
AIR 1961 MP 346 : (1961) ILR (MP) 366 : (1961) JLJ 419 : (1961) 6 MPLJ 645

Madhya Pradesh High Court (Indore Bench)

Case No: Second Appeal No. 119 of 1958

Gorilal Baldeodas

APPELLANT

Vs

Ramjeelal Bhuralal

RESPONDENT

Date of Decision: Sept. 23, 1960

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 7
- Limitation Act, 1908 - Section 20

Citation: AIR 1961 MP 346 : (1961) ILR (MP) 366 : (1961) JLJ 419 : (1961) 6 MPLJ 645

Hon'ble Judges: H.R. Krishnan, J

Bench: Single Bench

Advocate: S.D. Sanghi, for the Appellant; K.A. Chitale, for the Respondent

Final Decision: Allowed

Judgement

H.R. Krishnan, J.

This is an appeal by the plaintiff from the judgment of the first appellate Court reversing the decision of the trial Court allowing the plaintiff's suit for the principal of a loan of Rs. 1000/- and interest at a rate lower than the one claimed. The appellate Court held that the suit of the plaintiff was time-barred; because the payment by a cheque in the handwriting of the borrower, is not an acknowledgement for the purposes of Section 20 of the Limitation Act, and does not give a fresh term of limitation, unless the cheque is honoured and the money is realised. As in this case the cheque concerned was not honoured, limitation was not saved u/s 20 and the plaintiff's suit stood time-barred. The appellate Court did not consider whether the plaintiff could have been granted any relief on the fact of the cheque itself being dishonoured; the plaintiff himself had not made that prayer in so many words.

The facts of the case are the following: It is common ground that the plaintiff advanced a loan of Rs. 1000/- in cash on 11-6-1952. There was a receipt and interest was to be at

one per cent. On 10-7-1953 the defendant passed a cheque for one thousand rupees written by himself. The cheque when presented to the bank was dishonoured. That was on 18-7-1953. The plaintiff brought the present suit for Rs. 1000/- plus interest, on 11-5-1956. Starting from the date of the loan, the suit was obviously time-barred, but the plaintiffs case was that payment by cheque is "payment" with effect from the date on which it is given. Even if it was subsequently dishonoured, still it was "payment" for the purposes of Section 20 of the Limitation Act and gave a fresh period of limitation.

In this Court, the plaintiff further urged that if his contention on the ground of limitation is not accepted, he should at least get the relief of the payment of the amount of cheque that was dishonoured, plus interest for the subsequent period. No doubt, he has not pleaded it separately and expressly sought it as alternative relief. He relies upon order 7 Rule 7, C. P. C., which provides "it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for".

The first question is whether limitation is saved in a case like this where a cheque in the handwriting of the borrower is handed over to the creditor, but is subsequently dishonoured. Both the parties have quoted case law. In these cases, the word "payment" is used in two slightly different senses. Where cash is handed over both the senses will have the effect. But where a bill or cheque or pro-note (or any such negotiable instrument) is given, one sense is that it is payment, because it represents money and the parties intend that as soon as it goes into the hands of the creditor, the debt should be washed out. The other sense is in regard to the ultimate effect.

In the latter sense (but not in the former) payment by a negotiable instrument is at the first instance conditional; only when the cheque or bill is honoured does the creditor really benefit by it, i.e., is paid in the latter sense. If they are dishonoured, then original loan is revived. A good deal of confusion will be saved by remembering that it is possible to have payment in first sense without its turning out ultimately to be one in the second sense. The real question, therefore, is whether the word "payment" in Section 20, Limitation Act, is payment in the first sense i.e., ostensible payment that is intended by the parties, in other words, represented by the debtor and accepted by the creditor, or whether it is in the second sense of actual realisation.

In the much older rulings of all the High Courts, the view taken was that payment by cheque would only be a conditional payment in both senses, and only the realisation of the money would be the effective payment. But as late as 1956 the Bombay High Court in [Chintaman Dhundiraj Vs. Sadguru Narayan Maharaj Datta Sansthan and Others](#), held that in case the cheque is subsequently dishonoured, there has been no payment for the purpose of Section 20, Limitation Act. What has been said about cheques would apply equally to bills, pro-notes and other negotiable instruments. On the other hand, the principle laid down in *Kedar Nath Mitter v. Denobandhu Shaha* AIR 1916 Cal 580 and [Prafulla Chandra Nag Vs. Jatindra Nath Kar](#), is that there has been a payment as soon as

the negotiable instrument is given and accepted. It did happen in these cases that the cheques were honoured, but in the view of the Court it was not the criterion. In [Prafulla Chandra Nag Vs. Jatindra Nath Kar](#), :

"Under Section 20, the mode of payment need not be in cash. Similarly the payment and acknowledgment may be simultaneous. Further the Indian Statute only requires that the acknowledgment must be of the payment; it is not necessary that it must also be stated that the payment is towards a particular debt. Hence a cheque accepted by payee operates as payment as well as acknowledgment of payment in the handwriting of the person making the payment".

Similarly the older view held in *Mackenzie v. Tiruvengadathan* ILR 9 Mad 272 was overruled in [Kandaswami Mudaliar Vs. Thevammal](#), and the principle laid down was that:

"Payment u/s 20, may be made in any form and a pro-note can be given by way of payment. The writing of the pro-note need not specify that the payment was made towards interest or principal".

No fully reported case from the Nagpur High Court has been placed before me, but in a short-note case in *Kisanlal v. Firm Bansilal Sarda* 1954 Nag LJ 263, it was held:

"Under Section 20, Limitation Act, the fresh period of Limitation is to be computed from the time when payment is made. It follows, therefore, that where a cheque itself is given as part payment of a debt time will run from the date the cheque is given. But where this is not the case, time will run from the date of ½ encashment".

It is regrettable that the entire report is not available and the citation suffers from the usual disabilities of abstract reports. But this is the only Nagpur ruling placed before me for what it is worth. The Allahabad High Court is of the same view.

The recent rulings of the Punjab High Court reported in [Mangat Ram Shiv Nath Vs. Mange Lal Om Parkash](#), and of the Andhra High Court in [Thavva Subrahmanyam Vs. Chenna Venkataratnam](#), are to the same effect. If one bears in mind that the word "payment" has been used in two different senses, it would be clear that the moment the negotiable instrument is handed over and accepted by the creditor, and is in the debtor's handwriting, there has been a payment for the purposes of Section 20, Limitation Act and a fresh period of limitation has already started.

If the negotiable instrument is dishonoured subsequently, the creditor no doubt can fall back on his original claim. But the new term of limitation that has already started, cannot get blocked because of the subsequent happening. To link Section 20 with the subsequent honouring of the negotiable instrument would indeed lead to absurd results. The debtor has intended, and at all events represented to the creditor that the negotiable instrument is good, and thereby the creditor has for his part, been given a feeling of security with a fresh term of limitation.

If it turns out that the debtor's negotiable instrument is dishonoured (or as for that matter the currency notes that he has given turn out to be counterfeit) this fresh term of limitation cannot be blocked. Again, if one looks to the equity side of it, a payment which the debtor means as a sheer pretence, but the creditor accepts as genuine, cannot certainly deprive the latter of what Section 20 has already given him.

Thus I would hold that the passing of the cheque is payment for the purpose of Section 20 and if the other conditions were fulfilled, a fresh term of limitation started from that date, whether or not it is subsequently honoured. That way the suit of the plaintiff was not time-barred.

Apart from this contention, the plaintiff appellant has urged that even if we follow the Bombay view assuming that "payment" u/s 20 means payment in the second sense set out above, still the Court should, even without the alternative being expressly prayed for, granted a relief on the basis of the dishonouring of the cheque. The relevant portion of Order 7 Rule 7 has already been set out. One should always bear in mind that a law court is neither a school where the litigant is taught the rules of discipline, nor a gymnasium for feats of ingenuity. Justice has to be done if the litigant comes out with a full and clear disclosure of all the relevant facts and is not trying to be too clever. Certainly he cannot deprive his opponent of any right that he might have acquired meanwhile by limitation or otherwise.

But if he comes out with a full statement of facts on which he would obviously be entitled to a relief, then the Court should grant it, even if he has failed to set it out as an alternative which is patent and obvious. The only qualification on this general principle is that there should be no surprise. In this connection the general principles laid down in [Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya](#), are worth quoting:

"A code of procedure must be regarded as such it is procedure something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always, that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it".

Thus if I had held that the dishonouring of the debtor's cheque disentitles the creditor to the fresh period of limitation given by Section 20, I would have granted a relief on the basis of the dishonouring itself. But On the view taken in regard to limitation, the plaintiff gets the fuller relief.

The defendant-appellant has argued that the suit was time-barred and that the alternative relief should not also be granted as he had no opportunity to prove his case. He feels that he could at least have raised the question of territorial jurisdiction, and also tried to prove his allegation that though the cheque was for a sum identical to that of the principal loan,

and he was the plaintiff's debtor at that time still the cheque had nothing to do with the loan. What happened was that the defendant delayed filing of the process fee so that the witnesses did not turn up on the date fixed. In fact he had been cautioned about it. Again on the date fixed, he was absent though his place Neemuch is only forty miles from Mandsaur and is connected by bus as well as by train. When the case was taken up neither the defendant nor his witnesses were present and accordingly the plaintiff led evidence.

The defendant's lawyer cross-examined them without any prayer for adjournment or objection. The defendant himself had sent a telegram which was received later on, that he had missed the train. But that was no reason why he could not have come by bus, All things considered, the defendant's conduct was most unbusinesslike, and only showed that he had really no defence worth the name. Be that as it may, quite independently of the defendant's conduct, I find that the suit was not time-barred.

I, accordingly, allow the appeal, set aside the judgment and decree of the first appellate Court and restore the judgment and decree of the trial Court. Costs throughout to the plaintiff-appellant and pleader's fee payable by the defendant-respondent.