
(1876) 05 CAL CK 0002
In the Calcutta High Court

Nocoor Chunder Bose

APPELLANT

Vs

Kally Coomar Ghose

RESPONDENT

Date of Decision : 22-05-1876

Acts Referred:

Citation : (1876) ILR (Cal) 328

Hon'ble Judges : Pontifex, J

Bench : Single Bench

Judgement

Pontifex, J.—I was referred to two cases said to be conflicting with one another. One Parbati Charan Mookerjee v. Ramnarayan Matilal 5 B.L.R. 396 decided by Macpherson, J. and the other Brammamayi Dasi v. Abhai Charan Chowdry 7 B.L.R. 489 decided by Norman and Phear, JJ. In each of these cases interest had been paid up to within a short time of the date of suit. And in the second case, Phear, J. expressly held that limitation did not apply, however interest had been paid. "As long," he said, "as the plaintiff forebore to make demand of the principal, and the defendant at the stipulated periods paid the monthly sums by way of interest, so long it was, as it seems to me, impossible in reason to say that the plaintiff had any cause of suit." In my opinion, both of the cases cited are adverse to the plaintiff's claim, and, if additional authority was necessary, I might refer to the case of Hempammal v. Hanuman 2 Mad. H.C. Rep. 472. In the present case neither principal nor interest has been paid since the 5th of August 1869, and if the plaintiff had instituted his suit on the 6th of August 1872, it must have been dismissed as barred by limitation.

2. It is impossible for me to hold that he is not barred now because he has deferred the institution of his suit until after the 1st day of April 1873, the date mentioned in Section 1 of the Limitation Act of 1871 See Venkatachella Mudali v. Sashagherry Rau 7 Mad. H.C. 283; Molakatella Naganna v. Pedda Narappa 7 Mad. H.C. 288; Venkataramanier v. Manche Reddy 7 Mad. H.C. 298 and Chinnasami Iyengar v. Gopalacharry 7 Mad. H.C. 392 but see Madhavbhai Shiovbhai v. Fattesang Nathubhai 10 Bom. H.C. 487.

3. I must, therefore, dismiss the plaintiff's suit, but, as the defendant does not appear, without costs.