

(1940) 03 PAT CK 0012
In the Patna High Court

Byomkesh Mukharji

APPELLANT

Vs

Madhabji Mepa Maru and Others

RESPONDENT

Date of Decision : 28-03-1940

Acts Referred:

Contract Act, 1872 — Section 46

Citation : AIR 1940 Patna 609

Hon'ble Judges : Harries, C.J.;Manohar Lall, J

Bench : Full Bench

Judgement

Harries, C.J.—This appeal was heard by this Bench on 10th January 1939. The claim in the suit out of which the appeal arose was one for royalty and was brought against a number of persons. The Lower Court had passed a decree against defendant 3 for Rs. 9416-14-3 and against certain other defendants for a larger sum. Defendant 3 appealed to this Court though the other defendants did not. For the reasons given in the judgment of this Court dated 10th January 1939, we were satisfied that the defendant had worked certain minerals belonging to the plaintiff and had agreed with the plaintiff to pay royalty in respect of the minerals worked, and we were satisfied that if the claim was within time the defendant was liable to the extent of Rs. 9416-14-3 as found by the Court below.

2. No point had been made in the written statement or in evidence or argument in the Court below on the question of limitation. The point was taken for the first time in this Court that the plaintiff's claim was out of time. We held that though the point had not been pleaded or taken in the *Reported in AIR (1939) Pat 421.

Court below we were bound to take notice of it. There were no materials before this Court upon which this question of limitation could be decided, and we therefore framed an issue and asked the lower Court to record its findings upon that issue. The issue was "Is the claim against defendant 3 barred by time?"

3. The parties, though given permission to adduce further evidence, did not do

so, and the Court below upon the materials on the record, has come to the conclusion that the plaintiff's suit was within time and has returned a finding accordingly. The claim was in respect of royalty due for the period March 1930 to January 1931. It is to be observed that a sum of Rs. 900 had during that period been paid on account of that royalty. This Court had held that the royalty was payable not under any lease, as there was no lease between the plaintiff and defendant 3. This Court had held that royalty was payable under a special agreement evidenced in the three letters which are referred to in detail in the earlier judgment. Those letters, in my view, show that defendant 3 had agreed to pay royalty at the rate fixed in an earlier lease of these minerals which was not binding upon defendant 3. The agreement between plaintiff and defendant 3 was however entirely silent as to how and when the royalty was to be paid.

4. Where no time is stated for the performance of a contract a reasonable time must be allowed for its performance (see Section 46, Contract Act). Where money has to be paid under a contract and the contract does not specify when such money is payable, then the money must be paid within a reasonable time. This contract states that royalty at a known rate is to be payable and in the absence of any direction as to when it is payable the Court is bound to hold that it became payable within a reasonable time of the coal being abstracted. It has been urged that the Court should treat royalty on the same footing as rent and that it should be regarded as due at the end of some given period. It is difficult to treat royalty on the same footing as rent because the amount cannot be possibly ascertained until the raisings of coal have been weighed and checked, etc. Mining leases usually provide for the mode and the time of payment of royalty; but there are no such provisions in the agreement governing the parties in this case.

6. In my judgment the contract entered into by the defendant in this case must be construed as a contract to pay royalty within a reasonable time of the coal being raised. Defendant 3 did pay from time to time and left the property on 31st January 1931. At that time a large sum was due in respect of coal raised. Having regard to the nature of the debt and the amount, I am of opinion that a reasonable time to pay this royalty would be three months or so. In any event I hold that there was no breach of this contract until the beginning of May 1931 at the very earliest. That being so, the plaintiff was entitled to three years from 1st May 1931, and he actually brought his suit within that time, namely on 10th April 1934. In my judgment the suit was within limitation and accordingly that point fails.

All other questions were dealt with in the earlier judgment and the result is that the appeal fails. I would accordingly dismiss it with costs.

7. The plaintiff-respondent gave notice to the Central Bank of India, respondent 4, that in the event of this appeal succeeding the plaintiff would claim as against this respondent. This special notice has caused this respondent to appear in Court, and in my view the plaintiff must pay the costs of respondent 4 for their

appearance in Court today. The plaintiff-respondent is entitled to his costs in this Court as against the defendant-appellant. The pro forma respondents other than respondent 4 are not entitled to any costs in this appeal.

Manohar Lall, J.

8. I agree.