
AIR 1932 Cal 440 : 137 Ind. Cas. 788

Calcutta High Court

Case No: None

Rajani Mandal

APPELLANT

Vs

Digindra Mohan Biswas

RESPONDENT

Date of Decision: June 23, 1931

Acts Referred:

Limitation Act, 1963 " Section 20

Citation: AIR 1932 Cal 440 : 137 Ind. Cas. 788

Hon'ble Judges: Jack, J

Bench: Single Bench

Judgement

Jack, J.

This Rule has been issued on the opposite party to show cause why a decree of the Small Cause Court Judge of Madaripore in a

suit for money due on a bond should not be sot aside on the ground that it is barred by limitation.

2. The question at issue here is whether the endorsement of the payment of interst made on 2nd September 1928 by a scribe on behalf of the

debtor, and also signed by him on behalf of the debtor who was illiterate and who made no mark beneath the endorsement, should be taken to

save limitation as having been made within three years of the suit. In Section 20, Limitation Act, it is provided that the limitation can be saved

where there is an acknowledgment of the payment of interest within the period of limitation in the handwriting of or in writing signed by the person

making the same, and the question is whether the signature made by the scribe on behalf of the debtor who was making the payment brings him

under this provision. Under the General Clauses Act the word ""sign"" shall with reference to a person who is unable to sign his name include the

word ""mark"" and it is therefore argued that this would be extending the meaning of the word ""sign"" to that extent, but otherwise the word ""sign

must be given its ordinary meaning. On the side of the applicant the case of Baliram Koer v. Sobha 44 Ind. Cas. 516 has been referred to. There it

is stated; that there was no case that had ever yet-suggested that in the absence of a mark the clear words of the section requiring the payment and

the handwriting to be made by one and the same person were not to be complied with. This case refers to the proviso to Section 20, Limitation

Act (9 of 1908), under which the endorsement must be in the handwriting of the person making the payment. On the other hand for the opposite

party the case of Sri Ram Singh Vs. Kashi Mollah and Others, has been referred to. In that case it was held by Jwala Pershad, J., of the Patna

High Court, that if the person making a part payment of the principal, being unable to write himself, gets another person to endorse for him and on

his behalf, it is a sufficient compliance with the proviso to Section 20, Limitation Act (9 of 1908).

3. The learned Judge referred to the case of Jamna v. Jaga Bhana [1904] 28 Bom. 262 and it was suggested that in that case Sir Lawrence

Jenkins based his decision on the fact that the affixing of a mark beneath an endorsement not written by the person making the payment was in

accord with the prevailing custom of signing among illiterate persons. That judgment however appears to have been based merely, on previous

decisions of the Madras High Court in which making a mark was regarded as sufficient compliance with the section and the learned Judge states:

Were the matter res integra we might have felt difficulty in arriving at the same conclusion.

4. It is clear that in the Patna case the learned Judge based his decision on the fact that the endorsement which in that case was made with the use

of the word Bakalam"" was in accordance with the prevailing custom of signing by illiterate persons, and it is suggested that if it is required in the

case of illiterate persons that there should appear a mark or thumb-impression beneath an endorsement that would have been made clear in the

proviso to Section 20. In the present case we have the fact that at the time of the endorsement the debtor was present and authorized the endorser

by touching the pen to sign on his behalf. It is clear that this was for illiterate persons a customary method of signing. The principal document in

question was executed in the same way. the word used in each case being ""Nishansahi"" followed by the name of the Illiterate person signing and

the (name of the scribe attached below. In Bengal this is the ordinary way in which illiterate persons sign documents and obviously the statement in

the General Clauses Act, that the definition of the word ""sign"" includes making a ""mark,"" does not limit the possible ways in which documents may

be signed. Once it is established that it is the ordinary practice among illiterate persons to sign documents by touching the pen and authorizing

another person to sign by writing their name for them in their presence this appears to me to be a sufficient signing, and therefore in the present

case the endorsement must be regarded as having been signed by the person making the payment. I therefore agree with the¹ finding of the Court

below on this point and discharge the rule with costs; hearing fee, one gold mohur.