

LAHORE HIGH COURT

Dil Mohammad

Vs

Sain Das

Civil Revision Petition No. 760 of 1926

(Tek Chand, J.)

07.02.1927

JUDGMENT

Tek Chand, J.

1. On the 13th August 1917, Dil Mohammad and Imam Din as principal debtors and Dula as surety executed a bond in favour of Plaintiff No. 1 and the predecessors-in-interest of Plaintiffs Nos. 2 and 3, for ₹ 200/- bearing interest at 2 p.m. On the 15th June 1925 the plaintiffs brought a suit in the Court of Small Causes at Lahore for recovery of ₹ 500/- on foot of this bond against Dil Mohammad and Imam Din the principal debtors, and Dula, the surety. It was discovered soon after that Imam Din had been dead for a long time. The plaintiffs accordingly made a statement giving up their claim against Imam Din and his name was removed from the record. In the plaint it was alleged that the suit was within limitation by virtue; of certain payments of interest which, were noted on the back of the bond and which bore the thumb-impressions of one or other of the defendants. A decree has been passed against both Dil Mohammad and Dula for ₹ 500/- with costs and they have come up to this Court on revision.

2. The first point taken by Mr. Dev Raj Sawhney for the petitioners was that the suit has been instituted on the 24th June 1925, and that even if the alleged payment of interest be held to be proved the suit would still be barred by time under the Repealing (Punjab Loans Limitation Act) 1923, as amended by the Act of 1925, according to which the last date for filing such suit was the 15th June 1925. Mr. Dev. Raj Sawhney seems to have been misled by a mistake in the copy of the judgment of the lower Court where the date of presentation of the plaint is given as 24th June 1925. I have referred to the original plaint and find that it was presented on the 15th June 1925. This contention is, therefore, incorrect and is overruled. On the main point arising in the case Mr. Sawhney has contended that the finding of the learned Judge is based upon the report of the Fingerprint Bureau at Philour where the thumb-impressions of Dil Mohammad were examined

by an expert, but that this expert has not come into the witness box and this report remains unproved, and is inadmissible in evidence. From the record, however, it appears that the document was sent to Philour at the instance of the defendant Dil Mohammad himself and that the report was received on the 14th July 1926. The case was put up for hearing on five occasions after this date, but no request was made by the defendant Dil Mohammad to summon the expert. Under these circumstances it must be held that the defendant accepted the certificate without formal proof and he cannot now be allowed to argue that this, evidence should be excluded for want of proof. In any case, even if the certificate and the conclusions that have been drawn, therefrom by the learned Judge are excluded from consideration, there is ample evidence on the record to prove that the payment of ₹ 25/- was made by Dil Mohammad on account of interest on the 27th July 1919. There is the evidence on oath of the plaintiff himself and also that of P.W. 1, Nanak Chand, which has been accepted by the learned Judge as reliable. I must therefore hold that the requirements of Section 20 of the Indian Limitation Act had been fulfilled and the suit is within limitation so far as Dil Mohammad is concerned.

3. As regards Dula, surety, Mr. Sawhney has in the first place contended that there being no acknowledgment of payment of interest by him, the suit is barred by limitation so far as he is concerned and the plaintiffs cannot under Section 21 of the Limitation Act rely on the payment of the interest on 27th July 1919, by Dil Mohammad, one of the principal debtors, in order to bring the suit within time against Dula. In support of this contention Mr. Sawhney has cited *Gopal Daji v. Gopal Abde¹ Ali v. Askaran²* and *Lodd Govindass Krishnadas v. Rukmani Bhai³* and a number of other rulings. The view taken in these rulings, however, is opposed to that of Martineau, J., in *Harbans Lal v. Nathu⁴* which was cited without disapproval by Campbell and Zafar Ali, JJ., in *Nihal Chand v. Khuda Bakhsh⁵* I am not sure of the correctness of the ruling of Martineau, J., and if the decision of the case had turned upon this point only I would have been inclined to refer the matter to a larger Bench for an authoritative decision, but here assuming that the lower Court has come to a wrong decision on the question of limitation so far as Dula surety is concerned I am not inclined to interfere on the revision side. It has been held over and over again by the Chief Court and this Court that a wrong decision on a question of limitation is not a valid ground for interference on revision, under Section 25 of the Small Cause Courts Act when substantial justice has been done- vide *Ghasita v. Sultan⁶* and *Sarab Dial-Ishar Das v. Devi Ditto, Mal-Gordhan Das⁷* I therefore decline to interfere with the judgment of the lower Court against Dula on this point.

4. Mr. Sawhney, has, however, raised a further contention that in this case the surety is discharged firstly by reason of the failure of the plaintiff to sue Imam Din within the period of limitation and, secondly, by reason of the plaintiff having given up Imam Din or his legal representatives after the institution of the suit. Now, with regard to this contention it has to be borne in mind that neither of these points was taken by the defendant in the Court below. Moreover a creditor's omission to sue the principal within limitation is not an act or omission of the kind contemplated by Section 134 or Section 139 of the Indian Contract Act whereby the

surety is discharged. The High Courts of Bombay, Calcutta and Madras have consistently taken this view vide *Sankana Kalana v. Virupakshapa Ganeshappa*⁸

¹[1904] 28 Bom. 248 : 5 Bom. L.R. 1020 ³[1915] 38 Mad. 438 : 21 I.C. 302 : 1 M.L.W. 529

² A.I.R. 1924 Nag. 411 : 20 N.L.R. 140 ⁴[1919] 105 P.R. 1919 : 53 I.C. 586

⁵ A.I.R. 1924 Lah. 534

⁶[1911] 93 P.R. 1911 : 228 P.L.R. 1911 : 11 I.C. 445 : 151 P.W.R. 1911

⁷[1918] 59 P.L.R. 1918 : 46 I.C. 541 : 139 P.W.R. 1918

⁸[1883] 7 Bom. 146

*Krishto Kishori v. Radha Romun*⁹ and *Subramania Aiyar v. Gopala Aiyar*¹⁰ and it is in consonance with the dicta of the Court of appeal in England Per Lindley, L.J. in *Carter v. White*¹¹ The contrary view taken by the Allahabad Court in *Ranjit Singh v. Naubat*¹² and the rulings cited therein does not appear to me as correct.

5. The other point that the claim against Imam Din was given up by the plaintiffs during the pendency of the suit has no force whatever. It is always open to a creditor to pursue his remedy against one of the debtors and forbearance to sue the others, does not bring the case within Ss. 134 and 139 of the Contract Act.

6. For the foregoing reasons I see no reason to interfere with the decision of the Court, below and reject this petition, but in view of all the circumstances I leave the parties to bear their own costs in this Court.

Petition dismissed.

⁹[1886] 12 Cal. 330

¹¹[1884] 25 Ch. D. 666 : 54 L.J. Ch. 138 : 32 W.R. 692 : 50 L.T. 670

¹⁰[1909] 33 Mad. 308 : 7 I.C. 898 : 20 M.L.J. 633

¹²[1902] 24 All. 504 : (1902) A.W.N. 166