

**Gopala Vs. Paramma**

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**SooperKanoon Citation :** [sooperkanoon.com/779720](http://sooperkanoon.com/779720)

**Court :** Chennai

**Decided On :** Aug-27-1884

**Reported in :** (1883)ILR7Mad583

**Judge :** Charles A. Turner, Kt., C.J. and ;Brandt, J.

**Appellant :** Gopala

**Respondent :** Paramma

**Judgement :**

Charles A. Turner, Kt., C.J.

1. This suit was brought to recover payment of three instalments, each of Rs. 75, due on a bond executed on 17th September 1874.
2. The bond was executed to secure the repayment of Rs. 1,200 without interest in sixteen yearly instalments of Rs. 75, and it contained a condition that, if failure was made in the payment of any one instalment at the date stipulated, the whole sum then remaining due should be forthwith exigible. It is admitted that default was made in payment of the first six instalments, and the instalments now sued for are the seventh, eighth, and ninth.
3. The defendant pleads that, inasmuch as the holder of the bond did not bring suit within three years after default was made in payment of the first instalment, the right to sue for the whole, and, therefore, for any part of the bond debt, has

become barred. The plaintiff contends that it was optional to the bond-holder to waive the benefit of the condition, and that the condition was waived; and this being so, the right to sue for the subsequent instalments has not been lost. The terms of the instrument rendering the whole sum exigible from the date on which default was made in the payment of any instalment, the Limitation Act declares that the creditor must sue for the debt, and every part of it, within the period prescribed, unless he can show that he had waived the default. It lies upon creditor who seeks to recover instalments, which in due course would have accrued subsequently to the date on which the recovery of the debt in full has become barred, to prove a waiver. Waiver is not to be inferred from a mere abstinence to enforce the remedy which accrued to the creditor on the default--vide *Hemp v. Garland* 4 Q.B. 519 *Sheppard v. Allen* 3 T. 78 *Cheni Bash Shaha v. Kadum Mundul* I.L.R. 5 Cal. 97. In this case the plaintiff's offered no evidence of anything by which a waiver could be proved, or from which it is to be inferred. All that appeared was that the creditor had remained inactive. The suit was barred by limitation. The decree must be set aside and the claim dismissed with costs.