
(1953) 09 RAJ CK 0019
In the Rajasthan High Court
Case No : S.C.C. Revision No. 48 of 1953

Krishna Verma

APPELLANT

Vs

Ameer Singh

RESPONDENT

Date of Decision : 10-09-1953

Acts Referred:

Citation : (1953) 09 RAJ CK 0019

Hon'ble Judges : B.N. Nigam, J.C.

Bench : Single Bench

Advocate : J.S. Gupta, for the Appellant; I.C. Das and Kapoor, for the Respondent

Final Decision : Allowed

Judgement

Nigam, J.C.

1. Krishna Verma filed Civil Suit No. 740 of 1952 against Ameer Singh claiming a decree for Rs. 229/11/- on the foot of a bond for a sum of Rs. 262/-. The suit was contested and the learned Judge, Small Causes, granted a decree for Rs. 20/-. Against that judgment and decree, Krishna Verma, plaintiff, has come up in revision. I have heard the learned counsel for the parties.

2. The first contention of the learned counsel for the applicant is that in any case, the plaintiff was entitled to a decree for Rs. 104/-, the amount found due by the learned trial Judge. He urged that the learned trial Judge was wrong in interpreting the acknowledgment not as an acknowledgment of existing liability, but as an acknowledgment of the liability to the extent of Rs. 20/- only. The learned counsel for the opposite party has referred me to -- Debji Ghelabhai and Brothers Vs. R.D. Mehta and Co., and -- "Karamadai Naicken v. Raju Pillar, AIR 1949 Mad 401 (B). The head-note in -- Debji Ghelabhai and Brothers Vs. R.D. Mehta and Co., reads :

There need not be a promise to pay but the document in question must on a fair reading amount to an admission of liability, absolute or conditional..... But

where the letter or the document relied upon expressly states that there is no liability and the liability is in fact denied and repudiated, it cannot be said that limitation is extended under S. 19 of the Act.

In -- " AIR 1949 Mad 401 (B)", it was laid down :

The statement must be taken as a whole and the intention must be gathered by reading the document as a whole and not by confining attention to a particular portion of it. It is wrong to dissect the statement into two parts, the first part containing an admission of liability and the second part the mode in which it was discharged.

As I understand, these rulings lay down that there must be an acknowledgment of an existing or subsisting liability and are no authority for the suggestion that the acknowledgment will operate to the extent mentioned in the acknowledgment and not be treated as an acknowledgment of an existing liability the extent of which is to be determined by the Court.

3. The learned counsel for the applicant has referred me to -- Hatimulla Vs. Sukhamoy Chaudhuri and Others, which lays down :

An acknowledgment by the judgment-debtor of his liability for portion of money by means of an application for adjustment under O. 21, R. 2, gives a fresh start of limitation in respect of the entire amount.

4. I have also been referred to -- Raghubar Dayal Vs. Banwari Lal In this case the defendant's admission in a previous case as to the existence of the pro-note along with the plea of an agreement between the parties by which the plaintiff had agreed to take certain amount, part of which had been paid, was, even though the agreement was not proved, taken to be a sufficient acknowledgment to save limitation.

5. The learned counsel has also relied on -- Abdul Latif Gulam Nabi Patil Vs. The Jawhar State, Head-note (e) reads :

Under S. 19 Expl. 1 the omission to specify the exact nature of the amount of the liability is immaterial, or even the averment that no balance is due and therefore words "you should take proper account and if on taking accounts some balance be found due from the defendant you should absolve him from those dues" addressed to the creditor by a counsel on behalf of his client constitute a valid acknowledgment.

6. On a consideration of the above rulings I am of opinion that what is necessary to save limitation is the acknowledgment of the existence of a subsisting liability and the acknowledgment is not to operate merely to the extent mentioned in the acknowledgment. As such, the plaintiff was entitled to a decree for Rs. 104/-.

7. The second point urged by the learned counsel for the applicant is as regards appropriation. It is urged that the plaintiff is entitled to appropriation at any time before the filing of the suit. I have no objection to that. But the appropriation

must be made effective on the date of the payment. It is open to the plaintiff to make his choice on any date upto the date of the institution of the suit, but the appropriation must be made so as to be effective on the date of the actual payment. In the present case, the payment exceeded the interest due on the date of the payment and, as such, the plaintiff could only exercise the option of crediting as much towards interest as was due on that date. As to the balance he had no option but to credit it towards principal. I am, therefore, unable to see any force in the contention of the learned counsel.

8. The result is that the revision is accepted in part and the plaintiff will be entitled to a decree for Rs. 104/- and the parties will receive and pay costs in the case in proportion to their success and failure. In this revision, the parties will bear their own costs.