

(1910) 09 BOM CK 0007
In the Bombay High Court
Case No : Claim No. 238

In Re: Tricumdas Mills Company Ltd.

Date of Decision : 15-09-1910

Acts Referred:

Limitation Act, 1963 — Section 20

Citation : (1911) 13 BOMLR 482

Hon'ble Judges : Robertson, J

Bench : Single Bench

Judgement

Robertson, J.—The claimant urges that the claim was not barred by limitation as there was a payment of interest u/s 20 of the Limitation Act. The real difficulty is caused by the affidavit that Nagindas Bhikaridas sworn on the 13th April 1910 in support of his claim. That affidavit sets out in paras 6, 7 and 8 that it was at his express request and consent that the Company credited the amount in each of the years since the death of Bai Jadav.

2. That affidavit is on the very face of it the very reverse of convincing and accordingly the claimant Nagindas was examined and cross-examined with a view to ascertaining the real facts. When he came to be re-examined his case appeared to be that on the death of Bai Jadav he had applied to the Company to transfer the loan into the names of the trustees.

3. This the Company agreed to do on the trustees duly executing a bond and providing a surety. A bond was executed by the executors but the surety was not provided. It appears that the first person suggested as a surety refused to sign the bond and the executors had to look out for another. The second gentleman who had consented to act as surety died before he executed that bond. Nagindas on each occasion had an interview with Dwarkadas Dharamsey to satisfy him as to the fitness of the person designated as a surety and according to his present story, it was at the time of these interviews with Dwarkadas Dharamsey that the arrangement was come to that interest should be added to the capital and that it was to be treated as a new loan, i.e., the capital and the interest together. That is not the story told in his affidavit, but the story told in his examination by

Nagindas is probably correct. The question then arises whether his claim is barred by limitation. In *Ichha Dhanji v. Natha* ILR (1888) 13 Bom, 338, the portion of the judgment which deals with the question of limitation is to be found at page 343. "But it was said that the entry of interest in the defendant's books, made, as it was alleged, in the presence of the plaintiffs, amounted to a payment, which by Section 20 postponed the date from which time would run to within three years previous to the filing of the suit. *Spargo's case* (2)(1873) L.R. 8 Ch. 407, was relied on ; but that only decides that if the circumstances would support a plea of payment they are such as to satisfy the section. Here there were no demands on both sides to set off against one another, and nothing took place which could be regarded as equivalent to payment of interest. We must, therefore, confirm the decree with costs." It is to be noted that it was treated by the learned Chief Justice as being a matter depending on the circumstances of each case.

4. A later Bombay case is that of *Kariyappa v. Rachapa* ILR (1900) 24 Bom, 493; 2 Bom, L.R. 378. There it was laid down as follows: "To satisfy the requirements of Section 20 of the Limitation Act the payment of principal or interest as such need not be in money. It may be in goods or by a settlement of accounts between the parties; but the payment must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount." These words "to recover the amount" must mean to recover the amount as interest, not to recover the total amount as principal. At page 501 of that report, Mr. Justice Ranade says: "These English cases show clearly enough that if a debtor consents that some money due by him for interest should be credited to the account of the principal in favour of the creditor, and the interest balance reduced to that amount, such a consent is really tantamount to a payment of interest. It is as if the debtor makes the payment and the creditor advances it again. Where all parties agree to such a settlement, there is no particular reason why such an adjustment should not operate as a payment of interest u/s 20. If the debt had been a mortgage-debt, and the interest balance had been, with the consent of parties, reduced by a certain amount and credited in the principal account, such adjustment would make a very significant alteration in the state of the accounts. It would be likewise the case if the *damdupat* rule were applied under the general law. Such a settlement would be an answer to a claim for the interest balance made after the adjustment; and it was, therefore, correctly held to be a payment of interest u/s 20."

5. I think it is unnecessary to refer to any other case to which my attention was called, because after all these two cases are binding upon me and all that I have to do is to apply them as best I can to the circumstances of this case.

6. From what I have already said, it appears to me that all the parties did agree to such a settlement, and if that is so there is no reason according to the words of Mr. Justice Ranade why such an adjustment or agreement should not operate as payment of interest u/s 20.

7. I, therefore, hold that the claim is not barred by limitation.

8. It is unnecessary to discuss the point which was incidentally mentioned in the course of the arguments as to whether or not the Limitation Act does apply to such claims as these; but I may say that under the English Law, where such a claim as this would only bar the remedy and does not destroy the right, it has been held that the Limitation Act does apply.

9. As to the costs, there was a considerable argument as to what costs I could or ought to allow in this case; but in the view that I have taken of the conduct of the claimant, I think that point does not arise in this case. I consider that the necessity for the adjournment into Court and the lengthy hearing in Court is entirely due to the character of the affidavit which was put in by Mr. Nagindas. It courted opposition and was, as I said, on the face of it the very reverse of convincing. If the story he told in the witness-box had been set out clearly in his affidavit, I very much doubt that the Liquidator would have refused to admit his claim, or when it came before me in Chambers I should have thought it in any way necessary to adjourn the matter into Court.

10. I am of opinion therefore that the claimant is not entitled to the costs of the hearing in Court even if I considered that I had the power to award them to him. I may point out that the rule in England is laid down in two cases: *Bailey and Leetham's case* (1) *In re General Estates Co., Ex parte Wright and Gamble* (2). It apparently is that the costs of adjournment into Court are allowed if the claimant succeeds under ordinary circumstances. That is all I could have awarded to him and as I think that the adjournment into Court was rendered necessary by the way in which his affidavit was drafted, I disallow the costs of that adjournment into Court. As to the other costs they are apparently provided for under Rule 663 of the Rules of the High Court which says: "Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator shall be allowed their costs of proof which will be added to the debt." I allow the claimant such costs as he would ordinarily be allowed under Rule 663; but no costs of or subsequent to the adjournment into Court.

11. The claim is allowed to the extent of Rs. 2652, and costs under Rule 663 up to the time the matter was adjourned into Court.

12. No order as to costs subsequent to that order.