

BOMBAY HIGH COURT

Vishwanath Raghunath Kale

Vs

Mahadeo Rajaram Saraf

(John Beaumont, Kt., C.J. Baker, J.)

19.01.1933

JUDGMENT

John Beaumont, C.J.

1. This is an application to revise an order made by the Small Causes Court Judge at Nasik. The learned Judge dismissed the plaintiffs' suit on the ground that it was barred by limitation. The plaintiffs sued on a promissory note dated May 29, 1925. There were various part payments of principal secured by that note. The first payment was made on October 18, 1925, the second on November 4, 1926, and the third on October 5, 1927, all those being within three years from the date of the promissory note. Then there was a fourth payment made on June 2, 1928, and on that date an acknowledgment was signed by the defendant admitting all the past payments including the payment on June 2, 1928. This suit was brought on June 4, 1931. It is admitted by the defendant that the Court was closed on June 2 and 3, 1931, and therefore, although the period of limitation prescribed by Article 73 of the Indian Limitation Act expired on June 2, 1931, under Section 4 the plaintiffs would have a right to bring this suit on June 4, 1931, if they could have brought it on June 2, 1931. The learned trial Judge was of opinion that the suit was barred because the acknowledgment of the part payment was made more than three years from the date of the promissory note. Section 20 of the Act provides, so far as relates to part payments, that where part of the principal of a debt is before the expiration of the prescribed period paid by the debtor or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made, provided that an acknowledgment of the payment appears in handwriting of or in a writing signed by the person making the payment. Now the effect of each part payment, provided it was made within the prescribed period and was acknowledged in writing, was to start a new period of three years running. So that the payment of October 5, 1927, extended the prescribed period to October 5, 1930, provided there was the requisite acknowledgment in writing. Now the acknowledgment in writing of that payment was made on June 2, 1928, which is beyond the period of three years from the date of the promissory

note, and the learned Judge was of opinion that an acknowledgment outside the prescribed period was no good. But in that view I think he was wrong. It is true that the payment has to be made within the prescribed period, but the Act does not provide that the acknowledgment is to be made within that period. It is the payment, and not the acknowledgment, which extends the period of limitation. The acknowledgment is merely a matter of evidence, and provided it is signed before the suit is commenced, that appears to me to be sufficient. So that we have this, that by the payment of October 5, 1927, duly acknowledged on June 2, 1928, the prescribed period was extended until 1930 : consequently the payment on June 2, 1928, was within that prescribed period, and that payment was duly acknowledged on that date. That being so, it appears to me that the plaintiffs had until June 2, 1931, to bring their suit under Article 73, and then Section 4 of the Act extended the period until the Court was sitting. As the suit was commenced on June 4, which was the day on which the Court opened, it was, in my opinion, in time. That being so, the application must be allowed with costs.

2. Suit remanded to the lower Court to deal with the other issues. Costs of the suit to be dealt with by the lower Court.

Baker, J.

3. I agree. In this case it is the payments which will operate to extend the limitation and not the endorsement on the bond. It was held in *Venkatasubbu v. Appusundram*¹ that it is not necessary that the endorsement should be made at the same time as the payments. Nor does the Act say so. The point, therefore, is whether the endorsements serve to save limitation by the payments. The endorsements of the payments are there; the part payments of the principal will operate to extend the period of limitation and on this view of the case the suit is in time.

1(1893) I.L.R. 17 Mad. 92