

ORIGINAL CIVIL.

Before Page J.

RAMKUMAR SEWCHAND ROY

v.

NANURAM PODDAR.*

1925

July 20.

Limitation—Limitation Act (IX of 1908), s. 20—“The person making the payment” under s. 20, meaning of.

Where the defendant borrowed some money from the plaintiff firm, and N, who was and purported to act as the agent of the defendant, sent to the plaintiffs Rs. 1,000 by a messenger as part payment of the debt, and with it a slip signed by N directing the plaintiffs to credit the amount so paid to the defendant :—

Held, that N was “the person making the payment” within the meaning of section 20 of the Limitation Act, and, therefore, that the suit was not barred by limitation.

Joshi Bhaishankar v. Bai Parvati (1) and Sarajubala Debi v. Sarada Nath Bhattacharjee (2), referred to.

THIS was an action for the recovery of Rs. 3,172-3. The plaintiff firm lent the money to the defendant, who was alleged to have made a part payment of the debt through his agent before the time for paying the whole amount was barred by limitation.

Mr. S. N. Banerjee and *Mr. R. N. Banerjee*, for the plaintiff firm.

Mr. B. Basu, for the defendant.

PAGE J. This is a suit brought to recover money lent. The munib gomascha of the plaintiff firm gave evidence in support of the claim, but no evidence was adduced by the defendant in rebuttal. I am satisfied that the sums claimed as having been lent by the plaintiffs to the defendant were lent as alleged. The

* Original Civil Suit No. 2625 of 1923.

(1) (1901) I. L. R. 26 Bom. 246.

(2) (1918) 23 C. W. N. 336.

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claim, however, is barred by limitation unless a payment of Rs. 1,000 alleged to have been made on behalf of the defendant on the 3rd October 1921 amounts to a part payment within section 20 of the Limitation Act 1908 of the moneys due by the defendant to the plaintiffs in respect of the sums which had been lent. The munib gomastha of the plaintiffs stated that one Naitram Jajodia, who was a friend and purported to act as the agent of the defendant, sent this sum of Rs. 1,000 by a messenger who handed the money to the plaintiffs, and at the same time delivered to the plaintiffs a slip in the following form :—

“ To Ramkumar Sewchand Roy,

“ Please accept compliments of Naitramjee. I send
“ one piece note for Rs. 1,000 through my man. Please
“ credit same to Nanuramjee Poddar, Miti Aswin Sudi,
“ 2nd, S. 1978”.

The munib gomastha further stated that this slip was in the handwriting of Naitram, and that after the money had been paid he had several interviews with the defendant who enquired on each occasion if the Rs. 1,000 which he had sent had been paid, and asked for a statement showing the state of the account for money lent to him by the plaintiffs. Having regard to the evidence I come to the conclusion that this sum of Rs. 1,000 was paid by Naitram on behalf of Nanuram to be placed to the credit of the debt for moneys lent to, and owing by, the defendant, and that Naitram was duly authorised by the defendant to make this payment. In these circumstances if the slip on which the fact of payment is stated in the handwriting of Naitram can be said to be in the handwriting of “ the person making the payment”, then, in my opinion, the plaintiffs’ suit is not barred. I am clearly of opinion that Naitram was the person who made the payment within section 20 of the Limitation

Act. The intention of the Legislature in enacting section 20 of the Limitation Act appears to have been that a debtor should not be bound by the payment of part of the debt unless the person who in substance, though perhaps not in form, made the payment has stated in writing that such payment had been made. Now, who "makes the payment" within section 20? Is it the man who physically hands over the money, which apparently was the view held by the Bombay High Court in *Joshi Bhaishankar v. Bai Parvati* (1)? In my opinion, that need not necessarily be the case. For instance, where a duly authorised agent sends a cheque or notes by post the person actually making the payment and physically handing over the notes or the cheque is the postman, or again, the money may have been sent by a duly authorised agent through a peon, and in that case it is the peon who physically hands over the money. * But, in my opinion, neither the peon nor the postman " makes the payment " within section 20 of the Limitation Act, for the postman or the peon is merely a conduit pipe through which the money passes to the creditor, the duly authorised agent who sent the notes or cheque being regarded as the person who made the payment. That appears to me to be the clear meaning of section 20 of the Limitation Act; *Sarajubala Devi's case* (2).

In my opinion, therefore, the suit is not barred by limitation, and there will be a decree for the plaintiffs for Rs. 3,172-3. Interest on judgment at 6 per cent. Costs on scale No. 2.

Attorney for the plaintiff firm: *Moses*.

Attorneys for the defendant: *Chaudhuri & Chaudhuri*.

B. M. S.

(1) (1901) I. L. R. 26 Bom. 246. (2) (1918) 23 C. W. N. 336.