

(1914) 08 CAL CK 0021
In the Calcutta High Court

Maharani Janki Koer

APPELLANT

Vs

Mahabir Prasad

RESPONDENT

Date of Decision : 06-08-1914

Acts Referred:

Citation : 25 Ind. Cas. 706

Hon'ble Judges : Walmsley, J;D. Chatterjee, J

Bench : Division Bench

Judgement

1. The defendant was an Am-mukhtear of the Bettiah Raj appointed under a letter of appointment by the Assistant Manager on the 16th May 1904. On the 29th June 1904 he was given a registered am-mukhteamama by which he was authorised to do various things, one of which was signing petitions of executions and filing them. In February 1907 he made reports in respect of a number of decrees that they could not be realized by execution and the Assistant Manager in charge at Chapra sent these remission reports to the Manager. The Manager sanctioned certain of these recommendations, but with regard to certain decrees the Manager ordered further inquiries. "What the result of the further inquiries was, does not appear. But it seems that it was found out that these decrees had been barred by limitation. Upon that, some reports seem to have been called for from the Head Clerk, and the Head Clerk made his report on the 6th September 1907. The defendant was dismissed in 1909 and the suit was brought on the 6th of September 1910 on an insufficient stamp. The deficit stamp was supplied on the 10th September 1910. The suit was for the recovery of about Rs. 800 being the amount of the decrees which had been barred during the incumbency of the defendant as Am-mukhtear of the plaintiff in charge, of law affairs at Chapra. The first Court gave a decree. The second Court dismissed the suit on the ground that it was barred by limitation, because he considers that the plaint was properly filed on the day on which the deficit Court-fee was put in, and secondly, on the ground that it was barred by limitation under Article 90 of the Schedule I to the Limitation Act.

2. It is contended before us that the learned Judge is wrong on both points. As regards the first point, it is conceded by the learned Vakil for the respondent that the plaint must be considered to have been filed when it was presented, i.e., on the 6th September 1910. If the cause of action arose, as stated by the plaintiffs, on the 6th September 1907, then the suit would be within time if Article 90 would apply. On the second ground it is contended here that it will not be necessary to consider whether the cause of action arose on the 6th of September 1907, if the suit is governed by Article 116 instead of Article 90. That would really be so. But it must be seen whether Article 116 would apply. It is contended that it would be so governed by reason of the ammukhternamah, by which the defendant was given the power of executing decrees, being a registered document. The suit must be considered as one for compensation for breach of a contract covered by a registered document. Reliance is placed in support of this contention on the case of Harendra Kishore Singh v. Administrator-General of Bengal 12 C. 357. That was also a case of the Bettiah Raj. There the appointment of the Manager was under a registered deed by which he agreed to account for all monies that came into his hands and the suit was for misappropriation of Raj moneys. Here the appointment was by a writing on plain paper dated the 16th May 1904 and the registered document only conferred powers upon the defendant for doing certain things, and the suit is brought not for breach of any covenant in the registered am-mukhtearnama but for the negligence of the defendant in the discharge of his duties as Am-muklitear which he undertook when he accepted his appointment on the 16th May 1904. The present case, therefore, is distinguishable and we think that Article 90 is the proper Article to apply in this case. That being so, we must see whether the cause of action arose on the 6th September 1907. As regards that, the learned Judge says in the first part of his judgment: "it is admitted that there was previous notice that the decrees were refused execution, as being barred by limitation. But the Head Clerk's report of the 6th September 1907 is said to have been the first notice of the appellant's misfeasance. This distinction is, of course, based on sound principle and must be accepted." In a later part of his judgment, however, the learned Judge says that Mr. Laurie states that he first had knowledge of the appellant's misconduct or negligence when the Head Clerk, Gopi Nath Sanyal, submitted his report on the 6th September 1907. I am inclined to think that Mr. Laurie must mean that he then first knew that there was sufficient ground for suing the defendant for damages." And then "I am not prepared to hold that Mr. Laurie remained ignorant for all these years, 1905, 1906 and eight months of 1907, of what was so easily discoverable." And then again, "It is one thing to know of a man's negligence, and another to know that you have a good case against him for damages." Reading all these portions in the judgment together, we think that the learned Judge was of opinion that Mr. Laurie, the Assistant Manager of the plaintiff, knew of the defendant's negligence before the 6th September 1907 and that on the 6th September 1907, he came to know that there was sufficient cause for a good case being run against the defendant. This being so, the knowledge of the plaintiff which was required to be

within three years by Article 90 of the Limitation Act was beyond three years and the suit fails. In this view of the case, we think that the appeal must fail.

3. It is accordingly dismissed with costs.