
(1972) 01 BOM CK 0004
In the Bombay High Court
Case No : A.F.A.D. No. 775 of 1967

Ramchandra Vinayak Badamikar

APPELLANT

Vs

Paygonda Sargonda Patil

RESPONDENT

Date of Decision : 14-01-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2
Limitation Act, 1908 — Article 136, 20
Limitation Act, 1963 — Section 19

Citation : AIR 1973 Bom 163 : (1972) 74 BOMLR 648 : (1973) ILR (Bom) 378 : (1972) MhLj 907

Hon'ble Judges : Bhole, J

Bench : Single Bench

Advocate : P.S. Joshi, for the Appellant; M.A. Rane, for the Respondent

Judgement

1. The decree-holder has filed this appeal being aggrieved by the decision of the learned Assistant Judge, Sangli, who allowed the appeal of the judgment-debtor, reversed the decree of the Court of the first instance and held that the claim of the decree-holder was barred by limitation. He, therefore, dismissed the darkhast. A decree was passed in favour of the decree-holder, in Civil Suit No. 98 of 1955 of the Sangli Court on 16-4-1956. The decree was for a sum of Rs. 5250/-. The darkhast with which we are concerned has been filed on 12-3-1964 by the heir of the original decree-holder as the manager of the family. he claimed under this darkhast Rs. 7075.98 P. and future interest. He has also stated that he judgment-debtor inspite of his movable and immovable property has been avoiding payment and, therefore, he should be kept in civil jail. The Judgment-debtor has objected on various grounds the darkhast. The principal ground with which we are concerned in this appeal is that the darkhast is barred by limitation.

2. The trial Court decided in favour of the decree-holder but the learned Assistant Judge took a different view and dismissed the darkhast. It is in these circumstances that the decree-holder has come here in appeal. The only point for determination here is whether the darkhast was in time or not.

3. It would be better if I mention some facts as regards the darkhast. The decree-holder as stated earlier had obtained the decree on 16-4-1956. He also obtained the payment of a sum of Rs. 100/- on 10-3-1959 and Rs. 20/- on 24-4-1959. There was no writing as regards the payment of Rs. 100/- on 10-3-1959 but there was an endorsement on the decree as regards the total payment of Rs. 120/- on 24-4-1959. There was another payment of Rs. 40/- by the judgment-debtor on 10-3-1960 and there was an endorsement accordingly on the decree. Yet another payment of Rs. 50/- was made on the decree. It is after this payment and acknowledgment by the judgment-debtor of the payment that the darkhast No. 81 of 1964 was filed on 12-3-64 claiming Rs. 7075.48 P. in all.

4. The objection is that the first endorsement dated 24-4-59 as regards the payment of Rs. 120/- does not fulfill the test as laid down in Section 19 of the new Limitation Act. It is contended that there was no acknowledgment as regards the payment of Rs. 100/- which was made on 10-3-1959; its acknowledgment was only made on 24-4-59. The endorsement of acknowledgment admittedly is after a period of three years after 16-4-1956. It is therefore urged that the endorsement dated 24-4-1959 after a period of three years will not help the decree-holder. According to Mr. Rane, the learned advocate for the judgment-debtor, the darkhast on this ground alone can be said to be barred by limitation. I cannot accept this objection, because Section 19 of the new Limitation Act does not provide that the writing as well as the payment should be on the same day; the writing can as well be, u/s 19, after a period of three years though the payment of the debt must be before three years. Section 19, is as follows :

"19. Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. Provided that save in the case of payment of interest made before the 1st day of January 1928, an acknowledgment of the payment appears in the handwriting of, or in writing signed by the person making the payment."

It is clear from the expressions used in the proviso as well in the section itself that the payment has to be made before the expiration of the prescribed period. The only condition is that there should be an acknowledgment of the payment in written, in the writing of or in the writing signed by the judgment-debtor who makes the payment. It is not mentioned in the proviso that the writing or the signature or the writing with the signature should be made before the expiration of the prescribed period. If a part payment therefore, is made within the period of limitation, the mere fact that the writing, evidencing (sic) was made after the period of limitation had expired, would not render such handwriting useless for the purpose of saying a claim from the limitation bar. This section requires that the payment must be made within the prescribed period. It does not require that the writing should be made before the expiry of the prescribed period. This Court

has also taken such a view before in *Vishwanath v. Mahadeo* ILR Bom 453 : AIR 1933 Bom 252 . The Supreme Court has also endorsed this view in *Sant Lal Mahton Vs. Kamala Prasad*, .

5. The second objection raised by Mr. Rane is that since Section 20 of the old Limitation Act is now altered and its place is taken by Section 19 of the new Act and since the definition of "debt" does not include the moneys payable under a decree or an order of a Court, the impugned decretal sum cannot be a debt under the provisions of the new Limitation Act and that limitation for acknowledgment will not be applicable. This contention also can be repelled because there is no such provision as S. 19 (b) under the old Act. The decree-holder has obtained the decree on 16-4-56 when the old Act was in force. He had, therefore, evidently a vested right and also a claim under the decree. If that is so, then the claim of the decree-holder on that ground cannot be rejected. Whenever there is repeal of an enactment, the consequences as under the old enactment would follow the naturally would not affect any right, privilege or obligation or liability acquired, accrued or incurred under any repealed Act unless a different intention appeared. There does not appear to be any different intention. It was held in *Subodh Chandra Mitra Vs. Kanai Lal Mukherjee*, "that even though the new Limitation Act of 1963 was retrospective in operation as to be confiscatory in nature even in respect of the existing rights of the parties." The decree which was alive by reason of the extension of period effected by acknowledgment and part-payment under Sections 19 and 20 of the old Limitation Act did not lose the extended life because of the fact that no such extension was available under the new Act of 1963." I respectfully agree with this view.

6. It is then contended that the endorsement on the decree is not certified as contemplated under Order 21 Rule 2. Order 21 Rule 2 is as follows :

"(2) The judgment-debtor also may inform the Court by an application in writing supported by an affidavit of such payment of adjustment and apply to the Court to issue a notice to the decree-holder to show cause on a day to be fixed by the Court why such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause on a day to be fixed by the Court why such payment or adjustment should not be recorded as certified; and if after service of such notice, the decree-holder fails to show cause why the payment of adjustment should not be recorded as certified, the Court shall record the same accordingly."

It is, therefore, contended that because the payment or adjustment dated 24-4-1959, 10-3-1960 and 15-3-1961 have not been certified, therefore, this Court shall not recognise those payments in the darkhast proceedings. That contention also cannot be accepted because admittedly the decree-holder can obtain a certificate at any time. In my view the notification to the Court of the receipt of the sum paid by the judgment-debtor is all that is necessary. In this case the decree-holder does mention in the darkhast application that though

money was paid on those dates, such payments were also admitted by the judgment-debtor on those dates. There is, therefore, no reason why such notification to the Court not only by the judgment-debtor but also by the decree-holder should be enough to fulfill the test of Order 21 Rule 2. If there is no time for certifying then the application for execution in this case certifying the payments already made does amount to a certificate under Order 21 Rule 2. The Court is bound to take notice of such mention of facts in an execution proceeding. We have also taken such a view even before in *Pandurang Balkrishna v. Jagya Bhau*. 22 BomLR 1120 : AIR 1921 Bom 411.

7. The darkhast is within the period of limitation for another reason. Under Article 136 of the old Limitation Act the period of limitation is 12 years for execution of any decree other than the decree granting a mandatory injunction or order of any Civil Court.

8. For the aforesaid reasons, therefore, I cannot agree with the decision of the learned Assistant Judge, Satara. I, therefore, set aside the judgment and decree passed by the learned Assistant Judge, Sangli, allow this appeal executing Court including the order as regards costs. In view of the circumstances of the case no order as to costs, in this Court as well as in the first appellate Court.

9. Appeal allowed.