Smt. Mohd-un-Nisa Begum *v.* Shri Fayaz Ali Hashmi

Falshaw, J.

also clear that this earlier order could not be challenged in a revision petition after it had been followed by the order decreeing the suit which is appealable and against which in fact the petitioner is in fact seeking to appeal in *forma pauperis.*

The result is that I would dismiss both the application under Order 44 rule 1, Civil Procedure Code, and the revision petition but would allow the petitioner two months to deposit the necessary court-fee. I would leave the parties to bear their own costs in these petitions.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL.

Before Falshaw and Mehar Singh, JJ.

SHRI SURAJ MAL,—*Plaintiff-Appellant.*

versus

SHRI VISHAN GOPAL —*Defendant-Respondent.*

R.F.A. 38-D of 1957

1957

Nov., 1st

Indian Limitation Act (IX of 1908)—Section 19 and Article 64—Acknowledgment—Date of—Entry in the account of defendant opened by him with his name at the beginning—Entry not signed by him—Whether sufficient to extend period of limitation—Stamp Act (II of 1899)—Schedule 1 Article 1—Acknowledgment—essentials of—How does it differ from acknowledgment under limitation Act—Acknowledgment within the meaning of Article 1, Schedule 1, Stamp Act, being not stamped—Whether admissible in evidence.

Held, that an acknowledgment under section 19 or Article 64 of the Limitation Act extends the period of limitation from the date on which it is signed by the party making it. An entry in the account of the defendant opened by him by writing his name at its head, the particular entry

not being signed by him, it does not extend the period of limitation from the date of the entry. If the name of the defendant, at the head of the account, is to be taken as signatures of the defendant, the date of the acknowledgment can only be the date on which he signed his name at the head of the account and not the date of the entry in the account.

Held, that for an acknowledgment to come within the scope of Article 1, Schedule 1, of the Stamp Act, it is also necessary that it must have been made by the debtor and signed to supply evidence of the debt. That is not necessary for an acknowledgment under section 19 of the Limitation Act. It is a question of intention of the parties whether a particular acknowledgment is intended to supply evidence of the debt, and that must, of course, remain a question of fact to be decided having regard to the words of the acknowledgment and the circumstances attending the making of it. But if it is an acknowledgment coming within the scope of Article 1, Schedule 1, of the Stamp Act, and is not properly stamped, it is inadmissible in evidence for any purpose whatsoever.

Regular First Appeal from the decree of the Court of Shri Rameshwar Dayal, Sub-Judge, 1st Class, Delhi, dated the 31st day of March, 1952, dismissing the plaintiff's suit with costs amounting to Rs. 508-8-0.

TARA CHAND, BRIJ MOHAN LAL and J. L. SETH, for Appellant.

R. S. NARULA, for Respondent.

JUDGMENT.

Mehar Singh, J.

MEHAR SINGH, J.—This appeal, by Suraj Mal plaintiff, arises out of a suit for recovery of Rs. 9,890-14-6, principal and interest, on the basis of various amounts advanced by the plaintiff to Vishan Gopal defendant, between December 15, 1944, and May 31, 1947, on which last date the defendant, after going through the account, wrote in his hand at the bottom Rs. 7,883-6-0 due (Baki Rahe). The suit has been dismissed by the learned trial Judge on the ground that it is barred by

Shri Suraj Mal v. Shri Vishan Gopal

Mehar Singh, J

the Statute of limitations. The decree is dated March, 31, 1952.

The defendant began taking loans from the plaintiff on December 15, 1944. He raised various amounts on various dates up to May 31, 1947, pledging certain shares at different times and taking sometimes all and sometimes part of them, while making repayments in the account. The account was throughout kept by the defendant himself and started with his name written by himself on top of the account. The first balance entry in the account is of January 15, 1945, written in the hand of the defendant showing a balance of Rs. 4,700 as due. The entry is stamped with one anna revenue stamp and is signed by the defendant. There is another entry signed by the defendant of March, 13, 1945, but that only relates to the taking back of certain shares pledged by him and to those that remained with the plaintiff. The third entry of balance of account is of May 31, 1946, which shows balance payable as Rs. 9,638-9-0. The entry is stamped with a revenue stamp of one anna and is signed by the defendant. The last entry, the one that is the subject matter of argument between the parties, is of May 31, 1947, as usual, written by the defendant himself, showing that Rs. 7,833-6-6 were due. The entry is unstamped and not signed by the defendant. It is the amount of this entry, with interest, that is the subject matter of the claim in this suit.

The learned trial Judge has come to the conclusion that the last entry of balance due is an acknowledgment within the scope of Article 1, Schedule I, of the Stamp Act, and as it is not stamped, so it is inadmissible in evidence. It is common case of the parties that if this acknowledgment is taken out of consideration, the suit

Shri Suraj Mal
v.
Shri Vishan
Gopal

Mehar Singh, J.

from the dates of the advances is obviously time barred.

An acknowledgment under section 19 of the Limitation Act extends the period of limitation from the date on which it is signed by the party making it. But if it is an acknowledgment coming within the scope of Article 1, Schedule I, of the Stamp Act, and is not properly stamped, it is inadmissible in evidence for any purpose whatsoever. That Article requires a stamp of one anna on an acknowledgment and reads thus—

> "Acknowledgment of a debt exceeding twenty rupees in amount or value, written or signed by, or, on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession : provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property".

What is material in the present case is that for an acknowledgment to come within the scope of this Article it must have been made by the debtor and signed to supply evidence of the debt. That is not necessary for an acknowledgment under section 19 of the Limitation Act. It is a question of intention of the parties whether a particular acknowledgment is intended to supply evidence of the debt, and that must, of course, remain a question of fact to be decided having regard to the words of the acknowledgment and the circumstances attending the making of it. In the present case what is stated in the acknowledgment is that a certain

Shri Suraj Mal
v.
Shri Vishan
Gopal

Mehar Singh, J.

amount is due (Baki Rahe), and by itself it provides no indication of the intention of the parties, but when it is considered along with the three previous balance entries of January 15, 1945, March 13, 1945, and May 31, 1946, it becomes abundantly clear that when the parties intended the balance due to be evidence of the debt the entry was specifically signed by the defendant and in the case of first and third of the three entries, referred to above, the entries are stamped with one anna revenue stamp. In the case of these two entries there can be no doubt at all that the intention of the parties was to make each an acknowledgment within the scope of Article I, Schedule I, of the Stamp Act and to supply evidence of the debt. This is not the case with regard to the last entry and the inference is apparent that that entry was not intended by the debtor to supply evidence of the debt. This conclusion takes out that entry from the scope of Article I, Schedule I, of the Stamp Act.

The reported cases, so far as an entry of this type, merely saying that balance is due, is concerned, do not take a consistent view. In *Sitaram* v. *Ram Prasad Ram and others* (1), a similar entry was held to come within the scope of Article I, Schedule I, of the Stamp Act, but *Sripada Sambasina Rao* v. *Kaki Venkatasuryanarayanamurthy and others* (2), takes a contrary view. In *Ramdayal* v. *Madi Devdiji* (3), the learned Chief Justice is of the opinion that in the case of such an acknowledgment the presumption should be that the intention was to accept the correctness of the account and to make it the account of the person signing it, and not that the intention was to supply evidence of the debt. Similar view has

(1) A.I.R. 1915 Cal. 280
(2) A.I.R. 1950 Mad. 135
(3) A.I.R. 1956 Rajasthan 12 at page 18

Shri Suraj Mal v. Shri Vishan Gopal

Mehar Singh, J.

been expressed in *Roshan N. M. A. Karim Omir and Co.* v. *Mohamed Ebrahim and another* (1), and in *Manilal Motiram Mehta* v. *Natwarlal Gokaldas Shah and others* (2). However, in the present case, there is other evidence available in the account produced and, as already referred to, it leads to the inference that the acknowledgment in question was not intended by the debtor to supply evidence of the debt.

So Article I, Schedule I, of the Stamp Act does not apply to the acknowledgment in question, and, as such, it certainly comes within the scope of section 19 of the Limitation Act. The learned counsel for the defendant says that, even if that is so, that section cannot apply to this particular acknowledgment, because it is not signed by the defendant. The reply of the learned counsel for the plaintiff is that it is not necessary that such an acknowledgment be signed by the debtor at its foot and that if the account, which is maintained by the defendant himself, begins with his name written by him, that is sufficient signature by him according to section 19. Reliance in this behalf is placed on *Andarji Kalyanji* v. *Dulabh Jeewan* (3), *Mohesh Lal* v. *Busunt Kumaree* (4), *Bhagwan Koer* v. *J. C. Bose and others* (5). In the first and third of these cases, the debtor, after writing down the acknowledgment, had written under it 'signed by himself', in the first case the words being 'Daskhat Pote' and in the second case 'Likhitan Khod', and the learned Judges held that this manner of attesting the acknowledgment was sufficient signing within the scope of section 19 of the Limitation Act. No such thing has happened in the present case. In the second case, all that the learned Judges said was that the signature need not appear at the foot,

(1) A.I.R. 1939 Rang. 315
(2) A.I.R. 1947 Bom. 337
(3) I.L.R. 5 Bom. 88
(4) I.L.R. 6 Cal. 340
(5) I.L.R. 31 Cal. 11, 43

Shri Suraj Mal
v.
Shri Vishan
Gopal

Mehar Singh, J.

but if the name of the debtor, written by himself, appears in the body of the writing itself, that is sufficient to meet the requirements of section 19. This, too, is not the case here. None of these authorities is of any assistance to the plaintiff. But even if this contention on behalf of the plaintiff was to be accepted, it is of no assistance to him because extension of the period of limitation under section 19 is from the date of the signature on the acknowledgment by the debtor. In this case the defendant wrote his name in the heading of the account on December 15, 1944, and from that date the suit is, from any consideration, time barred. His own name written by the defendant at the head of the account some 2½ years earlier to the date of the last acknowledgment cannot be taken to be a signature of the defendant on that acknowledgment on the date on which it was made. So that the plaintiff cannot derive any benefit, in the circumstances, from the provisions of section 19 of the Limitation Act.

As a last resort, the learned counsel for the plaintiff has fallen back upon Article 64 of the Limitation Act which provides a limitation of three years from money found to be due from the defendant to the plaintiff on accounts stated between them and the starting point of limitation is 'when the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives'. The learned counsel for the plaintiff contends that, in any case, in this Article 'signed' covers a case in which the account is signed by the defendant as in the present case. The reply on behalf of the defendant is that 'signed' in this Article means signed at the time of the making of acknowledgment and not at any time earlier. The contention on behalf of the defendant apparently

Shri Suraj Mal
v.
Shri Vishan
Gopal

Mehar Singh, J.

appears to be the one that is correct. In *Dasaundhi Ram* v. *Mool Chand and another* (1), the learned Judges accepted the view that the wording of Article 64 and section 19 of the Limitation Act being identical, it is settled law that what is good and valid signature in the one is also good and valid signature in the other. However, it does not appear from the report that the question as to when the signature appended was a matter of consideration before the learned Judges. In this connection also the learned counsel for the plaintiff has relied upon the three cases already cited in supporting his contention that the writing of his name by the defendant in the heading of the account is sufficient signature for the purposes of Article 64. These are not relevant for the reasons already given. But even if this contention is to be accepted, the question still remains whether his name written at the top of the account by the defendant himself about 2½ years earlier to the acknowledgment in question is a writing signed by him within the scope of Article 64, so as to give the starting point of limitation not the original date of the writing of his name by the defendant but the date of the acknowledgment. As already stated above, this appears to be based on an unsound argument and the starting point of limitation must even under this Article be taken from the date of the signature appended by the debtor-defendant—and if, in the present case it is the date when the defendant put his name in the heading of the account that is to be taken into consideration, the suit is obviously time barred. In *Kanthasami Reddiar* v. *Pethusami Reddiar* (2), the facts were somewhat similar. The defendant started an account with the plaintiff about a year before the settlement with the writing of the heading by the defendant. There followed a series of

(1) A.I.R. 1933 Lah. 12
(2) A.I.R. 1940 Mad. 887

Shri Suraj Mal *v.* Shri Vishan Gopal

Mehar Singh, J.

entries all in the hand-writing of the defendant, as in the present case, and a mere pencilled totalling and striking of the balance. Wadsworth, J., was of the opinion that this did not indicate, in any way, that there was authentication of the balance or an express indication given by the writer that he accepted it as binding upon himself, and he held that the writing of the name at the head of the account could not be regarded as authentication of the balance finally struck approximately one year later and therefore Article 64 did not apply. Thus, even Article 64 of the Limitation Act cannot apply to the present case because, even if the writing of his name by the defendant at the head of the account is to be taken as his signature within the scope of that Article as having been appended to the acknowledgment of May 31, 1947, the fact being that such writing of the name of the defendant was 2½ years earlier to the date of the acknowledgment, it cannot be said that the date of the signing is the same as the date of the acknowledgment and with this conclusion Article 64 does not help the plaintiff, for from the date of his putting his name on the heading of the account by the defendant, the suit is time barred.

In consequence, the decision of the learned trial Judge that the suit of the plaintiff is time barred is affirmed and the appeal is dismissed, leaving the parties to bear their own costs in this appeal.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

APPELLATE CIVIL.

Before Tek Chand, J.

PREM NATH —*Appellant.*

versus

M/s. KAUDOOMAL-RIKHIRAM AND ANOTHER,—*Respondents.*

First Appeal from Order No. 47 of 1955.

1957

Nov., 1st

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 13 and 36—Limitation for the recovery of