acknowledgements is not to be read as based upon the theory of

implied promise and that it is difficult to see why Section 20, which deals with payments should be regarded as based upon a theory of

acknowledgment. Their Lordships were also unable to discover any sufficient reason for the assumption that Section 20 is an expression of any

single principle. The views of their Lordships cannot be taken as connoting that a writing which falls u/s 20 may not be valid u/s 19. It is true that in

B. Udeypal Singh Vs. Lakshmi Chand , Section 19 was not applied, but the reason for this is clear from Suliman, C.J."s remark at page 264 that

in the plaint there was no mention as required by Order 7, Rule 6, C.P.C., that exemption from limitation was claimed on account of any

acknowledgment in writing of the liability to pay but exemption was sought on the ground that the amount had been paid towards interest. In the

case before us the position is otherwise. Although neither Section 19 nor Section 20 is mentioned in the plaint, reference is made to a note and a

receipt which saved limitation and the plaintiff in replication maintained that the acts which evidenced the payment of Rs. 25 was a good

acknowledgment which extended the period of limitation. Our attention was drawn to the view taken in Shyam Ballav Nandi Vs. Dologobind Sahu

and Another, , to the effect that a mere acknowledgment of a payment is not in itself an acknowledgment of liability within the meaning of Section

19, but in that case, Venkatakrishniah v. Subbarayudu ILR (1917) Mad. 698, was distinguished on the ground that in the endorsement in it was

expressly stated that the sum was to be paid towards the document. Similarly, in the present case, the note Ex. P5 contains an express declaration

that the Rs. 25 were paid towards the promissory note.

Therefore, examined in the light of the above case law it is clear that there is absolutely no acknowledgement of liability for the respondent-decree

holder to invoke Section 18. On the contrary it is only Section 19 that would apply. If that be so, the date of payment, viz., 31st December, 1972

is the date from which the period of limitation has to be reckoned. Consequently, the suit having admittedly come to be filed on 12th February,

1976 would be clearly barred by limitation. The appellant's contention is well founded.

17. Accordingly, the appeal will stand allowed. The judgment and decree in so far as it relates to these appellants are hereby set aside and the parties will bear their respective costs throughout, i.e., both in the suit as well as in the appeal, since the appellants have succeeded on an important question of law. I make it clear that the decree against the first defendant N. Bhala Rao is not in any manner interfered with in this judgment.