

(1980) 12 BOM CK 0008
In the Bombay High Court
Case No : Appeal No. 166 of 1973

Shreeram Durgaprasad

APPELLANT

Vs

Sial Soap Stone Factory and others

RESPONDENT

Date of Decision : 03-12-1980

Acts Referred:

Limitation Act, 1963 — Section 18, 19, 20

Citation : (1982) MhLj 912

Hon'ble Judges : S.W. Puranik, J; R.D. Tulpule, J

Bench : Division Bench

Advocate : H.W. Dhabe and S.A. Bobde, for the Appellant; V.P. Salve, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Tulpule, J.—This is an appeal by the plaintiff, whose suit has been dismissed by the Joint Civil Judge, Senior Division, Nagpur, being Special Civil Suit No. 127 of 1968.

2. The suit was filed by the plaintiff to recover a sum of Rs. 3,50,000 from the defendants together with future interest and costs on the allegation that the plaintiff firm held a money lending licence and was a registered partnership. It carried on business in Nagpur and advanced monies to the defendants, defendant No. 1 being a firm carrying on business in Nagpur and owning a factory. One of the partners of the plaintiff firm, Durgaprasad Shreeram was also a partner in the defendant firm.

3. The defendant firm's factory was closed in the year 1965, and to be precise on 28-2-1965. The accounts of that firm and factory were then made out upto 31-3-1965 and a balance sheet was struck. That balance sheet was drawn on 8-8-1965 and it showed the balance due from defendant firm to the plaintiff in the sum of Rs. 5,34,786, as on 31-7-1965. According to the plaintiffs, thereafter also, further transactions took place between the parties. On 16-9-1965, the

balance due as on 31-7-1965 was confirmed by the defendants. On the 17th September 1965, another letter was written by the defendant firm, which, according to the plaintiff, served as an acknowledgment. The present suit is filed, therefore, to recover an amount of Rs. 5,34,786 due till 31-3-1965, as made upon 31-7-1965, after deducting therefrom the share of Durgaprasad Shreeram, and for the balance amount due with interest from 1-4-1965 on that account.

4. Adding therefore the amount of Rs. 877/4/- by way of interest to the balance amount of Rs. 2,62,086/- the claim of Rs. 3,50,000/- is made. It is stated that the claim of plaintiff was within time on account of the acknowledgment made by the defendants by their letter dated 17-9-1965 and also presumably on account of the acknowledgment in the balance sheet of the debt due till 31-3-1965, as on 31-7-1965, on the 8th August 1965.

4. To this suit, though Durgaprasad Shreeram was a partner of defendant No. 1 firm, he was not joined. The suit was filed against defendant No. 1 firm and its two remaining Partners C.S. Sial and P.S. Sial. Besides these two partners, the mother of defendant No. 3 was also joined. In the plaint, the plaintiff claimed that defendant No. 4 was a guarantor of the dues for the plaintiff firm payable by the defendant No. 1 firm.

5. The suit was resisted by the defendants. So far as defendants Nos. 1 and 3 are concerned, who filed a written statement, they denied that the amount of Rs. 5,34, 786/- which was shown as due was a current amount due from the defendant No. 1 firm. It was not disputed that the balance sheet was prepared as on 31-7-1965 of the position of the firm's accounts till 31-3-1965 and was signed by defendant No. 2 and Durgaprasad Shreeram, one of the partners of defendant No. 1 firm. However, the authority of Durgaprasad Shreeram as also that of defendant No. 2 C.S. Sial to sign this balance sheet was disputed. It was also contended that the endorsement made in ink on the balance sheet, which was produced in the court having the signature of defendant No. 2 C.S. Sial and Durgaprasad Shreeram, was not there in the balance sheet, when it was prepared, but was subsequently made.

6. With regard to the acknowledgment, the contention of the defendants was that the letter dated 16-9-1965 did not serve as an acknowledgment. So far as letter dated 17-9-1965 was concerned, it was contended that it merely acknowledged a further payment of Rs. 10,400. made subsequent to 31-3-1965 and had not the effect of acknowledging the liability prior to 31-3-1965 which may have been incurred. In any event, it was contended that defendant No. 2 had not the authority to bind defendant No. 1 firm, or the other partners by writing this letter or acknowledging the debt due to the plaintiff. The defendants also disputed and denied the claim made by the plaintiff of Rs. 3,50,000 as being due to them. Their principal defence, as stated, however was that the suit was barred by time, having been brought beyond three years from the time the so-called acknowledgment, even assuming there was an acknowledgment on the balance sheet made on the 8th August 1965, and the two subsequent letters,

16th and 17th September 1965, these not having the effect of extending the period of limitation, the letters themselves not being an acknowledgment of a liability, as contemplated by section 18 of the Limitation Act, 1963. So far as defendant No. 4 was concerned, she denied that there was any subsisting liability as a guarantor as far she was concerned. According to her the liability as a guarantor was discharged and she was no more liable to the plaintiff firm as a guarantor for the dues due to the plaintiff from defendant No. 1 firm.

7. This defence of the defendants succeeded. The learned Judge held that defendant No. 4 was not liable as a guarantor. So far as defendants 1 to 3 were concerned, the learned Judge held that the suit was barred by time. In coming to this conclusion that the suit was barred by time, the learned Judge held firstly that the statement in the balance sheet as on 31-7-1965 made on 8-6-1965 did not amount as acknowledgment, and even if it were to amount to an acknowledgment, according to him that was no acknowledgment for a debt due upto 31-3-1965. It was not an acknowledgment of a present liability so as to save the period of limitation so far as the present suit was concerned. With regard to the letter dated 16-9-1965, by which the balance was confirmed, on behalf of defendant No. 1 firm as drawn on 31-3-1965, he held that though that letter may be binding on defendant No. 1 firm as its partners, nevertheless it merely stated as to what was the liability until 31-3-1965. Even if letter dated 16-9-1965 was to be construed as an acknowledgment, the suit filed on 17-9-1968, according to him, was clearly barred by time.

8. The last letter dated 17-9-1965, which was relied upon as an acknowledgment by the plaintiff in the plaint, he held that it merely acknowledged the debt of Rs. 10,400 advanced subsequent to 31-3-1965. It did not speak of any liability prior to 31-3-1965 as having been admitted or accepted and, therefore, did not in its turn extend the period of limitation to save the claim made by the plaintiff for dues upto 31-3-1965. At best it could save limitation, if a suit was brought to recover Rs. 10,400 advanced subsequent to 31-3-1965, since the suit was not concerned with that amount there was no question of any acknowledgment or saving of limitation. The learned Judge also seems to think and hold, that so far as letter dated 17-9-1965 was concerned the acknowledgment, even assuming it is an acknowledgment, is not an acknowledgment of a present liability. The debt had already become barred by time. Even as far as acknowledgment dated 8-8-1965 some of the amounts have already been barred by time and would not cover such claims. It is the correctness of this decision which is challenged by this appeal.

9. Mr. Dhabe for the appellant contended that the learned Judge was in error in holding that there was no acknowledgment in Ex. 73, the balance sheet. Having come to a conclusion that the balance sheet was genuine document and had the effect of binding defendant No. 1 firm by the signatures therein, it was urged that the writing dated 16-9-1965 and the drawing of the balance sheet on 8-8-1965 of the accounts as they stood between the parties till 31-3-1965 serves

as an acknowledgment. Mr. Dhabe contended that the account between the parties was an open account and the balance was struck as on 31-3-1965 on that date only and as on that date. The learned Judge was in error in thinking or considering the question as to whether any amounts due prior to 31-3-1965, and which were a part of the account, statement of which was submitted along with the plaint and is at Ex. 88 are in turn barred by limitation. Mr. Dhabe contended that no such contention was raised on behalf of the defendants and it was not permissible for the learned Judge to embark upon an enquiry, without giving an opportunity to the party claiming a relief to show as to how they were not so barred. It was pointed out that in the case of a running account between the parties, any payment made in an open account towards the dues, which are due at the feet of the account or in respect of every transaction, get a further acknowledgment or a further period of limitation by reason of the payment itself. Any such payment would ensure to the benefit of the creditor and would extend the period of limitation further u/s 19 of the present Limitation Act and u/s 20 of the former Limitation Act. Such payments which are shown in Ex. 88, would, therefore, save further limitation, and it is the last date of payment from which limitation could be counted as starting to run. We find from Ex. 88 at page 72 that on 10-4-1964 an amount of Rs. 100 is shown as credited in the account to the credit of the account of defendant No. 1 firm in the plaintiff's account books. That payment of Rs. 100 will, therefore, start fresh period of limitation from 10-4-1964, for a period of three years therefrom. There was a further acknowledgment on 8th August 1965, according to Mr. Dhabe, in the balance sheet itself.

10. Mr. Dhabe then relied upon letter dated 17-9-1965, Ex. 83. Mr. Dhabe contends that it is permissible to look to the surrounding circumstances in order to construe whether a certain writing amounts to an acknowledgment or otherwise if it is not express or specific. His contention was that the learned Judge read only a part of the letter and omitted to take into account the most material part of it, upon which reliance is placed for purposes of saving limitation. He pointed out that the crucial sentence appearing in that letter signed by defendant No. 2 on behalf of defendant No. 1 firm was to the effect that the amount of Rs. 10,400 was credited by the defendant No. 1 firm in its accounts books in the account of the plaintiff firm. The exact wording thereof is "we have credited this amount date wise in your account with us". Mr. Dhabe relied upon the last part of the sentence "your account with us" and contended that acknowledged and admitted the existence of a relationship of accounting and the existence of an account between plaintiff and defendant No. 1 firm. He contended that this amounts to an admission of a relationship of an existing account arising between the parties, the result of which was as to who was the debtor and who was the creditor and what was the liability was also impliedly admitted. If this statement, Mr. Dhabe says, amounts to an acknowledgment as contemplated by section 18 of Limitation Act, then the present suit filed on 17-9-1968 was well within limitation. Mr. Dhabe relied upon a number of

authorities to substantiate this contention.

11. It is unfortunate that there was no appearance on behalf of the respondents and we had to proceed to hear this appeal in the absence of counsel of respondents or the respondents themselves.

12. The central question in the present case in the circumstances is only of limitation. The question of limitation also poses two distinct aspects for determination. The first is whether a statement of liability shown in a balance sheet by a firm for its own purpose and to arrive at the operating results of the firm during that year could and would serve as an acknowledgment to the creditor. The second question is whether letter dated 17-9-1965 amounts to an acknowledgment of a liability which had been incurred and earlier acknowledged, as the plaintiff contends, on the 8th August 1965 subsequently by letter dated 16th September 1965.

13. There is no difficulty in the present case in holding that so far as the confirmation of the balance due from defendant firm to plaintiff by letter dated 16-9-1965 amounts to an acknowledgment. It in clear terms says that defendant No. 1 firm confirms the balance due to plaintiff firm as on 31-7-1965 at Rs. 5,34,786-42. There could be no difficulty in coming to a conclusion that this letter of confirmation in terms of section 18 of Limitation Act, serves as an acknowledgment. If the suit of the plaintiffs had been brought on 16-9-1968 or any date prior to that date, then there would have been no difficulty in holding that the suit was well within limitation, notwithstanding what has been observed by the learned judge. We shall presently come to that aspect of the matter. But we do not think that there could be any semblance of doubt in coming to a conclusion that letter dated 16-9-1965 Ex. 85 does serve the purpose of an acknowledgment and that it can further extend the period of limitation by another 3 years from 16-9-1969. We have already pointed out that the balance claimed by the plaintiff due as a running account, which apparently was running from 1959 till the year 1965, has become acknowledged and further period of limitation extended on account of the payments which are evidenced in the statement of account, Ex. 88. If the matter had, therefore, rested with Ex. 85 only, our task would have been simpler.

14. It is conceded that Ex. 85 alone will not help matters and benefit the plaintiff and the plaintiff must succeed or fail only in a case of letter dated 17-9-1965, Ex. 85 serves any purpose of saving limitation and extending it further. If that letter has the effect of extending the period of limitation, as contended for by Mr. Dhabe, then it must be held that it serves as an acknowledgment and the suit filed on 17-9-1968 would be in time. As we pointed out, two contentions in support of this letter and particularly the last portion thereof serving as an acknowledgment were pressed. The portion relied upon itself admits the existence of a relationship of an open account between the parties and impliedly, therefore, admits of a liability resulting therefrom, namely the existence of an account. The second contention which was raised was that in construing this

letter, the surrounding circumstances could be permissibly considered and looked into, though oral evidence there of would not be admissible. Oral evidence has in this case been led on behalf of plaintiff, but we find that this oral evidence is of little assistance, excepting in a limited way.

15. The first question, therefore, to which we will address ourselves is as to whether Ex. 73 operates as an acknowledgment. Ex. 73 was produced along with the plaint. It is a balance sheet of the defendant firm. Under the caption "Capital and Liabilities", it is mentioned "loan account of the plaintiff firm Seth Shreeram Durgaprasad," and the amount due to that firm on account of the loan is shown as Rs. 5,34,786-42. The note appended to the balance sheet says that interest on this amount is calculated only upto 31-3-1965 and further calculation of interest will have to be made. This endorsement is dated 8-8-1965. The balance sheet is signed by all the three partners of defendant No. 1 firm, i.e. present defendants Nos. 2 and 3 and Durgaprasad. Further the balance sheet also bears an endorsement under the signature of the accountant, who has been examined in this case, of defendant No. 1 firm, Dhepe D.W. 1 (Ex. 97). That endorsement says that the balance sheet has been delivered to the plaintiff firm together with endorsements and remarks made therein. It may be pointed out that it was the contention raised on behalf of the defendants that the endorsements made on the balance sheet were subsequently made and that they were interpolated. Further it was the contention of defendants that defendant No. 2 had no authority to make such endorsements on the balance sheets or that the balance sheet truly represented a state of affairs stated therein and was not a correct balance sheet. Neither defendant No. 2 nor defendant No. 3 were able to step in the witness box in support of these contentions. Further in view of the endorsement of the accountant, we do not think that there is any truth or substance in this contention which was raised in the written statement.

16. The only question then is whether a statement in the balance sheet serves as an acknowledgment of the liability mentioned therein in favour of the creditor. In the present case, the balance sheet has been handed over to the plaintiff firm. It was, therefore, clearly intended to be given to plaintiff firm. The contention raised by the defendant seems to be that in order that an acknowledgment should extend the period of limitation, the acknowledgment must be made in favour of that person or creditor. This contention seems to overlook Explanation (a) to section 18 of Limitation Act. All that section 18 requires is that the acknowledgment must be made before the expiration of the period prescribed in respect of the property or right or an acknowledgment of liability in respect of such property or right and in writing by the person against whom that right is claimed. For our present purpose, we may refer to explanation (a) to section 18. It says that such an acknowledgment may be "addressed to a person other than a person entitled to the property or right." It is not, therefore, necessary that the acknowledgment must be addressed to the person, and even if it is not addressed to that person and is addressed to any other person, a creditor or a person in whose favour such a right exists and is acknowledged in that document

would the entitled to claim the benefit of that acknowledgment for the purpose of bringing his claim within time. We shall have an occasion to refer to section 18 of Limitation Act at a later stage. Even no authority is needed for that purpose when entries and statements in the balance sheets have the effect of an acknowledgment. We may refer to the decision reported in Babulal Rukmanand Vs. Official Liquidator, Bharatpur Oil Mills (Private) Ltd., . We doubt that decision was in the case of a company. But we do not think that on principle there would be any difference whether the balance sheet is that of a company or of a private firm. It must, therefore, be held that a statement in the balance sheet acknowledging the liability in favour of a creditor, though not addressed to him will ensure to the benefit of the creditor, serving as an acknowledgment. As was stated above, that alone does not serve the purpose of the present plaintiff.

17. Adverting now to the letter dated 17-9-1965, Ex. 85, it has been held to be not serving the purpose of extending the period of limitation by the learned judge. It would be advantageous to reproduce that sentence upon which reliance was placed and that sentence is "we have credited this amount date wise in your account with us". This sentence is preceded by three dates, totaling a sum of Rs. 10,400 which had been received from the plaintiff firm by the defendants on the various dates mentioned therein. This letter was construed as acknowledging the payments made subsequent to 31-3-1965 and not referring to payments of amount found due prior to 31-3-1965 or on 31-3-1965 at the feet of the accounts. The learned judge, it seems, did not pay enough attention to the last sentence upon which reliance was placed which by itself would serve the purpose of an acknowledgment and extending the period of limitation.

18. It is true that all that the letter says and acknowledges or states is the existence of an account between the plaintiff and defendant firm. It does not say, that on the date on which this letter was sent, namely, 17-9-1965, any particular amount was due from the defendant to the plaintiff or that a sum of Rs. 5,34,786.42 was due as on 31-3-1965 and interest thereafter and in addition to this an amount of Rs. 10,400 was due. It does not say or acknowledge any specific amount as due from the defendant to the plaintiff. In fact it does not say that any amount is due from defendant to plaintiff or that the defendant is indebted to plaintiff in any amount. All that it merely says is that there exists an account between the plaintiff and the defendant firm. The question is whether this statement by itself would serve the purpose of an acknowledgment so as to bring a suit within time by reason of section 18 of Limitation Act. In other words, does this amount to an acknowledgment of a debt or right or liability which the plaintiff claims. That brings us back to section 18 of the Limitation Act and Explanation (a) thereto.

19. The relevant portion of section 18 of Limitation Act for our purpose is as follows:

18. (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in

respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derived his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

EXPLANATION.--For the purposes of this section,--

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

20. In the present case all the other requirements of the letter serving the purpose of an acknowledgment could be said to be satisfied. It is written by a partner of the defendant No. 1 firm, who in law has an authority to bind defendant No. 1 firm. It has been addressed to the plaintiff firm and has been sent before the expiration of the prescribed period of limitation, which would have in this case expired, if we take the date of signing of the balance sheet on 5-6-1965, as 8-8-1968. It has been made well in time before the expiry of the first of the period of limitation within which a suit would have been required to be brought if the only acknowledgment was the acknowledgment in Ex. 73.

21. The above explanation makes it clear that the acknowledgment need not specify the exact nature of the property of right. In the present case the property or right which is claimed is to recover an amount of Rs. 5,34,786.42. It does not, as Ex. 83 clearly omits to refer to any amount as such, specify the right nor does it exactly speak of its nature. But for the purpose of section 18 and in order to extent the period of limitation, even such an acknowledgment which omits to specify the exact nature of the right would be sufficient, provided it does acknowledge such a right. If Mr. Dhabe's contention is right, in that the existence of an account has the effect of spelling out such a right, then the letter Ex. 83 will have to be treated as an acknowledgment.

22. Mr. Salve for the respondents entered appearance to-day (3-12-1960) on behalf of the respondents. Mr. Salve's contention is that Ex. 83 does not assist the plaintiff and further that even if it refers to the existence of an account, that does not amount to an admission. Secondly, Mr. Salve contended that there may be more than one accounts between the parties. What it refers is to the account in which the amounts mentioned in that letter, items 1 to 3, were to be entered. It does not follow therefrom that it necessarily refers or means the account in which the amount of Rs. 5,34,786.42 was found due upto 31-3-1965. We are unable to accept this contention. The written statement filed by the defendants does not anywhere allege that there existed any other account except the one, namely the loan account between the plaintiff and defendant. The plaintiff contended that there were transactions which were entered in the account maintained by the plaintiff in their books of accounts of the defendant. This

position is not disputed. The existence, therefore, of there being more than one account has to be ruled out. Besides, we find that on behalf of plaintiff, evidence was given of Durgaprasad whereas, P.W. 3. (Ex. 91), who stated that the plaintiff firm "has only one account for the defendant No. 1 firm". There was no cross-examination of Durgaprasad Shreeram on this point, nor was it suggested that there was more than one account. Besides on behalf of defendant, the only witness who entered into the witness box, accountant Dhepe, D.W. 1 (Ex. 97) has also not said anything in this connection. We must, therefore, reject the contention that there could be more than one account. Consequently there is only one account in which these amounts were entered.

23. The question which we have now to decide is whether as to what is the consequence of this statement that "there exists an account between us". It was contended by Mr. Dhabe that this admission or statement meant two things. The first submission was that it amounted to an admission of an existence of a relationship between the parties, which is a legal relationship. The consequence of that legal relationship and the admission of such a legal existence of relationship is a consequence which is implied and accepted. If the relationship is accepted, then the consequential obligation must have been deemed to have been accepted and, therefore, acknowledged. Where there exists an account, the admission is that the parties have a relationship of debtor and creditor, as the case may be, between the two. Therefore, the implied and consequential admission, according to Mr. Dhabe, is that whoever is found to be a debtor, if the existence of the relationship of debtor and creditor is admitted, then the debtor agrees and accepts the liability to make the payment. We are inclined to accept this contention, which we shall presently point out is amply borne out by the various decisions to which we shall presently make a reference.

24. The first decision to which we may refer is reported in Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others, , and the relevant portion from the Head Note, which we extract is as follows:--

The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jura relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship.

Therefore, it is clear from the aforesaid decision that the liability need not be specifically admitted in so many words. All that is necessary to admit is the existence of a jural relationship and that jural relationship need not also be expressly admitted, but could even be admitted by implication. If the statement is clear, then, the Court held that "that jural relationship may be implied from it". It was also pointed out that where the words which fall for interpretation constituted an acknowledgment as implied by a jural relationship, though oral evidence is not allowed to be led, "surrounding circumstances can always be

considered". We may also refer incidentally to a decision which is referred in that case. There the acknowledgment was relating to a joint debt and it was held that what follows from the admission of the existence of a joint debt is the legal incident that a joint debtor is liable to be sued for contribution. It will thus be seen that the liability or the admission of the liability for being sued for contribution in case of a joint debt by one of the joint debtors is not expressly or specifically admitted. The only thing which is admitted is the existence of a jural relationship of the parties being joint debtors to the creditor. Once the admission is that the parties were joint debtors, then the further legal incident was the consequential admission of status of joint promises, liable to be sued for contribution. The principle which flows from the aforesaid decisions is that where the admission is relating to a relationship, not only the acknowledgment would serve for the admission of the relationship, but all these legal incidents, which flow from the admission of the existence of such a relationship, also must be held and will be held to have been acknowledged. This decision was followed in subsequent decisions of the Supreme Court reported in *Tilak Ram and Others Vs. Nathu and Others*, and *Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd.*, . In both these decisions, a reference was also made and reliance was placed on a decision reported in *Maniram v. Rupchand* 33 Ind. Appl. 165 (PC). In *Tilak Ram's* case (supra) Supreme Court also referred to a decision reported *Green v. Humphreys* (1884) 26 Ch. p. 474, with approval. We may mention that *Green's* case was also referred to in *S.F. Mazda's* case (supra). Referring to *Green's* case, it was observed that upon a fair construction of the letter read by the light of the surrounding circumstances, it was an admission that the writer owes the debt. (*Tilak Ram's* case).

25. These decisions in *Green's* case and in *Maniram's* case and the decision of Mellish L.J. in the case reported in *In re River Steamer Co. v. Mitchell* (1871) 6 Ch. App. 822, were also cited with approval in the case reported in *L. C. Wills v. Aluminium Corpn. of India* and the observation which was quoted with approval was that an unconditional acknowledgment has always been held to be an implied promise to pay, because that is the natural inference, if nothing is said to the contrary.

26. We will now refer to *Maniram's* case (supra). In that case the acknowledgment which was relied upon came by way of a reply in answer to the objections taken to the debtor being appointed as a person or trustee entitled to administer the estate, to which the letters of admission or probate was sought on account of the will left by *Motiram*, a money lender. The admission which was made by the debtor was to the effect "for the last five years he had open and current accounts with the deceased. The alleged indebtedness does not affect his right to apply for probate " The probate application was not granted. But subsequently a receiver came to be appointed of the estate of deceased *Motiram* who sued the applicant who had applied for probate to recover the sum which was claimed to be due to the estate of *Motiram*. In both the Courts below these

statements were held to be not amounting to an acknowledgment. The Privy Council held that these words spelt out therefore--

... a clear admission that there were open and current accounts between the parties at the death of Motiram. The legal consequence would be that at that date either of them had a right as against the other to an account. It follows equally that whoever on the account should be shown to be the debtor to the other was bound to pay his debt to the other.....

From this the Privy Council deduced as an inevitable deduction from this statement "that the respondent acknowledged his liability to pay his debt to Motiram or his representative if the balance should be ascertained to be against him."

27. It is in this context also that their Lordships of the Privy Council observed that they "... see no reason for drawing any distinction in this respect between the English and the Indian law." The two cases upon which reliance had been placed before the Supreme Court, namely Green's case and River Steamer's case are decisions under the English law. The three propositions to which a reference was made in L.N. Cotton Mills's case (supra) by the Supreme Court are to be found laid down in River Steamer's case (supra) by Lord Mellish and the third proposition of Lord Mellish was that where there is a conditional promise to pay, if the condition is performed, the promise to pay would be spelt out. The condition in the present case would be, where the account is admitted to be open and existing, acknowledging the liability by any one of the parties. If the account is taken and the condition of taking the account is performed, then whoever found to be liable to pay on taking account also accepts and obliges himself to pay that amount. It was held in that case that--

.....It is what every honest man would mean to do. There can be no reason for giving a different meaning to an acknowledgment that there is a right to have the account settled, and as qualification of the natural inference that whoever is the creditor shall be paid when the condition is performed by the ascertainment of a balance in favour of the claimant....

It is, therefore, clear that where existence of an account between the parties and relationship are admitted, and that relationship includes a right to have an account between them, the natural inference, on such a right to have an account between the parties, is that when account is taken and balance ascertained, then an honest person would always mean that he would pay the balance. Therefore, where the existence of a right to account between the parties is admitted, which follows from the admission or acknowledgment it is an acknowledgment of liability to pay in case any balance is found to be due.

28. In the present case the right to account is admitted. That means that a right to having an account between the parties upon the fact of an existence of an account between them, is admitted. If that is so, in the case of an honest man, which every person is presumed to be, the further obligation to pay on the

ascertainment of a balance at the feet of that account must be deemed to have been admitted and acknowledged.

29. Since English decisions would be applicable and have been used, and as has been observed by Lord Mellish that the English law relating to acknowledgments and the Indian law which is a statute law not being different, it would be useful to refer similar cases, where words of similar import have been interpreted in the case reported in *Quinsey v. Sharpe* (1876) 1 Ch. p 72. Sharpe had written a letter to Quinsey saying "I shall be obliged to you to send in your account, made upto Christmas last". This was followed by another letter saying very much the same thing, namely to sending the account. It was contended that this amounted to a promise to pay the amount due or which may be found to be due at the feet of the account. Quincey had not sent any accounts. In the suit filed by Quincey against the estate of Sharpe, limitation was pleaded. It was held that "When he says, send me in your account, I read that not as saying, send in any sort of account, but, send in your account in which you make me your debtor. The question then is, whether there being this unqualified acknowledgment by which the writer makes himself out debtor, he does so in such a way that you must infer it was done with the intention of paying the debt which should appear to be due on that account" In that case also we feel that what was admitted by Sharpe was only that an account existed between them. The condition which was fulfilled was upon ascertainment of that account the balance, a balance was found due from Sharpe. It was held this Quincey was entitled to recover that amount, notwithstanding the statute of limitation, as the letter contained an acknowledgment taking the case out of the law of limitation.

30. In the case reported in *I. Sanyasirao v. P. Venkateswarulu* (1968) 1 An. WR 299, Gopalrao Ekbote, J. as he then was, in a similar situation held that where a debtor asked for a copy of the account upon a notice issued to him demanding the amount, he thereby acknowledges his liability to pay. That reply by which he asked for a copy of the account would serve as an acknowledgment to enlarge the period of limitation.

31. We may also refer to a decision reported in *Regina v. Kuppusami Ayer* AIR 1917 Mad. 846. Though the judgment is a short one, it does not deal with the question in any detail. It says and holds that where a person writes to another that the amount sent by him may please be credited in his account, amounts to an acknowledgment of the "existence of an account". Such an admission or acknowledgment would save the period of limitation and enlarge it further. We do not think it any more necessary to multiply the authorities, as the purpose and principle laid down by these authorities, is as we pointed out, that the admission must be relating to the existence of a jural relationship. If that jural relationship is admitted, then the consequence of that admission, upon the fulfilment of a condition, like in the case of an existence of an account, of ascertaining the balance, would also mean that the liability to pay whatever may be found due is similarly acknowledged.

32. Applying the principles which are laid down, as we pointed out, Ex. 83 is clearly an admission of the existence of an account and, therefore, the relationship and right to have an account between plaintiff and defendant No. 1 firm is also borne out. The consequence of that right to account, if the account between them is ascertained, then is that whosoever is discovered to be a debtor is liable to pay the amount found to be due under the account and at its feet, to the other. In the present case it is not disputed that there is an account in existence between the plaintiff and defendant No. 1 firm, which is a debtor. The letter dated 17-9-1965, therefore, clearly works as an acknowledgment. If it is held that the letter amounts to an acknowledgment, the present suit must be held to be in time.

33. That leaves only one question, which we do not think need have even been gone into or dealt with by the learned Judge. In paragraphs 21, 22 and 23, the learned Judge made an account of what was found, according to the calculations of the plaintiff, due and what should have been claimed by the plaintiff. He found that the interest did not come to Rs. 87714 as claimed in the plaint but only came to Rs. 71705 on the principal amount of Rs. 2,62,086. Mr. Dhabe contended that the calculation made by the learned Judge is wrong and the interest due would be Rs. 81750.10 on a correct calculation. That figure, therefore, will have to be substituted in place of Rs. 87,714.00 claimed by the plaintiff. The second contention of Mr. Dhabe is also right. What the learned Judge has done is that in calculating the amount of interest, he has effected a further deduction. That is on account of as he says, Durgaprasad Shreeram being one of the partners of defendant No. 1 firm and therefore liable to repay an amount of Rs. 2,62,086 which has been deducted from the plaint claim by the plaintiffs, and the interest on that 1/3rd amount will also have to be deducted. He, therefore, proceeded to deduct an amount of Rs. 29,774, presumably on the basis that the interest amount came to Rs. 87714. This process of calculation is wholly wrong. The plaintiff having already deducted the amount on account of the one third share, from the entire suit claim, of Durgaprasad Shreeram, a partner of the defendant firm, a further deduction in interest amount cannot be allowed. That amount, therefore was rightly claimed.

34. The result, therefore, would be that the plaintiff is entitled to a decree in the sum of Rs. 3,43,794 together with costs and future interest at 4% per annum from the date of suit till realisation. The appeal, therefore, succeeds and has to be allowed. Appellant will get costs from respondent Nos. 1 to 3. Mr. Dhabe, however, did not press his appeal so far as respondent No. 4 was concerned. Appeal against her is dismissed. Since there was no appearance on behalf of respondent No. 4, there will be no order as to costs of respondent No. 4.