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**(1977) 06 AP CK 0026**  
**In the Andhra Pradesh High Court**  
**Case No : S.A. No. 342 of 1975**

Vasantam Sambasiva Rao

APPELLANT

Vs

Sri Krishna Cement and Concrete Works Tenali, by its  
proprietor Chatti Radha Krishna Murty

RESPONDENT

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**Date of Decision :** 10-06-1977

**Acts Referred:**

Limitation Act, 1963 — Section 18, 19, 20

**Citation :** (1977) 06 AP CK 0026

**Hon'ble Judges :** S.H. Sheth, J

**Bench :** Single Bench

**Advocate :** S. Venkateswara Rao, for the Appellant; M. Venkata Rao, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.H. Sheth

1. This appeal has been filed by the original first defendant Plaintiff filed against defendants 1 and 2 the present suit for recovering a sum of Rs. 3.108 72ps. due on Khata account. Plaintiff alleged that on 26-4-1966 defendants placed an order for supply of cement pipes and opened a Khata with the plaintiff in the name of the first defendant by paying a sum of Rs 1,000/- in advance to the plaintiff. First defendant later told the plaintiff to deliver the goods to the second defendant. On 18-6-1966 the plaintiff supplied the goods to the defendants They were valued at Rs. 4,46707. Plaintiff delivered the goods to the second defendant in pursuance of the advice of the first defendant. On 29-8-1968 the second defendant paid to the plaintiff a sum of Rs. 1, 100/-. The defendants thereafter failed to pay the balance due to the plaintiff. Plaintiff therefore filed the present suit against both the defendants to recover the suit claim. In defence, the first defendant totally denied his liability to pay the amount and further contended that the suit was barred by time. Second defendant admitted the claim but pleaded that he had merely acted as the agent of the first defendant.

2. The learned trial Judge found that both the defendants had acted jointly and that both were jointly and severally liable to pay the suit amount to the plaintiff. However, the learned trial Judge held that so far as the first defendant was concerned the suit against him was barred by time. He therefore passed decree against the second defendant alone. Plaintiff as well as the second defendant appealed against that decree. The appeal by the second defendant was dismissed. The learned appellate Judge allowed the plaintiff's appeal and passed decree against the first defendant also.

3. It is that appellate decree which is challenged by the first defendant in this second appeal.

4. The only contention which has been raised on behalf of the first defendant-appellant is that the suit against him was barred by time. There is no dispute about the fact that the goods were supplied to the defendants on 18-6-1966 and that the suit was filed on 30-8-1971. Ex officio therefore the suit was barred by time. However it was pleaded by the plaintiff that payment made by the second defendant on 29-8-1968 saved limitation for the suit and that the suit was within time. The question which has under these circumstances arisen for my consideration is whether the second defendant was "his agent" of the expression used in section 99 of the Limitation Act 1963.

5. The receipt which the plaintiff issued to the second defendant in respect of the payment of Rs. 1,000/- made by the latter to the former stated that "towards the debt due in respect of supply of cement pipes a sum of Rs. 1,10/- was paid by V. Venkateswarlu" (second defendant). It further stated that the said amount was credited to their account. The receipt therefore clearly shows that the payment was made to the second defendant. In order to enable the payment made by the second defendant to save limitation for the suit against both the defendants the case must fall u/s 19 of the Limitation Act 1963 which Inter alia provides that where payment on account of a debt is made before expiration of the prescribed period by the person liable to pay it or "by his agent duly authorised in this behalf" a fresh period of limitation shall be computed from the time when the payment was made. In the instant case the payment was not made by the first defendant. It was made by the second defendant. The record does not show that the second defendant had acted as the "duly authorised agent" of the first defendant in that behalf. This expression also forms the subject matter of section 20 of the Limitation Act 1963, Sub-section (1) of Section 20 provides as follows:--

The expression "agent duly authorised in this behalf" in sections 18 and 19 shall, in the case of a person under disability include his lawful guardian, committee or "manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment".

6. Sub-section (2) of section 20 makes certain exceptions. It provides as follows:--

Nothing in the said sections renders one of several joint contractors, partners,

executors or mortgagees chargeable by reason only of a written acknowledgment signed by or of a payment made by or by the agent of any other or others of them.

7. Sub-section (2) of section 20 makes it clear beyond any doubt that in case of joint contractors payment made by one of them does not save limitation against another, in other words what sub-section (2) of section 20 provides is that in case of joint contractors one of them is not regarded as the duly authorised agent of another joint contractor. The finding recorded by the learned appellate Judge in regard to the relationship between the first and second defendants is that the defendants first approached the plaintiff and that the first defendant asked the plaintiff-firm to deliver goods to the second defendant for the purpose of their joint contract business and that second defendant took delivery of the goods and acknowledged its receipt. The next finding which has been recorded by the learned appellate Judge is that the second defendant had not "merely acted as the agent of the first defendant". This finding shows that the first and second defendants were joint contractors.

8. However on behalf of the plaintiff it has been very strenuously contended that the observations made by the learned appellate Judge that the second defendant had not merely "acted as the agent of the first defendant" shows that besides being the joint contractor he was also was the agent of the first defendant. The evidence discussed by the learned appellate Judge shows that from the same set of facts he has drawn an inference that the first and second dependents were joint contractors and that the second defendant, had acted as the agent of the first defendant. Now what section 19 requires "in his agent duly authorised in this behalf" The expression "in this behalf" clearly shows that one who makes part payment of a debt on behalf of another must be duly authorised" to make that payment", The other words the authorisation given by one to another must be the authorisation for the purpose of making the payment on his behalf, which would lead to the saving of limitation for the plaintiff's cause of action.

9. It has been argued on behalf of the plaintiff that the account was opened with the plaintiff in the name of the first defendant that an advance payment of Rs. 1000/ was made by the first defendant and that first defendant had requested the plaintiff to deliver the goods to the second defendant. On this basis it has been further argued that the second defendant was the "duly authorised" agent of the first defendant for the purpose of section 19 of the Limitation Act. (sic)963. I am not impressed by this argument because what section 19 requires is authorisation for the purpose of making part payment towards the debt, which would save limitation for plaintiff's cause of action. In case of joint contractors, if one of acts on behalf of both whatever one does in respect of the contract binds both. To this general rule section 19 makes an exception The statute expressly requires that even though whatever else one of the joint contractors does may be binding on both the contractors, the payment made by contractor towards a debt does not bind another unless he is the duly authorised agent of another in

that behalf It is true that a joint contract or may be in a given case the duly authorised agent of another in that behalf. It is true that a joint contractor may be in a given case the duly authorised agent to make the payment on behalf of both the contractors towards the debt due from them. In order to show that one of the joint contractors was authorised to make such a payment on behalf of both, there must be special facts on record. The facts which constitute relationship of joint contractors between them cannot be marshalled to the aid of the proposition that they would also establish the relationship of principal and agent between them. If the facts which establish the relationship of joint contractors between the parties are regarded as facts constituting the relationship of principal and agent between them the very purpose of enacting section 19 read with section 20 would be defeated. That is exactly what sub-section (2) of section 20 makes clear. Where the legislature has provided for a special situation effect must be given to it. I am unable to read section 19 and Sub-section (2) of section 20 in such a way that so far as the Joint contractors are concerned that effect would be completely obliterated In the instant case there are no special facts to show that the first defendant had "duly authorised" the second defendant to make the payment of Rs. 1,100/- to the plaintiff If the 2nd defendant paid it to the plaintiff he did so on his own behalf. Indeed such payment would discharge the debt of both but would not in light of the provisions of section 19 and subsection (2) of section 20, save limitation for the purpose of plaintiff's suit against the first defendant.

10. The lower appellate court has relied upon the decision of Chinnappa Reddy, J., in Mohd Abdul Qadeer v. Azamatullah khan 1974 (1) An. W. R. 98. It was a case of a part payment having been made by a Mohammedan here. In that context it has been held that part payment by one of the co-heirs of a deceased Mohamedan is sufficient to save limitation against other co-heirs also. Though under the Mohamedan law each heir is liable for the debts of the deceased only to the extent of his share in the estate of the deceased, so far as the creditor is concerned, the identity and the integrity of the debt remains unimpaired by the death of the original promisor. Therefore, as held in that decision there are no several debts but there is only one debt and its identity and integrity attract section 19 of the Limitation Act, 1963.

11. The principal laid down in the decision quoted above has no application to the instant case, The more opposite decision applicable to the facts of this case is the Bench decision in Ratan Lal and Another Vs. Commercial and Industrial Bank Ltd. and Others, In that decision it has been laid down that in case of a joint debt one of the several debtors cannot keep the debt alive and subsisting against the other joint debtors by reason only of a written acknowledgement signed on a payment made by him. What is further necessary for the creditor to prove is that the debtor who acknowledged the debt or made the payment was the agent of the other co-debtors duly authorised by them to acknowledge payment in writing signed by him. In my opinion the principle which has been laid down by the Bench is more in consonance with the provisions of section 19 and Sub-section

(2) of section 20 than the principle laid down in the decision first referred to. It appears that in the first mentioned case the attention of the learned single Judge was not invited to the Bench decision referred to above. What section 19 emphasises is not the identity or integrity of the debt but the due authorisation by one of the debtors of the other to make part payment towards the debt due from them. The concept of identity and integrity of a debt due from several co-heirs is foreign to sections 19 and 20.

12. In light of the principle laid down in the Bench decision the principle laid down by the learned single Judge in the first mentioned case is open to doubt.

13. Since in the instant case there is nothing to show that the second defendant was the "duly authorised" agent of the first defendant (as distinct from being a joint contractor) to make payment towards the debt due to the plaintiff, the payment of Rs 1,000/- made by the second defendant to the plaintiff did not save limitation against the first defendant. The claim made by the plaintiff against the first defendant was therefore barred by time. The learned appellate Judge was therefore in error in passing decree against the first defendant. In the result the appeal is allowed. The decree passed by the learned appellate Judge is set aside and the decree passed by the learned trial Judge is restored. No costs.