

(1909) 06 CAL CK 0006
In the Calcutta High Court

Jagdeo Singh

APPELLANT

Vs

Bal Govind Singh and Others

RESPONDENT

Date of Decision : 18-06-1909

Acts Referred:

Citation : (1909) 06 CAL CK 0006

Judgement

1. This appeal arises out of a suit on a mortgage bond by which the debtors agreed to repay the money by five instalments, the first of which was payable in Jaith 1297 (F.S.) and the last in Jaith 1301. Corresponding to June 1894. The bond contained a condition that if the debtors failed to pay any one instalment the creditor should have the power to realize the entire amount covered by the bond, principal with interest. It has been found as a fact that no instalments were paid and this suit was brought on the 4th June 1906. The question before us is whether this suit is barred by limitation. There can be no doubt that the suit falls within the description of cases under Article 132 of the second schedule of the Limitation Act, it being one to enforce payment of money charged upon immovable property. The question, therefore, before us is whether the period of limitation dates from the time of the first instalment or from the time when the last instalment became due. We have had cited to us a great number of cases showing the rule applicable to cases under article 75. The effect of the decisions has been conveniently summarised in the cases of Mon Mohan Roy v. Durga Churn Gooee 15 C. 502 and Girindra Mohan Roy v. Khir Narayan Das 36 C. 394 : 9 C.L.J. 226 : (1909) 1 Ind. Cas. 49. But none of those cases go to extend the principle of article 75 to cases under article 132. The only case which seems to touch the present point is the case of Sitab Chand Nahar v. Hyder Malla 24 C. 281 where, as in this case, the mortgage bond hypothecated immovable property and article 132 of the Limitation Act was held to apply. There it was held that the period of limitation ran from the date of the first default. It was also held there that the principle of waiver could not be extended from article 75 to article 132. This case is directly in point and we see no reason for hesitating to accept the law there laid down. It should be added that in this case there is no evidence of

waiver, it being the settled law that mere abstention from suing does not constitute waiver within the terms of article 75. The result is, that this appeal fails and is dismissed with costs.