

APPELLATE CIVIL.

Before Tek Chand and Monroe JJ.

DASAUNDHI RAM (PLAINTIFF) Appellant

versus

MOOL CHAND AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 1510 of 1928.

Indian Limitation Act, IX of 1908, Section 19 and Articles 64, 85: Suit on an account struck between Principal and Agent—whether a “mutual account”—Acknowledgment—bearing seal of debtor firm—and name of one of the defendants at top—but no signature—whether sufficient for purposes of section 19.

The plaintiff who belongs to Hoshiarpur district, sent cotton for sale to the defendants, who are a firm of commission agents at Kot Radha Kishan, district Lahore, and the defendants made payments to the plaintiff in this account from time to time. Eventually, on the 2nd of January 1922, the parties met at Kot Radha Kishan and after going through the accounts the defendants' *munim*, handed over to the plaintiff a document, Exhibit P-2, written in his own hand and containing a *verbatim* copy of the account showing all the credits and debits, and a statement at the end that the sum of Rs. 2,150 was due to the plaintiff by the defendant firm with interest at 1 per cent. *per mensem*. Below the entry the seal of the defendant firm was affixed. The entry was not signed at the foot by any one, but the name of the defendant firm appeared at the top in the hand-writing of one of the defendants. No interest was payable on the account before it was settled on the 2nd of January 1922. Plaintiff sued on foot of Exhibit P-2 and claimed that the suit was within time under Article 64 of the Limitation Act. He also relied upon an acknowledgment contained in a postcard (Exhibit P-8) which was proved to have been written by the defendants.

Held, that the District Judge was in error in applying Article 85 of the Indian Limitation Act to this case; the dealings between the parties were simple transactions between

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Principal and Agent and there was no "mutuality" between them, in the sense that "each party to the account extended credit to the other on the faith of an admitted indebtedness." The settlement between the parties on the 2nd January 1922 was in the nature of an account stated between them, a suit on which is governed by Article 64 of the Act.

Ram Dhan v. Court of Wards (1), followed.

Held further that the affixing of the defendant's seal on Exhibit P-2 by his agent, duly authorised in this behalf, and the writing of his name by one of the defendants at the top of the document was sufficient 'signing' within the meaning of section 19 of the Act.

And, what is good and valid signature for the purposes of section 19 is equally good for the application of Article 64 of the Act.

Gur Sahai Ram v. Sadik Muhammad (2), and *Ram Ditta v. Ibrahim-ud-Din* (3), followed.

Second appeal from the decree of Khan Zaka-ud-Din Khan, Additional District Judge, Lahore, dated the 27th February, 1928, reversing that of Agha Mohammad Sultan Mirza, Subordinate Judge, first Class, Lahore, dated the 22nd August, 1927, and dismissing the plaintiff's suit.

RAM LAL ANAND, for Appellant.

MEHR CHAND MAHAJAN, for Respondents.

TEK CHAND J.—This second appeal arises out of a suit instituted by the plaintiff-appellant against the defendant-respondents for recovery of Rs. 3,000 alleged to be due to him on foot of an "account stated" between them on the 2nd of January 1922. The suit was decreed by the trial Court against defendants 3, 6 and 7, but has been dismissed by the learned District Judge as barred by time under Article 85 of the Indian Limitation Act.

(1) (1931) I. L. R. 12 Lah. 420.

(2) 185 P. R. 1883.

(3) 122 P. R. 1889.

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The relevant facts are that the plaintiff, who belongs to the Hoshiarpur district, sent cotton for sale to defendants, who are a firm of commission agents, at Kot Radha Kishan, District Lahore, and the defendants made payments to the plaintiff in this account from time to time. Eventually, on the 2nd of January 1922, the parties met at Kot Radha Kishan and after going through the accounts the defendants *munim* Sundar Das handed over to the plaintiff a document Exhibit P. 2, written in his own hand and containing a *verbatim* copy of the account showing all the credits and debits and a statement at the end that "the sum of Rs. 2,150 was due to the plaintiff by the defendant firm with interest at 1 *per cent. per mensem.*" Below the entry the seal of the defendant firm was affixed. The entry was not signed at the foot by any one, but the name of the defendant firm appeared at the top in the hand-writing of Sundar Das.

Nothing having been paid by the defendants to the plaintiff after the execution of Exhibit P. 2 the plaintiff brought the present action on the 6th of May 1925. The defendants pleaded that the suit was on a balance due on a "mutual, open and current account" and not having been brought within three years from the date of the balance was barred under Article 85. In reply the plaintiff contended that Article 64 and not Article 85 was applicable and, in any case, the suit was within time by reason of an acknowledgment contained in the post card (Exhibit P. 8), which has been proved to have been written by defendant Uttam Chand to the plaintiff in September 1922. The learned District Judge has found against the plaintiff on both these points.

After examining the account and the terms of the document, Exhibit P. 2, I am of opinion that the

learned Judge was clearly in error in applying Article 85 to this case. The dealings between the parties were simple transactions between principal and agent and there was no "mutuality" between them in the sense that "each party to the account extended credit to the other on the faith of an admitted indebtedness." It is a settled law that in order to bring a case within Article 85 it is necessary that the dealings on either side must be so independent of each other, that neither party giving credit to the other relied on the debt which he had against him. As pointed out in *Ram Dhan v. Court of Wards* (1), "a mutual account means not merely where one of two parties has received money and paid it on account of the other, but where *each of the two parties* has received and paid on the other's account," i.e. there is a "mutual account, where each of two parties has received and paid on account of the other, and what would be recoverable would be the balance of the two accounts." It is admitted by the learned counsel for the respondents that the account between the parties lacked this essential feature of a "mutual" account. The case, therefore, does not fall under Article 85, and the settlement between the parties on the 2nd of January 1922 was clearly in the nature of an "account stated" between them, a suit on which is governed by Article 64.

The learned District Judge, however, held that that article was inapplicable as Exhibit P. 2 was not signed by the defendant or his agent duly authorised in this behalf. But, as stated already, Exhibit P. 2 bears the seal of the defendant firm. In *Gur Sahai Ram v. Sadik Mohammad* (2) it was held that the affixing of a seal or stamp, on which the name of the

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(1) (1931) I. L. R. 12 Lah. 420.

(2) 185 P. R. 1883.

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signatory is impressed, is a sufficient signing within the meaning of section 19 of the Indian Limitation Act. Moreover, there is ample authority for the proposition that the signature of the debtor need not appear at the foot of an acknowledgment, but his name written, either by himself or at his dictation, at the top of the document, is sufficient as an acknowledgment [*Ram Ditta v. Ibrahim-ud-din* (1)].

Mr. Mehr Chand for the respondents has conceded that there is no warrant for the distinction drawn by the learned District Judge between Article 64 and section 19 of the Limitation Act in this behalf, the wording of both being identical and it being settled law that what is good and valid signature for the one is also good and valid signature for the other.

It may also be stated that no interest was payable on the account before it was settled on the 2nd of January 1922 and that when the balance was struck by the defendants' *munim* on that date, it was stipulated that interest at 1 *per cent. per mensem* would be payable in future. The suit is, therefore, clearly one for recovery of a sum due on an "account stated" between the parties and duly signed by the defendant and is governed by Article 64, under which the plaintiff had a period of six years to sue.

In this view of the case it is not necessary to discuss at length the question whether Exhibit P. 8 amounts to an acknowledgment under section 19 and gave the plaintiff a further extension of time. It will be sufficient to say that the writer Uttam Chand, defendant No. 7, clearly admitted his and his brother's liability to pay the sum due on the account. I hold, therefore, that the suit is clearly within time and has been wrongly dismissed.

I would accordingly accept the appeal, set aside the judgment and decree of the learned District Judge and pass a decree for Rs. 3,000 in favour of the plaintiff against the defendants 3, 6 and 7 with costs throughout.

MONROE J.—I agree

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Appeal accepted.

APPELLATE CIVIL.

Before Bhide J.

JASWANT SINGH AND OTHERS (PLAINTIFFS)

Appellants

versus

GOBIND RAM (DEFENDANT) Respondent.

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Civil Appeal No. 1017 of 1931.

Negotiable Instruments Act, XXVI of 1881, section 78: Suit on promissory note in plaintiff's favour—whether defendant can plead payment to a third person—Consideration—whether must have come from the promisee.

Plaintiff sued on a promissory note executed by defendant in his favour. Defendant pleaded that the debt was really due to a firm of which plaintiff was a partner, and that the debt had been paid off.

Held, that it was not open to the defendant to plead that he had paid the amount to a third person and that the plaintiff was a mere *benamidar*. On the other hand, if the firm sued him again, he could plead payment to the holder.

Subba Narayana Vathiyar v. Ramaswami Aiyar (1), *Brojo Lal Saha Banikya v. Budh Nath Pyari Lal and Co.* (2), and *Reoti Lal v. Manna Kunwar* (3), relied upon.

Surjug Singh v. Deosaran Singh (4), and *Sewa Ram v. Seth Hoti Lal* (5), distinguished.

Held also, that consideration for a promissory note need not necessarily come from the promisee.

(1) (1907) I. L. R. 30 Mad. 88 (F.B.). (3) (1922) I. L. R. 44 All. 290.

(2) (1928) I. L. R. 55 Cal., 551, 556. (4) (1930) 123 I. C. 395.

(5) (1931) 130 I. C. 698.