

(1926) 06 AHC CK 0027
In the Allahabad High Court

Jaunpur Sugar Factory Ltd.

APPELLANT

Vs

Upper India Rice Mills Ltd.

RESPONDENT

Date of Decision : 04-06-1926

Acts Referred:

Limitation Act, 1963 — Section 6

Citation : AIR 1927 All 173

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukerji, J.—This is an application by the liquidators of the Jaunpur Sugar Factory Limited in liquidation against the liquidator of the Upper India Rice Mills, Limited in liquidation for recovery of a sum of Rs. 8,514-0-10 on the following allegations. The two Companies now in liquidation were managed by one and the same firm of agents who described themselves as Messrs. Behari & Co. While the two Companies were under the same management, from time to time, the Managing Agents borrowed moneys from the Jaunpur Sugar Factory Limited, for the use of the Upper India. Rice Mills Limited. The total sums thus borrowed amounted to Rs. 7,093-10-9 after giving credit for the sums paid in from time to time. The Jaunpur Sugar Factory went into liquidation on the 28th of March 1924, and the Upper India. Rice Mills went into liquidation on the 26th of October 1924. On the 24th of January 1925, the present claimants put forward their claim before the liquidators of the Upper India Rice Mills but the claim was not recognized on the ground of limitation. The applicants accordingly lay their claim before the Court for adjudication.

2. These facts are all admitted by the learned Counsel appearing for the Upper India Rice Mills Limited. No written statement has been filed on behalf of the opposite party and there was hardly any need for that as the only question raised is that of limitation.

3. It is common ground that the sums alleged to have been borrowed from time to time by the Rice Mills were borrowed prior to the 26th of September 1921, on which date the last amount of Rs. 60 was borrowed. The last amount that was paid on behalf of the Rice Mills was paid on the 30th of September 1921, and was a sum of Rs. 15. It is also conceded before me that the transactions were all against the Rice Mills, there being always a credit balance in favour of the Sugar Factory. The question is whether the present claim is time-barred.

4. The learned Counsel for the claimants argues that it being the case that the Managing Agents were one and the same till at least the 28th of March 1924, the period of limitation should be deemed to have been under suspension up to that date. The following rulings were cited by the learned Counsel in support of his argument: *Tapham v. Booth* [1887] 35 Ch. D. 607, *Lakhan Chander Sen v. Madhusudan Sen* [1908] 35 Cal. 209, *Nrityamoni Dassi v. Lakhan Chandar Sen* [1916] 43 Cal. 660 and *Soni Ram v. Kanhaiya Lal* [1913] 35 All. 227, *Muthu Korakkai Chetty v. Mohamad Madar Ammal* [1920] 43 Mad. 185.

5. The learned Counsel for the opposite party contends that none of these cases have any application and that it did not matter if the managing Agents were one and the same. It was argued that there were the Directors of the Company to take care of their interest and that the provisions in the law for suspension of the period of limitation do not apply to the facts of the present case. He referred the Court to Section 9 and Section 6 of the Limitation Act.

6. In my opinion the proper view of the case is this. The question is whether there was any loan in existence at all and if so when did it come into existence.

7. The admitted facts are that Messrs Behari & Co., managed both the Companies and that whenever it was found expedient they removed the moneys from the coffers of the Sugar Factory and applied the same for the benefit of the Rice Mills Company. The Managing Agents were, no doubt, in the position of ordinary agents of two separate principals, but all the same they were common servants of the two persons, viz., the two Companies. When, therefore, Messrs. Behari & Co., took a sum of money from, so to say, one of their pockets and put it into another of their pockets, did they advance a loan? In my opinion they never advanced any loan. For a loan to come into existence there ought to be a lender and a borrower. Here the lender and borrower being the same person no loan came into existence, and, therefore, Article 59 of the Limitation Act has no application. It is true the two Companies had separate boards of Directors, but it is common ground that no loan was obtained by any Directors of one Company from the Directors of the other Company. It is as if the same servant of the two men applied money of one principal for the benefit of another principal. To my mind, it is clear, that it is not a case of loan at all.

8. If that be the case, can the money be recovered or not? In my opinion the money is certainly recoverable. The money was never applied so as not to be recoverable. In fact, such money as was available from the management of the

Rice Mills was applied, from time to time, for the liquidation of the amounts taken from the coffers of the Sugar Factory. The question then would be what would be the period of limitation and what would be the date on which the cause of action would arise. I have run through all the relevant articles in the First Schedule of the Limitation Act and the only Article that I find applicable is the Article 120. It is the omnibus article which applies when no particular Article is applicable.

9. The position is this: A sum of money is due by one person to another and the money is due under circumstances which do not amount to a loan. The money should become payable when it is demanded and a re-payment is asked for. Even for this purpose it would be necessary for another party to come into existence in place of the Managing Agents. The Managing Agents themselves could not demand money from themselves. Therefore, the right to sue would accrue when the Directors of the Sugar Factory would take charge of the Company after sending away the Managing Agents or when, as in this case the liquidator appeared on the scene. The liquidator was appointed some time after the 28th of March 1924, and he made the demand on the 24th of January 1925. The earliest period, therefore, on which the limitation could begin to run was the 28th of March 1924, if not the 24th of January 1925.

10. In my opinion the claim is a sound one and is not barred by limitation and ought to be allowed. I allow the claim with costs but no future interest. The interest that has already been claimed has not been contested and is clearly payable. Costs Will include counsel's fees on the higher scale if any higher scale fee be admissible under the rules.