
(1908) 05 CAL CK 0006
In the Calcutta High Court

Santishwar Mahanta and Others

APPELLANT

Vs

Lakhikanta Mahanta

RESPONDENT

Date of Decision : 27-05-1908

Acts Referred:

Limitation Act, 1908 — Section 20

Citation : 4 Ind. Cas. 321

Hon'ble Judges : Coxe, J; Brett, J

Bench : Division Bench

Judgement

1. The main question, which arose for determination in the suit, out of which this, appeal arises and which has been considered at the hearing of the present appeal, is whether the claim of the plaintiff to recover the balance of the money due on the bond was barred by limitation or not.

2. The plaintiff, to support his contention that the claim is not barred, has relied on an endorsement of payment made on the 80th Chait 1309 B.S., by the defendant of the sum of Rs. 53. The body of that endorsement was admittedly not in the handwriting of the debtor, and the question, which was raised and discussed in the Courts below, was whether the signature on that endorsement was in his handwriting or not.

3. The Court of first instance held that the signature was a forgery, that the endorsement was a forged endorsement, and that the plaintiff was not entitled to rely on it in order to save his claim from being barred by limitation.

4. On appeal the lower appellate Court has come to a different conclusion. The District Judge has not felt himself prepared to accept the view taken by the Court of first instance, that the signature to the endorsement was so distinguishable from the admitted signature of the debtor to another endorsement in the same document as to support the conclusion that the former was a forgery. The District Judge, relying on the signature and on what he describes baldly as the oral evidence, has come to the conclusion that the payment of the interest and the

endorsement have been satisfactorily proved and that the suit is not barred by limitation.

5. There was a further plea of payment put forward on behalf of the defendant, which was disallowed by the District Judge, and as to which no argument has been advanced in support of this appeal. The Judge, however, relying on the fact that the endorsement had been satisfactorily proved and that the payment was a payment made on account of interest, decreed the plaintiff's suit.

6. The defendant has appealed, and in support of the appeal two main contentions have been urged. The first is that the payment was not a payment made on account of interest.

7. It has been argued that the lower appellate Court in support of its conclusion that the payment was a payment on account of interest, has merely referred to the oral evidence, but has not discussed that evidence, or attempted in any way to show how that evidence supported the conclusion that the payment was made on account of interest. The provisions of Section 20 of the Indian Limitation Act are clear and precise, and distinctly lay down that before a payment made on account of interest due on a debt can be taken to save the balance of the debt from being barred by limitation, it must be proved that the payment was made on account of interest as such.

8. The learned Vakil for the respondent has suggested that in the previous part of his judgment the District Judge specifies with sufficient clearness the witnesses on whose evidence he relies to support the conclusion to which he has arrived, that the payment was a payment made on account of interest. We are unable, however, in second appeal, to go into the evidence so as to ascertain what these witnesses have said, and we are unable to hold that a mere reference to the evidence of these witnesses in a previous part of his judgment, is a sufficient compliance with those provisions of the law, which require that a Judge shall in his judgment, when dealing with the matters in issue between the parties, state his findings with the reasons thereof upon each separate issue.

9. The first contention urged in support of the appeal must, therefore, prevail, and the judgment and decree of the lower appellate Court must be set aside and the case sent back in order that a proper decision may be arrived at by that Court on the issue whether the payment of the Rs. 53 made on the 30th Chait 1309 was a payment made on account of interest as such.

10. The second point, which has been raised in support of the appeal, is, that, if the payment be taken to be a part payment of the principal of the debt, then the endorsement on which the plaintiff relies to prove the fact of that payment, cannot be accepted as sufficient, because the proviso to Section 20 of the Limitation Act requires that in order to save limitation in the case of the payment of a part of the principal of a debt, the fact of such payment shall appear in the handwriting of the person making the same, and that in the present case the endorsement relied on to save limitation is not in the handwriting of the debtor.

11. We have already noticed that the body of the endorsement is in the handwriting of a person other than the debtor, and that all that is found to have been written by the debtor is the signature: and in support of his contention the learned Vakild relies on the decision of a Full Bench of this Court in the case of Mukhi Haji Rahmutulla v. Coverji Bhuja 23 C. 546.

12. The learned Vakild for the respondent has argued on the other hand that if the payment was a payment made of part of the principal of the debt, then the endorsement was sufficient to comply with the provisions of the proviso to Section 20 of the Limitation Act, as it bears the signature of the debtor. In support of this view he relies on the case of Madabhushi Seshacharlu v. Singara Seshaya 7 M. 55 and the case of Ellappa Nayak v. Annamalai Goundan 7 M. 76 and also on the case of Jamna v. Jaga Bhana 28 B. 262.

13. The learned Judges of this Court, who referred the case of Mukhi Haji Rahmuttulla v. Coverji Bhuja 23 C. 546 to the Full Bench, were, however, careful to distinguish it from the Madras cases. The learned Judges, after noticing that in the Madras cases it was held that the signature by a marksman to what was, as to the rest, in the handwriting of another person, was sufficient to satisfy the Act, go on to say that in each of those cases the person, who made the payment, could not write and, therefore, that, so far as was possible, the fact of the payment appeared in his handwriting. The learned Judges of the Full Bench in their judgment in stating that the Madras cases were outside the subject of the case before them appear to have accepted the view taken by the referring Judges. In the case then before the Full Bench, the endorsement had been made in the presence of the debtor by his agent, and it was distinctly held that, in order to create a new period of limitation under the proviso to Section 20 of the Limitation Act, the fact of part payment of the principal of a debt must appear in the handwriting of the person making the part payment, and not in that of any other person however authorized.

14. No doubt, as the learned Vakild for the respondent has pointed out, there is the point of distinction between that case and the case before us, that in the present case the endorsement is found to have been signed by the debtor himself. That fact, however, is not sufficient to distinguish this case in principle from that which was before the Full Bench. The principle laid down by the referring Judges which seems to have been accepted by the Full Bench was that in order to comply with the provisions of the law it was necessary that as far as was possible the fact of the payment must appear in the handwriting of the person making the same. The learned Judges of the Full Bench in dealing with this point expressly say that the intention of the proviso to Section 20 of the Limitation Act must be, so far as possible, to exclude oral evidence and to substitute for it the real evidence furnished by the handwriting of the person making the payment.

15. It seems to us that in this case, where it has been distinctly found (and is admitted) that the debtor can write, it is impossible to hold that an endorsement

written by another person and signed only by the debtor is an endorsement which is, as far as was possible, in his handwriting, and, therefore, which is sufficient under the proviso to Section 20 of the Limitation Act to create a new period of limitation. We are of opinion, therefore, that the contention advanced on behalf of the respondent cannot be accepted, that in the present case, if the endorsement relied on by the plaintiff be held to refer to the part payment of the principal of the debt, it was sufficient in law to save the present claim from being barred by limitation.

16. We set aside the judgment and decree of the lower appellate Court and remand the case to that Court in order that the Judge may come to a finding, whether the payment of Rs. 53 relied on by the plaintiff was made by the debtor as a payment of interest as such or not, and then proceed to dispose of the appeal according to law.