

(1925) 10 BOM CK 0039

Bombay High Court

Case No: Second Appeal No. 643 of 1921

Hormasji Bezonji

APPELLANT

Vs

Hajrat Yarkhan

RESPONDENT

Date of Decision: Oct. 8, 1925

Acts Referred:

- Limitation Act, 1877 - Section 20

Citation: (1926) 28 BOMLR 569

Hon'ble Judges: Norman Macleod, J; Coyajee, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Norman Macleod, Kt., C.J.

In this case a preliminary decree was passed in a mortgage suit under which the defendant had to pay Rs. 2,583-8-1 within six months of the decree, The six months expired on March 25, 1918, An application was made on April 4, 1921, to make the decree final. The plaintiff relies, to save limitation, on two payments made by the defendant, the dates of which are not clearly set out in the judgment, but we are told that they were in July 1920, and it is argued that if those could be brought within Section 20 of the Indian Limitation Act, the bar of limitation would be saved.

2. The trial Court held that it could be inferred that there was a payment on account of interest as such, because the amount due was made up of principal and interest, and if the debtor paid anything on account of the debt, it could be said that he was paying on account of interest as such. He relied upon the following passage in Rustomji's Law of Limitation, 3rd Edn. p. 160:-

Where money is paid on account of principal and interest, but it is not specified how much is for principal and how much for interest, it is nevertheless a payment of interest as such...in other words, if there is, in fact, a payment of interest, it is immaterial if such payment as interest is mixed up with a part payment of principal.

3. But I do not think he has properly appreciated what is said therein,

4. In *Subraya Kamati v. Pakaya bin Narayan* (1902) 4 Bom. L.R. 231 the head-note is as follows :-

A payment expressed to be made on account of principal and interest generally without specifying what part of it is to be appropriated in satisfaction of interest or of principal, is a payment of interest as such and serves to extend the period of limitation u/s 20 of the Limitation Act, 1877.

5. The payments relied upon in that case were evidenced by endorsements, signed (but not written) by the defendant, The endorsements dated November 12, 1898, ran thus: - "I paid Rs. 4 out of the entire amount payable on account of principal and interest in respect of this bond." It could be said, therefore, that the debtor had expressed his intention that part of the money which he paid should be taken on account of interest and was paid as such.

6. Then in *Hanmantmal Motichand v. Bamba Bai* I.L.R.(1879) . 3 Bom. 198 the defendant at different times made payments to the plaintiff, who was his creditor, in reduction of the general balance of account against him, but without intimating that any of such payments was to be appropriated in satisfaction of the interest due on his debt, It was held that there had been no payment of interest "as such" by the defendant so as to bring the case within Clause (I) of Section 21 of the Indian Limitation Act (No. IX of 1871). The reason of the decision was that there was no intimation by the defendant that any payment made by him was to be appropriated to interest.

7. The District Judge held that the application was time-barred on the ground that the words "as such" in Section 20 of the Indian Limitation Act, 1908, must mean that there must be at the time of payment some mention that the payment is wholly or partly for interest, We think he was right. Otherwise there would be no meaning whatever in those words.

8. The appeal is dismissed with costs.

Coyajee, J.

9. I agree.