

(1887) 04 CAL CK 0003
In the Calcutta High Court

Nobodip Chunder Shaha

APPELLANT

Vs

Ram Krishna Roy Chowdhey and Another

RESPONDENT

Date of Decision : 13-04-1887

Acts Referred:

Citation : (1887) ILR (Cal) 397

Hon'ble Judges : W. Comer Petheram, C.J.; Ghose, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—This is an action brought by the plaintiff against the defendants upon a bond executed by the defendants[399]in his favour to secure payment of a sum of money by instalments ; and the bond contains a proviso, the effect of which is that, in the event of any of the instalments being unpaid, the whole amount shall become due at once....

2. The instalments have been unpaid for some time, and, as a matter of fact, the time the last payment was made was so long ago that, if the whole amount became due at that time, the cause of action would become barred ; and upon that state of things the question that arises is, whether the mere fact that the creditor has done nothing but simply allowed the matter to sleep, without enforcing his remedy against the debtor, is any evidence of waiver within the meaning of Article 75 of the Limitation Act.

3. We do not think it necessary to say what opinion we might have formed on this matter if it had not been already decided by judicial authority, because it has been so decided and is concluded by that authority. The decisions which have been reported, viz., Cheni Bash Shaha v. Kadum Mundul 5 C. 97 Sethu v. Nayana 7 M. 577 and Mumford v. Peal 2 A. 857 are clear authorities to show that, in the opinion of the Courts in this country, such a condition of things would be no evidence of waiver. The law on this subject must, therefore, in my opinion, be treated as having become settled. The Court below has held in this case that the last default was made so long ago that the time that has elapsed since. then would be enough to bar the remedy. That Court has accordingly followed the

authority of those eases, and has decided that the remedy is barred in this case!; and, as I said before, without expressing any opinion which we might have entertained upon this point if it had been new matter, we think that, as it had been considered settled law in this country for so long a time, it is not desirable that this matter should be referred to the Full Bench and further questions raised upon it.

4. Therefore, following the decisions referred to in this case, we dismiss the appeal with costs.