

(1869) 04 CAL CK 0004

Calcutta High Court

Case No: Special Appeal No. 3008 of 1868

Gaur Hari Doss

APPELLANT

Vs

Madan Mohan Biswas

RESPONDENT

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Date of Decision: April 8, 1869

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### Judgement

Bayley, J.

According to the statement made by the pleader for the special appellant, the nature of the action in this case is of this kind. One Ram Chandra Bhowmik executed two bonds for a certain sum of money in favor of the plaintiff. The plaintiff sued, in the Court of Small Causes, to recover the money due upon those bonds. On the 2nd July 1863, corresponding with the 19th Assar 1270, the Court of Small Causes gave the plaintiff a decree for the money due on those bonds under these circumstances. The defendant, Ram Chandra, confessed judgment, and the present defendant, Madan Mohan Biswas, intervened by a petition of date the 19th Assar 1270 (2nd July 1863) by which he covenanted, that if, on the 31st Agran 1270 (16th December 1863,) a first installment due upon the decree for the bonds was not paid, then he, Madan Mohan, would, in his own person and in his property, be responsible for the whole amount, principal and interest, due upon the bonds.

2. On the 11th April 1867, corresponding with the 30th Chait 1273, the present suit was instituted, and the plaintiff sought to recover from Madan Mohan, by virtue of his agreement of the 19th Assar 1270 the total amount of the bonds in question.

3. The lower appellate Court has found that this is a suit of the nature described in clause 9, section 1, Act XIV of 1859, and then, inasmuch as the plaintiff did not sue within three years of the time when his cause of action accrued, that his suit was barred by the application of the Statute of Limitation. The lower appellate Court, accordingly, has dismissed the plaintiff's suit.

4. In special appeal, it is contended before us, that the limitation applicable in this case is six years, under the provisions of clause 16, section 1, Act XIV of 1859, because there is no other express provision in the Limitation Act for such a suit as

this. It would probably have been more accurate, if the lower appellate Court had, upon its own understanding of the case, found that it was clause 10, and not clause 9, of section 1, which applied; because although the documents in this instance were not registered, still it was a contract upon a document, and, therefore, it was not the provisions of clause 9, but of clause 10, that would apply to this case, if they do apply at all; but this is immaterial because the period of limitation is the same by reason that the documents were not registered. The provisions of clause 10, which apply to this case, are these:--

To suits brought to recover money lent on interest, or for the breach of any contract, the period of three years from the time when the debt became due, or when the breach of contract in respect of which the suit is brought first took place." What, then, is the nature of this suit? It is clearly a suit to recover money upon a written contract by reason of the breach of that contract. In this case, it is stated to us by the pleader for the special appellant, that the defendant covenanted, that if, on the 31st Agran 1270 (16th December 1863), a certain sum of money was not paid, then he would become responsible for a much larger sum of money, that is, the money now in suit. Then when did the breach of contract take place? It is admitted that this was on the 31st Agran 1270. And when did the plaintiff sue? It was not until the 30th Chait 1273 (12th April 1867), or in the words of the Act, until after the expiration of the period of three years from the time when the breach of contract in respect of which the action was brought first took place.

We think, then, that the suit was clearly a suit coming within the provisions of clause 10, section 1, Act XIV of 1859; that it was, therefore, incumbent on the plaintiff to sue within three years of the date of his cause of action; and that as he did not do so, the lower appellate Court was right in law in dismissing his suit, and we dismiss this special appeal with costs.