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(1878) 06 AHC CK 0009

Allahabad High Court

Case No: None

Mathura Das

APPELLANT

Vs

Babu Lal

RESPONDENT

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Date of Decision: June 14, 1878

Citation: (1875) ILR (All) 683

Hon'ble Judges: Turner, O.C.J.; Pearson, J

Bench: Division Bench

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Judgement

Turner, Officiating C.J.

1. The plaintiff, appellant, carries on the business of a banker in the Lashkar of Gwalior, and the defendant, respondent, is a resident of Allahabad who for some years accepted contracts in the Lashkar. In the course of his business the respondent had monetary dealings with the appellant, and in respect of those dealings the appellant asserts that a sum of Rs. 14,812-8-3 is due to him for principal and interest, and to recover this sum he has instituted the present proceedings. It is admitted that several of the items of the claim are barred by limitation, unless the appellant can establish that, by an acknowledgment of the debt or payment of interest, a new period of limitation accrued. In proof of an acknowledgment, the appellant relies on a letter he received from the respondent, bearing date Mansgar Sudi, 10th Sambat 1931, corresponding with the 18th December 1874, and which is in the following terms:

Written by Babu Lalto Shah Benarsi Das, Camp Gwalior, dated Mansgar Sudi 10th Sambat 1981.

After tendering my compliments, I beg to say that your letter came and I know the contents thereof. I received my account in which you have struck a balance of Rs. 17,679-2-0 of the Chandaury coin. You have written me to debit and credit the same, and I have known it. The account is correct, but it has not been running for the last two or three years, and my papers are at Lashkar. Now-a-days a marriage is to be

celebrated in my house. I shall send for the papers from Lashkar in Phagun, and, after examining them, I shall make pukka debit and credit entries in my accounts, and shall write you to do the same; then I shall make arrangement for the payment of the money. If I fail to procure the money till Phagun, then, according to our agreement at Cawnpore, I shall give you some property yielding a monthly rent of Rs. 150. You will deduct your interest at 7 3/4 annas per cent., and the balance you may credit in my account. In our account of customs and tank there appears some difference in interest, &c. The letter written by me is with you. You should send the same to me. I shall examine the accounts according to the terms agreed upon by us. We shall give credit for any mistake on either side. You have not charged interest on the item relating to the tank, but I shall charge it. I had drawn a hundi for Rs. 5,000 on you, for which you have got a rukka written by me and Babu Sahib. You should send the same to me--all right, Mangar Sudi, 10th Sambat 1931. If there be any mistake, credit shall be given or taken.

2. appears that Bhikhari Das, gomashtha of the appellant, accompanied by Gaj Mal, came to Allahabad to obtain from the respondent the payment of the amount then due to the appellant, which was shown by an account then delivered to the respondent to amount to Rs. 17,679-2-0. The respondent stated that he was unable at once to satisfy the demand, but undertook to pay it within two or three months, and that if he failed to do so he would give security. For the satisfaction of the appellant it was arranged that the respondent should send him a letter expressing the terms he had offered, and a draft was prepared by Bhikhari Das of which the respondent did not approve, and he then dictated to Bhikhari Das the draft which was subsequently faired out by his own gomashtha and is the letter dated Mangar Sudi, 10th Sambat 1931, to which we have referred. The respondent has admitted, in his deposition taken on the 19th July 1877, that this letter was written by his directions, and it is proved that the concluding words "all right, &c," to the end of the letter, are in his handwriting. The effect of this letter is to admit the existence of a debt due by the sender to the person addressed. While admitting that the account rendered is on the face of it correct, the sender of the letter reserves to himself the right of testing the account by his own books before finally allowing it to be correct, and he then promises to pay what may be due at a time stated, and in the event of default to give security for the debt.

3. It cannot be doubted that, if this letter has been "signed" by the respondent or his agent duly authorised in that behalf, it constitutes a sufficient acknowledgment to satisfy the Limitation Act.

4. It is not the practice of Hindu bankers to sign their letter at the foot. Their letters are ordinarily headed, as is the letter on which the respondent relies, with an intimation of the person to whom the letter is addressed and of the person by whom it is sent. The admission of the respondent that the letter was written by his gomashtha by his orders, and the circumstance that he added a paragraph at the

conclusion, is sufficient evidence that the heading was written by an agent duly authorised. There remains the question--Is this heading a signature within the meaning of the Limitation Act? The Act does not require that the signature should be at the foot or in any particular part of the document, and in our judgment, whenever the maker of an instrument or his agent acting with authority introduces the name of the maker with a view to authenticate the instrument as the instrument of the maker, such an introduction of the name is a sufficient signature. We do not mean to say that every introduction of the name of the maker into an instrument is a signature. As expressed in an English decision on the Statute of Frauds, the introduction of the name must amount to an acknowledgment by the party that it is his instrument, and if the name does not give such authenticity to the instrument, it does not amount to what the Statute requires, Addison on Contracts, 7th ed., 159. In the heading of such a letter as that which is before us, it is clear the name of the sender is introduced to authenticate the letter, or, in other words, to assure the person to whom it is addressed that the letter is sent by the person named. We consequently find that the letter is "signed" by the sender within the meaning of the Limitation Act, and that it constitutes a sufficient acknowledgment of the debt to satisfy that Act. The claim is therefore in no particular barred by limitation. (The learned Judge then proceeded to determine the appeal on its merits.)