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LAKSHMI
NARAIN RAI
v.
DEE NARAIN
RAI

It is further contended that this Court ought not to interfere as there is another remedy open to the applicant. In the present case it is doubtful whether in all circumstances the applicant would have another remedy open to him. If the applicant having paid the additional court fee was successful in his suit and the other side did not appeal, the applicant would have no further opportunity to agitate the matter of his wrongly having been called upon to pay additional court fee, even though he might fail to recover his costs from the defendant.

We accordingly allow the application in revision with costs and direct that the plaint be admitted on the payment within two months of a further sum of Rs.10 as court fee.

Before Mr. Justice Iqbal Ahmad.

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December, 23

LAL SINGH (PLAINTIFF) v. GULAB RAI (DEFENDANT)*
Limitation Act (IX of 1908), section 20, proviso—Part payment of principal—Acknowledgment of such payment in the handwriting of the debtor—Such acknowledgment need not be within limitation if the payment is within time.

The part payment of the principal of a debt, made within the period of limitation, gives a fresh start to the period of limitation, provided an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. But it is not necessary that the acknowledgment of the payment in the handwriting of the debtor should be made within the period of limitation. It is enough if the payment is made within the period of limitation and it does not matter that the acknowledgment in writing is made by the debtor after the expiry of the period of limitation.

Mr. Panna Lal, for the applicant.

The opposite party was not represented.

IQBAL AHMAD, J. :—This is a plaintiff's application and is directed against the decree of a court of small

causes. The suit was for recovery of the amount due on the basis of an instalment bond dated the 22nd of December, 1924. The plaintiff alleged that certain payments that were made by the defendant gave a fresh start to the period of limitation and that in view of those payments the claim was within time.

The defendant did not contest the suit. The learned small cause court Judge observed: "None of those payments is in the defendant's handwriting. The last payment is of the 7th of May, 1926. Under these payments there is an endorsement in the defendant's hand to the effect that these payments had been made by him. The endorsement was obviously obtained from him after the 7th of May, 1926." He further noted that the plaintiff was unable to prove that the endorsement by the defendant was made within the period of limitation. As regards the endorsements with respect to the payments made after the 7th of May, 1926, the learned Judge observed that as those payments were made after the expiry of the period of limitation, they could be of no avail to the plaintiff. In this view of the matter he dismissed the plaintiff's suit.

I am unable to agree with the learned Judge of the court below. He is not right in observing that "none of those payments is in the defendant's handwriting". As a matter of fact, the endorsements about the payments made on the 6th of May, 1929, and on the 13th of November, 1931, are in the defendant's handwriting.

The endorsements about the payments made up to the 7th of May, 1926, are, no doubt, in the plaintiff's handwriting, but below those endorsements there is an acknowledgment by the defendant in his own handwriting to the effect that Rs.10 had been paid in part satisfaction of the debt due on the bond. In my judgment this endorsement by the defendant, though not proved to have been made within the period of limitation, was sufficient to extend to the plaintiff the benefit of the provisions of section 20 of the Limitation Act.

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LAL SINGH
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The part payment of the principal of a debt within the period of limitation gives a fresh start to the period of limitation, provided an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. In this case, as already stated, the acknowledgment of payment is in the handwriting of the defendant. But it is not necessary that the acknowledgment of payment should be made in writing by the debtor within the period of limitation. It is enough if the payment is made within the period of limitation and it does not matter that the acknowledgment in writing is made by the debtor after the expiry of the period of limitation. I cannot agree with the view of the learned small cause court Judge that, in order to be of use under section 20 of the Limitation Act, the handwriting of the person making the payment referred to in the proviso to that section must have come into existence before the expiration of the period of limitation. To so interpret the proviso would be to import into the proviso the words "before the expiry of the period of limitation"—words which are not there, and I find no warrant for doing so. The view that I take is in consonance with the view taken in *Venkalasubbu v. Appusundram* (1), *Marina Ammayi v. Sundayya* (2), and *Ram Prasad Babu v. Mohar Lal Babu* (3).

It is manifest, therefore, that the time began to run against the plaintiff from the 7th of May, 1926, but we find that within three years of that date, viz. the 6th of May, 1929, another payment was made by the defendant and an acknowledgment of that payment appears on the bond in suit in the defendant's handwriting. The suit was brought within three years from the last mentioned date and was within time.

For the reasons given above I allow this application, set aside the decree of the learned small cause court Judge and decree the plaintiff's suit with costs throughout.

(1) (1893) I.L.R., 17 Mad., 92.

(2) A.I.R., 1929 Mad., 432.

(3) A.I.R., 1923 Neg., 117.