(1937) 08 PAT CK 0002

In the Patna High Court

Sheo Charan Das — APPELLANT

Vs

Chhakowri Sao and Another — RESPONDENT

Date of Decision : 17-08-1937

Acts Referred:
Limitation Act, 1963 — Section 19

Citation : AIR 1937 Patna 616

Hon'ble Judges : Rowland, J

Bench : Division Bench

Judgement

Rowland, J.—This is an application by the defendant in a Small Cause Court suit which has been decreed against him and the application is presented on the ground that the suit should have been dismissed as barred by limitation.

2. The claim is based on a hand.note dated 11th March 1930 and the suit was instituted on 20th June 1936. In the interval between these dates, it is alleged that payments were made of Rs. 100 on 20th April 1930 and again of Rs. 25 on 18th April 1933. The second payment is still more than three years before the date of suit, and the point for decision is whether a new start to limitation is given u/s 19, Limitation Act, by an abortive agreement to refer the differences between the parties to arbitration on 1st January 1936.

3. The parties were at variance over another matter. There had been an All India Mutual Financing Corporation at Patna in which both the plaintiffs and the defendant had deposited money. When the corporation failed, the plaintiffs considered that the defendant was in some way liable for the loss they had suffered as having induced them to deposit the money in the concern. This claim appears to have been principal matter referred to arbitration. The recital of the reference-to arbitration alludes to a hand.note of 11th March 1930 and this is construed by the Subordinate Judge as an acknowledgment of liability relying on the decisions in Hukumat Singh v. Nenumal Rejhumal, AIR 1928 Bind 45 and in Kanshiram-Banshi Ram v. Arjan Das, AIR 1982 Lah 470. Neither of these cases is on all fours with the matter before us and the learned Subordinate Judge would

have done well to bear in mind what was said by Maclean C.J. in Jogeshwar Roy v. Raj Narain Mitter (1904) 31 Cal 195 that:

Unless the language of the document be identically the same, a decision upon the construction of one document is not of much assistance to the Court in construing another.

4. What the Court should do in each case is to apply its mind to the language used in the document actually before it and then see whether the language used in fact amounts to an acknowledgment of liability within the meaning of Section 19. What is necessary to constitute such an acknowledgment of liability has been discussed by the Privy Council in the leading case in Mani Ram v. Seth Rupchand (1906) 33 Cal 1047. Their Lordships have said:

In a case of very great weight the authority of which has never been called in question, Hellish, L.J. laid it down that an acknowledgement, to take the case out of the statute of limitations, must be either one from which an absolute promise to pay can be inferred, or secondly an unconditional promise to pay the specific debt, or thirdly there must be a conditional promise to pay the debt, and evidence that the condition has been performed. An unconditional acknowledgement has always been held to imply a promise to pay, because that is the natural inference, if nothing is said to the contrary.

5. The cases referred to by the Subordinate Judge and cited to me on behalf of the opposite party appear to be oases of mutual, open and current account or partnership account and the acknowledgments to be acknowledgments of the right to have an account taken. But this is not such a case. The relations between the plaintiffs and the defendant appear to have been the ordinary relations of creditor and debtor and no question of mutual account or of partnership account arose at all. As between a creditor and debtor, what we have to see is whether there is any acknowledgment of the existence of a liability. Assuming that a reference to arbitration implies a promise to pay in the event of the arbitrator deciding that there is a liability, that is not the same thing as unconditional promise to pay. It is, if anything, a promise to pay coupled with a condition, and unless that condition is fulfilled, that is to say unless something is found by the arbitrator to be due, it will not operate to give a fresh start to limitation on the principles stated by the Privy Council in Mani Ram v. Seth Rupchand (1906) 33 Cal 1047.

6. Now, the words used in the recital portion of Ex. 3 merely say that there have been transactions of money lending between executants Nos. 1 and 2 and the executant No. 3 by means of a hand-note dated 11th March 1930 and verbally and in cash and in kind, namely by ornaments etc. It then goes on to refer to the affairs of the All India Mutual Financing Corporation and other matters and the desire of the parties to avoid litigation. For the opposite party, reliance is placed on a later passage in which the arbitrator is directed to make such enquiries as he thinks fit regarding the matters above mentioned concerning the debt claimed

as due, principal and interest, to executant No. 1 and 2 against executant No. 3. In my opinion the language used falls short altogether of being a definite acknowledgment of any liability to pay any amount. In fact the arbitration fell through and in the circumstances there was never any thing which could operate to save limitation. The result should have been that the suit should have been dismissed by the Court of first instance as barred by limitation. The application will be allowed and the order under revision set aside and the suit dismissed with costs. Hearing fee one gold mohur.

