
(1880) 04 CAL CK 0016

Calcutta High Court

Case No: None

Johuri Mahton

APPELLANT

Vs

Thakoor Nath Lukee

RESPONDENT

Date of Decision: April 19, 1880

Citation: (1880) ILR (Cal) 830

Hon'ble Judges: White, J; Maclean, J

Bench: Division Bench

Judgement

White, J.

We have heard Mr. Sandel for the appellant, who is the plaintiff in the first Court.

2. The appeal is confined to a sum of Rs. 395. The lower appellate Court has held that the claim of the plaintiff is barred by the law of limitation, inasmuch as the suit is not brought within three years from the date when the money became payable.

3. The money in question was deposited by the plaintiff with the defendant pending negotiations for a new lease; and the arrangement was, that, if the new lease was granted, these 395 rupees should be treated as part of the security to be given for the due performance of the lease; but that, if no new lease were granted, the money should be returned. The negotiations fell through, and the consequence was, that the money immediately became repayable, and in the eye of the law was money had and received by the defendant for the use of the plaintiff. Article 62 of the Schedule of the Indian Limitation Act prescribes three years' limitation for a suit to recover money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use; and the date from which the three years are to count is when the money is received, that is, received by the defendant for the use of the plaintiff.

4. Under the circumstances which I have stated, the money in this case did not become money received by the defendant for the use of the plaintiff until the failure of the negotiations for a new lease.

5. The article of the Limitation Act which the lower Court has applied is Article 115 of the 2nd schedule. This article relates to suits for compensation for breach of contract. Inasmuch as, in the present case, it was expressly stipulated that the money should be returned if the new lease were not granted, it may no doubt be said that the defendant broke his contract when he failed to return the money. But in my opinion the more appropriate article is Article 62, for what the plaintiff really seeks is not compensation, which means damages, but to get back the money which he had deposited. As the period of limitation fixed by both the articles is the, same, the question as to which article is most applicable becomes of no practical importance. We think the Judge was clearly right in holding the suit to be barred. It is therefore unnecessary to direct a notice to be sent to the lower Court, or a notice to be served on the respondent or his pleader.

6. We confirm the decision of the lower Appellate Court, and direct that the confirmation be notified to that Court u/s 551 of the Code of Civil Procedure.