
(1945) 11 BOM CK 0027
In the Bombay High Court
Case No : Second Appeal No. 202 of 1943

Manilal Motiram Mehta

APPELLANT

Vs

Natwarlal Gokaldas Shah

RESPONDENT

Date of Decision : 29-11-1945

Acts Referred:

Limitation Act, 1908 — Section 19

Citation : (1947) 49 BOMLR 81

Hon'ble Judges : Lokur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Lokur, J.—This appeal arises out of a suit filed by the plaintiff to recover Rs. 2,000, future interest on it and costs of the suit out of the estate of deceased Bhulabhai Gokuldas, to whom various amounts had been advanced by him from time to time between December 13, 1936, and January 27, 1938, Defendants Nos. 1 and 2, who are Bhulabhai's brothers, contended that they were separate from him, that none of his property was in their possession and that the suit was time-barred. The suit was filed on November 18, 1940, and the only amount advanced within three years before suit was the last item of Rs. 25 paid to Bhulabhai on January 27, 1938. But the plaintiff alleged in his plaint that on November 19, 1937, Bhulabhai had endorsed an acknowledgment of his liability in his khata in the ledger, and that the bar of limitation was saved thereby u/s 19, of the Indian Limitation Act, That endorsement being unstamped, both the Courts below held it inadmissible in evidence, as it amounted to an acknowledgment Which required a stamp of one anna under Article 1 of the first schedule to the Indian Stamp Act. The plaintiff was, therefore, given a decree for Rs. 25 and Rs. 4-4-0 as interest thereon with proportionate costs.

2. The endorsement in the khata runs as follows :-

Rs. a. p. 1,679 9 3 due; as principal. 147 12 0 due for interest (details are set

out). 1,827 5 8 found : due, after understanding accounts. (Signed) Shah Bhulabhai Gokuldas.

3. The only question in this appeal is whether this amounts to an acknowledgment, requiring to be stamped : under Article 1-That article prescribes a stamp of one anna for an

acknowledgment of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in, (order to supply evidence of such debt in any book...when such book is left in the creditor's possession, provided".that such an acknowledgment does not contain any promise to pay the debt.

This article would apply to a written or signed acknowledgment of a debt exceeding Rs. 20, left in the. possession of the creditor, (1) if it is intended to supply evidence of such debt but (2) does not contain any promise to pay the debt.

4. When the balance of an account is acknowledged by a writing made in the creditor's account book and signed by the debtor, it is often difficult to say whether the intention is to admit the correctness of the account or to supply evidence of the debt. In the latter case, the acknowledgment requires to be stamped, and if it is not stamped, it cannot be admitted in evidence for any purpose, so that in such a case the creditor is met with the heavy penalty of losing his claim, altogether,, since the document cannot be made admissible even on payment of stamp duty and penalty to Government. This is apt to attract some sympathy for the creditor, and although there is an apparent conflict of judicial opinion in the interpretation of the article, the test applied in each case was what was the dominant intention of the parties in the passing of the writing. For this purpose surrounding circumstances and oral evidence can be taken into consideration. Thus in *Nagappa Chetty v. V.A.A.R. Firm* A.I.R 1925 Mad. 1215 a letter written in reply to a letter sending a statement of account and admitting that the account sent was correct was held to be not an acknowledgment requiring to be stamped, because the intention was merely to admit the correctness of the account, and not to supply evidence of the debt. Mr. Thakor for the plaintiff-appellant pointed out a number of similar rulings *Muthayyan Swaminatha Sastrial and Others Vs. S. Narayanaswami Sastrial and Others*, , *Ramprabha Ojha v. Bishunath Ojha* [I.L.R 1938] Pat. 139 and *Madhaorao Narayanrao v. Hanmant Dhaduji* A.I.R [1941] Nag. 70 which distinguish between an admission of the correctness of accounts and an acknowledgment of liability, and lay down that a debtor's admission taken in writing in order that he may not subsequently dispute its correctness cannot be regarded as an acknowledgment intended to supply evidence of the debt. I respectfully agree with this as a general proposition of law and it does not in any way conflict with the view taken by a full bench of this Court in *Mulji Lala v. Lingu Makaji* I.L.R (1896) Bom. 201.. There the acknowledgment was similar to that with which we are concerned in this appeal, and it was held that it required to be stamped. Mr. Thakor points out that it had been conceded in that case that the acknowledgment required to be

stamped and the only question referred to the full bench was whether though unstamped, it could be admitted in evidence to save the debt from the bar of limitation u/s 19 of the Indian Limitation Act, as held in the earlier decision in *Fatechand Harchand v. Kisan* I.L.R (1893) Bom. 614. The full bench overruled that case and held that it could not be admitted in evidence for any purpose whatever. Though it was not disputed in the lower Court in the full bench case that the writing was an acknowledgment within the meaning of Article 1 of the first schedule to the Indian Stamp Act, yet the point was argued in the High Court, and the full bench held that it fulfilled all the requirements of that article. The acknowledgment ended with the words-After making up all accounts, this writing is made and given", and from these words it was held to have been intended to be used as evidence, In distinguishing this case *Schwabe C.J. and Ramesan, J.* observed in *Chandick v. Ananta Lal Damani* I.L.R (1923) Mad. 948 (p. 952) :-

...the words amounted to giving the figure and the statement was that account having been taken the balance due was so much, and I can understand the view in those cases that there was merely sending (signing) an acknowledgment of the debt for giving the other party an acknowledgment (of debt) for use in evidence.

5. In every case the primary question is whether the document was brought into existence with the dominant intention of supplying evidence of the debt, and this must be determined both from the wording of the document and the surrounding circumstances.

6. In the present case not only is the wording of the acknowledgment similar to that of the acknowledgment in the case of *Mulji Lala v. Lingu Makaji* I.L.R (1896) Bom. 201B., but the plaintiff himself has admitted that he took the writing in order that it might serve the purpose of acknowledgment. In other words it was intended to be used as evidence for the purpose of Section 19 of the Indian Limitation Act.

7. Mr. Thakor next contends that in view of this finding the acknowledgment must be held to fall within the exception contained in the proviso to Article 1, since according to the rulings of the Privy Council in *Narasimha Charlu v. Venkat Singaramma* I.L.R (1909) Mad. 165 and of this Court in *Chunilal v. Laxman Govind* I.L.R (1921) . 46 Bom. 24, 23 Bom. L.R. 606 an unconditional acknowledgment implies a promise to pay and, therefore, amounts to an "agreement", and if unstamped, would be admissible in evidence on payment of the required stamp duty and penalty. But the proviso will be applicable only if the acknowledgment "contains" a promise to pay, which obviously means an express promise. An implied promise to pay, by way of an inference from an unconditional acknowledgment, is not sufficient for the purpose of the proviso-

8. Hence the acknowledgment relied upon by the plaintiff requires to be stamped with a one-anna stamp, and not being so stamped, it is inadmissible in evidence

even for the purpose of saving the bar of limitation u/s 19 of the Indian Limitation Act.

9. The appeal is dismissed with costs.