(1956) 03 BOM CK 0024

Bombay High Court

Case No: Appeal No. 94 of 1951

Chintaman Dhundiraj		APPELLANT
	Vs	
Sadguru Narayan Maharaj Datta Sansthan and Others		RESPONDENT

Date of Decision: March 12, 1956

Acts Referred:

- Limitation Act, 1908 - Section 19, 20
- Succession Act, 1925 - Section 304

Citation: AIR 1956 Bom 553

Hon'ble Judges: Vyas, J; Shah, J

Bench: Division Bench

Advocate: H.D. Banaji and V.J. Gharpure, for the Appellant; V.S. Desai, for the Respondent

Judgement

Shah, J.

Special Civil Suit No. 208 of 1947 filed by the plaintiff Shrimant H.H. Sir Chintaman Dhundiraj alias Appasaheb Patwardhan against the defendants for a decree for Rs. 35,000 from the estate of defendant 1 with the defendants or in the alternative for a decree for Rs. 20,000 with interest from 10-11-1944 has been dismissed. The plaintiff has appealed to this Court.

2. It was the plaintiff''s case that Shri Sadguru Narayan Maharaj Kedgaonkar established an institution described as Shri Sadguru Narayan Maharaj Datta Sansthan and Datta Mandir, Kedgaon, Bet Taluka Bhimthadi, District Poona; that during his lifetime Shri Narayan Maharaj was doing daily and occasional worship of Shri Datta and big festivals and puja of Shri Satyanarayan were performed on a large scale; that Sansthan devotees were paying cash or offering various gifts on several occasions and from these gifts and offerings the expenses of the Sansthan were met; that Shri Narayan Maharaj thought it expedient to make arrangements or a permanent income for the expenses of the Sansthan, so that the institution may

not have to depend on the offerings made by the devotees; that for making a permanent arrangement in that behalf Shri Narayan Maharaj got a mortgage deed of the Inami income of the village of Menavali, Taluka Wai, from Sardar Balaji Madhavrao Phadnis and Janardan Balaji Phadnis that before taking the mortgage deed, Shri Narayan Maharaj had a desire to purchase two villages for the Shri Datta Sansthan that for taking such properties he had not got sufficient funds and he wanted Rs. 35,000 and on that account he wrote a letter on 11-7-1939 to the plaintiff and asked him to pay the amount and he promised to repay the amount after Kartik Pournima of that year (October 1939); that as requested, the plaintiff gave a cheque for Rs. 35,000 on 12-7-1939, drawn on the Bank of India; that Shri Narayan Maharaj had promised in his letter that he-would send the title deeds of the village to the plaintiff for his custody if he so desired that Shri Narayan Maharaj was unable to pay the amount after Kartik Pournima of Samvat year 1996 as promised; that at diverse times the plaintiff demanded the moneys from Narayan Maharaj and ultimately on 25-9-1942 he sent a cheque for Rs. 35,000 drawn on the Imperial Bank of India, Poona City, in the name of the plaintiff; that the same was not honoured as the amount was not arranged for'' by Shri Narayan Maharaj that thereafter on 10-11-1944 Shri Narayan Maharaj gave four cheques each of Rs. 5,000 each in the name of the plaintiff for cashing with the Imperial Bank of India, Poona City, and the cheques were returned with the endorsement ''Refer to Drawer''; that there after Shri Narayan Maharaj died on 3-9-1945, having executed a deed of management of the Datta Mandir and its property and having appointed defendants 2 to 10 as its trustees; that the Datta Man- dir and its property are liable to pay the dues of the plaintiff, that the amount was demanded by the plaintiff, but the defendants failed and neglected to make any payment and hence the suit for the recovery of Rs. 35,000 advanced on 12-7-1939.

The plaintiff claimed that the entire claim for Rs. 35,000 was within limitation in view of the acknowledgment of liability and part-payment by cheques given by Shri Narayan Maharaj on 25-9-1942 and 10-11-1944. In the alternative the plaintiff claimed a decree for Rs. 20,000 being the amount of four cheques of Rs. 5,000 each, the cause of action being the consideration of dishonoured cheques. The plaintiff claimed by his plaint a decree against the property of the first defendant institution namely, Shri Sadguru Narayan Maharaj Datta Sansthan and Datta Mandir Kedgaon Bet.

3. The suit was resisted by the defendants on diverse grounds. They contended that Narayan Maharaj had not received Rs. 35,000 as the manager of the first defendant, that in any event the claim was not within limitation, that the plaintiff was not entitled to obtain a decree on the cause of action arising out of dishonoured cheques dated 10-11-1644; that the amount was borrowed by Shri Narayan Maharaj in his personal capacity and not as the manager of defendant 1 institution and that defendants 2 to 10 were not the legal representatives of Shri Narayan Maharaj.

4. The learned trial Judge held that the amount borrowed by Shri Narayan Maharaj was borrowed by him as manager of defendant 1 institution. He further held that defendants 2 to 10 were the legal representatives of Shri Narayan Maharaj if the amount was received by him in his personal capacity.

But the learned Judge held that the claim was barred by the law of limitation. The learned Judge accordingly dismissed the plaintiff''s suit. The plaintiff has preferred this appeal against the decree dismissing his suit.

5. Mr. Banaji on behalf of the plaintiff contends that the learned trial Judge was in error in holding that the claim was barred by the law of limitation. Mr. Banaji says that the amount having been borrowed by Shri Narayan Maharaj on 12-7-1939 on his agreeing to repay it in October 1939 by acknowledgments and part payments made by cheques dated 25-9-1942 and 10-11-1944, the suit filed on 8-11-1947 must be regarded as within limitation.

We are unable to accept that contention. There is in our view no acknowledgment of liability merely by giving a cheque which is dishonoured, and a cheque which is dishonoured cannot be regarded as part payment within the meaning of Section 20, Limitation Act. Reliance was sought to be placed upon a judgment of the Calcutta High Court in ''Kedar Nath v. Dinobandhu Saha'' AIR 1916 Cal 580 (A).

In that case, Sir Lawrence Jenkins, Chief Justice, delivering the judgment of the Court held that if a cheque is delivered to a payee by way of payment and is received as such, it operates as a payment subject to a condition subsequent that if upon due presentation the cheque is not paid, the original debt revives. It was further held that where such a cheque is signed by the debtor and paid in part payment of the principal of a debt, the Cheque being subsequently honoured, the proviso to section 20 of the Limitation Act has been complied with.

It is evident from the Judgment in ''Kedar Nath''s case (A) that a cheque was given in part-payment, it was received in part-payment and the cheque was honoured and the Court held in that case that the requirement of the proviso to Section 20, Limitation Act was complied with. In the present case the cheque was dishonoured and when it was dishonoured, the amount of the cheque cannot be regarded as part-payment of the principal.

It is true that when a cheque is delivered to a payee in whole or part satisfaction of a liability and it is accepted the delivery of the cheque and acceptance thereof would be regarded normally as conditional satisfaction of the liability, and if the cheque is dishonoured, the original debt which was conditionally satisfied would be deemed to be revived.

By the delivery of the cheque dated 25-9-1942 it may be that the debt due by Narayan Maharaj was conditionally satisfied. But when the cheque was dishonoured, there was a revival of the debt and the suit had to be filed within the

normal period of limitation. In our view, the learned trial Judge was right in holding that the claim for the amount of Rs. 35,000 on the original debt was barred by the law of limitation.

6. But the plaintiff had claimed a decree for Rs. 20,000 on the four cheques dated 10-11-1944. The suit having been filed on 8-11-1947 was within limitation and we do not see why a decree should not be passed in favour of the plaintiff for the amount of Rs. 20,000 on the footing that the cause of action which arises in favour of the plaintiff is on the four dishonoured cheques.

The plaintiff has in paragraph 8 of his plaint clearly stated that the plaintiff demands Rs. 20,000 from the defendants, cheques for which amount were given by the late Shri Narayan Maharaj on 10-11-1944 for and on behalf of defendant 1; the cause of action for this occurred on 10-11-1944 when the late Shri Narayan Maharaj gave cheques for defendant 1 and were returned on the same day without being accepted by the Bank. The plaintiff having filed the suit for recovery of the four cheques, in our view the alternative claim cannot be refused as barred by the law of limitation.

7. Mr. Banaji contended that the plaintiff is entitled to a decree against the estate of defendant 1. He urged that the debt was incurred by Shri Narayan Maharaj for the benefit of defendant No. 1 institution and out of the property of defendant No. 1 institution the plaintiff is entitled to obtain satisfaction. We are unable to uphold that contention. There is no allegation made in the plaint that Shri Narayan Maharaj borrowed the money for any purpose binding upon the estate of defendant No. 1 institution.

It does not appear to be clear even on the averments made in the plaint and the letter written by Shri Narayan Maharaj that in borrowing the money he was acting as trustee or manager of defendant No. 1 institution. Ex facie, Narayan Maharaj appears to have undertaken a personal liability. It is true Shri Narayan Maharaj wanted to provide a substantial fund out of which the expenses of the institution may be met.

But whatever his object Shri Narayan Maharaj being in the position of a Shebait or a trustee of the institution, his power to incur debts must be measured by the existing necessity for incurring them. It was never alleged in the plaint that there was any existing necessity for incurring any debt.

The power of a shebait to render liable the estate of a religious institution is analogous to the power of a manager of an infant heir and he is not entitled to borrow monies so as to render the property of the institution liable unless there is an existing necessity or in other words, there is legal necessity or benefit to the estate. It is now well settled that the power can only be exercised for protective purposes and not for enhancing the estate of the institution.

The plaintiff is, therefore, not entitled to obtain a decree against the estate of the first defendant. Again it is evident that the alternative claim alone be decreed on the dishonoured cheques dated 10-11-1944 and it has never been suggested in the plaint that the cheques were issued by Narayan Maharaj as manager of the defendant No. 1 institution. If the plaintiff is to obtain a decree on a cause of action arising out of dishonoured cheques, it can only be against Narayan Maharaj or his estate after his death.

8. Mr. V. S. Desai on behalf of the defendant has contended that defendants 2 to 10 are not the legal representatives of Shri "Narayan Maharaj. But the learned trial Judge has pointed out in the course of his judgment in paragraph 11 that Narayan Maharaj died at Bangalore in 1945 and after his death his devotees met at Kedgaon and they appointed defendants 2 to 10 as trustees of defendant 1 who were managing the properties of that institution. He has further pointed put that defendants 2 to 10 had intermeddled with the assets of Shri Narayan Maharaj in such a way as to denote an assumption of the authority or an intention to exercise the functions of an executor or administrator and that they were, therefore, practically executors de son tort.

We see no reason to disagree with the view of the learned trial Judge that defendants 2 to 10 must be regarded as executors de son tort and liable to satisfy the claim of the plaintiff out of the estate if any, in their possession.

9. On the view taken, we set aside the decree of the learned trial Judge dismissing the plaintiff''s suit and pass in his favour a decree for Rs. 20,000 with interest at the rate of 4 per cent per annum from the date of the suit till satisfaction. The decree will be passed against defendants 2 to 10 as representing the estate of Shri Narayan Maharaj and to be satisfied by them out of the estate if any received by them and not duly applied for.

The plaintiff will also be entitled to his costs in proportion to his successors in both the Courts from defendants 2 to 10 as representatives of the estate of Shri Narayan Maharaj.

10. Appeal partly allowed.