

(1910) 02 CAL CK 0001

Calcutta High Court

Case No: None

Rai Mohan Shaha

APPELLANT

Vs

Lakshu Karikar

RESPONDENT

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**Date of Decision:** Feb. 18, 1910**Acts Referred:**

- Limitation Act, 1963 - Section 20

**Citation:** 6 Ind. Cas. 16**Hon'ble Judges:** Teunon, J; Mookerjee, J**Bench:** Division Bench

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### Judgement

1. We are invited in this Rule to set asid a decree of the Small Cause Court at Manikgunge, by which the suit of the petitioner has been dismissed as barred by limitation. The plaintiff sued to recover money due on a bond for Rs. 50 alleged to have been executed in his favour by the defendant on the 23rd March, 1905. The debt carried interest at the rate of Rs. 1-9 per cent. per month and was made payable on the 16th November 1905. The suit was commenced on the 18th March. 1909. The bond which was produced in Court and was admitted by the defendant, showed on the face of it an endorsement of a payment of Rs. 36 alleged to have been made on the 20th March 1908. The defendant in his statement before the Court also admitted the payment, but he alleged that the plaintiff had at the time consented to give up his claim for interest and to limit his claim to the principal amount. He urged, therefore, that only Rs. 14 was due, but pleaded that the claim was barred by limitetion. On the date of the final hearing, the defendant asked for an adjournment, which was refused, he thereupon did not defend the suit, But the Small Cause Court Judge dismissed the suit on the ground that the claim seemed to have been barred by limitation, and in support of this view observed as follows: There was an endorsement on the back of the bond but it was not signed, the plaintiff's witness and gomashta stated that the payment was for principal and interest, and so the payment did not save the bond from being time-barred" This is

not quite intelligible. What the learned Judge apparently meant was that as the sum of Rs. 30 was paid on account of principal and interest and it was not specified how much was for interest and how much for principal, there was no payment on account of interest as such, within the meaning of Section 20 of the Limitation Act. This view is obviously untenable. The witness examined on behalf of the plaintiff stated that the payment was made on account of principal and interest. In fact on the date of the alleged payment, Rs. 28-2 was due on account of interest. Consequently a part of the Rs. 36 paid must be taken to have been made and applied in payment of interest and the remainder, in part payment of principal. Under these circumstances, we must hold that there has been a payment of interest as such by the person liable, so as to attract the consequences for which provision is made in Section 20 of the Limitation Act. This view is supported by the case of Subraya Kamati v. Pakaya 4 Bom. L.R. 231, which is precisely in point, and is distinguishable from the cases of Hanmantmal Motichand v. Ramba Bai 3 B. 198 and Damodar Ramchander Bapat v. Bai Jankibai 5 Bom. L.R. 350, where indefinite payments on geueral account made it impossible to say that a payment had been made in respect of interest as such. The suit is, therefore, not barred by limitation.

2. The result is that this Rule is made absolute and the decree of the Court below set aside. The claim of the plaintiff is decreed with costs both here and in the Court below, but the decretal amount will not carry any interest. We assess the hearing fee in this Court at one gold mohur.