

Roshan Lal and Another Vs Chaudhuri Bashir Ahmed and Another

Court: Allahabad High Court

Date of Decision: June 16, 1924

Citation: AIR 1925 All 138

Final Decision: Dismissed

Judgement

1. The question for determination in this appeal is whether the suit was rightly dismissed by the Court below on the ground of limitation.

2 The suit was brought on foot of a bond executed on the 10th of July, 1908. The principal amount was payable in the course of three years. But

it was also stipulated that interest would be paid every six months according to the Hindi calendar and if any such interest (payable every six

months) should remain unpaid the mortgagee would be entitled to enforce his bond without waiting for the three years" time. It is common ground

that no interest was paid by the mortgagor. It is also common ground that if six months, according to the Hindi calendar, be added to the date of

the bond, the starting point of limitation would be some time before the 10th of July, 1909, the date on which the suit was actually filed. On

the other hand, if six months, according to the Gregorian calendar, be taken from the date of the bond as the starting point of limitation, the suit

would be just within time. The question is what course should be adopted to find out the starting point of limitation.

3. The learned Counsel for the appellants has taken his stand on Section 25 of the Limitation Act and has referred us to two cases, viz. *Rungo*

Bujaji v. Babaji (1881) 6 Bom. 88 and *Latifi-un-nisa v. Dhan Kunwar* (1897) 24 Cal. 382. The Court below has referred to the case of *Dwarka*

Prasad v. Raja Ram (1915) 13 A.L.J. 486. We have carefully gone through these cases and are of opinion that it is really a matter of interpretation

in every case. The true principle seems to be this. If the starting point is to be calculated, as so many months or so many years from a particular

date, that point must be calculated according to the Gregorian calendar. On the other hand if the starting point is otherwise fixed by the stipulation

itself, the Court cannot apply Section 25 of the Limitation Act. In the case of *South British Fire and Marine Insurance Co. v. Brojo Nath Shaha*

(1909) 36 Cal. 516, their Lordships of the Calcutta High Court had to interpret a policy of insurance and they held that lunar month were meant

and not calendar months. It is therefore really a matter of interpretation in every case.

4. Coming to the facts of this case we find in the bond itself the following expressions:

I therefore covenant and give in writing that I shall pay the principal to the said creditor within three years and shall continue to pay interest on the

entire amount at 14 annas per cent, per mensem according to Hindi months including the intercalary month till the payment of the entire amount due

thereunder...If God forbid... or if six monthly interest be not paid, the said creditor shall, under all the circumstances, have power to realise the

whole of the principal, etc." We have read and re-read the document and we have also consulted the original document in Urdu character. It

seems clear to us that the parties meant that interest would be paid every six Hindi months, without dividing the year in which there is an intercalary

month into the two periods, of six and seven months. The view of the stipulation has been taken by the plaintiff himself in the account appended to

the plaint. There interest has been calculated every six Hindi months. In. the first two six months the calculation is from Asarh to Push and Push to

Asarh. But in the third period which contained apparently an intercalary month, the six months are composed not of seven months Asarh to Pus but

exactly six months Asarh; to Aghan. The intention therefore was that the interest should be payable at the expiry of six months according to the

Hindi calendar, that is to say on a particular date and not at the expiry of "six months" which u/s 25 of the Limitation Act would mean six months

under the Gregorian calendar.

5. The decree of the Court below seems to be right and we hereby dismiss the appeal with costs which will include counsel's fees in this Court on

the higher scale.