## ORIGINAL CIVIL.

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*Before Lort-Williams J.*

# SRILAL SINGHANIA

*v.*

# ANANT LAL MANDAL.*

1939

Nov. 24.

**Jurisdiction**—*Promissory note payable on demand—Residence of promisee—Place of payment impliedly fixed—Duty of debtor to seek creditor—Indian Contract Act (IX of 1872), s. 49.*

A promissory note payable on demand was addressed to the promisee at Bhagalpur, where he then resided, but made no mention of the place of payment. The promisee resided in Calcutta at all other material times. In a suit on the note at Calcutta, the defendant pleaded want of jurisdiction and contended that there was a condition for payment of the note at Bhagalpur.

*Held*: (*i*) that it could not be implied from the note that payment was to be made at Bhagalpur;

(*ii*) that s. 49 of the Indian Contract Act did not apply to the case and, in any event, the section did not override the Common Law rule that the debtor should seek out his creditor and pay him;

*Tasliman Bibi* v. *Abdul Latif Miya* (1) followed;

*Soniram Jeetmull* v. *R. D. Tata & Co., Ltd.* (2) and *Raman Chettiyar* v. *Gopalachari* (3) relied on;

(*iii*) that by implication the note was payable in Calcutta, the usual place of residence of the promisee, and the Court there was competent to try the suit.

ORIGINAL SUIT.

The facts of the case and arguments at the hearing appear sufficiently from the judgment.

*A. K. Sarkar* for the plaintiff.

*B. Das (Jr.)* for the defendant.

*Original Suit No. 1813 of 1938.

(1) (1935) I.L.R. 63 Cal. 726.
(2) (1927) I. L. R. 5 Ran. 451; L. R. 54 I. A. 265.
(3) (1908) I. L. R. 31 Mad. 223.

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LORT-WILLIAMS J. The plaintiff sues to recover the sum of Rs. 2,019-6-0 due in respect of a promissory note executed in favour of one Shamal Ram Jhoonjhoon Walla on September 15, 1935 and endorsed by him in favour of the plaintiff on November 2, 1938.

On September 27, 1935, the defendant paid a sum of Rs. 50 in respect of the monies due under the note, and this payment was endorsed on the back of the note and signed by the defendant.

In his written statement, the defendant denied that the promissory note referred to any *bona fide* transactions, or that he had received any money on the basis of the note, or that he paid Rs. 50 or any other amount. Further, he pleaded the law of limitation and that the Court had no jurisdiction.

This defence seems to me quite hopeless, and I do not believe a word of his evidence in the witness box. He said nothing about the case set up in his written statement. He advanced a new and ridiculous story that he had repaid Jhoonjhoon Walla some three years ago out of a considerable sum, which he had obtained from the sale of wheat. This payment, according to him, was made in the *bâzâr* at Bhagalpur in the presence of a number of witnesses. None of the witnesses have appeared to support his statement, for the reason, as he admits, that he has not asked any of them to attend this Court to give evidence on his behalf. When he made the payment he did not ask for any receipt, nor obtain any receipt, nor did he recover the promissory note, his only explanation being that he had faith in Jhoonjhoon Walla. It is obvious that his story is a tissue of lies.

The only defence which has been urged by learned counsel on his behalf is that of limitation. The note

in suit was the last one of a series, beginning sometime in 1931, when Jhoonjhoon Walla made him a loan of Rs. 900, and a promissory note was given, which provided for repayment in Bhagalpur. Subsequently, there were other notes, which made no such provision, the explanation given by Jhoonjhoon Walla being that when the first note was made he was living regularly in Bhagalpur, but when the renewals were made, he had ceased to live permanently in Bhagalpur and spent most of the year in Calcutta, where he and the members of his joint family occupied rooms and carried on business. In view of these circumstances, he told the defendant that he might have to make payment either at Calcutta or at Benares or some other place, where Jhoonjhoon Walla happened to be living. For the same reason, no mention was made in the subsequent promissory notes of any place of payment.

The note is addressed to "Sri Babu Shamal Ram Jhoonjhoon Walla, of *Bâzâr* Shoojaganj, Bhagalpur", and the sum covered by the note is repayable on demand.

Learned counsel for the defendant has argued that because the note is addressed to Jhoonjhoon Walla, of *Bâzâr* Shoojaganj, Bhagalpur, it is implied that payment is to be made at Bhagalpur and therefore the note does contain a condition as to the place of payment.

I cannot agree with this contention. All the notes were addressed to Jhoonjhoon Walla, of *Bâzâr* Shoojaganj, Bhagalpur. The first one contained a specific provision that payment was to be made there, but this provision was absent from the subsequent documents.

The place of payment is important, for this reason. The suit was instituted on November 7,

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1938. The note, as I have already said, was made on September 13, 1935, and the payment of Rs. 50 was made on September 27, 1935. *Prima facie*, therefore, the period of limitation would expire on September 27, 1938.

If, therefore, counsel's contention on behalf of the defendant is correct, the plaintiff should have sued, or rather, Jhoonjhoon Walla should have sued in the Court at Bhagalpur, which was open on September 27, 1938 and both before and after that date. The result would have been that the period of limitation would have run out prior to the transfer to the present plaintiff on November 2, 1938. But counsel on behalf of the plaintiff contends that the place of payment was in Calcutta, not only because the defendant had agreed with the plaintiff to pay him either in Calcutta or at any other place where Jhoonjhoon Walla happened to be residing at the time, but because Jhoonjhoon Walla was living in Calcutta during the months of September, October and November, that is to say, at all material times for the purpose of this part of the argument.

Now, the High Court happened to be closed for the vacation on September 27, 1938 and did not open till November 7, 1938. In the meantime, on November 2, 1938, the endorsement had been made in favour of the present plaintiff and the present suit was instituted on the first day of the re-opening of the Court, namely, November 7, 1938. It follows therefore, if the place for payment was Calcutta, that the suit was instituted within the period of limitation and was in time.

It was decided in the case of *Tasliman Bibi* v. *Abdul Latif Miya* (1) that--

> "A suit on a contract can be instituted in the Court which has territorial "jurisdiction over the place where the contract has to be performed"

(1) (1935) I. L. R. 63 Cal. 726.

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and that

" the place of performance must be taken to be the place where the plaintiff " is residing on the principle that when the creditor is residing in the realm, " the debtor must follow the creditor and pay him, unless there is a different " contract between them, "

and that

" s. 49 of the Indian Contract Act does not get rid of inferences that should " justly be drawn from the terms of the contract itself and the necessities of " the case involving in the obligation to pay the creditor the further obliga- " tion of finding the creditor so as to pay him."

The learned Judge, R. C. Mitter J., who decided that case, relied upon a judgment of Lord Sumner in the case of *Soniram Jeetmull* v. *R. D. Tata & Co. Ltd.* (1) and certain observations made by that learned Judge throwing some doubts on the observations of Sir Lawrence Jenkins C. J. in the case of *Puttappa Manjaya* v. *Virabhadrappa* (2), the opinion of Sir Lawrence Jenkins being that the provisions under s. 49 of the Indian Contract Act to the effect that where no place is fixed for the performance of the contract it is the duty of the promisor to apply to the promisee to appoint a reasonable place for performance and performance at that place overrides the rule of the Common Law that the debtor must seek out his creditor and pay. In Lord Sumner's opinion this was not the effect of that section, and R. C. Mitter J. agreed with that view and I see no reason to disagree with him.

In the case decided by R. C. Mitter J. the promise was to be performed without application by the promisee, and therefore, *prima facie*, s. 49 of the Contract Act applied, in accordance with the terms of that section. In the present case, on the contrary, the promise is to be performed on demand, and therefore, s. 49 has no application. That was decided in the case of *Raman Chettiyar* v. *Gopalachari* (3), if any decision were necessary in view of the clear words of

(1) (1927) I. L. R. 5 Ran. 451 (457); L. R. 54 I. A. 265 (271).
(2) (1905) 7 Bom. L. R. 993.
(3) (1908) I. L. R. 31 Mad. 223, 228.

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the section. It follows that s. 49 having no application to the present case *a fortiori* the Common Law rule applies, and it being necessary for the debtor to seek out his creditor and pay him, in the absence of any agreed place for payment, the place for payment in the present case was Calcutta. Consequently, the endorsement in favour of the present plaintiff was within time and the suit was instituted before the period of limitation had run out.

For these reasons I must decide this point against the defendant with the result that there must be judgment for the plaintiff for the amount claimed with costs.

*Suit decreed.*

G. K. D.