

Thakar Das and ors. Vs. Sant Ram

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Court : Punjab and Haryana

Decided On : Jul-27-1948

Reported in : AIR1949P& H219

Appellant : Thakar Das and ors.

Respondent : Sant Ram

Judgement :

ORDER

Achhru, J.

1. This is a petition for revision of the order of the learned Senior Subordinate Judge of Dharamsala reversing on appeal the decision of the Subordinate Judge of Kangra who had decreed the plaintiffs' suit against the defendant for recovery of a sum of Rs. 386 on the basis of a pronote dated 15th July 1939 and dismissing the suit as barred by time.

2. Prima facie the suit was barred by limitation on the date on which it was instituted. Exemption from the law of limitation was, however, claimed by the plaintiffs on the ground that on 19th Magh 1998 corresponding to Slat January 1942 a sum of Rs. 49 had been paid by the defendant in part payment of the principal and the fact of such payment was duly endorsed on the pronote by him under his own band. The learned Senior Subordinate Judge is of the opinion that the endorsement relied on by the plaintiffs cannot extend limitation under Section

20, Limitation Act, because it does not state whether the payment of Rs. 49 had been made by the defendant on account of interest as such or in part payment of the principal but evidences only a payment in general account. In the petition for revision it is urged that even though the endorsement cannot extend limitation under Section 20, it obviously amounts to an acknowledgment within the meaning of Section 19, Limitation Act, and must, therefore, be held to save limitation under that section.

3. After reading the endorsement I am clearly of the opinion that the contention of the learned counsel for the petitioners is well founded and must; prevail. The endorsement in question reads as follows:

Rs. 49 Sambat 1997 Bhadon Parwishta 5 arambh Sambat 1998 Magh Parwishta 19 shud uchabati de yori kari jama kite Sant Ramen hathin aj Sambat 98 Magh. Parwishta 19 baqalam khud Sant Ram Chachian.

The above endorsement can be translated in English as follows:

Credited Rs. 49, the total o the sums borrowed from time to time between 5th Bhadon Sambat 1997 and 19th Magh Sambat 1998 in the hand of Sant Ram to-day the 19th Magh Sambat 1998. Signed by Sant Ram Chaehian.

The rule of law that is deducible from the relevant authorities is that while a mere endorsement of payment does not constitute an acknowledgment within the meaning of Section 19, if the endorsement is so worded that an acknowledgment of the debt can be read into it, either in view of the express words used or by necessary implication, such endorsement may amount to an acknowledgment within the meaning of the afore, said section. The test that is generally to be applied in deciding whether the endorsement constitutes such an acknowledgment is to see if it is possible to read the words used as acknowledging liability for no more than the amount actually paid. Applying this test to the present case, I am clearly of the opinion that the endorsement does constitute such an acknowledgment. Where a note is made on a document creating liability against the executant of the document as to a certain amount having been credited to such an executant the necessary and inevitable inference is that the amount has

been credited in the account evidenced by the original document or towards the liability created by that document. Such a note where made by the debtor himself must be held to constitute an acknowledgment by him of the liability evidenced by the document on which it is made.

4. The learned Counsel for the respondent drew my attention to a Division Bench judgment of the High Court of Lahore reported as *Dial Singh v. Mahomed Ali* A.I.R. 1944 Lah. 88 where an endorsement to the effect that Rs. 20 has been paid was held not to amount to an acknowledgment of the liability created by the document. I can discover no analogy between the language of the endorsement which formed the subject-matter of dispute in the case decided by the Division Bench and the endorsement with which I have got to deal. In the endorsement with which the Division Bench was concerned the language used did not prove any conscious admission of the payer's liability for anything in excess of the amount paid by him, he having made no reference at all to the original liability. An endorsement to the effect that a certain sum of money is credited necessarily presupposes the existence of an account to which the amount is to be credited. It is well settled that a mere admission of the existence of an account without admitting the amount due in that account is sufficient acknowledgment of liability for the amount which may eventually be found due under that account.

5. It is contended by the learned Counsel for the respondent that the plaintiffs having claimed exemption from the law of limitation only under Section 20 on the ground of a part payment of the principal cannot now be permitted to claim exemption on the ground of acknowledgment under Section 19. In *Parmeshri Das v. Fakiria* A.I.R. 1922 Lah. 230, a Division Bench of the High Court of Lahore held that where the plaintiff mentions one ground of exemption in the plaint, he is not debarred from taking another and an inconsistent ground to get over the bar of limitation.

6. It is next urged that the petitioners never having relied on Section 19 before the lower appellate Court cannot be permitted in revision to make out a new case and that in any event this Court cannot in the exercise of its revisional jurisdiction grant them relief on a ground not urged before the lower appellate Court. I am, however,

not at all impressed by this contention of the learned counsel. The petitioners relied on the endorsement on the pronote as extending limitation.

7. The question whether that endorsement did or did not extend limitation under the provisions of any of the sections of the Limitation Act was a question for the Court to decide in respect of altogether of the arguments advanced before it. If in a particular case a party is either not represented by counsel or is represented by an inefficient and incompetent counsel who is unable to appreciate the legal implications of the contents of a document which forms the basis of the claim it does not mean that the Court itself is under no obligation to apply its own mind to the matter and to see what provision of the law is precisely applicable to the facts disclosed.

8. The learned Senior Subordinate Judge not having applied his mind to the question whether the endorsement on the pronote did or did not amount to an acknowledgment within the meaning of Section 19 and not having adverted to the afore said section and on its clear language the said endorsement quite evidently attracting the application of Section 19, I do not see why appropriate relief is not to be granted to the petitioners in revision. In my view, the learned Senior Subordinate Judge by not applying his mind to the above aspect of the question must be deemed to have acted with material irregularity in the exercise of his jurisdiction.

9. For the reasons given above, I allow this petition and setting aside the judgment and the decree of the learned Senior Subordinate Judge restore the decree of the learned trial Judge. In view, however, of the fact that the plaintiffs' counsel in the Courts below failed to draw the attention of those Courts to Section 19, I leave the parties to bear their own costs throughout.