

Jagannath Vs. Ram Gopal

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Court : Allahabad

Decided On : Oct-31-1933

Reported in : AIR1934All160; 147Ind.Cas.342

Appellant : Jagannath

Respondent : Ram Gopal

Judgement :

ORDER

Kendall, J.

1. This is an application for the revision of an order of the Judge of the Small Cause Court of Farrukhabad decreeing the plaintiff's suit. It has been argued before me that the suit was barred by limitation, and also that no interest ought to be allowed.

2. As regards the question of limitation, the cause of action arose on 24th September 1929 and the suit was filed on 11th October 1932, that is to say, on the day of the opening of the Courts after the long vacation. The plaint was stamped with a court-fee stamp of Rs. 4 only instead of Rs. 39, and on the office report the Court ordered that the deficiency should be made good within two days. The deficiency was made good on 13th October 1932 and the suit was then registered. The argument for the applicant is that the suit was not duly filed until the 13th October on which date it was barred by limitation. Under Section 6 of the Court-

fees Act.

No document of any of the kinds specified as chargeable in the first or second Schedule to this Act annexed shall be filed Unless in respect of such document there be paid a fee of an amount not less than that indicated....

3. The court fee had not been paid on 11th October 1932 but the order of the Court passed under Section 149 of the Civil P.C., allowing the plaintiff two days in which to make good the deficiency undoubtedly had the effect of giving the plaint 'the same force and effect as if such fee had been paid in the first instance'. Mr. Ghatak's argument, however, is that in passing the order under Section 149 the Court did not apply its mind to the provisions of the law; that is to say, it had not fully considered the effect of Section 6 of the Court-fees Act and Section 149 of the Civil Procedure Code and also the decision of this Court in the case of *Brijbhukan v. Tota Bam* : AIR1929 All75 . In that case Sir Section M. Sulaiman (now Chief Justice) remarked on the objectionable practice of filing an appeal on the last day of limitation with an obviously insufficient court-fee stamp in order to evade the provisions of the Court-fees Act, and he further remarked that the Court had full power to refuse to accept a memorandum of appeal when the amount of the court-fee paid was insufficient. In the present case however the plaint had not been rejected. The Court might no doubt have rejected it under Section 6 of the Court-fees Act, but it did not do so, and gave the plaintiff time to make good the deficiency. This was a decision that under Section 149 of the Civil Procedure Code was discretionary with the Court, and where the Court has exercised its discretion and allowed time, I doubt if this Court would ever be justified in revision in holding that the discretion had been wrongly exercised or had not been exercised at all, and that the plaint was barred by the provisions of the Court-fees and Limitation Acts for that reason.

4. As regards interest, it has been pointed out that in the case of *Kishwar Jahan Begam v. Zafar Mohammad Khan* A.I.R. 1938 All. 186 a Bench of this Court decided that where there was contract to pay interest, the Court would be justified in allowing interest if the matter were one that came within the jurisdiction of the Court of Equity in England as distinguished from the Courts of Common Law. In

the present case it is argued that the matter was one that came within the jurisdiction of the Courts of Common Law. It was as a matter of fact an ordinary matter between a buyer and a seller, and it is not necessary to look to the practice in England for the authority to decide the simple question in this case. There is good authority for holding that where a transaction between the parties is of the nature of a contract or of a quasi contract, as undoubtedly it is in the case of a buyer and a seller, the Courts would be justified in allowing interest even where there is no definite contract to pay interest : see the case of Anrudh Kumar v. Laohmi Ghand : AIR1928 All500 . That was considered by the Bench in the later decision referred to, but distinguished. As in the later case there was no question of contract or quasi contract, interest had indeed been claimed specifically on the grounds of equity, and for that reason the Bench distinguished principles of equity and principles of common law. But the decision does not go so far as to show that in a matter which would be covered by the common law in England, no interest could be allowed by the Courts in India. The trial Court remarks that the defendant did not expressly dispute the question of interest, and as he has deprived the plaintiff of the use of his money for a considerable period, there is nothing unjust or inequitable in directing that he should compensate the plaintiff by paying interest and the rate has been found by the Court to be a fair one. The result is that the application fails and is dismissed with costs.

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