

(1937) 05 CAL CK 0035

Calcutta High Court

Case No: Civil Rev. No. 16 of 1937

Anil Prokash Chatterjee

APPELLANT

Vs

Dhirendra Nath Mukherjee

RESPONDENT

Date of Decision: May 3, 1937**Final Decision:** Dismissed

Judgement

1. This Rule was issued on the application of the Defendant in a suit for recovery of money on a promissory note upon the Plaintiff to show cause why the decree of the 3rd Court of the Munsif at Serampore, dated the 5th October, 1936, against him in that suit should not be set aside. The only point for determination in this Rule is whether the Plaintiff's suit is barred by limitation.

2. It appears that the promissory note in the suit was executed on the 13th April, 1933. The last date for filing the plaint would be the 13th April, 1936, as the suit is to be filed within three years from the date of the execution of the note. This last date as well as the day following being holidays the Plaintiff filed a suit on the basis of the promissory note in question in the Court of the Small Causes at Calcutta on the 15th April, 1936. The plaint in the suit was returned by that Court on the 11th July, 1936, on the ground that it had no jurisdiction to entertain it, as the parties were the residents of Serampore and the transaction took place in Serampore. The 12th July, 1934, being a holiday, the filed a fresh plaint, on July 13th, 1934, in the third Court of the Munsif of Serampore which was invested with Small Cause Court power.

3. From the dates given above, it is clear that Plaintiff filed his suit in the proper Court after three years and 90 days had expired. It is not disputed by the learned Advocate for the Petitioner that the Plaintiff is entitled to add to the period prescribed for the suit by the Limitation Act 87 days, that is, the period during which the suit was pending in the Small Cause Court at Calcutta under sec. 14 of the Act. Under sec. 4 of the Indian Limitation Act when the period of limitation prescribed for in a suit expires on a date when the Court is closed, the suit may be instituted on the date when the Court reopens. That section contemplates that the suit should be

instituted in the proper Court, that is, the Court which has jurisdiction to entertain the suit-See the observation of the Judicial Committee in the case of Maqbul Ahmad v. Pratap Narain Singh L. R. 62 I. A. 81: S.C 39 C. W. N. 640 (1935).. The Plaintiff, therefore, is not entitled to add 13th and 14th April, 1936, to the prescribed period under sec. 4. The period of limitation therefore expired on the 9th July, 1936, when the period of three years and 87 days from the date of the promissory note expired. The Serampore Court was not closed either on the 9th July or on the following two days.

4. We are, therefore, of opinion that the Plaintiff's suit was not filed in time. The result therefore is that this Rule is made absolute, the decree of the Small Cause Court Judge is set aside and the suit is dismissed. Parties will bear their own costs in this Court as well as in the Court below.