

BOMBAY HIGH COURT

Laxminarayan Ramdayal

Vs.

Chimniram Girdharilal

Second Appeal No. 453 of 1915

(Stanley Batchelor, Kt., Acting C.J. and Shah, J.)

08.09.1916

JUDGMENT

Stanley Batchelor, Kt., Acting C.J.

1. In this appeal the only question which it is necessary to consider is the question whether the letter, Exh. 33, ought to be held to have been admitted. For if Exh. 33 is held to be admitted, then it is clear that the plaintiffs' suit is not exposed to the bar of limitation. Now the suit was brought to recover a sum of money on an account stated, and with regard to the question of limitation, the matter was put by the plaintiffs in the following language in paragraphs 4 and 5 of their plaint: "As mentioned in the special extracts the defendants have given the vasul in respect of the dealings and, at last, have sent a vasul of ₹ 160 on the 13th May 1910 and the defendants sent their firm's letter to the plaintiffs, dated the 12th May 1910 mentioning that vasul. This suit of the plaintiffs is filed after three years subsequent to the date of the last transaction. But the plaintiffs' suit is in time on account of the vasul given by the defendants and on account of the letter referred to in Clause 4." This letter thus referred to is Exh. 33. In reply to this averment in the plaint the defendants in their written statement, Exh. 14, state as follows Para 6 : The plaintiffs' suit is not in time. The suit is not saved by the letter put in from the bar of limitation." In this state of the pleadings, the learned Subordinate Judge of trial came to the conclusion that the letter, Exh. 33, must be accepted as proved, and in that conclusion we think he was justified under the provisions of Rules 3, 4 and 5 of Order 8 of the Civil Procedure Code. These are new provisions intended, it must be supposed, to bring the Indian practice as to pleadings into a position approaching that which they occupy in England. Rule 5 is, for instance, substantially the same provision as obtains in England, except that its rigour is mitigated by the added proviso. With that proviso, however, in this particular case, we have no concern, and the rule which we have to enforce lays down that "every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted." In this case the words which we have cited from paragraph 6 of the written

statement seem to us incapable of being read as containing either a specific denial or a denial by necessary implication of the execution of the letter upon which the plaintiffs have expressly relied. It appears to us that, on a fair reading of paragraph 6, its meaning is that though the letter put in by the plaintiffs is not denied, the defendants contend that for one reason or another its effect is not to save the suit from the bar of limitation. We think, therefore, that under rules 3, 4 and 5 of O, VIII of the Civil Procedure Code the lower Court was right in thinking, that in this state of the pleadings, the letter, Exh. 33, must be accepted as admitted between- the parties, and, therefore, unnecessary to be proved. This being so, the lower appellate Court's decree dismissing the suit on the ground of limitation is reversed and the decree of the trial Judge restored with costs throughout.

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