

Girdhari Lal Vs. Kishore Lal

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Court : Allahabad

Decided On : Feb-12-1940

Reported in : AIR1940All338

Appellant : Girdhari Lal

Respondent : Kishore Lal

Judgement :

ORDER

Allsop, J.

1. This is an application under Section 25, Small Cause Courts Act. The learned Judge of the Small Cause Court at Agra has given the plaintiff a decree for money. The defence was that the suit was barred by limitation. The plaintiff maintained that limitation was saved by a payment of Rs. 5 on 17th November 1935. This payment was not appropriated towards principal and it is clear that it was not a payment of interest as such. The learned Judge says, relying on paras. 10 and 11 of the written statement, that the payment must have been towards interest. These two paragraphs do not justify that conclusion. It is clear that the defendant was relying upon the point that the payment was not towards interest as such. It does not follow that the payment was towards principal. A Full Bench of this Court has made a distinction in Udaypal Singh v. Lakshmi Chand : AIR1935 All946 . In order to save limitation, in the view of this Court, the payment must either be towards

principal and appropriated as such or must be towards interest. If the person who pays does not specify whether the payment is towards principal or interest, limitation will not be saved unless possibly the payment is set off against the principal from the very beginning.

2. Learned counsel for the opposite party has referred to the case in *Het Ram Bodh Raj v. Aya Ram Tola Ram* (1938) 32 S LR 415 and urges that the decision of their Lordships of the Privy Council weakens the authority of the Full Bench case of this Court. In my judgment, there is no force in this contention. Their Lordships were not considering the point which was raised in the Full Bench case of this Court. In the case before them apparently the payment covered the whole of the principal and something towards interest and therefore must of necessity have been a payment towards interest as such. There is an obvious mistake in law in this case and therefore I consider that the decree cannot be allowed to stand. I set aside the decree of the learned Judge of the Small Cause Court and direct that the defendant opposite party shall get his costs in both the Courts. The suit is dismissed.

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