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**(1911) 08 MAD CK 0037**

**In the Madras High Court**

V. Andiappa Chetty — APPELLANT

Vs

P. Devarajulu Naidu's son by his Next Friend Alasinga Naidu and Another — RESPONDENT

**Date of Decision :** 22-08-1911

**Acts Referred:**

**Citation :** (1913) ILR (Mad) 68

**Hon'ble Judges :** Spencer, J;Ayling, J

**Bench :** Division Bench

## Judgement

1. Two letters marked Exhibits A and B in the Small Cause Suit No. 19117 of 1909 have been referred by the Court of Small Causes, Madras, u/s 69 of the Presidency Small Cause Courts Act for our opinion whether they constitute acknowledgments of liability within Section 19 of the Limitation Act. The letters run as follows:

Exhibit A.

Madras, 10th June, ''08.

To

R.V. Seshagiri Rao, B.A., B.L.,

High Court Vakil, Madras.

SIR,

With reference to your letter, dated 2nd instant, I request you to be so good as to furnish me with a copy of a statement of accounts.

Exhibit B.

Madras, I8th June 1908.

To

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M.R.Ry. R.V. Seshagiri Rao, B.A., B.L.,

High Court Vakil, Madras.

DEAR SIR,

With reference to your letter of the 2nd instant on behalf of V. Andiappa Chetty, landing contractor, Madras, I have to inform you that I wish to examine the accounts as my account does not show such an amount mentioned in your letter. I therefore request you will please forward the copy of the account or instruct your client "to send his gumastah with his account books.

2. The cases cited at the bar and referred to in the judgments of the Judges of the Small Cause Court are Quincey v. Sharpe (1876) L.R. 1 Ex. D., 72, Sitayya v. Bangareddi I.L.R., (1687) Mad., 259, Jogeshwar Roy v. Raj Narain Mitter ILR (1904) Calc., 195 and Maniram Seth v. Seth Rupchand I.L.R., (1906) Calc., 1047. The circumstances of those case seem to be all distinguishable from the present but before proceeding to discuss them we may say at once that we agree with the observation of Maclean, C.J., in Jogeshwar Roy v. Raj Narain Mitter ILR (1904) Calc., 195 that unless the language of the document be identically the same a decision upon the construction of one document is not of much assistance to the Court in construing another.

3. In Quincey v. Sharpe (1876) L.R. 1 Ex. D., 72 the debtor took the initiative by asking his creditor for an account for work done before he received any demand to pay, thus implying that some work had been done and that it would have to be paid for.

4. In Sitayya v. Rangareddi I.L.R., (1687) Mad., 259 the accounts which had to be taken were mutual, open and current accounts to which Article 85 of the Limitation Act applied; and in Maniram Seth v. Seth Rupchand I.L.R., (1906) Calc., 1047 the accounts were open and current, though the Privy Council in the view that they took, found it unnecessary to decide whether they were also mutual and the learned Judges contented themselves with observing that the dealings were not the ordinary ones of banker and customer but rather in the nature of mutual accommodation.

5. Section 19 of the Limitation Act is so worded as to suggest that, where there is an acknowledgment of liability in respect of a right and it is sought to use such acknowledgment for starting a fresh period of limitation, the right acknowledged must be of the same description as the right which is the subject of the suit. Thus in a suit for the balance due upon taking accounts an admission that accounts must be taken and settled would be a pertinent acknowledgment, but it might be otherwise in a suit brought to recover a definite sum of money. So also it is not difficult to see that asking for an account in response to a creditor''s demand may be a very different thing from acknowledging the necessity of settling accounts when a creditor bases his right upon accounts.

6. The decision in Jogeshwar Roy v. Raj Narain Mitter ILR (1904) . 195 is quoted

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in support of the view taken by the majority of the Judges who made this reference.

7. There a house-owner who received from a contractor a bill for building-work done by him wrote that the bill was incorrect in parts and that the work was unfinished but promised to examine the work and the estimates and see what was due. It was held that this was not an acknowledgment of liability within the meaning of Section 19 of the Limitation Act.

8. In point of fact however none of these cases really stand on a parallel footing to that with which we are now dealing. Each case must be treated on its own merits. From a consideration of the wording of Exhibits A and B we are of opinion that they do not contain any acknowledgment of liability sufficient to save limitation. We think there is much force in the comparison made by the Chief Judge of the Small Cause Court between the request of the first defendant in Exhibit A for a copy of a statement of accounts and the case of a tradesman who sends a bill for a certain sum with the words "to account rendered" to which the customer replies: "Please send me a detailed bill." We agree with him in thinking that such words would not amount to an admission of ability. The expression by the second defendant in Exhibit B of a wish to examine the contractor''s accounts does not carry the matter further. The questions referred to us must therefore be answered in the negative.

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