

Upendra Nath Vs. Kumar Bimalendu

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Court : Kolkata

Decided On : Jan-17-1944

Reported in : AIR1944Cal302a

Appellant : Upendra Nath

Respondent : Kumar Bimalendu

Judgement :

1. The facts so far as they are relevant for the purpose of this appeal are these: The defendant placed the plaintiff in charge of certain litigations started by one Rasik Chandra Khan against the defendant. The plaintiff spent Rs. 700 out of his own pocket in conducting these criminal proceedings. The criminal proceedings came to an end in July 1931. There was an adjustment of account between the plaintiff and the defendant in September 1935. On 5th January 1938 the plaintiff raised the present suit for recovery of these 700 rupees along with certain other sums due to him from the defendant. The point for determination in this appeal is whether the plaintiff's suit to recover Rs. 700 from the defendant advanced by him from his own pocket in conducting the criminal case is barred by limitation. Mitter J. has held that Article 61, Limitation Act, applies to the facts of the present case. The learned judge has further held that even if Article 83 applies, the suit is barred by limitation.

2. The plaintiff was the defendant's agent for looking after the criminal litigations started by Rasik Chandra Khan against the defendant. Under Section 222,

Contract Act, the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him. It is not disputed in this case that the plaintiff will pay the costs of the appellant in this Court and in the lower appellate Court the costs of this Court being assessed at two gold mohurs. Dr. Basak asked for leave to appeal. I have already pointed out how inappropriate it is that the Court of Wards should try to dodge out of payment of rent and I shall do nothing to help them to do so. The leave asked for is refused spent Rs. 700 out of his own pocket in exercise of the authority conferred upon him by the defendant. Under Article 83, Limitation Act, a suit upon a contract to indemnify is to be brought within three years from the time when the plaintiff is actually damaged. In *Kandaswamy v. Ayayambal* ('11) 34 Mad. 167, the Madras High Court said: 'The principal's duty to indemnify is no part of the contract (contract of agency). It is an obligation imposed by the law and is attached to the relation of principal and agent constituted by act of parties.' According to this view, the liability of the principal to indemnify the agent Under Section 222, Contract Act, is not a liability under a contract within the meaning of Article 83, Limitation Act. In *Manghi Ram v. Ramn Saran Das Maman Chand* ('14) 1 A.I.R. 1914 Lah. 407 the Punjab Chief Court held: 'Section 222, Contract Act, purports to be and is an integral part of the law of contract and it merely affirms and expressly lays down one of the principles of the law of contract. In effect it says that, unless there be some agreement to the contrary, the establishment of the relation of principal and agent shall inevitably bring in its train the liability of the principal to indemnify the agent. The right, instead of being merely implied in accordance with general principles, is expressed clearly by the Statute.' According to this decision of the Punjab Chief Court, the liability of the principal to indemnify the agent under Section 222, Contract Act, is a liability under a contract within the meaning of Article 83, Limitation Act. In *Ram Barai v. Sheodeni Singh* ('12) 16 C.W.N. 1040, Jenkins C. J. and Chatterjea J. observed: 'As the contract is one of indemnity, the article that applies is Article 83, possibly extended by Article 116. But even if it be taken that Article 83 alone is the governing article and the benefit of the extension provided by Article 116 cannot be claimed, still the suit is within time, as it is within three years of the time when the plaintiff was actually damaged. All that was urged against this view is that a contract in Article 83

means an express contract. I can see no warrant for placing that restricted meaning on the words of Article 83. It is a meaning which the words do not themselves require, nor would it be in accordance with the view of contract expressed in the Contract Act.' Once the relationship of principal and agent is established, Section 222, Contract Act, comes into operation. The obligation of the principal to indemnify the agent, therefore, flows from the nexus of the principal and agent. It is a part of the contract of agency, although it is an obligation imposed by statute. We are, therefore, of opinion that the liability Under Section 222, Contract Act, to indemnify the agent is a liability under a contract within the meaning of Article 83, Limitation Act. The question then is, when was the plaintiff actually damnified. An agent is damnified when he makes the payment on behalf of the principal; in other words, when the expenses incurred by him are recoverable. In this case, the agent made the payments long before three years before the institution of the present suit. The suit for recovery of money spent by the plaintiff on behalf of the defendant for conducting the criminal litigations must, therefore, be held to be barred by limitation under Article 83, Limitation Act. The appeal accordingly fails and is dismissed. There will be no Order as to costs.