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SECRETARY OF STATE FOR INDIA IN COUNCIL v. MADHURI DAS NARAIN DAS

note that the word "misconduct" occurring in risk-note B is of wider import than the popular sense in which that word is used. Want of proper care and caution may amount to misconduct within the meaning of the risk-note B. A mistake in the preparation of the railway receipt, which throws doubt on the identity of the consignment to which it relates, is a misconduct in the above sense.

In the view of the case I have taken, this application for revision is dismissed with costs.

APPELLATE CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice Rachhpal Singh

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RAM PRASAD (PLAINTIFF) *v.* BINAEK SHUKUL (DEFENDANT)*

Limitation Act (IX of 1908), sections 19, 20—Payment in handwriting of debtor but without specifying whether towards interest or principal—Appropriation by creditor towards interest—Not payment of interest as such—Acknowledgment—Part payment, by itself, is not acknowledgment of the balance.

It is an erroneous assumption that where interest is not paid as such, i.e., the debtor does not clearly mention that the payment made by him is to be appropriated towards interest, it should be considered to have been paid by him towards principal. A debtor may pay a certain amount in part satisfaction of what is due from him, without specifying that the sum is to be appropriated towards interest or principal; the creditor may, however, appropriate such payment towards interest, as he is entitled to do under section 61 of the Contract Act, but the payment cannot be considered to be the payment of interest as such, within the meaning of section 20 of the Limitation Act. Nor can it be considered to be payment in part satisfaction of the principal, as it has been lawfully appropriated by the creditor towards interest. Therefore, although the fact of the payment may appear in the handwriting of the debtor, limitation is not saved under section 20 of the Limitation Act.

*Second Appeal No. 1638 of 1931, from a decree of J. C. Malik, Additional Subordinate Judge of Mirzapur, dated the 20th of July, 1931, confirming a decree of Shambhu Dayal Singh, Munsif of Mirzapur, dated the 18th of June, 1930.

Where a debtor pays a certain sum of money to his creditor, it cannot be said that such payment amounts to an acknowledgment under section 19 of the Limitation Act of liability for the balance which may be proved to be remaining due.

Dr. *K. N. Katju* and Mr. *Ambika Prasad*, for the appellant.

Mr. *A. P. Bagchi*, for the respondent.

NIAMAT-ULLAH and RACHHPAL SINGH, JJ. :—This is a plaintiff's appeal and has arisen out of a suit for recovery of Rs.1,070-3-6 made up of Rs.595-13-9 principal and Rs.474-7-6 interest together with another sum of Re.0-2-3 which need not be detailed, on the allegation that the defendant purchased on the 25th of June, 1914, from the plaintiff ornaments and cloth of the aggregate value of Rs.1,003-9-6, and that he paid Rs.210-10-0 on that date promising to pay the balance within a month. It is also alleged that the defendant agreed to pay interest in case of non-payment of the aforesaid sum within the stipulated time.

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The suit was resisted principally on the ground that it is barred by limitation. The plaintiff attempted to escape the bar of limitation by relying upon a number of payments made by the defendant which, according to him, saved limitation under sections 19 and 20 of the Indian Limitation Act.

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The defendant made a number of payments after the date of the transaction, the first of which was made within 3 years from that date. Each subsequent payment is within 3 years from the date of the next preceding payment. It follows that if every one of the payments fulfils the requirements of section 19 or 20 of the Indian Limitation Act, the plaintiff may be held entitled to a decree. But to arrive at that finding every payment has to be examined in the light of the provisions of sections 19 and 20 of the Indian Limitation Act.

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The first payment of Rs.40 is said to have been made on the 7th of February, 1918. There is no evidence that the defendant paid that sum towards interest. The plaintiff's case is that interest was payable and was overdue. In the account annexed to the plaint the plaintiff has charged interest and has appropriated each payment towards interest. At any rate, the sum of Rs.40 paid on 7th of February, 1918, was appropriated towards interest. It is argued by the learned counsel for the appellant that if the defendant did not pay Rs.40 towards interest he must be taken to have paid it towards principal, and as the fact of payment appears in his handwriting, section 20 is fully applicable. In our opinion this argument is based on a fallacy and proceeds on the assumption that where interest is not paid as such, that is, the debtor does not clearly mention that the payment made by him was to be appropriated towards interest, it should be considered to have been paid by him towards principal. To our mind this is a wholly erroneous assumption. A debtor may pay a certain amount in part satisfaction of what is due from him without caring to specify that the sum is to be appropriated towards interest or principal. The payment will not be considered to be the payment of interest as such and will not save limitation on that footing. The creditor may, however, appropriate such payment towards interest, as he is entitled to do under section 61 of the Indian Contract Act. The position then is that though interest was not paid as such, payment made by the debtor was lawfully appropriated towards interest. It cannot be considered to be payment in part satisfaction of the principal. Therefore, if the fact of payment appears in writing, limitation cannot be saved on the supposition that a part of principal was paid and the fact of payment appears in the handwriting of the debtor. As already stated, payment of Rs.40 made on the 7th of February, 1918, was not made towards interest. The creditor did appropriate it in satisfaction

of the interest. The payment was not payment of interest as such and cannot save limitation and though it is in writing it cannot be assumed to be payment of principal so as to save limitation under section 20.

It was also contended that each payment amounted to an acknowledgment of liability within the meaning of section 19. It is said that payments were noted by the defendant on each occasion on a certain copy book which the plaintiff's peon used to take round to the debtors. This copy book was produced in the lower courts. It has not come up with the record of the case. We declined to adjourn the case as the entries on that copy book were not relied on in either of the two courts below as containing acknowledgments under section 19 of the Indian Limitation Act. The fact of payment which is not disputed was also relied on as acknowledgment under section 19. Where a debtor pays a certain sum of money to his creditor, there may be an implied acknowledgment of the liability to the extent of the amount paid. It cannot, however, be said that the remaining liability shown by evidence *aliunde* should be deemed to have also been acknowledged. In this view the payment of Rs.40 on the 7th of February, 1918, cannot amount to an acknowledgment under section 19 of the Limitation Act. As limitation is not saved by the first item, the debt became time barred by the time the next payment was made on the 27th of April, 1919, and subsequent payments can be of no avail, even if they fulfil the requirements of section 20 or amount to acknowledgments under section 19. Accordingly we hold that the plaintiff's claim was barred by limitation.

For the reasons stated above, this appeal fails and is dismissed with costs.