

(1929) 09 BOM CK 0011

In the Bombay High Court

Case No : O.C.J. Appeal No. 64 of 1928 and Suit No. 250 of 1927

Dunichand Bishandas

APPELLANT

Vs

Comptoir National D'escompte D'paris

RESPONDENT

Date of Decision : 10-09-1929

Acts Referred:

Limitation Act, 1908 — Section 14, 19

Citation : AIR 1930 Bom 187 : (1930) 32 BOMLR 58

Hon'ble Judges : Norman Kemp, J;Murphy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Kemp, Kt., Ag. C.J.

1. By an agreement in November 1922 the plaintiffs purchased from the defendants 2,00,000 francs delivery March-April 1923, and on November 25, 1922, deposited by way of margin Rs. 10,000. This is, of course, the usual practice when anybody wishes to speculate in francs or anything else. Here, it may be mentioned that the due date was undoubtedly April 30, 1923.

2. Certain correspondence took place after April 30, 1923, by which the defendants requested the plaintiffs to take delivery and the plaintiffs replied saying that the damages should be assessed as of April 30, 1923, The plaintiffs are a firm carrying on business at Amritsar in the Punjab, and the defendants are a bank carrying on business in Bombay.

3. The plaintiffs sue for the balance of the sum of Rs. 10,000 margin money after giving what they say should be the amount of credit for the damages sustained by the defendants at the due date, viz., April 30, 1923, such damages being assessed as the difference between the contract and market rates.

4. Clearly, the period of limitation for this suit would expire on April 30, 1926. The cause of action arose on the date, when the balance of the margin became

due to the plaintiffs, viz., April 30, 1923. The plaintiffs filed a suit before the Subordinate Judge at Amritsar on April 29, 1926, i. e., one day before the period of limitation would ordinarily expire. On July 1, 1926, the defendants filed their written statement and on December 2, 1926, the learned Subordinate Judge ordered the plaint to be returned to be filed in Bombay holding that the Court at Amritsar had no jurisdiction as no part of the cause of action had arisen there and the defendants did not reside there. It is, we think, unnecessary to go beyond this date December 2, 1926, for the purpose of the arguments in this appeal.

5. Mr. Justice Eangnokar decided the preliminary issue as to limitation against the plaintiffs. He came to no finding as to whether the proceedings in Amritsar between April 29 and December 2, 1926, were in the honest belief that the Court there could entertain the suit. He referred to the correspondence in the suit and particularly to the letters dated July 13, 1923, August 6, 1923, September 7, 1923, and the attorneys' letters of December 20, 1923, and February 2, 1924, and came to the conclusion that none of these letters would save limitation except the letter of February 2, 1924. He further held that letter did not amount to an acknowledgment of liability u/s 19, and, therefore, holding that there was no acknowledgment of liability he held that the suit was barred. As to the written statement and the counter-claim filed on July 1, 1926, he said that even if it were to contain an acknowledgment of liability it was filed after the expiry of the period of limitation. This, of course, is based on the assumption that the letters he has referred to did not amount to an acknowledgment of liability.

6. The first question for determination in this appeal is, whether Sections 14 and 19 of the Indian Limitation Act can be read together, and I am of opinion that they can. Section 14 provides for the computation of the period prescribed in the schedule to the Indian Limitation Act and the period prescribed is, of course, subject to the computation u/s 14. Then, that being the period for limitation, Section 19 provides that where there is an acknowledgment of liability prior to the expiry of the period of limitation, the period of limitation is extended for a further period, in this case for three years. The case of *Hemkors v. Maaamali* (1902) 4 Bom. L.R. 608 cited to us by Mr. Coltman for the defendants, has no application, because there the period of limitation expired during the October holidays, and although under old Section 5, i. e., Section 4 of the new Act, the plaint could have been filed on the first day after the vacation yet the period of limitation had expired and the acknowledgment relied on was after the expiry of the period. That was not a case where the period of limitation was computed in the manner provided by Section 14.

7. We now come to the period u/s 14 during which the plaintiffs were engaged in pursuing the suit before the Subordinate Judge's Court at Amritsar, i. e., the period from April 29, 1926, to December 2, 1926, the first date being the day when the suit was filed and the last the day when the Subordinate Judge returned the plaint for presentation to the proper Court. The learned trial Judge

has not found whether during that period the plaintiff's were honestly pursuing those proceedings in the belief that the Amritsar Court had jurisdiction or not. But we must assume for the purpose of this appeal that there is no adverse finding against the plaintiffs on that point. Otherwise, it might be a question for the learned Judge to decide before he came to the conclusion that the suit was barred. That period of April 29, 1926, to December 2, 1926, must, u/s 14, be deducted from the period of limitation prescribed for the suit. The suit having been filed one day before the expiry of the period of limitation, when it would have been barred, Section 14 comes in.

8. Then, there is the written statement and counter-claim filed in the Amritsar suit. Now, what was the contract between the parties ? The contract between the parties undoubtedly was that the plaintiffs should deposit Rs. 10,000 as margin. The sum of Rs. 10,000 would be a debt due by the defendants to the plaintiffs, subject to the right of the defendants to credit that amount or any part of it towards the difference on the due date in their favour. In paragraph 5 of the written statement in the Amritsar Court the defendants mention the balance which they claim as due to them after crediting the sum of Rs. 10,000. They do not say so specifically, but say merely the " balance." The way in which the balance has been arrived at is shown from the correspondence. Further, there is the mention of the receipt of the sum of Rs. 10,000 and, therefore, the liability to account for it, although there is no promise to pay the sum of Rs. 10,000 or any part of it. Certainly, it is an admission of liability in respect of it. Then, we come to the counter-claim in paragraph 11 in which the sum of Rs. 10,000 is specifically mentioned and the defendants say that the balance they claim is after giving credit for the sum of Rs. 10,000 paid by the plaintiffs as margin.

9. In effect they say they have received Rs. 10,000 which they would be liable to repay but for the fact that they are entitled under the contract to credit it in the account and that they have done so. That, to my mind, is an acknowledgment of liability u/s 19 of the Indian Limitation Act. The written statement was tiled on July 1, 1926. That was prior to December 1, 1926, when the plaint was ordered by the Subordinate Judge at Amritsar to be returned for presentation to the proper Court. Therefore, it was prior to the expiry of the period of limitation prescribed. Therefore, a further period for limitation from July 1, 1926, for three years accrues. That is a ground on which I think that we must set aside the finding of the learned trial Judge.

10. We now come to the letters. The letters prior to that of February 2, 1924, have been described as of no importance on this point by the learned trial Judge, But, I think, with respect, he was in error in this. For, looking at the letter of July 13, 1923, which is the first of the letters, it contains words which I have already held, when used in the counter-claim, to amount to an acknowledgment of a liability. Now, if I am correct that letter extends the period of limitation to July 13, 1926, and we have to deduct the period from April 29, 1926, to December 2, 1926, when the proceedings in the Amritsar Court were in progress, i.e., a period

of seven months and three days, so that the period of limitation was extended to February 16, 1927. That being so, and the suit having been filed on January 29, 1927, the suit is in time. Similarly, with regard to the letter of August 6, 1923, that extends the period, if it amounts to an acknowledgment of liability, to August 6, 1926. Now, the period in the Amritsar Court of seven months and three days must be deducted in the computation of the period of limitation and we get a further period for limitation expiring on March 9, 1927, which would also save the suit, which was filed on January 21, 1927. Similarly, as to the other letters.

11. I think the learned Judge erred :

firstly, in not taking into consideration after assuming it for the purposes of his decision that the period from April 29, 1926, to December 2, 1926, in the Amritsar Court should be deducted;

secondly, in excluding from consideration that period, when he considered whether the written statement filed on July 1, 1926, extended the period of limitation ; and

thirdly, in incorrectly interpreting the letters of July 13, 1923, and August 6, 1928, and their effect, when coupled with the period taken up by the Amritsar suit, which, as I have already mentioned, goes to save limitation.

12. I am, therefore, of opinion that the order of the lower Court should be set aside and the suit remanded for trial. The respondents to pay the costs of the issue on limitation and of this appeal.

Murphy, J.

13. I agree.