

(1909) 01 AHC CK 0017
In the Allahabad High Court

Gopi Nath Singh	Vs	APPELLANT
Hardeo Singh and Others		RESPONDENT

Date of Decision : 28-01-1909

Acts Referred:

Citation : (1909) ILR (All) 285

Hon'ble Judges : Griffin, J;George Knox, J

Bench : Division Bench

Final Decision : Allowed

Judgement

George Knox and Griffin, JJ.—This first appeal arises out of an application made by one Chaudhari Gopinath, decree-holder. The application is u/s 90 of the Transfer of Property Act asking for a decree under that section and for sale of certain property of Dalip Singh and others, judgment-debtors.

2. Among other objections raised by the judgment-debtors was an objection to the effect that the claim to this decree was barred inasmuch as the suit was filed when more than six years had expired after the execution of the bond. The bond was dated 21st of March 1884, the suit brought upon it was instituted on the 28th of August 1902. Several payments had been made from time to time, but the judgment-debtors objected that these payments were not payments made towards interest "as such." The Subordinate Judge who tried the suit held that these payments should be considered payments appropriated by the judgment-creditor towards interest due under the bond. The lower Court in considering the application for execution was of opinion that (1) mere appropriation by the creditor of any amount paid towards interest, or (2) any direction of a Court that sums paid be appropriated under the provisions of the Contract Act, Sections 69, 60 and 61, towards interest could not be interpreted as payments made by the debtor towards interest "as such" and (3) that the suit brought by Chaudhri Gopinath having been filed when more than six years had expired from the execution of the bond, held that the present application for a decree u/s 90 of the Transfer of Property Act could not be granted and dismissed the decree-

holder's application. The decree-holder comes here in appeal and contends that under the circumstances of the case the payments made by the judgment-debtor must be held to be payments coming within Section 20 of the Limitation Act, namely, payments of interest on debt paid "as such" before the expiration of the prescribed period by the person liable to pay the debt.

3. The bond in suit was, as already stated, executed on the 21st March 1884, and there has been a series of payments made under it nearly every year from the year 1887 up to the year 1899. With the exception of the very first payment, namely, that on the 26th March 1887, not one of these payments is marked as being made on account of interest. The payment of 1887 is set out as a payment of Rs. 600 on account of interest.

4. We find on looking into the bond that there is an express provision in it that any payment made under it was first to be applied to the payment of compound interest, next to the payment of simple interest, and lastly to the payment of principal.

5. In view of this we hold that at the time the parties entered into the bond they did so under circumstances which implied that payment was to be applied to the discharge, first of the particular debt of interest and afterwards to the discharge of the debt of principal.

6. Next there is the circumstance that the first payment made under the bond was distinctly ear-marked as a payment towards interest, so far coinciding with what we have just held to be the intention of the parties when they entered into the bond.

7. Then it is not entirely without significance that all the subsequent payments made and endorsed upon the bond without any difference from the first payment with the solitary exception that the "words on account of interest" are wanting. From these circumstances we may safely assume, we think, that the parties intended and understood that the payments were to be and had been made by the debtor as payments on account of interest and that they should have been appropriated by the creditor as payments on account of interest. We also find that in the original suit the Court considered that the payments were on account of interest.

8. The learned advocate for the judgment-debtors contended that as there was no direction by the judgment-debtors as to how the money was to be appropriated, and as no appropriation was made then and there in the case of any of the payments with the exception of that made on the 26th March 1857, none of these payments could rightly be held to be payments of interest on debt paid as such and none would save limitation from running. In support of his contention he referred us to the case of *Hanmantmal Moti Chand v. Rambabai* ILR [1879] Bom 198; *Narrunji Bhimji v. Mugnirum Chandaji* ILR [1880] Bom 103; *Sarju Prasad Singh v. Khwahish Ali* ILR [1882] All 512.

9. In the first of these cases the judgment of the learned Judges of the Bombay High Court starts with the words "It is clear, on the plaintiffs own statement, that there has been no payment of interest as such."

10. The second case was one of an undefended suit brought upon a running account between plaintiffs who were merchants of Bombay and the defendant who was a trader. There was nothing in the case to show that there had been any payments on the parts of the defendant as interest. In the third case the learned Judges who decided that case said that there was nothing to show that payments were made towards interest as such. In this respect they are all distinct from the present case.

11. In the course of the argument we were referred to the case of *Damodar Ramchander Bapat v. Bai Jankibai* [1903] 5 BOM. LR 350. Mr. Justice Tyabji who decided the case held that the question whether sums paid by the judgment-debtor were or were not paid as interest on a debt was a question of fact. He accordingly examined the evidence and found that "whether, he looked into the nature of the payment itself or the nature of the endorsement, he felt great difficulty in coming to the conclusion that the payments made were payments of interest as such. We agree with the learned Judge that the question is a question of fact in each case and in the present case as we have already pointed out we come to the conclusion from (a) the very particular words set out in the bond between the parties, (b) the terms in which the first payment was recorded on the bond, (c) the record of subsequent payments on the bond, that there is evidence from which it can be rightly inferred that in the present case the payments made by the judgment-debtors were intended to be and were payments of interest as such.

12. We think that the learned Subordinate Judge was wrong in holding that the application before him was barred by limitation inasmuch as the payments made bring the case down to the year 1899, and well within the period of limitation. We allow the appeal, set aside the decree of the Court below and in accordance with Order 41, Rule 23, direct the case to go back to the lower court with directions to re-admit it in its original number in the register of applications and to proceed to determine it according to law. Costs of this appeal to be costs in the case and to follow the event. Fees in this Court will include fees on the higher scale.