Union of India and others v. Jagdish Singh

Dulat, J.

serious in support of this view and he admitted that the question whether a particular proceeding is in nature criminal or civil depends on the procedure adopted for dealing with it. It is clear that in connection with such writs, as is concerned in the present case, the procedure adopted in this court is that for civil proceedings and there is no reason, therefore, for saying that just because the grievance was against the imposition of penalty the proceedings became criminal in nature.

For these reasons, I would allow this appeal, set aside the order made by the learned Single Judge, and dismiss the petition of Shri Jagdish Singh, and discharge the rule issued in this case. In view of all the circumstances, however, I would leave the parties to bear their own costs in this Court.

Khosla, C. J.

G. D. KHOSLA, *C.J.*—I agree.

Pandit, J.

P. C. PANDIT, J.—So do I .

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

HAZARA SINGH,—*Appellant.*

versus

BAKHSHISH SINGH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 563 of 1961.

1961

Oct. 9th

Limitation Act (IX of 1908)—Section 19—Acknowledgement by surety—Whether saves the period of limitation as against the principal debtor also.

Held, that the acknowledgement by the surety does not save the period of limitation as against the principal debtor. The acknowledgement has to be by a party or person against whom the right is claimed.

Regular Second Appeal, from the decree of the Court of Shri Harnarain Singh Gill, Sub-Judge, 1st Class, exer-

cising enhanced appellate powers, Bassi, dated the 29th day of March, 1961, affirming with costs that of Shri Avtar Singh, Sub-Judge, 1st Class, Amloh, dated the 7th June, 1960, granting the plaintiff a decree for Rs. 600, with costs.

S. D. BAHRI, ADVOCATE, for the Appellant.

M. R. SHARMA, ADVOCATE, for the Respondent.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—The only question in this second appeal is whether an acknowledgement by the surety would save the period of limitation as against the principal debtor. So far as the facts of the case go, no argument is open to the learned counsel for the appellant because the conclusions of the Courts below being conclusions on questions of fact are binding on me in second appeal. The Court of fact has found that defendant 1 was the principal debtor and No. 2 was a surety and that the debt in question was incurred.

The only contention raised and which is open to the learned counsel for the appellant is that of limitation. The debt was raised in July, 1956. The suit was filed on the 1st of December, 1959, i.e., more than three years from the date of the loan. Limitation is sought to be saved on the plea that the surety acknowledged the debt in a letter, Exhibit P.A. This letter has been treated as acknowledgement of the debt by the Courts below, and I am not prepared to accept the argument of the learned counsel for the appellant that this letter has no relation to the debt. But that does not solve the problem so far as the appellant is concerned, because he is the principal debtor. There is no appeal by the surety. There is no acknowledgement as such by the principal debtor, nor is there any evidence on the record that the surety was acting as the agent of the principal debtor. The rule seems to be firmly settled that acknowledgement by one of the co-debtors is not acknowledgement on behalf of the other co-debtor. So also would be the case where a surety and a principal debtor are concerned. There is a catena of cases under section 20 of the Indian

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Limitation Act, where part payment or payment of interest by the surety or by the principal debtor has been held to be not enough to save limitation against the one or the other. In this connection, reference may be made to *Gopal Daji Sathe* v. *Gopal Bin Sonu Bait* (1), *Brajendra Kishore Roy Chowdhury* v. *Hindustan Co-operative Insurance Society Limited* (2) *Raghavendra Gururao Naik* v. *Mahipat Krishna Sollapur* (3), *Abde Ali* v. *Askaran* (4), *Babu Jainarain Singh* v. *Parmeshar Murao* (5), *and U Ba Pe and another* v. *Ma Lay* (6).

On principle I see no difference, why the same rule should not apply to an acknowledgement. Moreover the language of section 19 of the Indian Limitation Act is very explicit. Section 19 is in these terms:—

> "19(1). Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.
>
> (2) Where the writing containing an acknowledgement is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, I of 1872, oral evidence of its contents shall not be received.
>
> *Explanation I.*— * * * * *.
>
> *Explanation II.*—For the purposes of this section 'signed' means signed either personally or by an agent duly authorised in this behalf.

(1) I.L.R. 28 Bom. 248.
(2) I.L.R. 44 Cal. 978.
(3) I.L.R. 49 Bom. 202.
(4) 84 I.C. 199.
(5) 132 I.C. 798.
(6) I.L.R. 10 Rangoon 398.

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Explanation III.— * * * * .

It will be apparent from the language of this section that the acknowledgement has to by a party or person against whom the right is claimed. In the present case the debt is sought to be recovered both against the principal debtor as well as the surety. Therefore, the right is claimed against both. The acknowledgement is only by one. Therefore, the right will only be saved *qua* one and not *qua* the other by whom there is no acknowledgement.

After giving the matter my careful consideration I am of the view that the contention of Mr. Bahri to the effect that the acknowledgement by the surety does not save the period of limitation as against the principal debtor must prevail. I would accordingly allow this appeal, set aside the judgment and decree of the Courts below as against defendant No. 1 only. The decree will stand against defendant No. 2, but in the circumstances of the case, there will be no order as to costs throughout so far defendant No. 1 is concerned.

B.R.T.

FULL BENCH

Before S. S. Dulat, Inder Dev Dua and Daya Krishan Mahajan, JJ.

THE UNION OF INDIA,—*Appellant.*

versus

THE LANDRA ENGINEERING AND FOUNDRY WORKS AND OTHERS,—*Respondents.*

Regular Second Appeal No. 598 of 1958.

1961

Dec. 15th

Code of Civil Procedure (Act V of 1908)—Section 80—Object and purpose of—Goods booked by Eastern Railway to be delivered at a station on Northern Railway—Goods short-delivered—Consignee giving notice only to General Manager, Northern Railway and filing suit against Union of India as owner of both the Railways—Notice—Whether sufficient.