

## APPELLATE CIVIL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Wallach.

JWALA PRASAD AND OTHERS (PLAINTIFFS) v. SHAMA CHARAN

AND OTHERS (DEFENDANTS).\*

1919  
July, 16.

Act no. IX of 1908 (Indian Limitation Act), schedule I, articles 73 and 80—  
Limitation—Promissory note—"Writing restraining or postponing the right to sue."

Defendant borrowed money from a bank and executed a promissory note in favour of the bank on the 13th of June, 1913. But on the same date he also wrote to the bank a letter, in which he stated:—"The sum of Rs. 700, which I have borrowed from the Bank to-day, I undertake to pay, principal and interest, within one year. If I cannot pay within the time specified, then they (the Bank) may realize (the money) in any way they please."

Held that this letter amounted to a "writing restraining or postponing the right to sue" within the meaning of article 73 of the first schedule to the Indian Limitation Act, 1908, and limitation, accordingly, did not begin to run against the Bank until the period of one year from the date of the note had expired.

THIS was a suit upon a promissory note executed on the 13th of June, 1913, by one Shama Charan in favour of the Kayastha Trading and Banking Corporation. The promissory note was expressed to be payable on demand; but on the same date, namely, the 13th of June, 1913, Shama Charan wrote a letter to the Bank promising to pay within a year and declaring that if payment was not made within the specified period then the Bank might realize the amount in any way they liked. The terms of the letter were as follows:—"Janab Manager Sahib, guzarish hai ki mubligh sat sau rupiye jo aj Bank se qarz liya hai igrar karta hun ke andar ek sal asal mai sud ke ada wa bebaq kar dunga; agar zamana mo'iana men ada nah ho sake to jis tarah chahen wasul karlen." Nothing was paid towards satisfaction of the debt. The plaintiffs as the beneficial assignees of the promissory note sued thereon in November, 1916. The main plea in defence was that the suit was barred by time. The court of first instance held that the promise contained in the letter extended the period of limitation, and decreed the suit. The lower appellate court upheld the plea of limitation, relying upon the ruling in *Somasundaram Chettiar v. Narasimha Chariar* (1), and dismissed the claim. The plaintiffs appealed to the High Court.

\*Second Appeal no. 947 of 1917 from a decree of Khwaja Abdul Ali, Additional Judge of Gorakhpur, dated the 25th of May, 1917, reversing a decree of Shamsh-ul-Hasan, Munsif of Basti, dated the 21st of February, 1917.

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Pandit *Kailash Nath Katju*, for the appellants, contended that the acceptance by the Bank of the letter and of the terms contained therein amounted to an agreement to grant one year's time; that is, to postpone for one year the right to sue on the promissory note. The promissory note and the letter should be considered together. The letter was a "writing restraining or postponing the right to sue" within the meaning of article 73 of the schedule to the Limitation Act. That article, therefore, did not govern the present case, and time did not begin to run from the date of the promissory note. The article applicable was article 80, and under it time began to run from the date when the promissory note became payable, that is, on the expiry of one year from the date of the promissory note. The suit was brought within three years of the expiry of the said year. The case relied on by the lower appellate court, namely, that of *Somasundaram Chettiar v. Narasimha Chariar* (1) was over-ruled by the Full Bench decision of the same Court in *Annamalai Chetty v. Velayuda Nadar* (2), and the latter entirely supports the appellants' contention.

Babu *Surendra Nath Gupta* (for Dr. *Surendra Nath Sen*), for the respondent, submitted that the real question was whether, by reason of the letter, the Bank was precluded from suing on the promissory note within a year of its date. If not, then time began to run immediately.

BANERJI and WALLACE, JJ. :—This appeal arises out of a suit on the basis of a promissory note, dated the 13th of June, 1913. The defendant no. 1, one Shama Charan, owed money to the Kayastha Trading and Banking Corporation, Limited, Gorakhpur, and in liquidation of this debt he executed the aforesaid promissory note for Rs. 700, on the 13th of June, 1913, in favour of his creditor. This promissory note was payable on demand, but on the same day the executant of the promissory note wrote a letter to the Manager of the Kayastha Trading and Banking Corporation stating that the period for suing on the promissory note should be postponed for one year, within which time he promised to pay the amount due on the promissory note. The promissory note was subsequently assigned to defendant no. 3, a relation and

(1) (1905) I. L. R., 29 Mad., 212. (2) (1915) I. L. R., 39 Mad., 139.

*benamidar* of the plaintiff. The suit was filed on the promissory note on the 25th of November, 1916. If the period of limitation be calculated from the date of the execution of the promissory note, the suit would be barred by time; but it is argued on behalf of the appellants that the period of limitation was to run from the date of the expiry of one year after the date of the execution of the promissory note, as provided by the writing which accompanied it. This was the view taken by the court of first instance. But the lower appellate court was of opinion, relying on the decision in *Somasundaram Chettiar v. Narasimha Charariar* (1), that the suit was barred by limitation. That Court overlooked entirely the terms of article 73 to the Limitation Act, which specially lays down that the period of limitation begins to run on a bill of exchange or promissory note from the date of the bill or note, provided that it is not accompanied by any writing restraining or postponing the right to sue. In this case the promissory note was accompanied by a writing restraining or postponing the right to sue for one year, and, therefore, the article of the Limitation Act applicable to the suit is not article 73, but article 80, which provides that the period of limitation for a suit on a bill of exchange, promissory note or bond begins to run from the date when the bill, note or bond becomes payable. In this case, therefore, the period of limitation began to run from the 13th of June, 1914, and the suit was not barred by time. The ruling referred to by the learned Additional Judge—*Somasundaram Chettiar v. Narasimha Charariar* (1)—was over-ruled by a full Bench decision of the same High Court in *Annamalai Chetty v. Velayuda Nadar* (2). No other question was involved in this case. We accordingly allow the appeal, set aside the decree of the lower appellate court and restore that of the court of first instance with costs in all courts.

*Appeal allowed.*

(1) (1905) I. L. R., 29 Mad., 212.

(2) (1915) I. L. R., 39 Mad., 129.

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