

LAHORE HIGH COURT

Kalian Chand-Dularam

Vs

Dayaram Amritlal

(Harrison, J.)

18.12.1928

JUDGMENT

Harrison, J.

1. The only question to be decided in this appeal is that of limitation. Plaintiffs claimed ₹ 5,750 from the defendant-firm. The defendants confessed judgment in the sense that they admitted the correctness of the account and their liability but urged that the suit was barred by limitation. The contention prevailed and the suit was dismissed by the trial Court, it being held that it fell under Article 85, Lim. Act.

2. On appeal it is contended that Article 64 governs the case and not Article 85, and that even if Article 85 be held to apply, Article 64 applies equally and under these circumstances the more favourable period of limitation should be allowed to the plaintiffs. Many authorities have been cited and counsel for both sides have devoted much time to presenting the two different views. It is established that *Mani Ram Seth v. Rup Chand*¹ disposes of the view taken throughout a long series of rulings of this Court and of the Punjab Chief Court that an unqualified acknowledgment does not necessarily imply any sort of promise to pay.

3. The first point to be decided is whether Article 85 applies or not. There are two distinctly conflicting views as to whether a balance struck and accepted by the other side does or does not conclude and close a mutual, current and open account with the result that no suit can subsequently be brought on the basis of the account as such. There is the further difficulty to be found in the words, "Where there have been reciprocal demands." This has been interpreted to mean, "Where mutual liabilities have been incurred." It is of course true that a demand presupposes and implies an obligation, real or imaginary, or, at any rate, the assertion of such an obligation. The converse, however, is difficult, for an obligation does not pre-suppose or connote a demand though doubtless it may ultimately result in such a demand being made. Fortunately in this case it is not necessary for us to go into these difficult points, inasmuch as we are satisfied that the balance struck and accepted at the conclusion of these accounts was novation of contract,

implied a promise to pay, and therefore, gave a fresh period of limitation if Article 64 governs the case and if 64 is applicable it is immaterial whether 85 is also applicable or not. Now, Article 64 runs as follows:

¹[1906] 33 Cal. 1047

For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.

4. The only question is whether the accounts have been stated, and the only difficulty is the use of the plural "accounts." An account was undoubtedly stated, that account was accepted by the defendant and the balance was signed by him. At page 20 of the paper book the words are to be found:

Credit account of Lala Dayal Ram-Amrit Lal, etc., Balance struck at loaf Mo. 20 etc., ₹ 3,939-14-6 due on account of loss in respect of cotton and cotton seed. Balance due. Dated 10th Bhadon 1977, corresponding to 25th August 1920. Account adjusted. Balance struck. Sd. Daya Ram.

5. This is followed by the names of the witnesses.

6. Now, the three expressions, "balance due," "account adjusted" and "balance struck" mean that the plaintiffs and the defendants went through the account. The defendant accepted the statement of account contained in plaintiff's books and made it his own by signing in the way he did. This, in our opinion, fulfills all the necessary requirements of the words accounts stated between them."

7. The only point remaining is that the defendant-respondent has urged that his minor son is not personally liable. This is conceded by the plaintiff. We accept the appeal and give the plaintiff a decree against the defendant-firm with costs throughout.

.