
(1909) 03 AHC CK 0024
In the Allahabad High Court

Kamta Prashad and Another

APPELLANT

Vs

Musammat Muni Bibi

RESPONDENT

Date of Decision : 16-03-1909

Acts Referred:

Citation : 1 Ind. Cas. 570

Hon'ble Judges : Richards, J;Karamat Hussain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This was a suit to recover money alleged to be due on foot of a certain money bond. Under the terms of the bond the money was payable by instalments and the bond provided that in default of payment of any instalment, the whole amount would become due. Default was made on 5th September 1902 and the present suit was instituted on the 29th November 1906. The bond was a registered bond. Article 75 of the Second Schedule of Act XV of 1877 provides for three years limitation on a promissory note or bond, payable by instalments, which provides that if default be made in payment of one instalment, the whole shall be due. According to this provision time begins to run from the date of the first default unless the benefit of the proviso is waived, in which case time begins to run from the date of the fresh default, in respect of which there is no such waiver. If this Article Applied the case is clearly barred by limitation. The plaintiff contends that Article 116 applies. That Article provides the period of six years" limitation for compensation for the breach of a contract in writing and registered. The respondent relies on a number of Rulings and amongst them the Full Bench decision of Husain Ali Khan v. Hafiz Ali Khan 3 A. 600 (F.B.) and also the case of the Collector of Mirzapur v. Dawan Singh 30 A. 400. In deference to these rulings we dismiss the appeal with costs including fees in this Court on the higher scale.