
(1930) 02 AHC CK 0043
In the Allahabad High Court

The Benares Bank Limited

APPELLANT

Vs

Ram Prasad and Others

RESPONDENT

Date of Decision : 05-02-1930

Acts Referred:

Limitation Act, 1908 — Article 36, 95

Citation : 124 Ind. Cas. 180

Hon'ble Judges : Sen, J; Niamatullah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These two appeals arise out of two suits brought by the Benares Bank, Limited, plaintiff-appellant, before the Munsif, Benares City, for recovery of certain sums of money. One of these suits was brought against (1) Ram Prasad, (2) Mahadeo Prasad and (3) Mahabali Prasad, the three defendants, on the allegations that defendant No. 3 had a savings bank account with the plaintiff's Bank, that there was a collusion between him and Ram Prasad the clerk in charge of the saving bank account and Mahadeo Prasad another employee of the Bank, and that though Mahabali Prasad had only Rs. 101-3-1 to his credit, not less than Rs. 800 were drawn, Rs. 200 on the 23rd February, 1924, by Mahadeo Prasad on the authority of a letter alleged to have been written by Mahabali Prasad, Rs. 200 on the 3rd January, 1924, Rs. 200 on the 25th of January, 1924, and Rs. 200 on the 13th of February, 1924, by Mahabali Prasad himself knowing that he had not enough money to his credit and that Ram Prasad the clerk in charge who was in complicity with the other two allowed the four sums to be drawn to the detriment of the plaintiff. Ram Prasad was convicted of offences under Sections 403 and 447-A of the Indian Penal Code on the 9th of July, 1924, by the Sessions Judge, Benares. The plaintiff claims Rs. 698-12-11 out of the Rs. 800 drawn in the manner already stated, being the amount overdrawn in the account of Mahabali Prasad.

2. Second Appeal No. 1174 has arisen out of this suit.

3. The other suit which has given rise to the connected Appeal No. 1175 of 1927 was brought against Ram Prasad, Harshaukar Lal and Mahabali Prasad on Bimilar allegations. It relates to a sum of Rs. 300 drawn by Mahabali Prasad on the authority of a letter alleged to have been written by Harshankar Lai another depositor in the savings bank account. Earn Prasad is alleged to have allowed the withdrawal of this sum with full knowledge that Harshankar Lal had no money to his credit in his account.

4. If the allegations contained in the complaints of the two suits briefly stated above, are true, Ram Prasad the clerk in charge of the savings bank accounts who has been since convicted of serious offences of forgery and falsification of accounts, was principally responsible for the fraudulent transactions to which the plaintiff's claims refer.

5. The only defence which, it is necessary to take notice of at this stage is one of limitation. Both these suits were brought within three years from the dates on which the sums claimed by the plaintiff-appellant were drawn. The defendants plead that the period of limitation for the suits brought by the plaintiff-appellant on the allegations contained in the complaints is two years. Both the lower Courts have held that Article 36 of Schedule I of the Indian Limitation Act, which provides a period of two years, is applicable to the circumstances of these cases. The plaintiff Bank has preferred these two appeals from the decrees of the lower Courts dismissing the two suits.

6. A reference to the terms of Article 36 will make it clear that it is a residuary Article providing a period of two years for suits "for compensation for any malfeasance, misfeasance, or nonfeasance independent of contract and not herein specially provided for." If, therefore, any other Article is appropriate to the circumstances of the case, Article 36 cannot apply. The learned District Judge has arrived at the conclusion that this is the proper Article to be applied. The Articles relied on by the plaintiff-appellant before him and before us are Articles 48, 95 and 90. The learned District Judge was of opinion that Articles 89 and 90 do not apply even as against Ram Prasad, the clerk in charge of the savings bank account, as, according to him, Ram Prasad was not the agent of the Bank. He has correctly defined the agent as one "who is authorised to act for his principal". But the learned Judge is of opinion that as his duties were confined to preparing vouchers, checking the balance, and reporting for orders of his superior, the Assistant Manager, and as he had nothing to do with the actual delivery of the money he cannot be considered to be the agent of the Bank. We are unable to agree with this view. It may be that the duty of making actual disbursements was entrusted to other officials, the clerk in charge through whom alone the money could be withdrawn and who alone could report to the official concerned, whether a particular depositor desirous of withdrawing money had to his credit sums in excess of what he sought to withdraw. If he acted within the scope of his own authority, which he had to exercise in transactions of that kind, it cannot be disputed that he was the agent of the Bank to that extent and if he misconducted

himself in the exercise of that authority Article 90 of the Limitation Act, which provides a period of the three years for suit by "principals against agents for, neglect) or misconduct" would be clearly applicable. Article 90, however, will not meet all the requirements of the case because the other defendants were not the agents of the plaintiff.

7. Referring to Article 48 of the Limitation Act the learned District Judge has dealt with the cases of Rameshar Chaubey v. Mata Bhikh 5. A. 341 : A.W.N. (1883) 48 and Ram Lal v. Ghulam Husain 29 A. 579 : A.W.N. (1907) 181 : 4 A.L.J. 671. Both of these cases are authority for the proposition that money is "specific moveable property" within the meaning of Article 48 and that where it has been lost, acquired by theft or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same Article 48 will apply. It is true that in the second of the two cases referred to it was observed that "it may be open to argument whether a suit for money could properly be considered to be a suit for "specific moveable property but we are bound by that decision", i.e., Rameshwar Chaube v. Mata Bhikh 5. A. 341 : (1883)A.W.N. 48. In the alternative the learned Judge held Article 90 to be applicable. The learned District Judge has made no attempt to distinguish these cases, and referring to the two cases decided by other High Courts, Agandh. Mahto v. Khajah Aliulah 11 C.W.N. 862 and Essoo Bhayaji v. The Steamship "Savitri" 11 B. 133 he observes as follows: "With all due deference to the earlier Allahabad rulings I am of opinion that the interpretation of the Calcutta and the Bombay Courts is the correct one and I would, therefore, hold that the present suit cannot fall under Article 48."

8. Mention of "earlier cases" would indicate that in some later case of this Court a different view has been taken. This, however, is not correct, nor has the learned Judge said so. It is not proper for a Judge subordinate to this Court to disregard its rulings which he cannot distinguish from the circumstances of the cases before him and to follow contrary opinions expressed by other High Courts. Ram Lal v. Ghulam Husain 5. A. 341 : (1883)A.W.N. 48 which the learned Judge has himself quoted must have made it clear to him that a Bench of this Court considered itself bound by the pronouncement of another Bench which was responsible for deciding the earliest case on the subject, viz., Rameshwar Chaube v. Mata Bkikh 5. A. 341 : (1883) A.W.N.48. We have ourselves considered the case last mentioned as binding on us as recently as the 13th of January, 1930, in S.A. No. 8.6 of 1927 and consider ourselves to be bound by that view so long as a larger Bench does not rule to the contrary. If, therefore, no other Article of the Limitation Act is applicable and the choice lies between Arts 36 and 48 we cannot but hold that the case is governed by Article 48 of the Limitation Act, in so far as it is a suit "for compensation for wrongfully taking or detaining" specific moveable property, i.e., money.

9. But we are clearly of opinion that Article 95 of the First Schedule of the Limitation Act, is appropriate to the circumstances of the present case. That

Article provides a period of three years for a suit "to set aside a decree obtained by fraud, or for other relief on the ground of fraud". The learned Judge has brushed aside this Article by a reference to the case of Chunder Nath Chowdhry v. Tirthanund Thakoor 3 C. 504 :2 C.L.R. 147 There is nothing in that case which makes that Article inapplicable to the case before us. It was held that Article 95 of the Limitation Act "has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed, or do some other act and desires to be relieved from the consequences". The plaintiff's allegations clearly amount to an averment of fraud perpetrated by certain persons in collusion with its officials whose duty it was to bring it to the notice of the other officials of the Bank that the sums sought to be drawn by them exceeded the amount to the credit of the depositor concerned and who for his own ends concealed that information inducing the other officials of the Bank to part with the money which they would not have otherwise paid. The plaintiff seeks relief against those who were parties to the last fraud. This being so the dictum quoted above is applicable to the circumstances of the case before us and far from being an authority to the contrary, as the learned District Judge thought, materially supports the plaintiff's case. Mention of a decree in the first part of the language of Article 95 does not, in any way, detract from the generality of the latter part thereof. The article which follows (Article 96) provides for relief on the ground of mistake just as Article 95 provides for relief on the ground of fraud.

10. For the reasons stated above we hold that Article 48, and in any case Article 95 of the first Schedule of the Indian Limitation Act, both of which provide a period of three years, are applicable to the case before us and that Article 36 which provides a shorter period of two years is not applicable. The plaintiff-appellant having brought the two suits which have been, dismissed by the Courts below within three years were not barred by limitation. Accordingly we set aside the decrees of the Courts below and remand the two cases for disposal on the merits. Costs incurred hitherto shall be costs in the suits.