

REVISIONAL CIVIL

Before Mr. Justice Ziaul Hasan

1940
February, 28

BACHCHU LAL (PLAINTIFF-APPLICANT) v. BHAGWATI AND
ANOTHER (DEFENDANTS-OPPOSITE-PARTY)*

Limitation Act (IX of 1908), section 20—Interest—Payment of interest “as such” under section 20, whether to appear in the handwriting of payer—Court to find from evidence and circumstances, whether payment was for interest.

There is no law requiring that payment of interest “as such” must necessarily appear in the handwriting or under the signature of the party making the payment. No doubt it is necessary that at the time of the payment it must be clearly mentioned that the payment was being made on account of interest.

Where there is nothing to show whether a payment has been made in respect of principal or interest, the court is entitled to find out on the evidence and from the circumstances for what purpose the payment was made. *Hem Chandra Biswas v. Purna Chandra Mukherji* (1), and *Charu Chandra Bhatta-charjee v. Karam Bux Sikdar* (2), relied on. *Ram Prasad v. Binaek Shukui* (3), *Narain Das v. Chandrawati Kuar* (4), and *Lalji v. Ghasi Ram* (5), referred to.

Mr. K. P. Misra, for the applicant.

Mr. Moti Lal Saksena, for the opposite-party.

ZIAUL HASAN, J.:—These applications have been filed by Bachchu Lal against decrees of the learned Judge, Small Cause Court, Gonda, by which two suits filed by the present applicant were dismissed as time barred.

The suits were brought on two bonds dated the 20th November, 1929, and 23rd April, 1930, respectively. The suits were filed on the 14th and 15th April, 1937, but the plaintiff in each case calculated limitation from 15th April, 1934, on which date the obligor of the bond was said to have paid Rs.10 on account of interest due on each of the bonds. These payments were endorsed

*Section 25 Applications Nos. 95 and 96 of 1937, for revision of the order of Mr. S. Hasan Irshad, Munsif, (as Judge of Small Cause Court), Gonda, dated the 18th May, 1937.

(1) (1916) LL.R., 44 Cal., 567.

(2) (1917) 27 C.L.J., 141.

(3) (1933) I.L.R., 55 All., 632.

(4) (1929) 6 O.W.N., 776.

(5) (1930) 7 O.W.N., 420.

on the back of the bonds by one Bhai Lal and the endorsements were signed by the executant of the bond, Mst. Raghubar Dei, with her thumb-impressions. Two witnesses, Mata Prasad and Swami Dayal signed their names below the endorsements as witnesses to the payment. The plaintiff examined Bhai Lal, the scribe of the endorsements, and Mata Prasad one of the witnesses, both of whom deposed that the payments were made by Raghubar Dei on account of interest. In spite of this evidence, the learned Judge held that the suits were barred by time as he thought that the payment of interest "as such" was not mentioned in the endorsements themselves. The learned Judge appears to me to have taken an entirely wrong view of the law. I know of no authority and none has been quoted before me, requiring that payment of interest "as such" must necessarily appear in the handwriting of or under the signature of the party making the payments. No doubt it is necessary that at the time of the payment it must be clearly mentioned that the payment was being made on account of interest but this is what is proved not only by the evidence of the witnesses mentioned above but also from the fact that an account of interest due has been drawn up on the back of each bond and the payment of Rs.10 has been shown as being out of that amount. The case of *Hem Chandra Biswas v. Purna Chandra Mukerji* (1) is an authority for the view that where there is nothing to show whether payment has been made in respect of principal or of interest the court is entitled to find out on the evidence for what purpose the payments were made. The learned Judge of the court below has nowhere said in his judgment that he did not believe the witnesses produced by the plaintiff and in these circumstances their evidence was perfectly sufficient to prove that the payments in question were made on account of interest as such.

In *Gharu Chandra Bhattacharjee v. Karam Bux Sikdar* (2), it was held that for a payment of interest to

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come within the purview of section 20 of the Limitation Act, it is sufficient if circumstances exist which make the conclusion inevitable that the payment must have been made on account of interest. In the present case the circumstance of the interest being calculated on the date of the payment coupled with the evidence of the witnesses in whose presence the payments were made can lead to no conclusion other than that the payments were made on account of interest.

The learned counsel for the opposite-parties has relied on the cases of *Ram Prasad v. Binaek Shukui* (1), *Narain Das v. Chandrawati Kuar* (2), and *Lalji v. Ghasi Ram* (3) but they are not in point inasmuch as what they lay down is that it is necessary that at the time of a payment made under section 20 of the Limitation Act, it should be specifically mentioned whether the payment is on account of principal or interest.

I allow both the applications with costs and setting aside the order of dismissal of the plaintiff's suits passed by the court below, remand the cases to that court for trial on the merits.

Applications allowed.

APPELLATE CIVIL

Before Mr. Justice Radha Krishna Srivastava

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MAHMUD ALI KHAN (DEFENDANT-APPELLANT) *v.* WAJID ALI KHAN AND OTHERS (PLAINTIFFS AND DEFENDANTS-RESPONDENTS)*

Limitation Act (IX of 1908), section 5—Review application—Filing of review application whether sufficient cause—Reasonable grounds to be proved.

Prosecution of an application for review which proves to be infructuous is not sufficient cause within the meaning of sec-

*Second Civil Appeal No. 313 of 1938, against the order of Badri Prasad Tandon, Esq., Additional Civil Judge of Bahraich, dated the 8th of November, 1937.

(1) (1933) I.L.R., 55 All., 632. (2) (1929) 6 O.W.N., 776.
(3) (1930) 7 O.W.N., 420.