

(1918) 07 AHC CK 0013

Allahabad High Court

Case No: None

Mohan Lal

APPELLANT

Vs

Tika Ram

RESPONDENT

Date of Decision: July 9, 1918

Citation: (1919) ILR (All) 104

Hon'ble Judges: Abdul Raoof, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Abdul Raoof, J.

This was a suit brought upon an instalment bond, in the court of the Judge of Small Causes. The bond was for Rs. 175, with interest, and it was to be paid by five annual instalments of Rs. 35 each. The method provided for the payment of the instalments was in these words. As regards the payment of the money it was agreed that the said amount will be paid by instalments in 5 years. It was further provided that if there was any default in payment of any of the instalments, then the creditor would have the power to claim the entire amount in a lump sum: "Daen mausuf ko ikhtiar hai ki kul rupia ek-musht basharah sud ft sadi do rupiya mahwari tarikh tahrir tamassuk haza se ba-ijrai nalish Adalat Diwani wasul kar lewe." The document was written on the 23rd of February, 1909. The first instalment would be payable, according to this bond, at the end of February, 1910. It appears from the facts, found by the court below, that nothing was paid on account of the first two instalments. The plaintiff then had a cause of action, if he so chose, to bring a suit at once for the recovery of the whole amount due under the bond. He, however, did not choose to sue then. He has brought this suit after the term provided in the bond, and in paragraph 3 of his plaint he states that as the claim for the first two instalments is barred by time he makes a claim only with regard to the remaining three instalments. The claim was resisted in the court below on the ground of limitation. The questions for consideration in the court below were whether under

the terms of the installment bond in suit the cause of action arose on the first default and whether the plaintiff ought then to have brought the suit and whether by reason of the fact that he allowed the limitation period to elapse his entire claim was barred by time and it was not open to him to sue for the remaining instalments as being within time.

2. The real question for decision, however, was whether under the terms of the bond the plaintiff had an option to waive his right to bring the suit at once on the happening of the first default and whether as a matter of fact he did exercise this right of waiver. On the face of the document there can be no possible doubt that he had such a right and his subsequent conduct shows that he did exercise it. The learned Judge of the court below has relied on the case of *Amolak Chand v. Baijnath* I.L.R(1913) All. 455 and has held that the facts in the two cases were similar. The facts of that case, however, are clearly distinguishable from the facts of the present case. The facts of that case as stated at pages 457 and 458 were these: The installment bond was dated the 7th of July, 1904, the whole amount was repayable in 4 1/2 years in equal instalments of Rs. 75 payable every six months. There was a condition in the bond that if any instalment remained unpaid on the due date, then the creditor would be entitled to recover the whole sum at once with interest or that he might sue for each instalment as it fell due and remained unpaid. The first two instalments were paid on the due dates, the third instalment was due on the 7th of January, 1906. Neither this nor any of the subsequent instalments were paid. On the 17th of August, 1912, i.e., six years and seven months after the 7th of January, 1906, the plaintiff brought the suit. An examination of the plaint showed that the plaintiff sued to recover the full amount which was due on the 7th of January, 1906, together with interest, and which fell due by reason of the default of the 7th of January. In his plaint he distinctly stated that the cause of action for the suit accrued on the 7th of January, 1906. On these facts the learned Judges held that the plaintiff in that case had elected to take one of the two options given him by the bond viz., that one which entitled him to recover the full amount of the debt due by reason of the default in one instalment. They went on to say: It is perfectly clear from the plaint itself that the plaintiffs have not waived that right which entitled them to recover the whole of the balance due by reason of the default of the 7th of January, 1906. In fact they take their stand upon that provision and seek to enforce their right. The existence of a waiver is distinctly negatived by the plaint, which states that the right accrued on the 7th of January, 1906. To enforce that right they had six years from that date." In the present case the plaintiff in distinct terms states that his claim as to the first two instalments was barred by time and that his suit related only to the three remaining instalments. He does not base his cause of action on the default of payment of the first instalment. He does not claim the entire amount due under the bond, He has no doubt claimed interest on the amounts due with respect to the two first instalments. But having regard so the cause of action stated in the plaint he is not entitled to claim such interest. The learned Judges in these mentioned above

distinguish the case before them from the case of *Ajudhia v. Kunjal* I.L.R(1908) All. 123, in these words: "In regard to the ruling in *Ajudhia v. Kunjal*, an examination thereof shows clearly that it cannot apply to the, facts of the present case. That suit was brought to recover the last three of the instalments that were due under that bond and not the whole amount by reason of a default in payment of an instalment. It appears to have been proved or assumed that the plaintiffs had forborne to sue, in other words, had waived their rights in respect of the instalments that were due and had not been paid." These remarks make the case of *Ajudhia v. Runjal* I.L.R(1908) All.123 fully applicable to this case. The facts of the present case and those of *Ajudhia v. Kunjal* are almost parallel.

3. The case of *Chandan Singh v. Bidhya Dhar* 15 Ind Cas 856 is also distinguishable from the present case. Mr. Justice Chamier distinguished the case before him from the case of *Ajudhia v. Kunjal* I.L.R(1908) All. 123 upon the ground that the bond before him provided that in default of payment of any instalment, the debtor was bound to pay the whole amount at once. He held that that circumstance distinguished the case from *Ajudhia v. Kunjal* ILR (1908) All.123. The same reasoning is equally applicable in this case. In my opinion the learned Judge of the court below did not correctly appreciate the terms of the bond in suit. The suit was within time and it, ought not to have been dismissed as being barred by time. I allow this application, set aside the judgment and decree of the court below and remand the case to that court to be restored to its original number on the file and to be disposed of on the merits. The costs to abide the event.