

L. Narain Das Vs. Mannoo Lal

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Court : Allahabad

Decided On : Dec-13-1934

Reported in : AIR1935All405; 157Ind.Cas.409

Appellant : L. Narain Das

Respondent : Mannoo Lal

Judgement :

ORDER

Bennet, J.

1. This is an application in civil revision by a plaintiff whose suit was dismissed by a Small Cause Court on the ground of limitation. The plaintiff sued to recover a sum of money on a bond executed by defendant on 23rd April 1928. The bond contained the following terms:

Dar soorat na ada karne sood mahawari kisi mah kai ya guzar jane miad muayam bala ek sal he har do surat me dain ko ikhtaiyar hai ki kul rupaya apne asal mai sood wa balai sood mujhse wa mere zat wa jaidad manqoola wa ghair manqoola se ba sarye nalizh adalat ek musht wasul kar lan.

2. This is a very usual term and it provides that if the monthly interest is not paid or if the principal money; lent is not paid at the end of the year, in either case the creditor may sue. The finding of facts is not clear, but the judgment indicates that

the monthly interest was not paid and that the cause of action arose before the expiry of the year under Article 68, Schedule 1, Limitation Act. The suit was actually brought on 1st April 1932, on the allegation in the plaint that the cause of action arose on 23rd April 1929, when the period of one year stipulated in the bond for payment of principal expired. The lower Court held however that the cause of action had arisen more than three years before the date on which the suit was brought. The lower Court then considered whether certain payments totaling Rupees 198 in the cash book of the creditor would save limitation under Article 20, Limitation Act, and it held that as the payments were not in the handwriting of the defendant limitation would not be saved by these payments. We are not now concerned with this matter.

3. The case for the applicant is that the suit is within limitation on the basis of certain rulings which lay down that even though there is a breach of the condition for payment of interest still that is a matter over which the creditor has a right of waiver and limitation will only begin to run from the period stipulated in the bond for payment. This was a simple money bond. The ruling on which reliance is placed in the main is a ruling of their Lordships of the Privy Council reported in *Lasa Din v. Gulab Kunwar* 1932 P.C. 207. That ruling was on a mortgage-deed for which the period of limitation is under Article 132, Schedule 1. The ruling proceeded on the ground that a proviso of the nature quoted in the mortgage-deed was exclusively for the benefit of the mortgagee and that the proviso purported to give them an option either to enforce the security at once or if the security was ample to stand by their investment for the full term of the mortgage. If the contrary view were taken, and it was held that the breach of the condition for payment of interest rendered the mortgage money immediately due, the mortgagor would have a right to sue for redemption. Learned Counsel for respondent argues that this particular line of reasoning is peculiar to a mortgage-deed, and that as there is no redemption in the case of a simple money bond the reasoning ought not to be applied. I consider however that an analogous reasoning does apply in the case of a simple money bond. On the theory of the lower Court it would have been open to the debtor in the present case to pay back the principal when the first default was made which was apparently when the first month's interest became due. To allow a debtor such an option for his own default might be highly inconvenient to a

creditor. A creditor places money at interest on a bond in which he fixes a period for repayment and it may well be that he desires that arrangement to stand until the period has elapsed. On the other hand, a debtor might suddenly find himself in possession of funds and desire to break the contract and make repayment at an earlier date. It does not follow that the creditor should be forced to accept such (repayment before the date stipulated contrary to the principles laid down in the case of mortgages that a debtor should be allowed to pay off a simple money bond by means of making a default. I think therefore that the reasoning in the Privy Council ruling in question will apply also in the present case.

4. Further it would be extremely awkward to have one rule of limitation applying in the case of mortgages, and a different rule of limitation applying in the case of simple money bonds where the terms and conditions were in identical language. The next argument which was made was on the difference in language between Article 132 and Article 68. In Article 132 which is for enforcing payment, of money charged on immovable property limitation begins to run from the time 'when the money sued for becomes due.' In article 68 for a suit on a bond subject to a condition limitation begins to run from the time 'when the condition is broken.' Learned Counsel therefore argued that the expression was different in regard to a simple money bond. But a simple money 'bond is governed not only by Article 68, but also by Article 66 which provides for a suit on a simple bond where a day is specified for payment that time runs from 'the day so specified.' In a bond like I the present if no default in payment of interest is made then Article 66 applies for limitation. If, on the other hand, default is made in payment of interest then Article 68 applies. The two articles therefore must be read together in the case of the bond in suit, an limitation therefore runs either from the date specified for payment of the bond or from the date when the condition as regards payment of interest is broken. The two Articles 66 and 68 read together are in my opinion tantamount to Article 132 and the expression 'when the money sued for becomes due' would apply to either Article 66 or Article 68.

5. Learned Counsel also argued that Article 80 would apply to the bond in suit, that is, for a suit on a bond not herein expressly provided for. If that article is taken limitation runs from the time when the bond becomes payable. Again I find no

distinction to be drawn between this period and the period for Article 132. Learned Counsel also pointed out that in Article 75 for instalment bonds there was a provision in the column of time in regard to waiver and that provision does not appear in the articles which would refer to the bond in suit. That may be so, but in reply it may be said that there is no provision in Article 132 for the period from which time begins to run for waiver. The ruling of their Lordships of the Privy Council in *Lasa Din v. Gulab Kunwar* 1932 P.C. 207 in regard to mortgages has been applied by a Bench of this Court to the case of a simple money bond in *Lalta Prasad v. Gajadhar Shukul* 1933 All. 235. The bond there had conditions similar to the present bond and I consider that no distinction can be drawn between that case and the present. Reference was also made to *Muhammad Husain v. Sanwal Das* 1934 All. 397 where the ruling of their Lordships had been followed in the case of the mortgage bond.

6. For the opposite party it was admitted that there was no ruling of any Bench of this Court holding the view expressed by the Court below since the ruling had been given by their Lordships of the Privy Council in *Lasa Din v. Gulab Kunwar* 1932 P.C. 207. For these reasons I consider that the suit of the plaintiff is within time and accordingly I set aside the order of the lower Court and remand the case for decision on the merits. The costs hitherto incurred will be costs in the suit. Court-fees of this Court will be returned to the applicant in revision.