(1880) 06 CAL CK 0017

Calcutta High Court

Case No: None

Mohesh Lal		APPELLANT
	Vs	
Busunt Kumaree		RESPONDENT

Date of Decision: June 15, 1880

Acts Referred:

- Limitation Act, 1963 - Section 20

Citation: (1881) ILR (Cal) 340

Hon'ble Judges: Richard Garth, C.J; Maclean, J

Bench: Division Bench

Judgement

Maclean, J.

(after shortly stating the nature of the suit and defence, continued):--The first point in the defence filed by the Collector on behalf of the defendants is a denial of the alleged statement of account by the defendant on the 13th Bhadro 1282 (30th August 1875), and the Subordinate Judge embodied this plea in the third issue, and decided against the plaintiff, in favor of the defence. The first nine paragraphs of the petition of appeal attack this finding. We propose to dispose of this part of the case before entering upon a consideration of the intricate questions raised in the other grounds of appeal and in the able arguments which have been addressed to us. [His Lordship then went into the evidence on this portion of the case, and as to that affirmed the judgment of the Court below.]

2. But then comes the question (assuming this account of 1875 not to be proved), whether so much of the plaintiff''s claim as became due more than three years before suit, is barred by limitation ? The lower Court has held that it is so barred. But it has been contended here, on behalf of the appellant, that, whilst the account was running, Baboo Kali Pershad, in his life-time, and the defendants since his death, have made such acknowledgments, from time to time of the existence of the debt, as will take the case out of the operation of the Limitation Act. This question does not appear to have been adequately brought to the notice of the Court below; and

as it is one of some nicety, it is necessary to go carefully into the facts as well as the law for the purpose of deciding it.

3. We start then with an account, which was admittedly adjusted and signed by Kali Pershad himself, showing a balance due from him to the plaintiff''s firm, at the close of the Mahajani year 1274, of Rs. 13, 611-2-6. It is obvious that the account must have been adjusted up to the end of the Mahajani, and not the Fusli year 1274, because the Fusli year begins on the 1st of Assin, whilst the Mahajani year begins 24 days later,--viz., on the 25th of Assin; and this account, which purports to be for the three years, 1272, 1273, and 1274, runs from the 25th of Assin to the 24th of the following Assin in each year, and brings the account down to the close of the year 1274, so that the 24th of Assin, which is the last day of the Mahajani year 1274, must needs be the 24th of Assin 1275 of the Fulsi year; and as the account would hardly have been prepared until after the close of the year, and could not have been brought to the notice of Kali Pershad until after it had been completed, it follows that Kali Pershad could not have signed and settled it until at least two or three days after the 24th of Assin 1275 Fusli.

4. Assuming then that the account was signed on or after the 26th of Assin 1275 Fusli, we have in evidence three letters, which purport to have been written by Kali Pershad to the plaintiff''s firm within three years after that date, which are said to be sufficient acknowledgments of the debt to prevent its being barred by limitation.

5. As the suit was brought in September 1877, the Limitation Act by which it is governed is Act IX of 1871, the Act of 1877 not having come into force till the first of October in that year. But here the question arises whether, although the Limitation Act which was in force at the time when the suit was brought is the one to which were must look in order to ascertain the proper period of limitation, still if, under the former Act of 1859, the right to bring this suit was barred, that right can be revived by any promise or acknowledgment made before the Act passed, which would be sufficient to keep alive the debt under the Act of 1871, but insufficient under the Act of 1859. This point, no doubt, presents some difficulty; but we think its solution must depend upon, whether, in the case of a debt, the Act of 1859 merely barred the remedy or extinguished the obligation. Assuming the debt in this instance to have originated with the statement of account in 1867, which gave rise to a new and substantive cause of action, if the remedy was barred at the end of three years from that time, then the debt itself was in force at the time of the passing of the Act of 1871, and that Act repealed entirely the Act of 1859, making new provisions both with regard to limitation and also as to the means by which limitation might be prevented.

6. The first apparent difficulty which has presented itself upon this point is, that, in two cases it has been held by Division Benches of this Court, that, under the Limitation Act of 1859, it is not only the remedy that is barred after the expiration of the statutory period, but the debt. The first of these cases is Krishna Mohun Bose v.

Okhilmoni Dossee I. L. R. 3 Cal. 333, decided by Markby and Prinsep, JJ. That was a suit for arrears of maintenance, and it was held, partly upon the authority of a case decided by Mr. Justice Pontifex, Nohoor Ckunder Bose v. Kally Coomar Ghose I. L. R. 1 Gal. 328, and partly upon the doctrine supposed to have been Lald clown by the Privy Council in Gunga Gobind Mundul''s case (11 Moore''s I. A. 345), that the suit having been barred under the Act of 1859, the debt as well as the remedy was extinguished.

7. The other case was Bam Chunder Ghosaul v. Jugyulmonmohiney Dabec I. L. R. 4 Cal. 283. In that case the same question came before the present Chief Justice and Mr. Justice Markbyf, with regard to a mortgage-debt; and although the Chief Justice expressed great doubt as to the propriety of the judgment in the case of Krishna Mohun Bose I L. R. 3 Cal. 333, still, as that case had been decided by a Division Bench of two Judges, of whom Mr. Justice Mabkby was one, and as that learned Judge adhered to his opinion, the Chief Justice considered himself bound to follow their judgment.

8. In this case we have again considered the question very carefully, and our attention has been directed to two cases decided by the High Court of Madras, in which a contrary view has been taken: Valia Tamburati v. Vira Rayan I. L. R. 1 Mad. 228 and Madhavan v. Achuda I. L. R. 1 Mad. 301. The result is, that we are satisfied that the Madras Court is right. We have had some doubt whether we ought not to refer the point to a Full Bench; but as, upon consulting Mr. Justice Prinsep, we find that he agreed with Mr. Justice Markby in the above case with some hesitation, and that he is now of opinion that the debt is not extinguished by limitation, and as we find that, in a late case, Mr. Justice Pontifex has expressed a similar opinion, we consider that we are justified in deciding the point at once.

9. But then a further question has suggested itself u/s 20a of the Act of 1871--viz., whether the provisions of that Section as regards acknowledgments were retrospective; or, in other words, whether an acknowledgment given before the Act of 1871, which would be sufficient under that Act, but insufficient under the Act of 1859, would prevent a debt from being barred by the Act of 1871. This question appears to us to be answered, and correctly answered, by the Madras case of Teagaraya Mudali v. Mariappa PilLal I. L. R. 1 Mad. 264. The question there arose whether payments of interest made before the Act of 1871 prevented the debt from being barred; under the Act of 1859 such payments would have been of no avail; under the Act of 1871 they would keep the remedy upon the debt alive; and it was held, that this provision as to payments of interest was retrospective. We think that the same principle applies to acknowledgment u/s 20. If the acknowledgment fulfils the terms of that Section, it would prevent the debt from being barred, whether it was given before or after the passing of the Act of 1871; and it must be borne in mind that, having regard to the repealing Clause in the Act of 1871, if the acknowledgments which have been made in this case, would not be available under

the Act of 1871, it would seem that they would not be available at all.

10. It, therefore, remains to be seen, whether the acknowledgments given in this case are sufficient under the Act of 1871.

11. By Section 20a of the Act of 1871 any promise or acknowledgment to take the case out of the operation of the Statute must be "contained in some writing signed before the expiration of the prescribed period by the party to be charged therewith, or by his agent generally or specially authorised in that, behalf." And when such writing exists, then a "new period of limitation according to the nature of the original liability is to be computed from the time when the promise or acknowledgments were signed."

11. The time prescribed in this case is three years, and the three letters written in Kali Pershad''s name to the plaintiff''s firm within three years from the 26th of Assin of 1275 Fusli, are as follows:--1st, the letter marked T 10, dated the 6th of Pous 1276; 2ndly, that marked T 11, dated the 15th of Assar 1276; and 3rdly, that marked T 12, dated the 25th of Assin 1278. These letters are all addressed to the plaintiff, and are written in the same form, commencing, compliments of "Baboo Kali Pershad Singh." They appear to be answers to applications by the plaintiff''s firm for the settlement of the account or for the payment of money in part liquidation of it; and they certainly do appear to admit a debt due to the plaintiff, although no mention is made of the amount of it.

12. But it is argued by the respondent, 1st, that these letters are not proved to have been written either by Kali Pershad himself, or by his agent generally or specially authorized on that behalf; 2ndly, that they are not signed by Kali Pershad or his authorized agent; and 3rdly, that they do not contain a sufficient acknowledgment of the debt within the meaning of Section 20 of the Act.

13. Now, as to the first of these points, the defendants'' dewan, Shital Lal, is called as a witness by the plaintiff. He and his father before him have been the dewans of Kali Pershad for many years, and since Kali Pershad''s death he has been the dewan of the defendants, and he is in their service now; so that we may presume that his evidence would rather be in favour of the defendants than otherwise. He says that, after the account up to the end of the year 1274 had been signed by Kali Pershad, the business went on in the same way as before; and that the letters which Kali Pershad during his life, and the defendants after his death, used to write to the plaintiff upon the subject of the account matters, were either written by himself as dewan when he happened to be present, or, in his absence, by some one else. He says further, that the letters T 10 and T 11 were written by Bharosi Lal, the mohurir of Kali Pershad, and that the letter T12 was written by his (Shital Lal''s) father, who was at that time the dewan of Kali Pershad; and he also says, that the form in which these letters were written, was the same as was always adopted in the correspondence between Kali Pershad and the plaintiff.

14. Upon this evidence it seems to us that, as Kali Pershad never wrote letters to the plaintiff himself, but authorized them to be written by his dewan, whose ordinary duty it would be to carry on a correspondence of that kind, we are bound to hold that, at any rate, the letter No. 12 which was written by Shital Lal''s father, as the dewan of Kali Pershad, was written by him as his t agent generally authorized for that purpose.

15. We have more doubt with regard to the authority of the mohurir, Bharosi Lal, to sign the letters T 10 and T 11; but as in the absence of the dewan the mohurir would be the proper person to write such letters, we should have been disposed to hold, if it were necessary, that, even as regards these letters, the mohurir had authority to write them. As, however, we think we must assume that the letter No. T 12 was written within three years from the time when Kali Pershad signed the account for Es. 13, 611-2-6 at the end of 1274, and as the letters T 12, T 13, and T 15, which follow, all admit more or less clearly the existence of debt, and are all written by Shital Lal as the dewan of the family; it is not necessary for our present purpose to resort to the letters T 10 and T 11, which were written by the mohurir, provided that, in other respects, the letters written by the dewan are sufficient to satisfy the provisions of Section 20.

16. The next point is, whether the letter was sufficiently signed by Kali Pershad.

17. The Subordinate Judge seems to think that a formal signature at the end of the letter is necessary for this purpose; but here we think he is in error. As long as the document is signed with Kali Pershad''s name by his duly authorized agent in such a way as to make it appear that the letter is his, and that he is the real author of it, we do not think it matters what the form of the instrument is, or in what part of it the signature occurs.

18. It seems to us that the acknowledgment is quite as effectually signed whether it runs thus.

Dear Sir

19. I beg to acknowledge the correctness of your account.

20. A.B. presents his compliments to C. D., and begs to acknowledge the correctness of his account.

21. By the 17th Section of the English Statute of Frauds, the note or memorandum of the bargain which is necessary in the case of a sale of goods must be signed (in a similar way to an acknowledgment under the Indian Limitation Act) by the party to be charged therewith or his agent thereunto lawfully authorized; and it has been held, under that Section, that where a party to a contract signs his name in any part of it in such a way as to acknowledge that he is the party contracting, that is a sufficient signature within the Statute, as for instance, the words "I, James Crockford, agree," "Mr. Stanley agrees," "Sold to John Dodgson," have been held to

be sufficient signature by those parties; see Knight v. Crockford 1 Esp., 190 Lobb v. Stanley 5 Q. B. 574, Johnson v. Dodgson 2 M. & W. 653; and see also Darrell v. Evans 1 H. & C. 174. Indeed, if this were not so, having regard to the peculiar form of letter usually adopted in this country, few acknowledgments of debts, however complete they might be, would be binding u/s 20, if it were necessary that they should be signed at the foot like an English letter.

22. And as to the name of the principal being written by the agent, it seems clear, that if the agent is authorized to write the letter, it matters not whether he signs the name of the principal or his own name. Thus, under the 17th Section of the Statute of Frauds, it has been held that where goods were sold at auction, and the purchaser authorized the auctioneer''s clerk to put down his name as having purchased certain lots, and the clerk accordingly did so, the entry of the purchaser''s name so made by the clerk was a sufficient signature under the Statute to bind the purchasers: see Bird v. Boulter (4 B. and Ad. 443). This case has been since always considered and acted upon in England as good law--Durrell v. Evans (1 H. & C 174).

23. The only remaining question is, whether the letter of the 25th Assin 1278 (Ex. T 12) amounts to a sufficient acknowledgment of the debt to take the case out of the Statute.

24. Now it is not necessary, according to the provisions of explanation 1 of Section 20 of the Limitation Act, that the acknowledgment should specify the amount of the debt; and according to the authority of many English cases, it is sufficient that the acknowledgment should contain an admission that the debt is due, the amount in such case being proved by parol evidence: see Tanner v. Smart (6 B.C. 603), Quincey v. Sharpe (L. R. I Exch. D. 72), Sheet v. Lindsay (L. R. 2 Exch. D. 314). The letter of 25th Assin 1278 was evidently written in answer to a demand made by the plaintiff, for payment of money in part liquidation at least of a debt due to the plaintiff''s firm. It states: "Next year I will pay all your money out of the collections which will be made according to the jammabandi, because I cannot be free from your debt; when you are master of the raj how can I be free from your debt; but according to your account it may be liquidated from this year to the next year. Now I have got all the mouzas in direct possession, and I have increased the jammabandi; now it will not be much difficult to liquidate it. You have written for adjustment of account; I too am willing to it. In the course of a month or two everything will be settled in the villages, and then I will positively send the mohurir to you for adjustment of account." The letter surely contains a clear acknowledgment of a debt being due by Kali Pershad to the plaintiff, and a promise that, in the course of a month or two, the writer will send a mohurir to adjust the account.

25. We consider, therefore, that this letter was a sufficient acknowledgment within Section 20 of the Act of 1871, and that it gave to the plaintiff a fresh period of limitation of three years from the time when it was written.

26. Then follow three other letters, one T 13, dated 22nd Kartick 1279; T 14, dated 18th Bhadro 1280; and T 15, dated 7th Pous 1281. The letters T 13 and T 15, Shital Lal says, were written by himself as the dewan, and by the authority of Kali Pershad; and we think that they (especially that of the 7th Pous 1281) contain direct admissions of a debt being due from Kali Pershad. In the last letter it is said: "all the debts of other persons have been paid off through your kindness; now I am only anxious for your money, of which also, through your kindness, I will pay this year as much as I can, and then make settlement."

27. These letters would also give the plaintiff a further period of three years from the time when they were written.

28. Kali Pershad died in June 1874 (Assar 1281); and we have then a letter, G 17, dated the 18th of Aughran 1282 (11th of December 1874), from the defendants to the plaintiff, written, as Shital Lal says by the direct authority of the defendants. The defendants say in that letter, "you have written that you will now take steps to recover your money, so that we will not blame you afterwards. We do not disagree with you. As you have always been kind to the Baboo, you should now be more kind to us; therefore, we give you this trouble, that as you have waited so long, you will be pleased to wait for a short time more, then we will settle your account."

29. That again is a direct acknowledgment of the plaintiff''s debt, which gave him another three years to sue for it; and this suit is brought within that period.

30. We are of opinion, therefore, that so far as the plea of limitation is concerned, the plaintiff''s suit is not barred; and that it is only a question of evidence what amount is now due upon the account. As that question has not been considered by the Court below, except as regards the accounts for the three years next preceding this suit, and as the defendants'' counsel informs us that, in the interest of his clients, he desires that those accounts should be investigated, it is necessary that we should remand the case to the Court below for that purpose. That Court will report to us what amount is found to be due upon the investigation, and we will then dispose finally of the case.

Richard Garth, C.J.

31. I only desire to add that, as regards myself, I have felt some difficulty, in consequence of the decision, to which I was a party with Mr. Justice Markby, in the case of Bam Chunder Ghosaul v. Juggutmon-mohiney Dabee I. L. R. 4 Cal. 283, where we held that the Limitation Act in this country extinguished the debt as well as barred the remedy.

32. I was by no means satisfied, as I stated at the time, of the correctness of that decision; but as the point had been directly decided by a Division Bench of this Court, consisting of Mr. Justice Markby and Mr. Justice Prinsep, in the case of Krishna Mohun Bose v. Okhilmoni Dossee I. L. R. 3 Cal. 333, and as my brother Markby did

not see the propriety of referring the question to a Full Bench, I felt bound, according to our usual practice in this Court, to follow the previous decision.

33. I confess, that it has been a great satisfaction to me to find that, since that judgment was delivered, not only Mr. Justice Prinsep, but several other Judges of this Court, have arrived at the conclusion that our decision was wrong.

34. The High Court of Madras has also, in several cases, expressed a similar view; and as this appears, so far as I am aware, to be the general opinion of the Court as at present constituted, we have considered that it is not necessary to submit the question now to a Full Bench.

35. I believe that the erroneous view which prevailed here for a time was due mainly to a misunderstanding of the observations of the Privy Council in the case of Gunga Gobind Mundul (11 Moore''s I. A. 345). It seems clear that those observations were only intended to apply to suits for the recovery of Immovable property.