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**(1908) 01 BOM CK 0014**  
**In the Bombay High Court**  
**Case No : Appeal No. 22 of 1907**

Shriniwas Krishna Shiralkar

APPELLANT

Vs

Narhar Khando Khanvilkar

RESPONDENT

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**Date of Decision :** 20-01-1908

**Acts Referred:**

Limitation Act, 1877 — Section 19

**Citation :** (1908) 10 BOMLR 374

**Hon'ble Judges :** Knight, J;Chandavarkar, J

**Bench :** Division Bench

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## Judgement

Chandavarkar, J.—We think that in this case the appeal must be allowed. The question is whether the first and the second instalments are saved by the words relied upon as acknowledgment u/s 19 of the Limitation Act of 1877. There can be no doubt as to the first instalment. The acknowledgment relied upon is contained in the application put in by the judgment debtor by way of a written statement in the Darkhast No. 717 of 1903, presented on the 27th of July 1903. In that application which was filed on the 28th September 1903, the judgment debtor said that he was unable to pay that instalment but that he would pay if time were given to him. That was a distinct acknowledgment of his liability and as the present darkhast was presented on the 24th September 1906 the said instalment is within time. The question is then as regards the second instalment. What is relied upon as acknowledgment as to that is contained in the second paragraph of the same application and runs in these words: (translated from Marathi): "I have asked plaintiff by a written notice to take away the sum of Rs. 300 relating to the second instalment, from a third party with whom I have deposited that sum. Therefore I am not responsible to pay the said amount." This in effect means:-" I am liable to pay the second instalment; but I have deposited the amount of that instalment with a third person and let the plaintiff take it from him. But so far as I am concerned I refuse to pay. " In other words, there is an acknowledgment of the liability coupled however with a refusal to pay on the ground that the amount is deposited with a third party. We think that is the

natural construction of the words. We must, therefore, hold that the second instalment is not barred. But it is contended in support of the decree of the lower Court by the learned pleader for the respondent that an acknowledgment within the meaning of Section 19 must be addressed to the creditor or some one on his behalf. But there is nothing in the language of that section which would justify that narrow interpretation. On the other hand Explanation I to Section 19 expressly provides that an acknowledgment would be sufficient, even if made to some person other than the creditor. Here there was an acknowledgment made to the knowledge of the creditor before the Court.

2. Lastly, it is contended, that as in Darkhast No. 717 of 1903 the decree-holder had prayed for execution of the decree in respect of these two instalments but that the Court rejected his prayer, his present application for the same relief must be held barred on the principle of *res judicata*. What happened in that darkast was this. There the Subordinate Judge held that the right to execute the whole decree in default of the payment of three instalments having not accrued to the decree-holder, he was not entitled to execute the whole decree. Then the question was whether the decree-holder was entitled to execute the decree in respect of the two instalments now in dispute. In the darkhast he had asked for that relief as an alternative, but it appears that when the Court asked him whether he would accept that relief he declined to accept it. That is what the Subordinate Judge says in express terms in his judgment. That means, so far as the relief claimed in respect of the two instalments was concerned, the decree-holder was unwilling to proceed with the darkhast and therefore it was dismissed without any adjudication on the merits. Under these circumstances, we think, having regard to the observations in *Hari Ganesh v. Yamunabai* ILR (1897) 23 Bom. 35 and having regard to the ruling of the Privy Council in *Delhi and London Bank v. Orchard* (1876) L.R. 4 IndAp 127 that the present darkhast is not barred on the ground of *res judicata*. We must reverse the decree of the Court below and send back the darkhast to that Court for disposal according to law on the merits. Costs of this appeal on the respondent. Costs in the lower Courts to abide the result.