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**(1962) 09 KL CK 0002**  
**In the High Court Of Kerala**  
**Case No : A.S. No. 45 of 1958**

Vadakkekkara Hindu Matha Dharma Paripalana Sabha

APPELLANT

Vs

Ibrahim and Others

RESPONDENT

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**Date of Decision :** 05-09-1962

**Acts Referred:**

Cochin Kuries Act, 1107 — Section 34  
Limitation Act, 1963 — Article 132  
Travancore Chitties Act, 1094 — Section 27

**Citation :** (1962) KLJ 1259

**Hon'ble Judges :** M. Madhavan Nair, J

**Bench :** Single Bench

**Advocate :** Mathew Muricken, for the Appellant; M.K. Narayana Menon for Respondent 12, for the Respondent

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## **Judgement**

M. Madhavan Nair, J.—Bavunny and others, whose legal representatives are defendants 1 to 10, had executed a chitty security bond, evidenced by Ext. P. 1 dated 12-9-1112, in favour of the plaintiff, the foreman of the chitty and the suit is to enforce the bond in regard to the subscriptions defaulted from the 26th instalment of the chitty. The suit lands are the securities under that bond. Several contentions raised in defence, viz. discharge, merger of the cause of action in a prior decree on the same bond, and competency of the plaintiff to sue, have all been overruled by the court below and no objection is taken thereto by the respondents here. The court below however dismissed the suit as being beyond limitation and that finding is in challenge in this appeal by the plaintiff. The suit is for the entirety of the defaulted subscriptions. The chitty terminated in Edavom 1130 and this suit has been instituted on 15-8-1131 M. E. (28-3-1956). Admittedly, the date of the 26th instalment, the commencement of default, was 15-5-1114; and the plaintiff's notice demanding the entire future subscriptions in a lump was on 31-11-1120. The plaintiff counted limitation from the date of his written demand (31-11-1120); but the court below held it to have started on the date of the first default and therefore the suit instituted beyond 12 years

thereof barred.

2. Section 27 of the Travancore Chitties Act, III of 1094 which is the law governing the Chitty which gave rise to this suit, reads as follows: A foreman shall not be entitled to claim consolidated payment of all the future subscriptions from a defaulting prized subscriber unless he shall have demanded the same in writing

(The same has been re-enacted in Section 32 of the later Act XXVI of 1120).

Under the above Section the title to claim future subscriptions in a lump arose only on a written demand being made for the same. Counsel for respondent contended that Section 27 did not create the right but imposed a condition to its enforceability and therefore did not affect the running of time under the Limitation Act. According to him the right to claim future subscriptions in a lump arose in the foreman by virtue of the provision to that effect in the bond in suit. The fallacy in this argument lies in ignoring the effect of a statute on contracts. Here, the contract was that if ever default was committed in the regular payment of subscriptions the entire future subscriptions could be realised by the foreman in one lump. On the identical matter the statute governing the chitty enacted that the foreman "shall not be entitled to claim consolidated payment" of all the future subscriptions from the defaulting prized subscriber unless he had made a written demand for such payment. The contract has then to be read along with the statute. The word "entitle" means "give title" to a thing; and title denotes the facts or events by reason of which a right becomes vested in its owner. The expression in the statute is that the foreman shall not be entitled to consolidated payment unless he shall have demanded the same in writing. The issuance of a written demand is therefore the event which raises the right to consolidated payment. The provision in the contract may at best entitle the foreman to make the demand in writing; but it is the latter event that gives him the right to consolidated payment. Article 132 Limitation Act provides for "suits to enforce payment of money charged upon immovable property" a period of "12 years" from the time "when the money sued for becomes due." As consolidated payment of subscriptions became due only on the making of a written demand therefor by the foreman, the period of limitation started in this case only on 31-11-1120 and the suit instituted on 15-8-1131 has therefore to be held within time.

Counsel pointed out that, though Section 34 of the Cochin Kuries Act, VII of 1107, (Kuri and Chitty are mere synonyms) contained a provision similar to Section 27 of the Travancore Chitties Act, the right to claim consolidated payment of all future subscriptions from a defaulter has been held to arise on the date of the first default and therefore limitation was computed from such date in 38 Cochin 285 and 39 Cochin 517. Neither of those decisions has adverted to the Kuries Act. On the other hand it was assumed in both the decisions that the acceleration clause in the contract to pay all future subscriptions in a lump when and fault has been committed reigned supreme in the matter. Counsel has also

relied on AIR 1932 207 (Privy Council) . In that case their Lordships had no statute of the kind we find in Section 27 of the Travancore Chitties Act to control the acceleration in the mortgage deed under consideration. Their Lordships have observed in that case:

It is always dangerous to apply English decisions to the construction of an Indian Act where the clauses under consideration are not the same.

That observation is very pertinent and answers well the contentions of the counsel here.

All the contentions urged in defence to the suit claim have been repelled by the court below except that of bar by limitation, which also has been repelled hereinbefore. The suit therefore succeeds. The decree of the court below is discharged and the suit is decreed with costs here and in the court below.

The court below has found the defendant an agriculturist entitled to the benefits of the Agriculturists Debt Relief Act. That finding is not challenged before me and is therefore accepted. The defendant will be entitled to discharge the decree in accordance with the provisions of Kerala Act XXXI of 1958.