Khimji Bhimsi Vs Chunilal Ambaidas
 Chunilal Ambaidas Vs Govindji Khimji

Court: Bombay High Court

Date of Decision: Nov. 19, 1918

Citation: 51 Ind. Cas. 353

Hon'ble Judges: Basil Scott, C.J; Shah, J

Bench: Division Bench

Judgement

Basil Scott, C.J.
In appeal No. 1033 of 1915 it is agreed between the parties that there is a mistake in the figure mentioned in the district

judge"s judgment, and that ""983,"" should read ""938"" and it may be taken that the judgment is inaccurate in that respect. whether the judgment

should stand in its amended form is a question which has to be decided in the other appeal, No. 323 of 1916. Chunilal brings this suit against

Nathu Shivji. Ambaidas, the father of Chunilal, and Nathu Shivji were partners in equal shares in a cotton business. The partnership was dissolved

on the 3rd of November 1899, the business having resulted in a loss. On the 24th September 1900 Nathu Shivji admitted by an acknowledgment

in the accounts that he was indebted to Ambaidas in the sum of Rs. 1,022-12-0. The acknowledgment runs as follows:--""cotton was pressed into

bales in partnership between you and me. Therein a loss was sustained. As to the amount of loss falling to my share an account in respect thereof

was made and Rs. 1,022-12-0 were found due as up to this day."" On the 22nd September 1903, just before the expiry of three years from the

date of the last acknowledgment in account, a fresh acknowledgment was signed by Nathu Shivji stating that an account in respect of the previous

khata was made and a balance of Rs. 1,033-10-0 was found due. Before the expiry of three years from that date, another acknowledgment was

signed by Nathu Shivji stating that an account in respect of previous khata was made and Rs. 1,694 were found due, and a little less than three

years later a further acknowledgment was signed by Nathu Shivji stating that an account in respect of the previous khata was made and Rs. 2,071

were found due. Rs. 2,071 together with interest from the date of the acknowledgment, namely, 19th of September 1909, until the date of suit

amount to Rs. 2,600. For that sum the plaintiff has instituted this suit.

2. The learned trial judge passed a decree for the amount claimed with costs and interest on Rs. 2,600 at 6 per cent, from the date of suit to

payment.

3. On appeal to the district judge the decree was modified by the reduction of the decretal sum from Rs. 2,600 to Rs. 1,877-10-6, the reason

being that the learned judge was of opinion that the rule of damdupat applied and prevented the recovery of any more than the last mentioned sum,

thereby differing from the conclusion arrived at by the learned trial judge. The decision appears to have been based upon the penultimate

paragraph in the case of Shankar v. Mukta 22 B. 513 ; 11 Ind. Dec. 928 in which it was said ""how much of this is due for principal and how much

for interest is a matter of calculation, but the interest recoverable by suit is limited by the amount of principal originally advanced."" There was in that

case no discussion of the texts in Hindu Law bearing upon the rule of damdupat, and the decision is expressed to be based upon an unreported

case of Motilal v. Shivram Second Appeal No. 43 of 1894. In a later case in this Court Sukalal v. Bapu 24 B. 305 ; 2 Bom. L.R. 18 ; 12 Ind.

Dec. (N.S.) 738 the texts relating to damdupat in the matter of loans were fully considered in the judgment of Sir Lawrence Jenkins, and the Court

was of opinion that in the case of a bond where there was an express agreement for payment of interest, which involved in effect an agreement for

payment of interest on capitalized interest exceeding the original principal, there was nothing to prevent a decree for a larger sum than the principal

originally advanced.

4. In the present case we are dealing with mercantile accounts which are ordinarily made up from year to year with yearly rests for interest

calculated at the time of Diwali. But owing to the business having ceased to be a going concern, presumably the practice of yearly rests was not

followed from the date of first adjustment referred to, but rests were taken at intervals of three years at the times when acknowledgments were

required to prevent the operation of the law of limitation.

5. In the present case we have had the advantage of an argument on behalf of the respondent from Dewan Bahadur Rao, in which he attempted to

meet the case made upon the Hindu Law texts relied upon by the learned trial Judge and adverted to in the judgment of the Court in Sukalal v.

Bapu 24 B. 305 ; 2 Bom. L.R. 18 ; 12 Ind. Dec. (N.S.) 738. His argument resolves itself into this: that there is nothing in the texts which would

prevent an agreement amounting to a new transaction between the parties, the debtor and the creditor, for payment of a larger cum than double the

amount of principal, provided the agreement was clearly proved; that by reason of certain expressions in texts of Brihaspati and Manu that proof

could only be by a document in writing, and that the acknowledgments signed in the books in the present case could not be held to be writings

satisfying the necessities of the rule, because in Shankar v. Mukta 22 B. 513 ; 11 Ind. Dec. (N.S.) 928 it has been held that a signed Ruzukhata

cannot, in the Bombay Courts, be taken as anything more than an acknowledgment of liability for the purpose of saving limitation, and does not

give rise in itself to a fresh cause of action, and, therefore, that the Ruzukhatas cannot be taken to amount to a fresh agreement such as was

Contemplated by the Hindu Smriti writers. It appears to me, however, that the decision in Shankar v. Mukta 22 B. 513 ; 11 Ind. Dec. (N.S.) 928

must be taken subject to a recognised mercantile usage, that interest can be capitalized between Hindus at the end of each year, and a fortiori no

objection can be taken to the capitalization at the end of every three years in relation to mereantile account, where the yearly settlement of accounts

has ceased owing to the ceasing of the business.

6. As regards the requirements of proof under the Hindu Law, if that can be considered as part of the substantive Hindu Law, and not now

rendered obsolete by the rules of procedure in Anglo Indian Courts, it is to be observed that the translators of the text of Manu relied upon by

Dawan Bahadur Rao are by no means unanimous in agreeing that Manu thought a writing to be necessary, and that out of several Hindu Law texts

which have been referred to, Brihaspati is apparently the only one in which the necessity for a writing is clearly mentioned. We have in each of

Ruzukhatas a written document in which there is the clearest implication that the party liable agrees to pay interest upon interest, because the sum

mentioned in each of the three last Ruzukhatas is only arrived at by calculating interest upon interest, and that is the sum which is acknowledged to

be due. It, therefore, appears to me that both as a matter of natural inference from the documents and as a matter of Hindu Law there is nothing to

prevent the Court from awarding the full sum claimed, and that, therefore, the judgment of the District Judge should be set aside and that of the trial

Judge restored in its entirety with costs throughout upon the respondent.

Shah, J.

7. I agree. I desire to add with reference to the rule of damdupat that it requires that the interest in the course of one transaction shall not exceed

the principal. But it does not prevent an agreement between the debtor and the creditor to capitalize interest at a stage when the interest does not

exceed the principal. All the Smriti writers and the commentators are agreed that there must be an agreement between the debtor and the creditor

to capitalize interest in order to justify the calculation of interest in future on the sum made up of the principal and the interest thus agreed to be

capitalized. The question whether that agreement should be in writing or not is one upon which the Smriti writers are not unanimous. But in my

opinion in the present case whatever agreement there is between the parties is in writing, and, therefore, the difference on that point between the

Smriti writers is not a matter of any practical importance in the present case. The question really is whether the acknowledgments passed by the

debtor from time to time afford a fair basis for the inference that the debtor agreed to capitallze the interest. On that point, having regard to the four

acknowledgments passed by the debtor, it is clear that he agreed to capitalize interest at the intervals at which he passed those acknowledgments.

In this respect the present case is really different from the case of Shankar v. Mukta 22 B. 513 ; 11 Ind. Dec. (928. The transaction here is one

between two merchants; and there is no reason to suppose that when the debtor acknowledged the particular amount to be due on calculating the

interest not only on the original principal, but on the principal plus the interest which was acknowledged on a previous occasion, he meant anything

but an agreement on his part to treat the sum thus agreed to be due as principal for the calculation of interest in future. Whether such an

acknowledgment can form the basis of an action or not is not the question in the present suit, and it may be that in the case of Shankar v. Mukta 22

B. 513 ; 11 Ind. Dec. (N.S.) 928 there was not sufficient basis for an inference as to the agreement between the debtor and the creditor for the

capitalization of interest. But in the present case it seems to me that the trial Court was right in inferring such an agreement, and the passing of the

acknowledgments by the debtor seems to me to be consistent only with that inference.