

CIVIL RULE.

Before Rankin C. J.

1928

Feb. 1.

DEBENDRA NATH ROY

v.

KARTIC PRASAD DAS.*

Limitation—Vacation—Money bond—Payment of interest more than three years after the date limited for payment, but within a vacation, effect of—Limitation Act (IX of 1908), s. 20.

Payment of interest on a simple money bond after the expiration of of three years from the date limited for payment, when the Court was closed, cannot save limitation under section 20 of the Limitation Act, if a suit on the bond is not brought on the day that the Court reopens after that vacation.

Bai Hemkore v. Masamalli (1) approved.

Visram Vasudeo Thakoor v. Tabaji Balaji Wagh (2) dissented from.

Sheo Partab Singh v. Tajammul Husain (3) distinguished.

CIVIL RULE on behalf of the plaintiffs.

One Seetanath Ray, since deceased, advanced a sum of Rs. 139 as loan, bearing interest at the rate of Rs. 2 per cent. per mensem, to Kartikprasad Das, the opposite party in this Rule, on the 28th Chaitra, 1324 B.S., corresponding to 11th April, 1918, on a simple money bond. The time for repayment was the month of Aswin, 1328 B.S., *i.e.*, up to 18th October, 1921. The debtor paid Rs. 101 towards interest on the 12th Kartik, 1328, B.S., corresponding to 31st October, 1921. Seetanath died in Aswin, 1330 B.S. Thereafter, his sons, Debendranath Roy and two others, asked Kartik

*Civil Rule No. 1319 of 1927, against the order of the Additional District Judge of Berhampore, dated June 6, 1927.

(1) (1902) I. L. R. 26 Bom. 782. (2) (1912) 15 Bom. L. R. 348.

(3) (1926) I. L. R. 49 All. 67.

to pay the sum with interest. They then brought this suit in the Court of the Munsif at Jangipur in district Murshidabad on the 31st October, 1924, for the realisation of principal and interest still due. The Court of first instance held that though the right to sue survived up to the 2nd November, 1921, when the Court re-opened after the Pooja vacation, the suit was barred on the 18th October, 1921, *i.e.*, within the period of the civil court vacation and that though there was payment on the 31st October, 1921, the payment so made was after the period of limitation and as such the suit was barred by limitation. The plaintiffs appealed. The District Judge of Murshidabad dismissed the appeal. The plaintiffs, thereupon, moved the High Court and obtained this Rule.

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Babu Durga Chandra Mitra, for the petitioners. The right to sue survived up to the 2nd November, 1921, when the Court re-opened after the vacation. The payment of interest on the 31st October, 1921, gave a fresh start to the period of limitation. This suit, which was filed within three years of the date of payment of interest was in time. The Bombay case of *Bai Hemkore v. Masamalli* (1) is against me. But a later case of the same Court is in my favour: *Visram Vasudeo Thakoor v. Tabaji Balaji Wagh* (2). A very recent Allahabad case has also dissented from the earlier Bombay case. See *Sheo Partab Singh v. Tajammul Husain* (3).

Dr. Bijan Kumar Mukherji, for the opposite party, not called on.

RANKIN C. J. In my opinion this Rule must be discharged. It appears that the suit was on a bond. The due date of the bond was in October, 1918 and no

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payment of interest was made within three years. Rs. 101 was paid some twelve days after the expiration of three years from the date limited for payment. The date on which Rs. 101 was paid was the 31st of October and at that time it is said that the Court was closed, the plaintiff being in a position that he would be in time to sue if he brought his suit on the re-opening day. He did not bring any suit on the re-opening day, but in the meantime he took this payment of Rs. 101 and the question now arises whether that payment of interest has saved limitation under section 20 of the Limitation Act.

It is suggested and it may quite well be true—that but for the payment of the Rs. 101 the plaintiff would have brought a suit on the re-opening day; but when one comes to consider this matter one must do it according to the strict principles which govern limitation. It is quite obvious that the plaintiff could, if he liked, have refused to take Rs. 101, have brought his suit and then settled it by a separate agreement or he might have made a separate agreement without bringing his suit at all. All sorts of different things the plaintiff could have done to keep himself right. I am only concerned with the question whether by taking Rs. 101 for interest at that time, after three years had expired, he did save limitation. Upon that it seems to me that on the face of the Limitation Act there can be no doubt at all.

If one looks at section 3, one finds that it provides that “subject to the provisions contained in sections 4 to 25 inclusive, every suit instituted after the period of limitation prescribed therefor by the first schedule shall be dismissed”. It does not say that every suit instituted after that period shall be dismissed, but that subject to certain provisions every suit instituted after that period shall be dismissed.

When one comes to section 20, one finds that it provides: "where interest on a debt is, before the expiration of the prescribed period, paid as such, a fresh period of limitation shall be computed from the time when the payment was made". The reference there is "before the expiration of the prescribed period". That clearly means the period prescribed in the first schedule. It is said that if one reads section 4 together with section 3, one finds that the prescribed period is extended; but that is not so. Section 4 is a provision to say that where the period of limitation prescribed expires on a day when the Court is closed the suit may be instituted on the day that the Court re-opens, that is to say, it may be instituted notwithstanding that the period of limitation prescribed has expired.

Having dealt with the matter on the language of the Act, I would, also, like to point out that it is quite unworkable and really impossible to suppose that the effect of a payment or the effect of an acknowledgment should depend upon the day on which somebody who never brought a suit at all could have brought it. In this case there never was a suit. In many cases if there is a payment of interest or an acknowledgment, *ex hypothesi* there will be no suit. There are more Courts than one sometimes in which suits can be brought. If one was to introduce into the wording of sections 19 and 20, the consideration that is brought into force by section 4, the Limitation Law would become extremely unworkable.

Now, dealing with this matter from the point of view of authority, it is conceded very properly by the learned vakil who appears for the petitioner that the Bombay High Court in the case of *Bai Hemkore v. Masamalli* (1) has decided against him. That was a

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decision of Sir Lawrence Jenkins and Mr. Justice Aston and I would only say that I agree with what the learned Judges there laid down. In the same way we have the case of *Sheo Partab Singh v. Tajammul Husain* (1), where the learned Judges were dealing with a special question arising under section 31 of the Limitation Act and they had cited to them the Bombay case to which I have referred. What is said by the learned Chief Justice is this: "In our view that case can be distinguished. Section 4 does not prescribe any special period of limitation for any kind of suit. It only lays down that when the prescribed period of limitation expires on a day when the Court is closed then the suit may be instituted on the day when the Court re-opens. We are in full agreement with the view taken by the Bombay High Court in the ruling mentioned". He goes on to distinguish the special case of section 31. Section 31 is not one of the sections which is referred to in section 3 and it is a very special section. It is a section which gives to certain people in the United Provinces a longer period of limitation for certain suits by reason of the fact that the High Court having jurisdiction had been previously of the opinion (which the Privy Council has overruled) that the plaintiff in certain kinds of mortgage suits had sixty years within which to bring his suit. That section was really intended for a limited class of people to amend the schedule to the Limitation Act and substitute for them a longer period than the period which the schedule really mentions. The only authority in favour of the contention now put forward is the opinion of Mr. Justice Beaman in the case of *Visram Vasudeo Thakoor v. Tabaji Balaji Wagh* (2) and I have no hesitation in saying that

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I disagree entirely with the view taken by that learned Judge. He seems to me to have misinterpreted the Limitation Act, because he says: "So that it appears to me very hard to say that the acknowledgment was not made before the expiration of the period prescribed by limitation, for that really means the period within which a plaintiff may file his suit". If the learned Judge had only observed that the question there was not "the period prescribed by limitation" but the period prescribed by the schedule, he would have avoided falling into this error. I have no doubt that the decision of Sir Lawrence Jenkins to which Mr. Justice Beaman referred is right.

In these circumstances this Rule must be discharged with costs.

Rule discharged.

S. M.

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