

Firm Prasanna Kumar Pal Sanatan Kunda Vs Punaulla Miji and Another

Court: Calcutta High Court

Date of Decision: Feb. 21, 1923

Acts Referred: Contract Act, 1872 " Section 25(3)
Limitation Act, 1908 " Section 19

Citation: AIR 1923 Cal 659 : 79 Ind. Cas. 77

Hon'ble Judges: Rankin, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for money advanced on loan. There were transactions between the parties, followed by an adjustment

of accounts on the 4th April 1911, when Rs. 3,535 was found due from the defendants to the plaintiffs. Thereafter, there were three successive

adjustments on the 2nd April 1914, 6th April 1917 and 8th February 1920. On the 3rd August 1920, the plaintiffs instituted the present suit to

recover the sum of Es. 5, 200 with interest and costs. The defendants resited the claim on the ground, amongst others, that it was barred limitation.

The Subordinate Judge has found on the merits in favour of the plaintiffs but has dismissed the suit on a twofold ground, namely, first, that the claim

was barred by limitation and, secondly, that the document which recorded the adjustment on the 4th April 1911 was not admissible in evidence as

not duly stamped. On the present appeal, these positions have been controverted and we have come to the conclusion that the view taken by the

Subordinate Judge cannot be supported.

2. As regards the first question, namely, that of limitation, the Subordinate Judge has held that the plaintiffs are not entitled to the benefit of Section

19 of the Indian Limitation Act, inasmuch as they have not established that, at the time when the accounts were adjusted on the 4th April 1922, the

sum found due was still legally recoverable. The appellants have, in answer, urged that the document evidences something more than an

acknowledgment and is in essence an agreement to pay a barred debt within the meaning of Section 25, sub-section (3) of the Indian Contract

Act. This argument has been put forward on the assumption that the sum determined to be due on the 4th April 1911 was in fact not legally

recoverable by reason of the operation of the statute of limitations, though the debtor might not have been aware that the claim was barred ; Mati

Sheikh v. Baikantha Nath Kar 20 Ind. Cas. 809 : 18 C.L.J. 269, Bhowani Misser v. Peari Jha 21 Ind. Cas. 254 : 18 C.L.J. 329, Simon v.

Arogiasmi Pillai 25 Ind. Cas. 361 : 16 M.L.T. 122.

3. Section 25, sub-section (3), provides that an agreement made without consideration is void, unless it is a promise made in writing and signed by

the person to be charged therewith, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the

limitation of suits. Whether the statement contained in a particular document is a mere acknowledgment within the meaning of Section 19 of the

Indian Limitation Act, or whether it is a promise to pay within the meaning Section 25 of the Indian Contract Act, must manifestly depend upon the

language of the instrument under consideration. In the case before us, the document executed by the defendants on the 4th April 1911 was in the

following terms :

Account of money, in the name of Panaullah Miji and TJmer Ali Miji of Nanupur, Mokam Chandpore. Amount due, brought forward from the

account of Panaulla Miji at page 24 of this book Rs. 3,535. Interest at the rate of one rupee per cent, par mensem, stipulated time for payment the

month oÃ-Â¿Â½ Bhadra of the year 1318 B.S."" Then follow the signatures of the executants on one-anna stamp.

3. It is plain that the provision for payment of interest is not an acknowledgment of the existing debt but is a promise to pay interest in future on the

debt specified, We need not consider whether such a promise to pay interest may not necessarily involve a promise to re-pay the debt; for1 we

have the further expression "" stipulated time for re payment "" which unquestionably contained a promise to repay the amount found due.

Consequently, on a consideration of the document before us, the inference is legitimate that it sets out a promise made in writing and signed by the

persons to be charged therewith to pay wholly the debt specified therein. But the respondents have urged that a distinction must be observed

between an acknowledgment within the meaning of Section 19 of the Indian Limitation Act and a promise to pay within the meaning of Section 25

of the Indian Contract Act. This may be conceded, notwithstanding the observation of the Judicial Committee in Maniram Seth v, Seih Bup Ghand

33 C. 1047 : 33 I.A. 165 : 4 C.L.J. 94 : 8 Bom. L.R. 504 : 10 C.W.N. 874 : 1 M.L.T. 199 :3 A.L.J. 525 : 16 M.L.J. 300 : 2 N.L.R. 130 (P.C.),

namely, that an unconditional acknowledgment has always been held to imply a promise to pay, because that is the only inference, if nothing is said

to the contrary ; it is what every honest man would mean to do. There are, however, authorities which show that in view of the provisions of

Section 19 of the Indian Limitation Act, which make an acknowledgment available only when it is in respect of a debt not yet barred by limitation,

the Court should be reluctant to imply in every case of acknowledgment a promise to pay a barred debt; in this connection, reference may be

made to the decisions in *Ghowksi Rimutlal v. Ghowhsi Aohrutlal* 8 B. 194 : 4 Ind. Dec. (N.S.), *Jethi Bai v. Putii Bai* 17 Ind. 722 : 14 Bom. L.R.

1020, *Ganga Prosad v. Bam Dayal* 23 A. 502 A.W.N. (1901) 150, and *Gobinda Das v. Sam Das* 30 A. 208 : 5 A.L.J. 333 : A.W.N. (1908)

129. In the case of *Chandra Prosad v. Varajlal* 1 Bom. L.R. 644, a Khata signed by the defendant was produced. It contained an entry in the

following terms: Rs. 200 was found to be due on account of the previous khata having been made up. For the same this khata is passed. The

moneys are payable by me. I am to pay the same whenever you may make a demand." It was ruled that the khata was not a mere

acknowledgment of the debt, but was a promise to pay within the meaning of Section 25 of the Indian Contract Act. To the same effect are the

decisions of the Punjab Chief Court, in *Mahbub Jan v. Nuruddm* 102 P.R. 1905 : 22 P.L.R. 1906 : 134 P.W.R. 1905, *Bhagwan Singh v. Munshi*

Bam 41 Ind. Cas. 415 : 66 P.R. 1917 : 135 P.W.R. 191, and *Tirhu v. Bizah Bam* 8 Ind. Cas. 811 : 138 P.W.R. 1901 : 8 P.L.R. 1911 In the

case last mentioned, the principle was enunciated that when debtors strike a balance in the account-book of the creditor, promising in writing to

pay the debt due to him, a suit may be brought on the basis of the balance under subsection (3) of Section 25 of the Indian Contract Act, and the

claim is enforceable regardless of the question of limitation. Where the balance operates to acknowledge a debt, a statement of future interest to be

paid at a certain rate imports a promise to pay the debt as well. This view was supported by a reference to the earlier decision of a Full Bench of

the Punjab Chief Court in *Daula v. Gonda P.K.* 1903 : 101 P.L.R. All. 6903. We hold that in the present case the document is a promise within

the meaning of Section 25; this does not ignore the distinction between an acknowledgment and a promise to pay, which was emphasised by the

Patna High Court in *Bam Bahadur Singh v. Damodar Prosad Singh* 60 Ind. Cas. 514 : 6 P.L.J. 121 : 2 P.L.T. 308 The view we take is supported

by the instructive judgment of Lord Sumner in *Spencer v. Hemmerde* (1922) 2 A.C. 507 : 91 L.J.K.B. 941 : 66 S.J. 692 : 38 T.L.R. 869 where

the grounds of the distinction between an acknowledgment and a promise to pay were historically reviewed. The conclusion follows that the plea of

limitation cannot possibly succeed.

4. As regards the second question, namely, that of the admissibility of the document which records the adjustment of the 4th April 1911, the

Subordinate. Judge has found in favour of the defendants. We are of opinion, however, that the document is an agreement or a memorandum of

agreement within the meaning of Article 5, clause (c) of Schedule I of the Indian Stamp Act; in support of this proposition reference may be made

to a long series of decisions of this Court. In *Murari Mohan Bov v. Khetter Nath Mulluk* 15 C. 150 : 7 Ind. Cas. (N.S.) 684 a document was

executed in these terms:

This document, a hand-note, is executed by me for the purpose of purchasing a ghor. I take from you Rs. 7. I will pay interest on the same at half

anna per rupee per mensem. Having received Rs. 7 in cash, this hand-note is executed." Mr. Justice Wilson held, with the concurrence of Mr.

Justice O'Kinealy, that this was not a promissory note nor a bond, but was an agreement to pay, and as such was chargeable with duty under

clause (5) of Schedule I of the Indian Stamp Act. It was pointed out that this view was in accord with the earlier decision in *Berrier v. Bamhalpa*

Ghose 23 W.R. 403. The same view has been consistently adopted in subsequent cases; *Mulchand Lala v. Kashi Kashibullab Biswas* 25 C. 111 :

1 C.W.N. 1120 and *Enatullah Biswas v. Garuddi Biswas* 11 C.W.N. 1122. A similar view was adopted by the Allahabad High Court in

Mutusaddi Lai v. Harkesli 21 Ind. Cas. 146 : 41 A. 365 : 17 A.L.J. 381 and *Mohaiev Kori v. Sheoraj Bam* 51 Ind. Cas. 146 : 41 A. 365 : 17

A.L.J. 381 The decision of this Court in *Mul Chand v. Keshi Ballab Biswas* 35 C. 111 : 1 C.W.N. 1120 approved that of the Bombay High

Court in *Laxumibai v. Qanesh Baghumull* 25 B. 373 : 2 Bom. L.R. 1132 It is possible, however, that a different view was indicated in the Bombay

High Court in *Beference under the Stamp Act, Section 60* 4 Bom. L.R. 912 but the decision of the Madras High Court in *Tirupathi Goundan v.*

Bama Beddi 21 M. 49 : 7 M.L.J. 291 : 7 Ind. Dec. (N.S.) accords with the view adopted in Calcutta and Allahabad. As a last resort, the

respondent has strenuously argued that the document in question is a promissory-note and has relied upon the definition of the expression

promissory-note contained in Section 2, clause (22) of the Indian Stamp Act, where a promissory-note means a promissory-note as defined in the

Negotiable Instruments Act, 1881. The definition in the Negotiable Instruments Act is in the following terms : A promissory-note is an instrument in

writing, not being a bank-note or a currency note, containing an unconditional undertaking signed by the maker, to pay a certain sum of money to,

or to the order of, a certain person or to the bearer of the instrument. It is not necessary for the purposes of the present case, to examine the very

wide terms of this definition. But; we may usefully recall the important observation of Pollock, C.B., in *Sibree v. Tripp* (1846) 15 M. & W. 23

at.P. 35 L.J. Ex. 318 : 153 E.R. 746 : 71 R.R. 545 where a question arose, whether the document before the Court was a promissory-note: ""it is

difficult to lay down a rule which shall be applicable to all cases; but it seems to me that a promissory-note, whether referred to in the Statute of

Anne or in the text books, means something which the parties intend to be promissory-note., We cannot suppose that the Legislature intended to

prevent parties from making written contracts relating to the payment of money, other than bills and notes; and this appears to me to be merely an

instrument recording the agreement of the parties in respect of a certain deposit of money, the consideration of which is stated in the memorandum

itself, and to be 53,ther an agreement than a promissory-note."" In the case before us, there is no suggestion, indeed, the suggestion, if made, would

have no solid foundation, that the parties ever intended this to be a promissory note. We are of opinion a that the document is an agreement within

the meaning of Article 5 of Schedule I of the Indian Stamp Act and is consequently not affected by the provisions of Section 25.

5. The result is that this appeal is allowed and the decree of the Subordinate Judge set aside. The suit will stand decreed for Rs. 5,200 with interest

at 6 per cent per annum from the date of institution of the suit till the date of realisation. The plaintiffs are entitled to their costs throughout.