

(1918) 12 CAL CK 0009
In the Calcutta High Court

Mahendra Nath Chatterjee

APPELLANT

Vs

Lalit Mohan Datta

RESPONDENT

Date of Decision : 20-12-1918

Acts Referred:

Contract Act, 1872 — Section 25(3)
Limitation Act, 1908 — Section 19

Citation : (1919) ILR (Cal) 746 : 53 Ind. Cas. 854

Hon'ble Judges : Walmsley, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This appeal is preferred by the first defendant against the decision of the learned Additional District Judge of Hooghly dated the 24th April 1917 affirming the decision of the Subordinate Judge of Howrah. The point raised in the appeal is this: Whether the hatchitta in question was in this case a fresh acknowledgment under the terms of Section 19 of the Indian Limitation Act; and, if it was not, namely, if it was given after the period of limitation had expired, whether it was a fresh promise to pay within the meaning of Section 25(3) of the Indian Contract Act? It is obvious that the second question can only arise in the event of the first one being decided in favour of the appellant. Now, what the learned Judge of the lower Appellate Court has found is this: that there was, in fact, an intermediate hatchitta between the original hatchitta and the hatchitta of 1308. That is quite clear and the learned Judge, in my opinion, has held that that; hatchitta was in the ordinary course handed over to the defendant, and that it was being withheld by him. It is quite clear that what the learned Judge meant by his judgment was that that hatchitta, if produced by the defendant would not have supported his case, and, therefore, he held that the present hatchitta of 1308 was a fresh acknowledgment within the meaning of Section 19 of the Indian Limitation Act. If those facts are right, it is not disputed, having regard to the decision of the Privy Council in the case of Maniram Seth v. Seth Rupchand ILR (1906) Calc. 1047, that the present hatchitta was a fresh acknowledgment within the meaning of Section 19 of the Indian Limitation Act.

In that view, the present appeal fails and must be dismissed with costs.

Walmsley, J.

2. I agree.