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Court : Kolkata

Decided On : Aug-13-1917

Reported in : 43Ind.Cas.812

Judge : Asutosh Mookerjee and ;Beachcroft, JJ.

Appellant : Charu Chandra Bhattacharjee and anr.

Respondent : Karam Buxa Sikdar

Judgement :

1. This Rule has been granted in connection with a suit for recovery of money due on a bond. On the 28th June 1911 the defendant borrowed from the plaintiffs a sum of Rs. 80 which was to carry interest at two per cent per mensem with annual rests. The bond provided that 'Whenever any sum might be paid by the debtor to the creditor, the debtor would get an entry made on the back of the bond, of payment against the interest, and, after the interest had been satisfied, of payment against the principal to the extent of the surplus.' On the 11th May 1912, the debtor paid Rs. 14-6-0, and an entry to this effect was made on the back of the bond. There were two similar payments subsequently, namely, Rs. 16 on the 2nd February 1914 and Rs. 60 on the 11th May 1915. This suit was instituted on the 2nd January 1917 for recovery of Rs. 55 as then due on the bond. The defendant pleaded that the. Claim had been satisfied in full and in the alternative, that if anything was due, the claim was barred by limitation. The Small Cause Court Judge has found against the defendant on the first point, and in his favour on the

second point. The Period of limitation applicable is three years under Article 67 of the Second Schedule to the Indian Limitation Act and the question in controversy is, whether, within three years antecedent to the institution of the suit, interest had been paid as such within the meaning of Section 20 of the Indian Limitation Act.

2. Section 20 provides that where interest on a debt is, before the expiration of the prescribed period, paid as such by the person who is liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made. It is plain that some force must be attributed to the expression as such, and that consequently, something more than mere payment of interest must be established to entitle the creditor to the benefit of Section 20. The debtor has contended that there must be proof that, at the time the interest was paid, the debtor expressly stated that the payment was on account of interest, and that as, in the present case, the Small Cause Court Judge has found that nothing was said by either party when the payments were made, Section 20 is of no avail to the creditor. In support of this view, reliance has been placed upon the decisions in *Hanmautmal Mutichand v. Rama Bai* 3B. 198 : 2 Ind. Dec (N.S.) 133 and *Mohammad Abdullah Khan v. Bank Instalment Co.* 2 Ind. Cas. 379 : 3l A. 495 : 6 A.L.J. 611. These cases affirm the proposition that the meaning of the section is that there must be either an express intimation by the debtor, or proof of the existence of circumstances, which show that the payment was on account of interest on the debt sued upon, in other words, if payments are made in reduction of a general balance of account without intimation by the debtor that they are to be appropriated in satisfaction of interest, such payments are not payments of interest as such within the meaning of the section. This view is also supported by the observation in *Surju Prasad Singh v. Khuahish Ali* 4 A. 512 : A.W.N. (1882) 114 : 2 Ind. Dec. (N.S.) 1089. and *Nilkanth v. Dattatraya* 4 B. 103 : 4 Ind. Jur. 580 : 2 Ind. Dec. (N.S.) 578. All the cases mentioned are, however, clearly distinguishable. In the case before us [which in this respect differs from *Biswanath Bhattacharjee v. Sameswar Sarma* 41 Ind. Cas. 348 : 21 C.W.N. 1055] there was an express provision in the bond that whenever any payment should be made by the debtor to the creditor, the debtor would obtain an entry made on the back of the bond to the effect that the payment had been made on account of interest, and that it was only in the event of a payment exceeding the amount then due as interest that the

surplus would be applied in reduction of the principal. If, now, we confine our attention to the payment made on the 2nd February 1916, we find that at that time, a sum considerably in excess of Rs. 16 was due on account of interest. Consequently, pursuant to the agreement between the parties, the only payment which the debtor could make would be a payment as against the interest first. Though nothing was expressly stated by either of the parties at the time, the inference is irresistible that the payment of Rs. 26 on the 2nd February 1914 was a payment on account of interest as such. This view is supported by the observation in *Ranchordas v. Pestonji* 9 Bom. L.R. 1329 at p. 1331: 'The section requires something more than the English Law does, namely, that interest must be paid as interest, that is, it must be distinctly stated at the time of payment that it is paid on account of interest, or else there must be evidence from which the payment as interest may be distinctly inferred, and if so, the mere proof of payment is sufficient.' To the same effect is the decision in *Gopi Nath Singh v. Hardeo Singh* 1 Ind. Cas. 137 : 6 A.L.J. 207 : 31 A. 285.

3. The principle applicable to cases of this character was widely stated by Blackburn, J., in *Morgan v. Rowlands* (1872) 7 Q.B. 493 : 41 L.J.Q.B. 187 : 26 L T 855 : 20 W.R. 726. The principle is that any such payment is an acknowledgment of the existing debt, from which it implies a promise to pay the residue or the principal as the case may be, the payment must, however, be such that from it the promise to pay can be inferred in fact and not merely implied in law; in other words, the payment must be of an unambiguous character. If the payment is of an ambiguous character and it is merely open to the creditor to make an appropriation according to his choice, the payment cannot be treated as a payment of interest as such. No doubt, a different view was indicated by Knight Bruce, L.J. in the case of *Nash v. Hodgson* (1855) 6 De G M. & G. 474 : 25 L.J. Ch. 186 : 43 E.R. 1318 : 1 Jur. (N.S.) 946 : 3 W.R. 590 : 106 R.R. 157, in which he held apparently that where no appropriation is made by a debtor the creditor has a right to make such an appropriation as will save limitation. The correctness of this view, however, has been doubted by Starling, L.J., in *Friend v. Young* (1897) 2 Ch : 421 : 66 L.J. Ch. 737 : 77 L.T. 50 : 46 W.R. 130 (1897) 2 Ch : 421 : 66 L.J. Ch. 737 : 77 L.T. 50 : 46 W.R. 130. But whatever the law in England may be, the terms of Section 20 of the Indian Limitation Act are, in our opinion, perfectly plain. We hold that in order to

bring a case within the section, it is not essential that the debtor should, on the occasion of every payment, state explicitly that the payment is made on account of interest as such; it is sufficient if circumstances exist which make the conclusion inevitable that the payment must have been made on account of interest; and the case before us is precisely of that description.

4. The result is that this Rule is made absolute, the decree of dismissal made by the Small Cause Court Judge set aside and the suit decreed with costs. The petitioners are also entitled to their costs of this Rule. We assess the hearing fee at one gold mohur.

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