(1869) 04 CAL CK 0026

Calcutta High Court

Case No: None

In Re: Lachmipatsing
Dogar Roy Bahadur
and Others — APPELLANT

Vs

RESPONDENT

Date of Decision: April 7, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.
It appears to me that the judgment of Mr. Justice Phear is correct. Section 53 of Act XX of 1866 says, "the petition may be presented "within one year from the date on which the amount becomes payable, or where the amount is payable by installments within one year from the date on which any installment becomes payable." There are two classes of cases mentioned in the section: one, where the whole amount becomes due; and the other, where any installment, when the amount is payable by installments, becomes due, but the third case is not mentioned, viz., where the whole amount of a bond, payable by installments, becomes due through an installment not having been paid. The section goes on to say that the petition may be presented "to "any Court, which would have had jurisdiction to try a regular suit on such obligation for the amount secured thereby, or for the installment sought to be "recovered." It appears to me that, where the bond is payable by installments, the obligee can only sue for any installment within one year after it becomes due. Suppose he had sued for payment, not only of the installment due on the 30th day of Aswin 1275, but also for all the installments, this could not fall within the words "installment sought to be recovered." I do not think the parties to a bond can so far alter the rules of evidence, as to be able to recover money actually paid, merely because the amount has not been indorsed on the bond. If they had stipulated that every installment, when paid, should be indorsed on the bond, then the non-indorsement of any installment would be prima facie evidence that that installment had not been paid. But in a suit I have no doubt that, notwithstanding the stipulation in the bond, the Court could have inquired whether the money had been paid or not. Suppose by some fraud the defendant having paid the installment, the petitioner refused to indorse the payment on the bond,

and had then brought a suit to recover, not only that installment, but other installments also; the Court could have inquired whether the installment had been paid or not, and could have received evidence on that point, notwithstanding the indorsement had not been made. See the case of Doolee Chand v. Joogul Singh (8 W.R., 466). Assuming that the Court might enter into this question, there might be conflicting evidence as to whether or not installment had been paid. If the evidence had been gone into, an appeal would lie; but if the Judge decided that the money had not been paid, no appeal would lie u/s 53 of Act XX of 1866. We should not, therefore, increase the summary remedy given by Section 53, by extending it to cases not within it. The appeal must be dismissed.

Macpherson, J.

Concurred.