

Ala UddIn Vs. Sishir Kumar Dutta

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Court : Guwahati

Decided On : Apr-23-1987

Judge : Manisana, J.

Acts : [Evidence Act, 1872](#) - Sections 45, 47 and 73; [Negotiable Instruments Act, 1881](#) - Sections 4; Interest Act, 1839 - Sections 1; [Interest \(Amendment\) Act, 1978](#) ; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 34

Appeal No. : Civil Revn. No. 21 of 1982

Appellant : Ala Uddin

Respondent : Sishir Kumar Dutta

Advocate for Pet/Ap. : M.A. Laskar and B.L. Singh, Adv.

Disposition : Petition partly allowed

Prior history : Manisana, J. 1. This revision petition arises from the judgment and decree passed by the learned Assistant District Judge Karimganj in Money Appeal No. 40 of 1979 dismissing the appeal and affirming the judgment and decree passed by the learned Munsiff Karimganj in Money Suit No. 43 of 1978 decreeing the claim of the plaintiff for recovery of a sum of Rs. 2,132.81 with costs; hence this petition. 2. The plaintiff-opposite party brought the suit on the footing that on 26-5-75, the defendan

Judgement :

Manisana, J.

1. This revision petition arises from the judgment and decree passed by the learned Assistant District Judge Karimganj in Money Appeal No. 40 of 1979 dismissing the appeal and affirming the judgment and decree passed by the learned Munsiff Karimganj in Money Suit No. 43 of 1978 decreeing the claim of the plaintiff for recovery of a sum of Rs. 2,132.81 with costs; hence this petition.
2. The plaintiff-opposite party brought the suit on the footing that on 26-5-75, the defendant-petitioner borrowed a sum of Rs. 1,800/- by executing a document (Ex.-I) promising to repay the amount on demand but in spite of repeated demands, the defendant failed to re-pay the same. Out of Rs. 2,132.81 claimed by the plaintiff, Rs. 1,800/- was principal amount and Rs. 332.81 was the interest at the rate of 6.25% per annum from 26-5-75 to 11-5-78. The suit was instituted-on 12-5-78.
3. Mr. M. A. Laskar, the learned counsel for the petitioner, has submitted that the learned Munsiff compared the disputed signature of the defendant on the document (Ext.-I) with the admitted signatures of the defendant on his written-statement and also on the Vakalatnama executed by him, and based his findings on the comparison made by himself. Mr. Laskar has contended that the Court should not have given its findings solely on such comparison made by itself, and that the Courts below ought to have sent the document (Ext.-I) to the expert.
4. In the Evidence Act, for proving handwriting the opinion of expert and of persons acquainted with the handwritings of the persons concerned have been made relevant under Section 45 and Section 47 respectively. Both under Section 45 and Section 47, the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from the frequent observations and experience. However, the opinion of handwriting expert is not conclusive. The opinion of an expert is fallible or liable to error like any other witness. Still it cannot be brushed aside as useless.
5. With regard to comparison of signature and writing by the Court, there is no legal bar to the Judge using his own eyes to compare the disputed writing with the

admitted writing under Section 73 of the Evidence Act, that is, the Court can apply its own observation to the admitted or proved handwritings and compare them with the disputed one. But by doing so the Court does not become a handwriting expert. Although a comparison of signature or handwriting is a mode of ascertaining the truth, the Court does not play the role of an expert. The opinion of the Court is also not conclusive. Therefore, to base findings solely on the comparison of signatures or handwritings, the Court is taking the risk of doing so, as the opinion formed by the Court is not conclusive and is liable to error, and especially when it is not made by one not conversant with the subject. Therefore, the Court as a matter of prudence and caution should hesitate or be slow to base its findings solely on the comparison made by himself. However, if there is an opinion whether of the expert or any witness, the Court may apply its own observation by comparing the signatures or handwritings for giving a decisive weight or influence.

6. I have perused the findings of the Courts below. The findings of the learned Munsiff are based on the evidence of the scribe of PW 2 and the plaintiff (P.W. 1), and not solely on the comparison of signatures. The learned Munsiff made a comparison of the signatures for satisfying itself that it was safe to accept the evidence of PWs. 1 and 2.1 have also perused the evidence on records for my own satisfaction. The findings of the Courts below are supported by the evidence and materials on record. It is not a case where the Courts below have exercised their jurisdiction illegally or with material irregularity. Therefore, any of the provisions under Section 115, CPC is not attracted.

7. Mr. Laskar has further submitted that the plaintiff was not entitled to interest under the Interest Act. As already stated above, the suit was instituted on 12-5-78 before enforcement of the Interest Act, 1978 which came into force on 19-8-81. Therefore, the Interest Act, 1839 will be applicable to the present case. Section 1 of the Interest Act, 1839 runs as follows :

'It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not

exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable

otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment : provided that interest shall be payable in all cases in which it is now payable by law.'

In Mahabir Prasad v. Durga Dutta, AIR 1961 SC 990, the Supreme Court has held :

'Interest for a period prior to the commencement of suit is claimable either in agreement, or usage of trade or under a statutory provision or under the Interest Act, for a sum certain where notice is given.'

8. In the present case, no agreement about the interest was made, nor was it implied. There is no material to show that any notice was given demanding the interest for the period before the institution of the suit. There is also no material to show existence of any usage of trade or any statutory provision under which the plaintiff was entitled to interest. Therefore, the Interest Act does not apply to the present case, The Courts below have also not given reason as to why the plaintiff was entitled to interest. In this view of the matter, the plaintiff was not entitled to interest. Therefore, no interest could be awarded for the period up to the date of the suit and the decretal amount in the suit will have to be reduced by Rs. 332.81.

9. For the foregoing reasons, the judgment and decree of the Courts below relating to payment of interest ,is set aside. The plaintiff is entitled to Rs. 1,800/- only with costs awarded by the Courts below.

With the said observations and direction, the petition is partly allowed. Parties shall bear their own costs of this petition.

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