

(1928) 07 CAL CK 0023
In the Calcutta High Court

Sm. Manikya Bewa

APPELLANT

Vs

Pushpa Charan Majhi and Others

RESPONDENT

Date of Decision : 11-07-1928

Acts Referred:

Contract Act, 1872 — Section 25

Citation : AIR 1928 Cal 850

Hon'ble Judges : Mitter, J

Bench : Division Bench

Judgement

Mitter, J.—This rule was issued on the opposite party who are defendants 1 and 2 in the suit to show cause why the judgment and decree of the Small Cause Court at Dacca dismissing the suit of the plaintiff who is the petitioner before me should not be set aside. It appears that plaintiff deposited the sum of Rs. 500 with her relations who are defendant 1 and the father of defendant 2. The defendants refused to return this money and this has given rise to the cause of action for the suit. The Small Cause Court Judge found on the evidence that plaintiff had deposited the money in question with defendant 1 and the father of defendant 2 but dismissed plaintiff's suit on the ground of limitation. It appears that in a suit for partition which was instituted by the mother of defendant 2 as his next friend a written statement was put in by defendant 1 in which he admitted this deposit by the plaintiff. In the partition suit, the matter was referred to arbitration and an award was made on 10th September 1924 by which the liabilities of defendants 1 and 2 were declared in equal shares with regard to whatever was the deposit made by the plaintiff. The amount of the deposit was not stated in the award. That award was accepted by a joint petition to which both defendant 1 and the mother of defendant 2 who is said to be his lawful guardian were parties. So far as the liability of defendant 1 is concerned it seems to be clear that the written statement which was put in by defendant 1 coupled with the award and the petition of 11th September 1924 amount to a promise to pay the debt which was due to plaintiff by reason of the deposit. The suit was instituted within three years from the date of the joint petition which

was put in on 11th September 1924. Consequently limitation could be saved if Article 60, Lim. Act was held to apply. Article 60 is the proper article applicable seeing that plaintiff's own case is that this was money which was deposited with defendant 1 and father of defendant 2 under the agreement that this money was payable on demand by her. So far as defendant 1 is concerned, as I have already said, limitation is saved by reason of the acknowledgment made in the written statement and the subsequent joint petition of 11th September 1924. The decree of the Small Cause Court Judge in so far as it dismissed plaintiff's suit, in its entirety must be set aside. There will be a decree against defendant 1 for the sum of Rs. 250 (Rupees two hundred and fifty only) with interest at six percent, per annum from the date of the demand in Magh 1333 up to the date of realization.

2. It remains to notice the argument of the learned advocate for the petitioner that the suit should also be decreed against defendant 2. It appears that defendant 2 is an infant. There was a demand for this debt during the lifetime or his father Madhu Majhi. The father is said to have died six or seven years prior to the institution of the suit and it was not open to the guardian of the infant to make a promise within the meaning of Section 25, Contract Act as according to the findings of the learned Subordinate Judge the debt of the plaintiff was barred by the Statute of Limitation. It is said, however, that this petition of 11th September 1924 was put in at a time when the claim had not become barred by the Statute of Limitation. It appears to me that the petition standing by itself taken with the award is not a proper acknowledgment within the meaning of Section 19 read with Section 21, Limitation Act. The sum showing the liability of defendant 2 is not mentioned. It is true that in that award the present plaintiff was not a party but it is not necessary in view of the decision of the Judicial Committee of the Privy Council in the case of Maniram Seth v. Seth Rupchand [1906] 33 Cal. 1057 that the acknowledgment should be made in a document to which the plaintiff need be a party. However that may be, it appears to me that the acknowledgment was not the proper acknowledgment as it did not state the amount of liability in respect of which the guardian of the defendant acknowledged the liability of defendant 2.

3. In these circumstances the suit will be dismissed so far as the liability of defendant 2 is concerned. There will be a decree, as I have already said, against defendant 1 for a sum of Rs. 250 (Rupees two hundred and fifty only) with interest at six per cent, per annum. The rule is made absolute to this extent. There will be no order as to costs.