

(1973) 04 DEL CK 0007

In the Delhi High Court

Case No : Regular First Appeal No. 84D of 1964

Union of India

APPELLANT

Vs

Ahmed Din

RESPONDENT

Date of Decision : 18-04-1973

Acts Referred:

Citation : (1974) 10 DLT 81 : (1973) ILR Delhi 365 : (1973) RLR 565

Hon'ble Judges : S.N. Shankar, J; Narain Andley, J

Bench : Division Bench

Advocate : B. Kirpal, R.M. Lal and S.K. Khurana, for the Appellant;

Judgement

S.N. Shankar, J.

(1) This regular first appeal has been filed against the judgment and decree of Sub-Judge, First Class, Delhi, dated December 27, 1963 in favor of the respondent for a sum of Rs. 12,865.69 with proportionate costs.

(2) The respondent carried on business of supplying tents on hire. He hired out tents from time to time to different Government schools run by Delhi Administration as per details in the statement marked "A" annexed to the plaint. The respondent claimed that a sum of Rs. 24,553/12/3 became due to him on account of hire charges of the tents and that because the tents, when returned were found to be damaged and some of the items were also not returned and were found missing, he was further entitled to a sum of Rs. 10,826/4.00 by way of damages for these damaged and lost items. Out of the total amount so becoming due, he stated that a sum of Rs. 22,514/0/3 had been paid to him by the Administration, leaving a balance of Rs. 12,866.00 which was not paid in spite of demands and notice u/s 80 CPC Hence the suit. The claim, it was pleaded, was within time because of the part payments made by the Administration through its duly authorised agents and also because the Administration acknowledged their liability for the claims in suit from time to time. Besides Union of India, Director of Education, Delhi, was imp leaded as

defendant No. 2 to the suit.

THE suit was contested by both the defendants. In the written statement, it was denied that the hire charges claimed were due or that any damage was caused to the tents or that any item hired was not returned and found to be lost. It was maintained that no valid contract came into existence between the parties as envisaged in Article 299 of the Constitution and no claim on the basis of a contract could, Therefore, be laid. It was further pleaded that the suit was barred by time. At the time of issues, learned counsel for the respondent made a statement that no hiring contract as envisaged in Article 299, came into existence between the parties in the correspondence that was being relied upon by the respondent in support of the claims in suit. The trial court framed the following issues:- (1) Whether defendant No. 2 hired tents as per details given in the statement marked "A" annexed to the plaint? (2) Whether the plaintiff is entitled to recover from the defendants a sum of Rs. 2039/12.00 on account of the balance hire charges for the aforesaid tents? (3) Whether any damage or loss was caused to the properties belonging to the plaintiff as detailed in the statement marked "A" If so, whether the plaintiff is entitled to recover any damages for the said loss and damage from the defendant? If so, to what amount? (4) Whether the suit is within limitation? (5) Whether defendant No. 1 is liable to pay the amount in suit or any part thereof to the plaintiff notwithstanding the admitted fact that the hire contracts did not comply with the provisions of Article 299 of the Constitution of India? (6) Relief?

(3) Issues 1, 2 and 3 were found in favor of the respondent. Under issue No. 4, the court held that the suit was within time as it had been filed within three years of the dates when the claims of the respondent for the balance of the hire charges and damages were sanctioned vide the intimation of the sanction Exhibit P. 127 and the letters that followed it. Under issue No. 5, the finding was that the appellants were liable to pay the amount sued for, by way of compensation u/s 70 of the Contract Act.

(4) Shri B. N. Kirpal, appearing for the appellant, has not challenged the finding of the trial court under issue No. 5. The only points canvassed by him in support of the appeal are: firstly, that the suit should have been held to be barred by time because the intimation of sanction Exhibit P. 127 and the letters that followed were not acknowledgements within the meaning of Section 19 of the Limitation Act and, secondly, that the suit should have been dismissed on merits because there was no independent evidence on record to prove the respondent's claim for balance of hire charges and damages claimed.

(5) On the evidence produced, the learned trial court found that each claim of the respondent in respect of hire charges as well as the damages claimed was sanctioned by the Chief Commissioner and the sanctioned was conveyed by the Under Secretary, Delhi Administration to the Director of Education, by letter dated March 7, 1957. Exhibit P. 127. This letter, the court held, was an acknowledgement within the meaning of Section 19 of the Indian Limitation Act,

1908 and the suit filed on March 30, 1959, within three years of this letter, was within time.

(6) This letter, Exhibit P. 127, is from the Under Secretary, Education, Delhi Administration to the Director of Education, Delhi. Part of the letter, relevant for purposes of the controversy raised before us, reads as under:

SUB:Charges of hiring damages and lost articles of tents etc. pitched during 1953-54, 1954-55 and 1955-56, sanction of payment of:- Sir, With reference to your letter No. DE. 4/19 (Bills) Gen./56, dated the 25th January, 1957 on the subject noted above I am directed to convey the sanction of the Chief Commissioner to the incurring of expenditure not exceeding Rs. 48,540/15.00 (Rupees forty eight thousand five hundred and forty and annas fifteen only) in connection with the payment of outstanding bills as per descriptions mentioned in the enclosed statements and for the period noted against each therein. Sanction of the Chief Commissioner is also hereby accorded to the investigation of the above claims by Accountant General, Central Revenues before the payment is made. The expenditure involved on the account is debitabe 37-Edu. L.I. Govt: Secondary School. Lt(4) other charges Rs. 36,503/3/6....

(7) The amount of Rs. 48,540/15.00 mentioned in this letter is comprised of several amounts that were claimed from Delhi Administration by different tent suppliers including the respondent. Detailed lists of the claims of these suppliers were annexed to the letter. They have been proved as Exhibits P. 128, P. 129, P. 130, P. 131 and P. 132. Exhibit P. 129 is the list containing details of the bills of the respondent on account of balance of hire charges amounting to Rs. 2070/7/9. Exhibit P. 130 is the list of the respondent's claims, aggregating to Rs. 10,944.00. Both these amounts are included in the sum of Rs. 48,540/15.00 mentioned in Exhibit P. 127.

(8) Shri Kirpal argued that this letter did not constitute an unconditional acknowledgement because the second para of the letter specifically stated that the sanction was subject to investigation of the claims by the Accountant General, Central Revenues, before the payment could be made. We see no force in this argument. The language of Section 19 of the Limitation Act, 1908 (which shall apply to the present case) does not require that an acknowledgement under this section has necessarily to be unconditional. All that it requires is an "acknowledgement of liability in respect of such property or right" and not an acknowledgement of the amount due on the basis of that right or liability. The acknowledgement envisaged in the section does not create any new right or title in favor of the person whose right is acknowledged. It simply operates to extend the limitation for enforcement of a pre-existing right or liability, if there be any, provided the other conditions of the section are satisfied. In Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others, , Gajendragadkar, J. (as he then was) speaking for the Court, said:

IT is thus clear that acknowledgement as prescribed by S. 19 merely renews

debt; it does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgement is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgement must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be expressed but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement.

(9) In *Kalipada Sinha Vs. Mahaluxmi Bank Ltd.*, , it was held that the admission of the existence of an unadjusted account would bring a case within the purview of Section 19. In that case, the letter that was relied upon as an acknowledgement simply stated that the executant was prepared to make the payment of Installments of the total amount that was yet to be settled amicably. Relying on decision of the Privy Council in *Maniram Seth v. Rupchand* ILR 33 Cal 1047, the Division Bench held that the admission of the existence of unadjusted account was sufficient to attract the provisions of Section 19. It was observed that if there were admissions of facts of which the liability in question was the necessary consequence, it would amount to acknowledgement u/s 19. A similar view was taken by the Division Bench of the Punjab High Court in *Mst. Biro Mahajan Vs. Dulla Singh*, . After reviewing several cases, their Lordships said that the ratio decidendi for the determination of this question, was whether the debtor had admitted the existence of an account, and if he had. it must be deemed to be an acknowledgement of liability for whatever is found due from him on the settlement of the said account. It was further observed that the debtor, while admitting the existence of an account, may also say that on account of a set-off, which he claimed, nothing will be found due to the creditor but the statement will still be an acknowledgement. Explanation of Section 19 also unmistakably shows that unconditional admission of the liability was not a condition precedent to an acknowledgement under the section.

(10) An acknowledgement, Therefore, even if conditional, if it admits the subsistence of jural relationship and shows that the person making it intended to admit a subsisting liability on the date when he made the acknowledgement, would be an acknowledgement within the meaning of Section 19 and would start a fresh period of limitation from the date it is made. (See *Tilak Ram and Others Vs. Nathu and Others*,).

(11) Shri Kirpal then argued that acknowledgement u/s 19 had to be made

before the expiration of the period prescribed for the enforcement of the right or liability claimed to have been acknowledged. The submission of the learned counsel is correct. To avail of the acknowledgement in Exhibit P. 127 the respondent has to show that the cause of action for recovery of balance of hire charges turn each lot of the tents hired and for recovery of compensation for damages or loss in respect of them, accrued to him within three years of this acknowledgement. Reference to statement marked "A" annexed to the plaint, however, shows that except for the first five items of tents hired to Govt. High School, Krishnanagar in 1952 and 1953. all other tents were given on hire by the respondent in the year 1954 and thereafter, and were returned to him after the expiry of the hire period on different dates, earliest date being March 31, 1954. Cause of action for recovery of hire charges as well as damages in respect of all these tents in these circumstances, accrued to the respondent earliest on March 31, 1954, and thereafter, when each lot was returned. Acknowledgement in Exhibit P. 127 dated March 7, 1957 will, Therefore, operate to extend limitation in respect of claims of the respondent relating to all such tents. In other words, all the claims of the respondent for recovery of hire charges and damages, except the claims in respect of tents hired out to Govt. High School, Krishnanagar in 1952 and 1953, will be within time because of the acknowledgement Exhibit P. 127.

(12) This leads us to the second contention of Shri Kirpal, namely, that there is no independent evidence on record to prove the respondent's claims in suit and the decree for that reason deserves to be set aside. Shri R. M. Lal, at first, urged that Exhibit P. 127, with its annexures, was itself an admission of the claims and, Therefore, no other evidence was needed. But, he conceded that Exhibit P. 127 was not an unconditional acknowledgement of the amount payable under each claim mentioned in the annexures, according to the evidence adduced by the respondent himself. He admitted that in spite of Exhibit P. 127 the respondent had to submit fresh bills which had to be verified and confirmed to be correct before the payment could be made. The argument, Therefore, that Exhibit P. 127 was admission of the claims deserves no serious consideration and has to be rejected in the facts of this case.

(13) The learned counsel then took us through the evidence to show that after the issuance of Exhibit P. 127 the respondent submitted fresh bills which were scrutinised and accepted. To facilitate the discussion of this evidence, it would be convenient to deal separately with the claims of the respondent for the balance of hire charges and his claims for damages. The amount in suit (Rs. 12,866) is comprised of claims aggregating Rs. 10,826/4.00 on account of damages and Rs. 2039/12.00 on account of balance of hire charges. The respective break-up of these claims, according to the cerement marked "A" annexed to the plaint is as under:

S. Particulars of the School where tents Balance of hire Damages

No. etc. were supplied charges claimed claimed _____
 _____ 1 2 3 4 Rs. Rs. _____

_____ 1. For tents. etc. supplied to Govt. Primary nil. 1116-0-0 School turn Girls, Tihar Village (1) 2. For tents etc. supplied to Govt. Senior 201-8-6 137-8-0 Basic School, Babarpur, Delhi. 3. For tents etc. supplied to Govt, High 1187-13-0 2960-8-0 School, Krishnanagar, formerly Middle School. 4. For tents etc. supplied to Govt. High 75-6-0 1265-0-0 School, Tihar Colony, formerly Middle School. 5. For tents etc. supplied to Govt. High nil. 201-0-0 School, Najafgarh, Delhi. 6. For tents etc. supplied to Babu Ram Govt. 25-0-0 nil. High Secondary School, Delhi-Shahdara. 7. For tents etc. supplied to Govt. High School, 37-13-0 958-4-0 Malviya Nagar, New Delhi. 8. For tents etc. Supplied to Govt. Basic 201-0-0 nil. School. Okhla, New Delhi. 9. For tents etc. supplied to Govt. Middle 16-14-0 1185-0-0 School, Indranagar, Delhi. 10. For tents etc. supplied to Govt. High 76-11-6 2783-0-0 School, Rameshnagar, formerly Middle School, New Delhi. 11. For tents etc. supplied to Govt. High 92-0-0 nil. School, Kalkaji, New Delhi. 12. For tents etc. supplied to Govt. Primary 125-10-0 220-0-0 School, Jagatpur, Delhi. _____

(14) In regard to claim at Serial No. 1, evidence shows that the respondent submitted his fresh consolidated bill Exhibit P. W. 26/12 showing details of the damages of Rs. 1116.00. This bill was certified by the Headmistress of concerned school and in token of the correctness of the claim she put her signatures on it. Likewise, in support of the claim at Serial No. 2, the respondent submitted the bill Exhibit P. W. 5/25 for Rs. 101/6.00 for the balance of hire charges and Exhibit P. W. 5/26 for Rs. 137/8.00 on account of damages. Both the bills were accepted after verification and the Headmaster of the concerned school appended his signatures to them. (It would, however, be seen that Exhibit P. W. 5/25 supports the respondent's claim for balance of hire charges to the extent of Rs. 101/6.00 only as against the sum of Rs. 201-8-6 claimed in the suit). Exhibit P. W. 1/1 is the fresh consolidated bill in regard to the claim at Serial No. 3. As against the claim for Rs. 1187/13.00 as balance of hire charges and Rs. 2960/8.00 as damages (total Rs. 4147/5/7) claimed in the plaint, the respondent vide Exhibit P. W. I/I claimed Rs.4150/13.00 which included hire charges for tents given to Govt. High School, Krishnanagar. The bill was confirmed by the Headmaster to be correct. The details of the amounts acknowledged by this confirmation, however, show that it includes the claim totalling Rs.410/5.00 for the balance of hire charges for the tents supplied at Govt. High School, Krishnanagar in the year 1952-53. This part of the claim being already barred by time could not be saved by the acknowledgement and has, Therefore, to be disallowed. As against the sum of Rs. 1187/13.00 claimed as balance of hire charges under Serial No. 3, claim of Rs. 777/8.00 only is admissible. Exhibit P. 368 is the fresh bill for damages amounting to Rs. 201.00 relating to the claim at Serial No. 5. It also bears the signatures of the Headmaster of the School in token of its correctness.

Exhibit Public Witness 5/28 is the bill dated March 20, 1957 for Rs. 201.00 relating to the balance of hire charges claimed at Serial No. 8. It was verified by the Headmaster and recommended for payment. Exhibit Public Witness 21/1 is the fresh bill relating to the claim at Serial No. 9 for Rs. 16/14 - on account of hire charges and Rs. 1185.00 on account of damages. This bill was also accepted and passed for payment. Regarding the claim at Serial No. 10 Exhibit P. 343 shows that the claim for damages amounting to Rs. 2783.00 was accepted but there is no evidence in support of the claim for Rs. 76/11/16 on account of balance of hire charges. Exhibit P. 217 is the fresh bill relating to the claims at Serial No. 12. It records that damage? to the extent of R.s. 2.20.00 were verified to be correct and that a sum of Rs. 125/12.00 (against Rs. 125/10.00 claimed in the plaint) was also due on account of balance of hire charges.

(15) The endorsements of verifications and acceptance of the claims on the fresh bills aforesaid submitted by the respondent in our view, constitutes conclusive evidence independently of Exhibit P. 127 which satisfactorily proves the correctness of the respondent's claim to that extent. The total of the claims so verified and accepted comes to Rs. 9825/6.00.

(16) There is no evidence, and none was pointed out to us, to prove the remaining claims of the respondent. As Exhibit P. 127 did not constitute an admission of the liability in respect of these claims, the same have to be disallowed by us for want of proof.

(17) In the result, we hold that the respondent has proved his claim to the extent of Rs. 9825.37 nps only and the learned trial court was in error in decreeing the suit in full. The decree of the trial court is consequently modified accordingly, so that the plaintiff-respondent is granted a decree for Rs. 9825.37 nps against the appellants. The respondent shall have proportionate costs in both the courts.