(1947) 03 PAT CK 0004

In the Patna High Court

Shyamlal Marwari and Others APPELLANT

Vs

Mirtunjay Mandal and Others RESPONDENT

Date of Decision : 20-03-1947

Acts Referred:
Limitation Act, 1963 — Section 20, 20(1)

Citation : AIR 1947 Patna 446

Hon'ble Judges : Bennett, J;Beevor, J

Bench : Full Bench

Judgement

Bennett, J.—This is an appeal from a decision of the Additional District Judge of the Santal Parganas affirming a decision of the Subordinate Judge of Dumka in a suit which was instituted nearly ten years ago on 17-6-1937.

2. The suit was for payment of a sum of Rs. 2311, odd payable by the defendants to the plaintiffs on two hathchithas. Of the sum claimed, Rs. 1591-10-6 representing the balance of the principal and Rs. 719-12-6 the balance of interest. The plaintiffs'' case was that on 6-6-1930, the defendants first party, through defendant 2, borrowed Rs. 500 from the plaintiffs for family necessity, the loan bearing interest at 10 annas per cent. per month, and that they executed an acknowledgment thereof in the plaintiffs'' hathchi the. On 9-11-1930, the defendants took a further loan from the plaintiffs of Rs. 2000, also for family necessity, which was also acknowledged in the hathchi the book. This loan carried interest at 12 per cent. per month. In 1931 the plaintiffs and the defendants second party, who up till that time constituted a joint family, separated and in the partition of properties that followed, the two hathchit has were assigned to the plaintiffs. Between 20-9-1930, and 19-6-1934, the defendants made various payments to the plaintiffs, and the statement of accounts in regard to the loans set out in Schedule A to the plaint was as follows:

"STATEMENT OF ACCOUNT" The principal amount of loan taken by the defendants on 14th Jaishtha 1337 B.S. . . . . Rs. 500-0-0. The principal amount of loan taken by the defendants on 23rd Kartik 1337

B.S. ... ... Rs. 2000-0-0. Total amount of loans taken by the defendants ... ... Rs. 2500-0-0. Interest due on Rs. 500 and Rs. 2000 from the dates of the loans till the end of Chaitra 1337 B.S. ... Rs. 91-10-6. Payments made on behalf of the defendants in the year 1337 B.S.: Rs. 200 on 20th September, 1930 corresponding to 3rd Asin, 1337 B.S. Rs. 400 on 14th January, 1931 corresponding to 29th Paus, 1337 B.S. Rs. 100 on 18th February, 1931, corresponding to 6th Fagun, 1337 B.S. Rs. 50 on 24th February, 1931 corresponding to 12th Fagun, 1337 B.S. Rs. 50 on 24th March, 1931 corresponding to 10th Chait, 1337 B.S. Rs. 35 on 25th March, 1931 corresponding to 11th Chait, 1337 B.S. Rs. 165 on 9t h April, 1931 corresponding to 26th Chait, 1337 B.S. Total payments made in 1937 ... Rs. 1,000-0-0. Out of which Rs. 91-10-6 was paid and credited towards interest due and the balance Rs. 908-5-6 was paid and credited towards the principal. Balance of principal remaining due...Rs. 1591-10-6. Interest due on the above principal from 1st Baisakh 1338 B.S. to 31st Jaistha 1344 B.S. ... ... Rs. 874-12-6. Total ... Rs. 2466-7-0. Payment made on 28th Baisakh 1338 B.S. corresponding to 11th May, 1931 ... ... Rs. 50-0-0. Payment made on 19th Jaistha 1338 B.S. corresponding to 2nd June , 1931 ... Rs. 50-0-0. Payment made on 24th Pous 1338 B.S. corresponding 9th January, 1932 ... Rs. 25-0-0. Payment made on 5t h Jaisth a 1341 B.S. corresponding to 19th May, 1934 ... Rs. 10-0-0. Payment made on 20th Jaistha 1341 B.S. corresponding to 3rd June, 1934 ... Rs. 10-0-0. Payment made on 4th Asarh 1341 B.S. corresponding to 19th June, 1934 ... Rs. 10-0-0. Total payments since Baisakh 1338 B.S. which was paid and credited towards interest ... ... 115-0-0.

Deducting the said payment of Rs. 115 towards interest due--the balance due is Rs. 2,311-7-0 which is claim in suit.

The relevant passages in the plaint covering the above schedule are in paragraphs 7 and 9 thereof and are as follows:

7. From the 20th September, 1930, corresponding to the 3rd Asin 1337 B.S. to the 19th June 1934, corresponding to the 4th Asarh 1341 B.S. the defendants, on several dates, made payments to the total extent, of Rs. 1155 of which Rs. 908-5-6 was paid and duly credited towards the principal and the balance towards the interest due from them.

* * * *

As per statement of account given in Schedule A of this plaint, the sum of Rs. 2311-7-0 of which Rs. 1591-10-6 is the principal and Rs. 719-12-6 is the interest, is now legally due to and recoverable by the plaintiffs from the defendants, but they have failed to pay to the plaintiffs in spite of their repeated demands for the same.

In para. 10 of their plaint the plaintiffs stated inter alia,

for the purpose of limitation, time will run from the 19th June, 1934, corresponding to the 4th Asarh, 1341 B.S., the date of the last payment of Rs. 10 as u/s 20, Limitation Act, all such payments having been made and duly noted in the hathchitha khata within the time prescribed by the law of limitation, fresh period of limitation shall be computed from the time when each of such payments was made.

3. In their defence, the defendants first party denied that the said loans were for family necessity. The major defendants of the defendants first party pleaded in para. 4 of their written statement that the suit was time-barred under the general and special law of limitation. In para. 6 they specifically denied the partition and that the handnotes in question had fallen exclusively to the share of the plaintiffs. In paragraph 7 they alleged that only Rs. 1000 was in fact advanced to them on 9-11-1930, and not Rs. 2000 as alleged by the plaintiff. In para. 9 they stated that the statement of account given in Schedule A of the plaint was untrue, that the claim of the plaintiffs was excessive and exorbitant and that the loan of Rs. 500 had already been paid off. In para. 11 they stated that the cause of action and the application of Section 20, Limitation Act, was incorrect.

4. The minor defendants of the defendants first party set up a plea in which they denied the alleged family necessity for the loans but both the Courts below have decided this question of fact against these defendants and no question thereon arose in this appeal. In para. 4, of the written statement these minor defendants stated: "4. That these defendants have not any information about the allegations contained in paras. 1, 2, 3, 4, 7, 8, 9, 10 and 11 of the plaint and they are not in a position to admit or deny the same and they submit that the liability of defendants, as alleged, incurred either for a new business or for a purpose by which these defendants were not at all benefited and a liability which did not arise out of any joint necessity cannot be fastened on them."

5. At the trial the defendants attempted to prove that the last three payments of Rs. 10 each on 19-5-1934, 3-6-1934 and 19-6-1934 had not in fact been made by them. But both the Courts below have found against the defendants on this point.

6. The only question raised before us was as to whether the suit was time-barred by the provisions of Section 20, Limitation Act as it then read. Mr. S.N. Bose, for the appellant, argued that there was no evidence given at the trial in support of the allegation that the last payment of Rs. 10 on 19-6-1934, was paid towards interest ''as such'', that it was not alleged that it was paid in part payment of the principal and that the suit, which was instituted on 17-6-1937, was therefore time-barred. He relied upon the decision of the Judicial Committee in Rama Shah v. Lal Chana AIR 1910 P.C. 63.

7. For the respondents it was argued that this point was not open to the appellants because there was no denial in the written statements of the allegation in the plaint that this sum of Rs. 10, together with the other payments

together constituting the payment towards interest since Baisakh 1338 B.S. of Rs. 115 referred to in paras. 7 and 9 of and in Schedule A to the plaint, had been so paid towards interest.

8. In reply, Mr. S.N. Bose, argued that the allegations in the plaint were not sufficiently specific to call for a specific denial, that the statement in para. 9 of the written statement of the major defendants that the account in Schedule A to the plaint together with the allegation in para. 11 thereof that the alleged application of Section 20, Limitation Act, was incorrect constituted, in the then apprehended state of the law, a sufficient denial of the allegations of the payments towards interest and that an issue on the point was sufficiently raised in issue 4 namely, "Is the claim in suit barred by limitation". He further pointed out that it was perfectly clear that the payment of Rs. 50 made on the 2 6-1931, which was included in the alleged total payments towards interests of Rs. 115 above referred to, could not possibly have been a payment towards interest because on the respondents'' own account in the plaint only Rs. 10 or less was in fact due as interest at that date and therefore that the allegation as to the payment of the sum of us. 115 towards interest was palpably false on the face of the plaint.

9. Mr. S.N. Bose contended that, at the date of the trial, the law as to the interpretation of Section 20, Limitation Act, as it then read was thought to have been correctly set out in the judgment of Sir Trevor-Harries C.J. and Manohar Lall J. in Santa Prasad Singh Vs. Thakur Harkishore Prasad Singh, in the course of which their Lordships, following two previous decisions of this Court, held that the words ''as such'' in Section 20(1), Limitation Act were redundant and that an appropriation of a payment to interest made in the plaint was sufficient to satisfy the section and that consequently the parties attached no importance to the otherwise and now relevant issue of fact as to whether the payment of the above-mentioned sum of Rs. 10 on 19-6-1934, had in fact been paid towards interest as such. He further pointed out that the appeal to the Additional District Judge was heard after the Judicial Committee in Rama Shah v. Lal Chana AIR 1910 P.C. 63 had overruled the previous Patna decisions and enunciated the true construction of Section 20(1), Limitation Act and that in that appeal the appellants had raised the point but that the learned Additional District Judge had not dealt therewith in his judgment which had been delivered some nine months after the hearing.

10. In my opinion, the allegations in the plaint that, inter alia, the sum of Rs. 10 paid on 19th June 1934, was paid towards interest were sufficiently specifics to call for a specific denial if the appellants wished to raise any issue of fact thereon. The allegation in para. 9 of the written statement of the major defendants that the account in Schedule A to the plaint is untrue, whilst it may operate as a denial of the alleged payments, cannot possibly operate as an alternative plea that, if the payments were made, they were not made towards interest as alleged in the plaint. Nor do I think that the allegation that the

application of Section 20, Limitation Act is incorrect'' operates as any such denial; that allegation merely means that even if the facts alleged in the plaint are true, the suggested application thereto of the Limitation Act is incorrect.

11. I am very doubtful if the statements above set out and contained in para. 4 of the written statement of the minor defendants can properly be construed as a specific denial of the alleged payments towards interest or even as putting the plaintiff to the proof of that fact. Read as a whole, that paragraph seems to me to be directed to the allegation that even if the facts be true, there is no consequent liability upon the minor defendants.

12. At the close of the hearing of the appeal, we reserved our judgment with the intimation that in the special circumstances of the case we were inclined to frame an issue on the point raised in the appeal and send it back for trial. Since then, our attention has been drawn to a most significant passage in the judgment of the trial Court on the issue as to limitation which was not called to our attention during the hearing of the appeal and which reads as follows:

The learned pleader appearing for the defendants conceded that if it is proved that Rs. 10 was paid by Shyam Lal Marwari on 19-6-1934 then the suit would not be time barred. It has been shown above that this payment was actually made and the endorsements were made by Sham Lal Marwari. This being so this issue is decided in favour of the plaintiffs.

We accordingly gave the parties a further opportunity of addressing us on the effect of this concession. Mr. S.N. Bose contended that this was a mere concession upon a point of law and that having regard to the then apprehended state of the law, it could not properly be regarded as a concession upon the point of fact that the sum of Rs. 10, paid on 19-6-1934, was in fact paid towards interest.

13. Even if, there had been a clear issue of fact upon the pleadings as to whether Rs. 10 had or had not been paid towards interest, I should have been very doubtful, if, after the above concession, it would have been open to the appellants on appeal to urge that there had been no decision upon that issue, because it seems to me that the concession would necessarily have implied that the defendants were abandoning that issue. They in effect said to the Court that there is no other relevant issue of fact to be decided on the issue as to limitation. But, however that may be, on the pleadings as they stood, the concession made on behalf of the appellants must, in my opinion, be understood as conceding and confirming that there was no other issue of fact upon the pleadings on this issue as to limitation. The concession, to my mind, operates to dissolve any doubt that might otherwise exist as to whether the written statements both of the major and minor defendants raised or were intended to raise any issue of fact as to whether the sum of Rs. 10, paid upon 19th June was or was not paid towards interest. In the light of this concession, I am of opinion that the allegation in the plaint that the sum of Rs. 10 was paid towards interest on 19-6-1934, must be

taken to have been admitted in the written statements.

14. That being so, the point was not open on appeal either to the learned Additional District Judge or to this Court. I would, therefore, dismiss the appeal with costs.

Beevor, J.

15. I agree.

