

(1923) 06 CAL CK 0013
In the Calcutta High Court

Ibrahim Mallick

APPELLANT

Vs

Lalit Mohan Roy

RESPONDENT

Date of Decision : 06-06-1923

Acts Referred:

Limitation Act, 1963 — Section 19

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1924 Cal 388 : 79 Ind. Cas. 489

Hon'ble Judges : Rankin, J;Newbould, J

Bench : Division Bench

Judgement

Rankin, J.—This is an application on the part of the defendant u/s 25 of the Provincial Small Cause Courts Act. It appears that the plaintiffs on the 28th February, 1918, obtained a judgment against the defendant and certain co-sharers of the defendant for rent. On the 11th February, 1920, according to the plaintiffs' case, the plaintiffs entered into a contract with the defendant that in consideration that the plaintiffs would not seek to enforce their judgment, the defendant would pay the amount thereof with interest at 12 per cent per annum in April 1921. By April, 1921, the original judgment would become and has become time-barred and execution proceedings could no longer be taken upon it. The present suit was brought against the defendant on the 31st March, 1922. The plaintiffs have proved the contract alleged, and the present application is based upon the contention that such a contract as is alleged and proved is not valid in law. It is pointed out that the contract sued upon is a verbal contract and it is said that as Section 19 of the Limitation Act requires the acknowledgment to be in writing, it stands to reason that such a verbal contract as here alleged cannot be enforceable. That contention seems to be unsound. All that is required by Section 19 of the Limitation Act is the acknowledgment of an existing debt. A new consideration is not required and an actual promise to pay is not required. Acknowledgment alone is required. That must be in writing and signed by the defendant and the original debt can be enforced. But a new promise for a new consideration is a cause of action in itself and is in no way obnoxious to the

Limitation Act : see Per Mitter, J., in *Dukhi Sahu v. Mohamed Bhiku* [1883] 10 Cal. 284. Having regard to the time at which it was to take effect, the defendant's promise as pleaded may very well have been intended as a fresh bargain and not as a mere giving of time by plaintiff's for payment of the old debt. The learned Judge has found a contract and there is nothing to show that he is wrong.

2. The present case may be viewed in the light of the third clause of Section 25 of the Contract Act, a clause which as has been held in most of the Courts in India covers the case of a judgment-debt. Section 25 is directed to stating by way of exception that in certain cases an agreement although without consideration is not void. One of those cases is the case of a promise to pay a barred debt if that promise is made in writing and is signed by the party to be charged. In such a case as that, although the judgment-debt is barred, the promise to pay it, although there is no new consideration, would be good if in writing and signed. The present case has these differences, that the judgment-debt was not barred, at the time; that there was good consideration; but the promise is not in writing or signed. On principle where a person has given consideration for the purpose of obtaining a fresh promise to be acted on as in this case at a time, namely, April, 1921, when all remedy under the previous judgment would be barred, such a promise seems valid and enforceable. The case of *Heera Lal v. Dhunput Singh* [1878] 4 Cal. 500, especially the first branch of the decision, is in the plaintiff's favour.

3. No doubt there is room with the assistance of a certain amount of perjury for driving a gap through the provisions of the Law of Limitation by setting up a false verbal agreement. At the same time the Courts have always to distinguish between true and false evidence, and this is by no means the only kind of case in which they are likely to be called upon to do so. We cannot satisfy ourselves that there is any objection in law to the plaintiff's case as pleaded and as found.

4. The only other observation which seems necessary is this that this suit is in no wise a suit upon a judgment nor is it a proceeding under a judgment to enforce a judgment. Indeed the whole logic of the matter is that the judgment was superseded by the new agreement. The suit is upon a contract made no doubt with reference to an amount found due by the plaintiffs' judgment. But it is a suit on a simple contract. No exception can be taken to the frame of the suit. Under these circumstances this Rule must be discharged with costs.

Newbould, J.

5. Expressed his concurrence.