

SUNDARA  
 AYYAR, J.  
 SESH-  
 CEELAN  
 CHETTY  
 ?  
 TRAFFIC  
 MANAGER,  
 HIS  
 HIGHNESS  
 THE  
 NIZAM'S  
 GUARANTEED  
 STATE  
 RAILWAY  
 COMPANY,  
 LIMITED.

by the Act. The plaintiff adduced no evidence to show that any other person was authorised to receive notice on behalf of the Company. It has been laid down in a series of cases that the proper person on whom notice should be served is the Agent. See *Woods v. Meher Ali Bepari*(1); *G.I.P. Railway Company v. Dewasi*(2); *Great Indian Peninsula Railway Company v. Chandra Bai*(3); *Nadiar Chand Shaha v. Wood*(4). No doubt it may be shown by evidence that some other officer of the Company had authority to receive the notice either by showing that he was the person who, according to the practice of the Company, dealt with the claims of the particular character in question or that there were rules framed by the Railway Company authorising him to receive the notice, or in some other legal manner. The plaintiff has not adduced any evidence in this case to prove that the Traffic Manager to whom the notice was sent was authorised to receive it. The only evidence to which the learned counsel for the petitioner has drawn my attention is the statement of the Traffic Manager that the plaintiff's claim was barred. It is impossible for me to hold that this is sufficient to hold that the plaintiff was entitled to serve the notice on him. I am constrained to dismiss this petition.

## APPELLATE CIVIL.

*Before Mr. Justice Abdur Rahim.*

1911.  
 August 18.

E. KARUNAKARAN NAIR (SECOND DEFENDANT), PETITIONER,

v.

M. KRISHNA MENON AND ANOTHER (PLAINTIFF AND  
 FIRST DEFENDANT), RESPONDENTS. \*

*Limitation Act (IX of 1908), sec. 7F—Bond repayable by instalments; the whole to become payable "on demand" on default in paying one instalment—Meaning of "on demand"—Waiver.*

A bond repayable by instalments contained the following stipulation :—

"In default of our making each payment also the amount that may be found due for all future drawings shall be paid in a lump on your demand."

*Held*, that the cause of action for recovery of all the instalments would not arise until demand is made by the obligee in terms of the stipulation and that in

(1) (1908) 13 C.W.N., 24.

(2) (1907) I.L.R., 31 Bom., 534.

(3) (1906) I.L.R., 28 All., 552.

(4) (1908) I.L.R., 35 Calc., 194.

\* Civil Revision Petition No. 292 of 1910.

consequence the whole amount did not become due merely on failure to pay an instalment.

*Hanmantrám Sadhurám v. Arthur Bowles*, [(1884) I.L.R., 8 Bom., 561], followed.

The words "on your demand" mean "when you require." Failure to make the demand will constitute a waiver of the right stipulated for.

*Harri Pershad Chowdhry v. Nasib Singh*, [(1894) I.L.R., 21 Calc., 542 at p. 547], and *Jadab Chandra Bakshi v. Bhairab Chandra Chuckerbutty*, [(1904) I.L.R., 31 Calc., 297], dissented from.

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—  
KARUNA-  
KARAN NAIR,  
v.  
KRISHNA  
MENON.

PETITION under section 25 of the Provincial Small Cause Courts Act (IX of 1887), praying the High Court to revise the decree of A. N. ANANTARAMA AIYAR, the Subordinate Judge of South Malabar at Calicut, in Small Cause Suit No. 946 of 1909, dated the 17th day of January 1910.

The facts of this case are stated in the judgment.

*V. Ryrü Nambiar* for petitioner.

*B. Govindan Nambiar* for respondents.

JUDGMENT.—This suit was to enforce payment of Rs. 54-7-10 due on a simple money-bond and the question is whether it is barred. The bond provided for the payment of certain instalments and the earliest instalment included in the suit is the one which became due in December 1906, *i.e.*, within three years of the institution of the suit. The question is admittedly governed by article 75 of the Limitation Act and it is contended that the suit is barred because there was a default to pay one instalment more than three years before the date of the suit. And the bond provides that on failure of payment of one instalment the entire amount would become due. The stipulation in question is in these words: "and that in default of our making such payment also, the amount that may be found due for all future drawings from the date of default at Rs. 5 per drawing shall be paid in a lump on your demand in accordance with the stipulations in the *Kurivari*." I think the Subordinate Judge is right in holding that this case is analogous to that reported in *Hanmantrám Sadhurám v. Arthur Bowles*(1) and that the cause of action for recovery of all the instalments would not arise until demand is made by the obligee in terms of the stipulation. I do not agree with the learned vakil for the petitioner that the words "on your demand," etc.

(1) (1884) I.L.R., 8 Bom., 561.

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should be understood only to mean that the payment was to be made immediately or forthwith. He relies on *Perumal Ayyan v. Alagirisami Bhagavathar*(1) in support of his contention. But the learned Judges there had only to construe the document then before them and they do not lay down any general proposition which can be said to apply to this case. I may mention that in *Nettakaruppa Goundan v. Kumarasami Goundan*(2) an unreported case is referred to where the words "on demands" were given the same meaning as "when you require."

Apart from this it seems to me that under article 75 it might well be said that the plaintiff not having thought fit to enforce the proviso in question waived the benefit of it and if this view be correct their time will run only from the date of each fresh default. I however find that in *Hurri Pershad Chowdhry v. Nasib Singh*(3), which is followed in *Jadab Chandra Bakshi v. Bhairab Chandra Chuckerbutty*(4), it is laid down that there can be no waiver within the meaning of the third clause of article 75 save by payment of and acceptance of an overdue instalment. With great deference to the learned Judges I fail to see any reason for such construction. Whether there was waiver or not is a question of fact the proof of which cannot be confined to any particular kind of evidence and it seems to me that when a man abstains to take advantage of a stipulation in his favour that is at least a very strong evidence of waiver. This petition is therefore dismissed with costs.

## ORIGINAL CIVIL.

*Before Mr. Justice Ayling and Mr. Justice Spencer.*

V. ANDIAPPA CHETTY (PLAINTIFF),

v.

P. DEVARAJULU NAIDU'S SON BY HIS NEXT FRIEND  
ALASINGA NAIDU AND ANOTHER (DEFENDANTS).\*

*Limitation Act (IX of 1908), sec. 19—Acknowledgment of liability.*

The following two letters were sent by first and second defendants respectively to plaintiff's vakil:—

(1) (1897) I.L.R., 20 Mad., 245. (2) (1899) I.L.R., 22 Mad., 20 at p. 22.  
(3) (1894) I.L.R., 21 Calc., 542 at p. 547. (4) (1904) I.L.R., 31 Calc., 297.

\* Referred Case No. 13 of 1910.