

them was not material for the distribution of the mahal into one or more divisions as claimed by the applicants to partition."

Answered accordingly.

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FULL BENCH

Before Mr. Justice A. H. deB. Hamilton, Mr. Justice R. L. Yorke, and Mr. Justice Radha Krishna Srivastava

RISHI KISHEN AND ANOTHER (DEFENDANTS-APPLICANTS) v. KRISHNA KUMAR AND OTHERS (PLAINTIFF-OPPOSITE-PARTY)*

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Limitation Act (IX of 1908), section 20—Payment made by debtor without specifying whether it is made towards principal or interest—Creditor also making no appropriation at time of payment—Creditor whether can take payment towards principal when filing suit.

When the debtor makes a payment to his creditor on a bond of promissory note without specifying whether he makes it about principal or on account of interest and when the creditor also makes no appropriation at the time of the payment, the payment, in order to be available under section 20 of the Indian Limitation Act to the creditor as payment on account of principal, must be made within the time for filing a suit and further the creditor must be proved to have, in the exercise of his right of appropriation, done within the prescribed period, something which treats the payment as made on account of principal. *Rama Shah v. Lal Chand (1)*, followed.

The application was originally heard by Mr. Justice ZIAUL HASAN, who referred it for decision to a Full Bench under section 14(1) of the Oudh Courts Act. His order of reference is as follows:

ZIAUL HASAN, J.:—This application for revision of a decree of the learned Judge, Small Cause Court, Hardoi, raises a very important question of law, namely, whether in a case in which payment is made by the debtor to the creditor without specifying whether it is about principal or on account of interest, and the creditor too does not make any appropriation at the time of the payment, it is open to the creditor to rely on the payment

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*Section 25 Application No. 144 of 1937, for revision of the order of Mr. Dwarka Prasad Shukla, Civil Judge, as Judge Small Cause Court, Hardoi, dated the 23rd September, 1937.

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to save limitation under section 20 of the Limitation Act. The question appears to have been decided in the negative by a Bench of this Court in the case of *Zaman Khan v. Ram Asre* (1), but the learned Judges also observed in that case that the remarks made by them regarding the scope of section 25 of the Provincial Small Cause Courts Act were sufficient for the disposal of the application for revision in which that question arose. They referred to some cases of the Allahabad, Patna and Lahore High Courts and one of the Sind Judicial Commissioner's Court in support of the view taken by them. That view however is in conflict with the view of the Calcutta and Madras High Courts as expressed in *Hem Chandra Biswas v. Purna Chandra Mukherji* (2), *Charu Chandra Bhat-tacharjee v. Karam Bux Sikdar* (3) and *Pachipenta Lakshmi Naidu v. Somahanti Gunnamma Naidu alias Chinnammi* (4), and even in the Allahabad High Court in the Full Bench case of *Udepal Singh v. Lakshmi Chand* (5), two learned Judges of the Court were in favour of the Calcutta and Madras view. The question to my mind is of importance and of common occurrence and in view of the conflicting opinion between our Court and some others, I consider it necessary that the following question be referred for decision to a Full Bench under section 14(1) of the Oudh Courts Act—

When the debtor makes a payment to his creditor on a bond or promissory note without specifying whether he makes it about principal or on account of interest and when the creditor also makes no appropriation at the time of the payment, can the payment be deemed to be a payment of part of the principal within the meaning of section 20 of the Limitation Act.

Let the above order be placed before the Hon'ble Chief Judge for the constitution of a Full Bench.

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

Mr. H. N. Das, for the Opposite-party.

HAMILTON, YORKE and RADHA KRISHNA, JJ.:—The facts which have given rise to this Full Bench reference are that one Babu Ram, the father of defendants, executed in favour of the plaintiff promissory notes for Rs.60, Rs.15 and Rs.100 on the 1st August, 1931, the

(1) (1939) LL.R., 14 Luck., 588. (2) (1916) I.L.R., 44 Cal., 567.

(3) (1917) 27 C. Law Journal, 141. (4) (1934) I.L.R., 58 Mad., 418.

(5) (1935) A.L.R., All., 946.

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7th September, 1931, and the 13th February, 1932, respectively. On the 28th July, 1934, Babu Ram paid Rs.5, Rs.2 and Rs.7 towards the first, second and third promissory notes respectively, and endorsed the payment on the promissory notes as being "babat pronote men". On the 24th July, 1937, the creditor plaintiff filed the present suit. The plaint clearly shows and it is not disputed before us that there is no evidence of any appropriation by the creditor till the date of his suit of the amounts paid in respect of and noted on the three promissory notes either towards their principal amounts or interest due thereon.

The main plea in defence was that the suit was barred by limitation.

The suit was decreed against the assets of Babu Ram in the hands of the minor defendants.

On a revision being filed under section 25 of the Provincial Small Cause Courts Act, the following question was referred to a Full Bench by our learned brother, Mr. Justice ZIAUL HASAN:

"When the debtor makes a payment to his creditor on a bond or promissory note without specifying whether he makes it about principal or on account of interest and when the creditor also makes no appropriation at the time of the payment, can the payment be deemed to be a payment of part of the principal within the meaning of section 20 of the Limitation Act?"

The order of reference has pointed out the difference of opinion subsisting on that day between the views taken by different High Courts. The answer to the question referred to us depends upon the true construction and effect of section 20 of the Indian Limitation Act as amended by the Indian Limitation (Amendment) Act, I of 1927, which runs as follows:

"20. (1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf, or where part of the

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principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment."

The question as to the meaning and scope of section 20 of the Indian Limitation Act reproduced above came up for decision in an appeal from the Lahore High Court before their Lordships of the Privy Council in *Rama Shah v. Lal Chand* (1). It is not necessary to refer to any other decision. This decision was not reported at the time the order of reference was made. It has been laid down in this case by their Lordships of the Privy Council that where appropriation has not been made either towards principal or interest by the debtor or creditor at the time of the actual payment, then in that case the creditor to avail himself of section 20 of the Indian Limitation Act has to prove that he appropriated the sum towards the principal debt before the expiry of the period of limitation for a suit on the promissory note. It was remarked by their Lordships in their judgment that the contention that so long as the payment is made within time the appropriation towards the principal debt might be made by the creditor at any subsequent time and would give rise to a fresh period computed from the date of payment, is not correct, and that it could not have been intended by the Legislature that at the end of the prescribed period the right to sue should be barred and yet that the creditor might thereafter remove the bar at his own choice by making an appropriation.

It was further held by their Lordships of the Privy Council in the above case that the language of section 20 of the Indian Limitation Act is not satisfied unless within the prescribed period the creditor has in the exercise

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of his right done something which treats the payment as made on account of principal. To evidence a definite appropriation to the principal debt made by the creditor within the period prescribed the manner in which the payment has been dealt with by the creditor in his own books of account will ordinarily be sufficient. But if it be true that until after the expiry of the prescribed period the creditor has treated the sum as paid on account of interest or has not done anything to treat it as paid on account of principal, then under the amended section 20 part-payment of principal has not been established. This case lays down the law in respect of appropriation by a creditor in cases where at the time of actual payment neither party made the appropriation.

In the present case the pleadings show that the payment was an open payment and the evidence establishes that neither party did make any appropriation either towards the principal or towards interest at any time prior to the suit or even at any time after the suit.

The answer to the reference which we propose to give is fully furnished by the above-mentioned decision of their Lordships of the Privy Council and may be couched in the following terms:

“When the debtor makes a payment to his creditor on a bond or promissory note without specifying whether he makes it about principal or on account of interest and when the creditor also makes no appropriation at the time of the payment, the payment in order to be available under section 20 of the Indian Limitation Act to the creditor as payment on account of principal must be made within the time for filing a suit and further the creditor must be proved to have, in the exercise of his right of appropriation, done within the prescribed period something which treats the payment as made on account of principal.”

Reference answered accordingly