

Gur Singh Vs. Narad

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Court : Delhi

Decided On : Jun-27-1967

Reported in : 4(1968)DLT90

Judge : S.K.Kapur, J.

Acts : Limitation Act, 1908 - Sections 29

Appeal No. : Civil Revision Appeal No. 14 of 1965

Appellant : Gur Singh

Respondent : Narad

Advocate for Pet/Ap. : T.P.Vaidya and; Bhagat Ram, Advs

Judgement :

S.K. Kapur, J.

(1) Gur Singh plaintiff instituted a suit against Narad defendant for recovery of Rs. 450.00 on the basis of a bond dated May 22, 1956, on May 17, 1962. Admittedly on that date the suit was barred by time if the date of accrual be cause of action taken as May 22, 1956. The plaintiff claimed the benefit of section 20 of the Indian Limitation Act, 1908, on the ground that before the expiration of the period prescribed for filing the suit the defendant had made part payments on May 18, 1959, and December 27, 1960, and the acknowledgment of those payments

appeared in writings signed by the defendant. There is a note dated May 18, 1959, Exhibit PB/3, on the back of the bond and signed by the defendant acknowledging the payment of Rs. 10.00. If this is held to be a part payment sufficient to start a fresh period of limitation under section 20 of the Indian Limitation Act, the suit would be admittedly within time. The trial Court by judgment dated August 31, 1963, passed a decree for Rs, 279.00 in favor of the plaintiff. The defendant filed an appeal which was allowed by the learned District Judge. The suit of the plaintiff was accordingly dismissed. The plaintiff had also filed cross-objections against the judgment of the trial Court partly dismissing his suit which were not considered by the learned District Judge because he had dismissed the suit as barred by time. The learned District Judge had recourse to several authorities dealing with section 20 of the Indian Limitation Act before its amendment in 1942 and decided that since the plaintiff had appropriated Rs. 10.00 towards interest that could not save limitation. It is, therefore, appropriate to read the provisions of section 20 before amendment by the Indian limitation amendment) Act 1942 (Act No. Xvi of 1942), and after the amendment. The relevant parts of the section before and after amendment read as under : Section 20 before amendment.

'WHEN interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf, or when a part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made: Provided that, in the case of partpayment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.'

Section 20 after amendment.

'WHERE payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorized agent, a fresh period of limitation shall be computed from the time when the payment was made. Provided that, save in the case of a payment of interest made before the 1st day of January 1928, an

acknowledgment of the payment appears in the handwriting of, or in a writing, signed by, the parson making the payment.'

(2) The amendment appears to have been made to do away with the distinction between payment of interest and of principal. By the amended section, therefore, payment towards a debt be that in payment of interest or in payment of principal is treated as payment 'on account of a debt'. The old section made a distinction between a payment of interest and payment of principal. Payment towards interest could start a fresh period of limitation only if it was a payment of interest 'as such. payment on account of principal need nto have been payment 'as such. Consequently, under the old section if a payment was made without any specification and the creditor appropriated it towards interest it may nto have been possible to treat the payment of interest 'as such' but since the words 'as such' were missing in the part of the section dealing with payment of the principal the creditor could appropriate such a payment to wards the principal debt and thus take benefit of section 20. See Rama Shah v. Lai Chand. It appears that the amendment was introduced to do away with that distinction. Under the amended section all that is required is that the debtor should pay on account of a debt. It is, therefore, indifferent whether the payment is made towards the principal or towards the interest and so long the payment relates to the debt in question for recovery of which a fresh period of limitation is claimed it would be enough to extend the period of limitation provided the toher conditions as to signature or writing are satisfied.

(3) The learned counsel for the defendant pleaded that in spite of the change introduced in 1942 it was necessary for the creditor to appropriate the amount towards the principal. The question of appropriation may possibly arise where there are more than one debts due by a debtor to a creditor and the debtor makes payment without specifying the debt towards which it was paid but the necessity of appropriation does nto appear to arise where payment is made towards the debt sued for. It must, therefore, be held that the suit of the plaintiff was within time. The Judgment of the District Judge is, therefore, set aside and a decree passed in favor of the plaintiff for Rs. 279.00. The matter will, however go back to the District Judge for decision on the plaintiff's cross-objection. The parties will, bear

their own costs in this Court.

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