

(1923) 02 CAL CK 0033
In the Calcutta High Court

Firm Prasanna Kumar Pal Sanatan Kunda	APPELLANT
Vs	
Punaulla Miji and Another	RESPONDENT

Date of Decision : 21-02-1923

Acts Referred:

Contract Act, 1872 — Section 25(3)
Limitation Act, 1908 — Section 19

Citation : AIR 1923 Cal 659 : 79 Ind. Cas. 77

Hon'ble Judges : Rankin, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for money advanced on loan. There were transactions between the parties, followed by an adjustment of accounts on the 4th April 1911, when Rs. 3,535 was found due from the defendants to the plaintiffs. Thereafter, there were three successive adjustments on the 2nd April 1914, 6th April 1917 and 8th February 1920. On the 3rd August 1920, the plaintiffs instituted the present suit to recover the sum of Es. 5, 200 with interest and costs. The defendants resited the claim on the ground, amongst others, that it was barred limitation. The Subordinate Judge has found on the merits in favour of the plaintiffs but has dismissed the suit on a twofold ground, namely, first, that the claim was barred by limitation and, secondly, that the document which recorded the adjustment on the 4th April 1911 was not admissible in evidence as not duly stamped. On the present appeal, these positions have been controverted and we have come to the conclusion that the view taken by the Subordinate Judge cannot be supported.

2. As regards the first question, namely, that of limitation, the Subordinate Judge has held that the plaintiffs are not entitled to the benefit of Section 19 of the Indian Limitation Act, inasmuch as they have not established that, at the time when the accounts were adjusted on the 4th April 1922, the sum found due was still legally recoverable. The appellants have, in answer, urged that the document evidences something more than an acknowledgment and is in essence an agreement to pay a barred debt within the meaning of Section 25, sub-section

(3) of the Indian Contract Act. This argument has been put forward on the assumption that the sum determined to be due on the 4th April 1911 was in fact not legally recoverable by reason of the operation of the statute of limitations, though the debtor might not have been aware that the claim was barred ; *Mati Sheikh v. Baikantha Nath Kar* 20 Ind. Cas. 809 : 18 C.L.J. 269, *Bhowani Misser v. Peari Jha* 21 Ind. Cas. 254 : 18 C.L.J. 329, *Simon v. Arogiascmi Pillai* 25 Ind. Cas. 361 : 16 M.L.T. 122.

3. Section 25, sub-section (3), provides that an agreement made without consideration is void, unless it is a promise made in writing and signed by the person to be charged therewith, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. Whether the statement contained in a particular document is a mere acknowledgment within the meaning of Section 19 of the Indian Limitation Act, or whether it is a promise to pay within the meaning Section 25 of the Indian Contract Act, must manifestly depend upon the language of the instrument under consideration. In the case before us, the document executed by the defendants on the 4th April 1911 was in the following terms :

Account of money, in the name of Panaullah Miji and TJmer Ali Miji of Nanupur, Mokam Chandpore. Amount due, brought forward from the account of Panaulla Miji at page 24 of this book Rs. 3,535. Interest at the rate of one rupee per cent, par mensem, stipulated time for payment the month o? Bhadra of the year 1318 B.S." Then follow the signatures of the executants on one-anna stamp.

3. It is plain that the provision for payment of interest is not an acknowledgment of the existing debt but is a promise to pay interest in future on the debt specified, We need not consider whether such a promise to pay interest may not necessarily involve a promise to re-pay the debt; for¹ we have the further expression " stipulated time for re payment " which unquestionably contained a promise to repay the amount found due. Consequently, on a consideration of the document before us, the inference is legitimate that it sets out a promise made in writing and signed by the persons to be charged therewith to pay wholly the debt specified therein. But the respondents have urged that a distinction must be observed between an acknowledgment within the meaning of Section 19 of the Indian Limitation Act and a promise to pay within the meaning of Section 25 of the Indian Contract Act. This may be conceded, notwithstanding the observation of the Judicial Committee in *Maniram Seth v, Seih Bup Ghand* 33 C. 1047 : 33 I.A. 165 : 4 C.L.J. 94 : 8 Bom. L.R. 504 : 10 C.W.N. 874 : 1 M.L.T. 199 :3 A.L.J. 525 : 16 M.L.J. 300 : 2 N.L.R. 130 (P.C.), namely, that an unconditional acknowledgment has always been held to imply a promise to pay, because that is the only inference, if nothing is said to the contrary ; it is what every honest man would mean to do. There are, however, authorities which show that in view of the provisions of Section 19 of the Indian Limitation Act, which make an acknowledgment available only when it is in respect of a debt not yet barred by limitation, the Court should be reluctant to imply in every case of

acknowledgment a promise to pay a barred debt; in this connection, reference may be made to the decisions in *Ghowksi Rimutlal v. Ghowhsi Aohrutlal* 8 B. 194 : 4 Ind. Dec. (N.S.), *Jethi Bai v. Putii Bai* 17 Ind. 722 : 14 Bom. L.R. 1020, *Ganga Prosad v. Bam Dayal* 23 A. 502 A.W.N. (1901) 150, and *Gobinda Das v. Sam Das* 30 A. 208 : 5 A.L.J. 333 : A.W.N. (1908) 129. In the case of *Chandra Prosad v. Varajlal* 1 Bom. L.R. 644, a Khata signed by the defendant was produced. It contained an entry in the following terms: Rs. 200 was found to be due on account of the previous khata having been made up. For the same this khata is passed. The moneys are payable by me. I am to pay the same whenever you may make a demand." It was ruled that the khata was not a mere acknowledgment of the debt, but was a promise to pay within the meaning of Section 25 of the Indian Contract Act. To the same effect are the decisions of the Punjab Chief Court, in *Mahbub Jan v. Nuruddm* 102 P.R. 1905 : 22 P.L.R. 1906 : 134 P.W.R. 1905, *Bhagwan Singh v. Munshi Bam* 41 Ind. Cas. 415 : 66 P.R. 1917 : 135 P.W.R. 191, and *Tirhhu v. Bizah Bam* 8 Ind. Cas. 811 : 138 P.W.R. 1901 : 8 P.L.R. 1911 In the case last mentioned, the principle was enunciated that when debtors strike a balance in the account-book of the creditor, promising in writing to pay the debt due to him, a suit may be brought on the basis of the balance under subsection (3) of Section 25 of the Indian Contract Act, and the claim is enforceable regardless of the question of limitation. Where the balance operates to acknowledge a debt, a statement of future interest to be paid at a certain rate imports a promise to pay the debt as well. This view was supported by a reference to the earlier decision of a Full Bench of the Punjab Chief Court in *Daula v. Gonda P.K.* 1903 : 101 P.L.R. All. 6903. We hold that in the present case the document is a promise within the meaning of Section 25; this does not ignore the distinction between an acknowledgment and a promise to pay, which was emphasised by the Patna High Court in *Bam Bahadur Singh v. Damodar Prosad Singh* 60 Ind. Cas. 514 : 6 P.L.J. 121 : 2 P.L.T. 308 The view we take is supported by the instructive judgment of Lord Sumner in *Spencer v. Hemmerde* (1922) 2 A.C. 507 : 91 L.J.K.B. 941 : 66 S.J. 692 : 38 T.L.R. 869 where the grounds of the distinction between an acknowledgment and a promise to pay were historically reviewed. The conclusion follows that the plea of limitation cannot possibly succeed.

4. As regards the second question, namely, that of the admissibility of the document which records the adjustment of the 4th April 1911, the Subordinate Judge has found in favour of the defendants. We are of opinion, however, that the document is an agreement or a memorandum of agreement within the meaning of Article 5, clause (c) of Schedule I of the Indian Stamp Act; in support of this proposition reference may be made to a long series of decisions of this Court. In *Murari Mohan Bov v. Khetter Nath Mulluk* 15 C. 150 : 7 Ind. Cas. (N.S.) 684 a document was executed in these terms:

This document, a hand-note, is executed by me for the purpose of purchasing a ghor. I take from you Rs. 7. I will pay interest on the same at half anna per rupee per mensem. Having received Rs. 7 in cash, this hand-note is executed."

Mr. Justice Wilson held, with the concurrence of Mr. Justice O' Kinealy, that this was not a promissory note nor a bond, but was an agreement to pay, and as such was chargeable with duty under clause (5) of Schedule I of the Indian Stamp Act. It was pointed out that this view was in accord with the earlier decision in *Berrier v. Bamhalpa Ghose* 23 W.R. 403. The same view has been consistently adopted in subsequent cases; *Mulchand Lala v. Kashi Kashibullab Biswas* 25 C. 111 : 1 C.W.N. 1120 and *Enatullah Bisiuas v. Garuddi Biswas* 11 C.W.N. 1122. A similar view was adopted by the Allahabad High Court in *Mutusaddi Lai v. Harkesli* 21 Ind. Cas. 146 : 41 A. 365 : 17 A.L.J. 381 and *Mohaiev Kori v. Sheoraj Bam* 51 Ind. Cas. 146 : 41 A. 365 : 17 A.L.J. 381. The decision of this Court in *Mul Chand v. Keshi Ballab Biswas* 35 C. 111 : 1 C.W.N. 1120 approved that of the Bombay High Court in *Laxumibai v. Qanesh Baghumull* 25 B. 373 : 2 Bom. L.R. 1132. It is possible, however, that a different view was indicated in the Bombay High Court in *Beference* under the Stamp Act, Section 60 4 Bom. L.R. 912 but the decision of the Madras High Court in *Tirupathi Goundan v. Bama Beddi* 21 M. 49 : 7 M.L.J. 291 : 7 Ind. Dec. (N.S.) accords with the view adopted in Calcutta and Allahabad. As a last resort, the respondent has strenuously argued that the document in question is a promissory-note and has relied upon the definition of the expression promissory-note contained in Section 2, clause (22) of the Indian Stamp Act, where a promissory-note means a promissory-note as defined in the Negotiable Instruments Act, 1881. The definition in the Negotiable Instruments Act is in the following terms : A promissory-note is an instrument in writing, not being a bank-note or a currency note, containing an unconditional undertaking signed by the maker, to pay a certain sum of money to, or to the order of, a certain person or to the bearer of the instrument. It is not necessary for the purposes of the present case, to examine the very wide terms of this definition. But; we may usefully recall the important observation of Pollock, C.B., in *Sibree v. Tripp* (1846) 15 M. & W. 23 at.P. 35 L.J. Ex. 318 : 153 E.R. 746 : 71 R.R. 545 where a question arose, whether the document before the Court was a promissory-note: "it is difficult to lay down a rule which shall be applicable to all cases; but it seems to me that a promissory-note, whether referred to in the Statute of Anne or in the text books, means something which the parties intend to be promissory-note., We cannot suppose that the Legislature intended to prevent parties from making written contracts relating to the payment of money, other than bills and notes; and this appears to me to be merely an instrument recording the agreement of the parties in respect of a certain deposit of money, the consideration of which is stated in the memorandum itself, and to be 53,ther an agreement than a promissory-note." In the case before us, there is no suggestion, indeed, the suggestion, if made, would have no solid foundation, that the parties ever intended this to be a promissory note. We are of opinion a that the document is an agreement within the meaning of Article 5 of Schedule I of the Indian Stamp Act and is consequently not affected by the provisions of Section 25.

5. The result is that this appeal is allowed and the decree of the Subordinate

Judge set aside. The suit will stand decreed for Rs. 5,200 with interest at 6 per cent per annum from the date of institution of the suit till the date of realisation. The plaintiffs are entitled to their costs throughout.