

## REVISIONAL CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge and  
Mr. Justice R. L. Yorke

1939  
January, 31

ZAMAN KHAN (PLAINTIFF-APPLICANT) v. RAM ASRE  
(DEFENDANT-OPPOSITE-PARTY)\*

*Limitation Act (IX of 1908), section 20—Words “as such” in section 20, meaning of—Payment without specifying whether it was towards principal or interest—Appropriation by creditor towards interest, whether satisfies requirements of section 20—Specification by debtor that payment was towards interest, whether necessary—Provincial Small Cause Courts Act (IX of 1887), section 25—High Court’s power of interference under section 25.*

The words “paid as such” in section 20 of the Limitation Act are not superfluous. That section provides that it must be payment as interest by the debtor to the creditor and mere crediting of interest by the creditor in his own account books is not enough to satisfy the provisions of the Statute. It must be interest paid “as interest” and distinctly stated to be so at the time of payment. *Pachipenta Lakshmi Naidu v. Somahanti Gunnamma* (1), referred to. *Sheik Idam Sadagar and another v. Firm Prem Sukh Das Ram Chandra* (2), *Bai Havabu v. Isup Musa Patil* (3), *Lal Chand v. Raman Shah* (4), *Firm Hari Ram Dowlatram v. Firm Ram Singh Gopal Singh* (5), and *Udeypal Singh v. Lakshmi Chand* (6), relied on.

In an application under section 25 of the Small Cause Courts Act no High Court can be intended to be or can possibly undertake the duties of a court of first appeal from decisions of a Small Cause Court Judge. While the High Court has the power to interfere even upon a point of fact, it behoves it to exercise this power simply and solely for the purpose of preventing miscarriage of justice or gross illegalities. The powers conferred by section 25 are purely discretionary but it is not intended by that section to give in effect a right of appeal in all small cause court cases either on law or fact.

Mr. K. N. Tandon, for the applicant.

Mr. B. K. Dhaon, for the opposite-party.

\*Section 25 Application no. 89 of 1936, for revision of order of Mr. G. M. Frank Agarwal, Munsif (as Judge of Small Cause Court), Bahraich, dated the 31st August 1936.

(1) (1935) I.L.R., 58 Mad., 418.

(3) (1938) 40 Bom.L.R., 968.

(5) (1937) A.I.R., Sind, 95.

(2) (1937) A.I.R., Patna, 563.

(4) (1937) A.I.R., Lahore, 820.

(6) (1935) All.L.J., 1029.

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THOMAS, C.J., and YORKE, J.:—This is an application under section 25 of the Small Cause Courts Act against the judgment and decree of the learned Munsif of Bahraich exercising Small Cause Court powers, dated the 31st August, 1936.

The plaintiff brought the suit to recover a sum of Rs.81 on the basis of a bond, dated the 16th March, 1930. The amount was payable by the 2nd May, 1931. The plaintiff alleged that the defendant paid only Rs.12 towards the debt on Baisakh Sudi 2 (1341 Fasli) corresponding to 15th April, 1934. The defendant denied the payment of Rs.12 as alleged by the plaintiff and further pleaded that the suit was barred by limitation.

The learned Munsif held that the payment of Rs.12 was proved, but he dismissed the suit relying on the case reported in *Udey Pal Singh v. Lakshmi Chand* (1) holding that the payment did not have limitation.

The application raises an important question of law, namely whether the payment of a sum of money by the debtor without specifying whether the payment was made towards interest or towards principal can save limitation under section 20 of the Indian Limitation Act.

The endorsement on the back of the bond is as follows:

“Miti Doij Sudi Baisakh San 1341 Fasli ko babat tamasuk ke Rs.12 wasul pai” (i.e. received Rs.12 towards the bond on the 15th April, 1934). (Sd.) Ram Asre.”

It may be mentioned that the plaintiff in his plaint does not say whether he paid this sum of Rs.12 towards the principal or interest.

The contention of the learned Counsel on behalf of the applicant is that the circumstances are such that it should be assumed that the amount was paid towards the interest, and therefore the finding of the trial court that the suit was barred by limitation is wrong. Section 20 of the Indian Limitation Act is as follows:

“Where interest on a debt or legacy is, before the expiration of the prescribed period, paid *as such* by the person

(1) (1935) All. L.J., 1029.

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liable to pay the debt or legacy, or by his agent duly authorised in this behalf . . . a fresh period of limitation shall be computed from the time when the payment was made."

A large number of cases have been cited by the learned Counsel on behalf of the applicant, but we are of opinion that in an application under section 25 of the Act no High Court can be intended to be or can possibly undertake the duties of a court of first appeal from decisions of a Small Cause Court Judge. While the High Court has the power to interfere even upon a point of fact, it behoves it to exercise this power simply and solely for the purpose of preventing miscarriage of justice or gross illegalities. The powers conferred by section 25 are purely discretionary. It is not intended by section 25 to give in effect a right of appeal in all small cause court cases either on law or fact. The learned Counsel on behalf of the applicant has tried to argue this application as an appeal. In our opinion the learned trial court has decided the case sensibly and intelligently. There was no direct decision of this Court on the point for its guidance and he relied on a Full Bench decision of the Allahabad High Court for his guidance which he was entitled to do. These observations are sufficient to dispose of this application.

We may however briefly consider the contention of the learned Counsel on behalf of the applicant. His contention is that the words "paid as such" in section 20 of the Indian Limitation Act are redundant and that a payment of interest is a payment of interest and it is no more payment of interest if the words "as such" are added.

It was held in *Udey Pal Singh v. Lakshmi Chand* (1) that "where money is paid by a debtor without specifying whether the payment is towards interest or towards principal, leaving it to the option of the creditor to appropriate it as he likes, and the creditor appropriates

(1) (1935) All. L.J., 1029.

it towards interest, held (by majority) that there is neither a payment of interest as such nor a part payment of the principal within the meaning of section 20, Limitation Act."

We do not agree with this contention. In our opinion the words "paid as such" are not superfluous. The section provides that it must be payment as interest by the debtor to the creditor though the form of payment may differ. Mere crediting of interest by the creditor in his own account books is not enough to satisfy the provisions of the Statute. It must be interest paid "as interest" and distinctly stated to be so at the time of payment.

The learned counsel for the applicant relied on the case reported in *Pachipenta Lakshmi Naidu v. Somahanti Gunnamma* (1) in which it was held that when a part payment is evidenced by a writing which is signed by the person making the same, it makes no difference whether the payment is held to be for interest or for principal or for both. This case undoubtedly supports the contention of the learned Counsel for the applicant. The view of the Bombay, Allahabad (majority of Judges), Patna and Lahore High Courts and of the Judicial Commissioner's Court of Sind is that where money is paid by a debtor without his specifying whether the payment is towards interest or towards principal leaving it to the option of the creditor to appropriate it as he likes, and the creditor appropriates it towards interest, there is neither a payment of interest "as such" nor a part payment of the principal within the meaning of section 20 of the Indian Limitation Act, vide *Bai Havabu v. Isup Musa Patil* (2), *Sheik Idam Sadagar and another v. Firm Prem Sukh Dass Ram Chandra* (3), *Lal Chand v. Raman Shah* (4), *Firm Hari Ram Dowlatram v. Firm Ram Singh Gopal Singh* (5), and *Udeyhal Singh v. Lakshmi Chand* (6).

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(1) (1935) I.L.R., 58 Mad., 418.  
at page 426.

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(3) (1937) A.I.R., Patna, 583.

(4) (1937) A.I.R., Lahore, 820.

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We are of opinion that so far as the payment of interest is concerned, the acknowledgment in writing must be of the payment of interest "as such". The word "payment" in the proviso refers back to the section which it qualifies, and the words "as such" occur in relation to the payment of interest in the section itself. We are therefore of opinion that the view taken by the trial court is correct, and we accordingly dismiss the application with costs.

*Application dismissed.*

### REVISIONAL CRIMINAL

*Before Mr. Justice Ziaul Hasan and Mr. Justice  
A. H. deB. Hamilton*

1939

February,  
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BADRI NATH (APPLICANT) v. SHEOPHAL (OPPOSITE-PARTY)\*

*United Provinces Village Panchayat Act (Local Act VI of 1920), section 71—Accused found guilty of offence under section 426, Indian Penal Code, by village panchayat and fined—Application by accused dismissed by Collector under section 71 of Panchayat Act—Revision, whether lies to Chief Court—Panchayat, whether a court.*

The proceedings of a panchayat or of a Collector under section 71 of the Village Panchayat Act are not magisterial proceedings, that is to say, not proceedings of a criminal court which would be subordinate to the criminal jurisdiction of the Chief Court. There is nothing in that Act to indicate that a panchayat is in any way to be regarded as a court of law, but it corresponds more closely to a caste panchayat. It is not a court "constituted under any law other than this Code" as defined under section 6 of the Code of Criminal Procedure and is, therefore, not a body subject to the revisional jurisdiction of the Chief Court.

Mr. I. A. Abbasi, for applicant.

Mr. H. K. Ghosh, Assistant Government Advocate.  
for opposite-party.

ZIAUL HASAN and HAMILTON, JJ.:—This is an application in revision against an order of the District Magistrate of Partabgarh dismissing under section 71 of the

\*Criminal Revision No. 110 of 1938, of the order of Madan Mohan, Esq., Rai Bahadur, District Magistrate, Partabgarh, dated the 5th July, 1938.