(1923) 07 PAT CK 0004

In the Patna High Court

Case No : S.A. No. 1332 of 1921

Fyzabad Bank Limited APPELLANT

Vs

Ramdayal Marwari RESPONDENT

Date of Decision : 18-07-1923

Acts Referred:

Citation : (1923) 07 PAT CK 0004

Judgement

Kulwant Sahay, J.—This is an appeal by the plaintiff, the Fyzabad Bank Limited, against the decree of the Subordinate Judge of Shahabad, reversing the decree of the Munsif, and dismissing the suit on the ground of limitation. The suit was for recovery of a sum of money found due to the plaintiff Bank upon what is described in the plaint as a "floating open current and mutual account" between the parties. The transaction between the parties commenced with a deposit of a sum of Rs. 530 by the defendant on the 12th of November 1912. According to the plaintiff the last transaction between the parties, was on the 8th of August, 1919, when the defendant is alleged to have made a payment of Rs. 15 to the Bank. The plaintiff''s case is that the account between the parties is a "mutual, open and current account" where there have been reciprocal demands between the parties and that, therefore, the case falls under Art. 85 of the first schedule to the Limitation Act, and the period of limitation is three years from the close of the year in which the last item admitted or proved is entered in the account, such year to be computed as in the account. The defence of the defendant was that the account between the parties was merely that of loans advanced by the plaintiff to the defendant and payments made by the defendant in part or full satisfaction of the loans, and the article applicable to the case was article 57 of the first schedule to the Limitation Act, and the period of limitation was three years from the date of each advance, and that as none of the items of advances was made within three years of the suit, the claim was barred by limitation. The defendant further pleaded payment of the full amount due in the year 1916 and denied the item of payment of a sum of Rs. 15 entered in the plaintiff''s account under date the 8th of August 1919. The learned Munsif before whom the case came for trial held that the defendant had failed to prove the plea of payment in the year 1916, that the item of payment of the 8th of August 1919 was true and correct and that the account between the parties was a mutual, open and current account, where there had been reciprocal, demands between the parties, and that the case was governed by Art. 85 of the Limitation Act, and was not barred by limitation. He accordingly made a decree in favour of the plaintiff for the amount claimed with costs and further interest. Against this decree the defendant went on appeal before the learned Subordinate Judge, and the only points urged before him in appeal were firstly that the plaintiff''s allegation of payment of Rs. 15 by the defendant in August, 1919, was not true and even if true, it was not a payment which could save limitation and, secondly, that the article applicable to the case was Art. 57 of the Limitation Act and that the suit was barred under that article. The plea of payment urged by the defendant in the year 1916, was not taken before the learned Subordinate Judge. The learned Subordinate Judge found that the payment of Rs. 15 alleged by the plaintiff to have been made by the defendant in August, 1919, had not been proved, and that even if it be accepted that such a payment was made he came to the conclusion that the payment could only be treated as a payment in part satisfaction of the principal, and as it did not appear in the defendant''s handwriting, it did not save limitation under S. 20 of the Limitation Act. He moreover found that the account between the parties was not a mutual, open and current account as contemplated by article 85 of the first schedule of the Indian Limitation Act. He apparently held that the dealing between the parties was merely a transaction of loans advanced by the Bank to the defendant and that the case fell under Article 57 of the Limitation Act and that the suit was barred by limitation. He has accordingly dismissed the suit with costs. Against this decree the plaintiff Bank prefers this second appeal to this Court, and the only point for consideration in this appeal is as to whether the dealings between the parties amounted to a mutual, open and current account where there have been reciprocal demands between the parties so as to bring the case within Article 85 of Schedule I of the Limitation Act.

2. The copy of the account filed by the plaintiff bank is accepted by the defendant to be correct up to the 24th of August 1916. After that date the defendant does not accept the correctness of the account; but after the 24th of August 1916 the account consists merely in adding interest on the sums found due every six months with the exception of the item of Rs. 15 under date the 8th of August 1919, which is shown in the plaintiff''s account as a payment made by the defendant but which has been found to be not proved by the learned Subordinate Judge. Therefore, with the exception of this item of Rs. 15 under date the 8th of August 1919, the account as produced by the plaintiff must he taken to be correct. Now this account began, as I have said, on the 12th of November 1912 by a deposit of a sum of Rs. 530 by the defendant in the Bank. The accounts appear to have been made up every six months on the 30th of June and 31th of December every year, and interest is added at the end of every

six months and the balance carried forward to the next six monthly account. The accounts for 1912 and 1913 clearly show that the balance was sometimes in favour of the plaintiff and sometimes in favour of the defendant and it is admitted by the learned Vakil for the defendant that in the beginning the account was a mutual open, and current account creating reciprocal demands between the parties; but he argues that from February 1913 onwards the balance is always in favour of the plaintiff and although payments were made on several dates in each month from February 1913 to August 1916 these payments were only in discharge of the debt of the Bank and cannot be treated to be mutual accounts creating reciprocal demands between the parties. I have carefully looked into the accounts produced by the plaintiff and, to my mind, it seems to be clear that the account, which was admittedly a mutual, open and current account creating reciprocal demands in the beginning continued to be so up to August 1916. The deposits made by the defendant in each period of six months from 1913 to 1916 amount to large sums and in the years 1914 and 1915 I find that the deposits for the period of July to December in 1914 and July to December 1915 amount to more than the sums withdrawn in those periods and to my mind it is clear that from time to time each party could say to the other: "I have an account against you".

3. Several authorities have been cited by the learned Vakil for the defendant to show that the account between the parties in the present case does not amount to a mutual, current, and open account, within the meaning of article 85 of the first schedule to the Limitation Act. Reliance has been particularly placed upon the cases of Hajee Syed Mahomed v. Mt. Ashrufoonnissa [1880] 5 Cal. 759 and Ram Pershad v. Harbans Singh [1907] 6 C.L.J. 158. In the case of Hajee Syed Mahomed v. Mt. Ashrufoonnissa [1880] 5 Cal. 759, the suit was by a banker to recover a sum of money in respect of sums advanced to the defendant through her agent Mr. Wilson, the manager of her Indigo Factory. The dealings between the parties in that case commenced by a payment of Rs. 1,200 into the Bank by Mr. Wilson on behalf of the defendant. Between 20th of December, 1869, to 31st of December, 1869, the defendant withdrew a sum of Rs. 413 leaving a balance of Rs. 767. On the 31st of January, 1870 the balance was overdrawn and a sum of Rs. 867-6-2 was found due to the plaintiff. From this date onwards the balance was always against the defendant except on six occasions when the balance was in favour of the defendant, and the last date on which there was a balance due to the defendant was the 2nd of July, 1872. After this date the balance was always against the defendant and sums paid by the defendant went in part payment of the debt due from the defendant to the plaintiff. The last payment was made by the defendant on the 12th of June, 1873. The suit was brought on the 23rd of December, 1876, and their Lordships held that the period began to run from the 12th of June, 1873, i.e. the date of last payment by the defendant but under article 87 of Act IX of 1871 the suit was barred; as under that article the time began to run not from the close of the year in which the last item is entered in the account but from the date of the last item. Their Lordships treated the

account as a mutual, open and current account within the meaning of article 87 of Act IX of 1871 which corresponds with the present article 85 of the Act of 1908 with the difference that, whereas in the Act of 1871 limitation began to run from the date of the last item, under the Act of 1908 the period begins to run from the close of the year in which the last item is entered in the accounts. No doubt their Lordships at one place in the judgment throw out a doubt as to whether the account was a mutual account in which there had been reciprocal demands between the parties, but their Lordships did not decide the point but proceeded on the assumption that the account was a mutual, open and current account creating reciprocal demands between the parties. Similarly in the case of Ram Prasad v. Harbans Singh (2) Sir Ashutosh Mukherji, J. held that where the accounts can be called mutual they can at the latest be mutual down to the date when the defendant made his last payment to the plaintiff, the banker. His Lordship examined the law on the subject very exhaustively and considered all the important cases on) the subject and came to the conclusion that mutual accounts, are such as consist in reciprocity of dealings between the parties and do not embrace those having items on one side only though made up of debits and credits. On examining the account in the present case I am of opinion that the account between the parties is such as to consist in reciprocity of dealings between them and it does not consist merely of items on one side though made up of debits and credits. On several occasions during the period from 1913 to 1916 the defendant could have said to the plaintiff: "I have an account against you", It is true that after February, 1913, the balance was always against the defendant, but although a shifting balance is a test of mutuality, its absence is not a conclusive proof against mutuality. The account in this case shows dealings between the parties which amounted to mutual debits and credits on both sides so that sometimes the balance is in favour of one party and sometimes of the other, as was the case in Narrandas Hemraj v. Vissandas Hemraj [1881] 6 Bom. 134 which has been explained in the case of Velu Pillai v. Ghose Mahomed [1893] 17 Mad. 293 - 4 M.L.J. 140 to mean, not that there must have been a shifting balance, but that such was a possible and likely incident of the mutual transaction with regard to which the account was kept.

4. In my opinion the present case falls under article 85 of the first schedule of the Limitation Act of 1908 and the period of limitation began to run from the close of the year 1916 when the last item admitted by the defendant is entered in the account, and as the suit was brought within three years from that date, it is not barred by limitation. I would, therefore, set aside the decree of the Subordinate Judge and restore the decree of the Munsif.

5. The result is that the appeal is allowed and the suit is decreed for the full amount claimed with costs in all the Courts and future interest at the rate of 6 per cent, per annum.

Foster, J.

6. I agree.

