
(1910) 12 BOM CK 0006
In the Bombay High Court

Shrigopal Chiranjilal

APPELLANT

Vs

Dhanalal Ghasiram

RESPONDENT

Date of Decision : 23-12-1910

Acts Referred:

Limitation Act, 1908 — Section 19

Citation : 9 Ind. Cas. 944

Hon'ble Judges : Beaman, J

Bench : Single Bench

Judgement

Beaman, J.—An interesting and, as far as India is concerned, I believe, an entirely new point has been raised in this case. The defendant contends that the inclusion by him of the debt sued for in his schedule, while seeking the benefit of the Insolvency Act, is not an acknowledgment within the meaning of Section 19 of the Indian Limitation Act, and does not extend the period within which the plaintiff can bring this suit.

2. Mr. Jaffer has cited four English cases Everett v. Robertson (1885) 28 L.J.Q.B. 23 : 1 El. & El. 16 : 4 (N.S.) 1083 : 7 W.R. 9 : Ex parte Topping (1865) 34 L.J. B. 44 : 4 J. & S. 551 : 12 L.T. 787 : 13 W.R. 1025; Davis v. Edwards (1851) 7 Ex. Ch. 22 : 21 L.J. Ex. 4 : 15 Jur. 1014; Courtnay v. Williams (1844) 13 L.J. Ch. 461 : 3 Hare 539 which appear to be exactly in point. The English Courts seem to have felt no hesitation in deciding that the mere inclusion of a debt in a Bankrupt's schedule was not such an acknowledgment as the law required and would not operate to extend the period of limitation. The reason of those decisions seems to be that in England the law requires such an acknowledgment to be a legal, and a legally enforceable, promise to pay. The learned Judges do not appear to have founded their conclusions upon a proposition to be found in the text-book writers (vide Banning on the Limitation of Actions, 3rd Edition, page 250) that a Bankrupt cannot give a valid acknowledgment, and a perusal of the cases cited in support of that proposition suggests that the point is different. Had this formed any part of the ground of decision in the four cases mentioned,

the Judges would surely have averted to it.

3. The English Courts were administering the law contained in the Statutes of 21 James C. 16, Section 3 and 9 Geo. IV., C. 14, Section 1. The language of those Statutes is much narrower than, and easily distinguishable from, the language of the Indian Statute of Limitations. Section 19 is couched in much wider and more comprehensive terms, and is advisedly made to embrace every case in which a debtor has acknowledged and signed or has made in writing and signed an acknowledgment of a debt, although the acknowledgment may not have been to the creditor, or may have been accompanied by a refusal to pay. In such cases the reasoning of the English Judges would not apply. Reading the language of our Statute in its natural sense, I do not see how it can be successfully argued that when a debtor puts a debt down in his schedule, which he signs, this is not an acknowledgment in writing duly signed, of that debt, although it is not made directly to the creditor, and might not be a legal promise to pay. Our Statute advisedly contemplates a much larger class of cases, and seems to rest upon quite a different principle from that which the Courts in England have applied to the more restricted language of their Statutes. Broadly, the Indian law on this point is that when a debtor has deliberately (this is guaranteed by the conditions that he must have used writing and signed it) acknowledged a debt, he will not be allowed to repudiate it as from its moment of incidence, but only as from the moment of that confession. This is something like estoppel, though it is not estoppel.

4. It might be difficult to place the underlying policy of Section 19 of the Limitation Act exactly among our legal principles. But it is plainly different from the narrow ground of the English cases, refusing any extension of the period of limitation, except upon what is a legal and legally enforceable later promise to pay. And I am quite clear that where an Insolvent has written down a debt in his schedule, as owing that debt to a named person, and has signed the schedule, that is a sufficient acknowledgment u/s 19 of the Indian Limitation Act, to extend the period of limitation. I may observe in passing, that in England time would not run against an Insolvent after the vesting order, for the reason that all his assets thereupon vest in the Official Assignee as trustee for the creditors. But there does not appear to be anything in our Statute of Limitation, to stop time running once it had begun to run, for any such reason.