

(1932) 05 CAL CK 0016
In the Calcutta High Court

(Moulvi) Wazed Ali Khan Panee and Another

APPELLANT

Vs

Brojendra Kumar Bandopadhyaya and Others

RESPONDENT

Date of Decision : 11-05-1932

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : AIR 1933 Cal 90

Hon'ble Judges : Rankin, C.J.; Mitter, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this suit which was brought on 22nd June 1928, the plaintiffs sued for the rent of a putni which under a deed dated 20th March 1876 was payable in six instalments every year and amounted to Rs. 4,920-14-0 per annum. There was a stipulation that in default of due payment of any kist for money outstanding should carry interest at 12 per cent per annum. There is no longer any dispute about the sums of money which the putnidars have paid. The plaintiffs brought the suit for rent for the period from Jyoisto 1327 to Jyoisto 1335 B.S., that is to say, from some time in 1920 to some time in 1928. It may here be noticed that the suit was not brought in 1928 until the month of June. Accordingly, in the ordinary way, under the Bengal Tenancy Act, Sch. 3, the plaintiffs would only be entitled to recover rent for a period of three years. It seems that, under the terms of the putni lease, the putnidars had, first of all, to pay the revenue that was due in respect of the property and the rest had to be paid to the plaintiffs; and, for the purpose of describing the amount of this residue, the money which had to be paid to the plaintiffs was called the malikana. It appears that the putni is really held in two shares or accounts, though each share is liable for the whole of the putni rent.

2. These two shares are called the Bara Taraf and the Chhoto Taraf and at the time with which we are concerned the Chhoto Taraf's share was under the management of the Court of Wards. It appears that for the year 1326 B.S. a settlement of the dues was arrived at and there is certain correspondence put in

evidence which shows the ultimate settlement of the rent for 1326. Not only that, but there are accounts which go to the same effect. I may refer for this purpose to the letter (Ex. A) written on behalf of the plaintiffs to the manager of the Bara Taraf on 27th March 1924. That letter shows that sums have been received from both the sharers of the putni, that a sum of Rs. 3,000 and a sum of Rs. 500 have been appropriated to clear off the dues for 1326 and that Rs. 2,000 being Rs. 1,000 sent by each of the sharers is credited towards payment of the amount of interest for breach of instalments from 1327. It is not shown that this letter was also sent to the Chhoto Taraf; but the probabilities are-and there is indirect evidence which makes the matter clear-that this settlement of the arrears of 1326 and the carrying over of money against the interest already due for 1327 came to the notice of both the sharers.

3. In that position, we have to consider whether there is any answer to the plaintiffs' claim for what is due to them for rent from Jyoisto 1327. The first thing to be noticed is that the plaintiffs when they received any sum of money on account invariably credited as much thereof as possible to the interest outstanding at that time. The result was that when this suit was brought in 1928 a large amount of interest had been wiped off right up to the time of the suit and the consequence of this method of accounting is that, if the plaintiffs are to recover what is really due to them, they have to recover rent for a longer period than three years before the suit. As the plaintiffs did appropriate the money to interest, it does not seem to be possible to reverse that position. Accordingly, in order to decide this suit, we have really to see whether the plaintiffs can recover rent for more than three years previous to the suit. On that matter, it has to be observed that the defendants in the lower Court filed one and the same written statement and they were represented by the same pleader. In the same way, in this Court also they have joined in bringing one appeal together. In the issues taken in the lower Court, the question of limitation was not raised separately as regards each of the two shares and, in the memorandum of appeal to this Court, no grounds are taken distinguishing one case from the other. The fact, is of course, that under the Limitation Act the cases of joint debtors by virtue of Section 21 may have as a matter of law, to be considered separately, the limitation law being plain to the effect that one joint debtor may have an answer on a point of limitation and another joint debtor may not have. At the same time, in the present case, it is not pressed before us that, if either of these two sharers is liable, he should, as between them, be made liable for the whole amount with the result that the other escapes.

4. I propose therefore to consider this matter without distinguishing minutely between the cases of the two defendants. This is the way in which the learned Subordinate Judge has dealt with the matter. He has not separately dealt with the case of each defendant. The plaintiffs did not in their plaint state the reasons which took them out of the law of limitation and, in the present case, it turns out that they relied both upon acknowledgment u/s 19, Lim. Act, and upon part payment u/s 20. In this appeal, Mr. Nasim Ali on behalf of the appellants

contends that Sections 19 and 20, Lim. Act of 1908, do not apply to a claim for rent which is governed by Sch. 3, Ben. Ten. Act, and he further contends that, if they do apply, we have to see whether there is a proper acknowledgment and, if not, we have to see not whether the payments were made in such a way that the plaintiffs would be entitled to appropriate them in part payment of interest but whether the payments were made of interest as such: the matter being prior to the year 1928, they are governed by the Limitation Act before the recent amendment and payments of interest as such do not require evidence under the hand writing of the defendants at the time.

5. Now, on the first question whether Sections 19 and 20 apply under the, special limitation of the Bengal Tenancy; Act, the position is this: Under the Act of 1885, the section which imposes a special limitation is Section 184 which applies Sch. 3 to cases of a certain class of which the present is one. It cannot be doubted that, if this is a suit for rent of a patni, it is within Section 184, Ben. Ten. Act. This is not a proceeding under any Patni Regulation but it is a proceeding under the general law for recovery of patni rent. In Section 185, the then Limitation Act of 1877 was referred to: Sections 7, 8 and 9 were declared not to apply; but subject to the provisions of Ch. 16 the other provisions were declared to apply. There can be no doubt that under that law acknowledgment and payment of interest save the statute from running: *Kamal Krishna v. Kedar Nath* (1909) 3 IC 34, *Rakhlal v. Hemangini* (1906) 3 CLJ 347; and decisions to the effect that Sch. 3, Ben. Ten. Act, applies to suits for patni rents are *Burna Moyi Dassi v. Burna Mayi Choudhurani* (1896) 23 Cal 191, *Rash Behari Lal v. Tilak Dhari Lall* (1916) 29 IC 797 and *Basant Kumar Bose v. Khulna Loan Company* AIR 1915 Cal 24. In 1908 however the Act of 1877 was amended and, by the operation of the General Clauses Act, the references to the provisions of the Act of 1877 must be taken as references to the corresponding provisions of the Act of 1908. In 1922 again the Limitation Act of 1908 was amended by an alteration of the provisions of Section 29 of the Act and S.29 by its second clause dealt with the question of a special or local law which prescribed the period of special limitation.

6. In such cases, the Act as amended in 1922 said that the provisions of Section 3 should apply as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation, the provisions in certain sections should apply only in so far as they were not excluded by the local law and the remaining provisions of the Act should not apply. Accordingly, in this appeal Mr. Nasim Ali for the appellants contends that, by virtue of Clause (b), Sub-section (2), Section 29 as it stood after 1922, Sections 19 and 20 are not to apply in the case of special limitation under the Bengal Tenancy Act. It seems that until 1922 it had never been doubted in this Province that claims for rent were taken out of the period of limitation by acknowledgment or part payment of interest; but it is said that changed in 1922. In 1928, the local legislature amended Section 187, Ben. Ten. Act and made it quite clear that from that time Sections 19 and 20, Lim. Act were to apply to cases within Sch. 3, Ben. Ten. Act.

It is said however that between 1922 and 1928 the law was otherwise. As to that, it appears to me that the authority which has been quoted to us on the part of the respondents, Hasan Imam and Others Vs. Brahmdeo Singh and Others, , is an authority which ought to be followed. It is there pointed out that the amendment made in Section 29, Lim. Act of 1922 merely means that such sections as Sections 19 and 20 are not to apply by virtue of the Limitation Act and that if they are to apply the grounds for applying them are to be found in the special or local Act itself, but that section is not to be construed as intending to cut down whatever is provided by any special or local law either by express words or by clear intention.

7. It seems to me, for example, that if Section 184, Ben. Ten. Act, stood by itself and no such provision as Section 185 had been added, then it would be quite right to apply Section 29, Lim. Act, and say that the mere Section 184 was not under the Limitation Act to import such sections as Sections 19 and 20. But in the present case by the Bengal Tenancy Act, Section 185 means that certain sections of the Limitation Act should not apply and certain other sections should apply. It appears to me that the proper effect and result of that is that by virtue of the local Act Sections 19 and 20 did apply to cases under Sch. 3, Ben. Ten. Act, even between the years 1922 and 1928. I propose therefore on that point to follow the Patna decision. Assuming therefore that the period of three years may be extended by acknowledgment or payment of interest, we have to see whether the plaintiffs have made out their case entitling them to recover arrears of rent from Jyoisto 1327 B.S., that is, from the year 1920. As to that, so far as the Bara Taraf is concerned, I think there is little difficulty. It has been conceded on behalf of the appellants that, if the payments can be taken to be payments of interest as such within the meaning of Section 20, the plaintiffs are entitled to the whole of their claim. It may be just as well, first, to deal with the question of acknowledgment. So far as acknowledgment is concerned, the Bara Taraf writing on 24th June 1924 states that it has sent Rs. 2,000 and Rs. 1,000 and asks for a correct account. It says that it desires to send a further sum, that it wrote two letters to the General Manager to find out how much was paid by the Court of Wards but got no answer and asks what amount has recently been paid by them. That seems to be a letter which is consistent with this that a certain amount is outstanding on account of the putni lease and that the amount whatever it may be is thereby acknowledged.

8. There are further letters of the same character; in particular, there is a letter of 1926 at p. 51 of the paper book where the Manager of the Bara Taraf says that he has not been sending money because the account of the claim as made by the plaintiffs is materially at variance with the accounts of the two different branches of the estate. He sent a copy of the account showing the dues of both the Taraf a and showing that a certain sum of money was due. In these circumstances so far as the Bara Taraf is concerned, apart altogether from the payment of interest, it appears to me that the matter is covered by acknowledgment. It does not appear however that there is any letter which can

be claimed to be an acknowledgment sent by the Chhoto Taraf.

9. I come now to consider the payments and the circumstances in which they were made. It is quite clear from the very commencement of the negotiations about the rent due for 1327 that in 1924 the plaintiffs were saying that the dues for 1326 had only just been cleared off after crediting a large amount. They were further saying that Rs. 2,000 was being credited against interest already due for default of the 1327 rent. Now, that arrangement clearing off the 1326 rent has plainly been accepted by both the Taraffs as the learned Subordinate Judge points out and it certainly must have come to the notice of both of them. The Bara Taraf in its letter of June 1924 refers to another payment that it has "made and it asks for a correct account to be sent. It says that it does not know how much has been paid by the Court of Wards; but it is quite clear that any money that the Bara Taraf sent must have been sent both on account of interest as well as of principal. It knew that it would be credited against the interest first. On 10th September 1924, the Manager writes to the plaintiffs that Rs. 2,000 has been credited to interest on account of the year 1327. He asks for an account to be sent up to 1326. He says that there is no contract for anything except malikana rent and interest. He sends an account and he also sends a sum of money on account of malikana rent. He says that the Court of Wards promised that it would shortly send money and he demands a detailed and correct account for the years 1326 to 1330 and says that he will try to pay the balance of the dues as early as possible. In these circumstances every sum of money that was sent in that way was sent upon an admitted obligation to meet interest and was sent with the knowledge that the plaintiffs would not apply any part of the money in reduction of the principal until the interest had been first wiped out. When we come to 1331 we find that the Bara Taraf admitted that a large amount of malikana had remained unpaid. Indeed, from the beginning of the correspondence it is clear that neither Taraf was under any delusion to the effect that the payments that were being made were not payments for long standing arrears. In 1331 the Bara Taraf asks for an extension of time up to Sravan next and the correspondence goes on in that way

10. The case of the Chhoto Taraf, if it were necessary to distinguish it in the present case, would not be quite as strong; but in that case it is to be remembered that in 1333 when the parties were minded to exchange accounts, the Chhoto Taraf sent in an account according to which the payments that had been made were all credited in the first place against interest. The form of the letters does not say anything about interest. It uses the phrase malikana or amount of rent, but the learned Subordinate Judge has come to the finding that the Chhoto Taraf is in no different position from the Bara Taraf in respect that the money was intended from the first to be applied to outstanding interest and than to the principal. Before the learned Subordinate Judge the main contention of the defendants was that the language of the letters making remittances by both the Tarafs was such that the plaintiffs were not entitled to credit any part of the money to interest as distinct from principal. It appears to have been conceded on

behalf of both the defendants that, if the plaintiffs were competent to credit portions of the payments made towards interest then no portion of the claim would be barred by limitation.

11. There can be no doubt that the plaintiffs were competent to credit portions of these payments to interest. But in this Court Mr. Nasim Ali has pointed out that it is not quite the same thing to say that the plaintiffs were entitled to appropriate the money to interest as to say that the, money when sent was meant for payment of interest as such by the defendants. I think in an ordinary case it would be quite obvious that there might be a very considerable distinction between those two things. That matter however was not submitted to the learned Judge as a question for his determination upon the facts. We have to say as regards the evidence before us whether we think that these defendants can escape by reason of the payments being made without any statement about interest accompanying the payments. It is reasonably clear that the learned Judge was entirely right as regards the Bara Taraf and though as regards the Chhoto Taraf, the matter is not so plain, they too had no expectation that the principal would be reduced until the interest had first been fully paid off. The appeal fails and must be dismissed with costs.

Mitter, J.

12. I agree.