

Northern India Finance Corporation (P.) Ltd., v. R. L. Soni
(R. S. Narula, J.)

(18) This argument was raised by the learned counsel for the appellant presumably because if she succeeded as the mother of Nawal and not as the widow of Narain Datt, then she could not even take advantage of the principle of representation, because there are authorities that lay down that a widow represents the husband and the daughter her father. There is, however, no ruling for this proposition that the mother represents the son. But be that as it may, as I have already said, if the plaintiff wants to depend on the principle of representation, then she can be properly met with a plea by the defendant that in that case the latter also represents her father, whose property she inherits.

(19) In view of what I have said above, this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs.

B.S.G.

ORIGINAL CIVIL

Before R. S. Narula, J.

NORTHERN INDIA FINANCE CORPORATION (P.) LTD.,—*Petitioner*

versus.

R. L. SONI,—*Respondent.*

Civil Original No. 9 of 1971

February 10, 1972

Limitation Act (XXXVI of 1963)—Section 19—Payment of debt by cheque which is dishonoured—Whether amounts to part-payment and acknowledgement of liability of the debt—Suit for the recovery of such debt—Whether to be filed within the normal period of limitation.

Held, that payment of debt by a cheque which is dishonoured does not save limitation under section 19 of the Limitation Act, 1963. If the cheque is encashed, it amounts to part-payment within the meaning of section 19 and saves the suit from getting barred by time. If, however, the cheque is not

honoured, the amount represented by the cheque is not "paid" by the drawer to the drawee. There is, therefore, no acknowledgement of the liability and there is no revival of the original debt. The suit for the recovery of the debt has to be filed within the normal period of limitation. (Para 5).

Petition under Section 446(2) of the Companies Act, 1956 praying that the Hon'ble Court be pleased to grant an order in favour of the petitioner Company in liquidation and against the respondent for payment of Rs. 12,160.15 plus future interest at the rate of Rs. 12 per cent per annum from 1st January 1971, up to the date of payment and costs of the petition.

Kuldip Singh Keer, Advocate, for the petitioner.

Amrit Lal Bahri, Advocate, for the respondent.

JUDGMENT

NARULA, J.—(1) This is a claim petition under sub-section (2) of section 446 of the Companies Act, 1956, for recovery of Rs. 12,160.15 P. The petitioner-company was carrying on finance business at Jullundur. A petition for its winding up was filed on June 9, 1969. The company was ordered to be wound up by this Court in Civil Original 26 of 1969, on January 9, 1970. The Official Liquidator attached to this Court was appointed the liquidator of the company. He has, therefore, filed this claim petition on behalf of the company in his official capacity.

(2) The claim is that on December 27, 1962, a sum of Rs. 6,000 was lent by the company to R. L. Soni respondent and the same was repayable with interest at 12 per cent per annum which is the usual rate at which the company charged interest on loans granted by it. According to the claim petition, part payments of Rs. 594 and Rs. 500 were made in cash by the respondent towards principal and interest in account on April 12, 1965, and May 21, 1966, respectively. Another sum of Rs. 1,000 is said to have been paid to the company by cheque Exhibit P. 7 on June 15, 1966, but the said cheque was dishonoured.

(3) The claim has been contested by the respondent. According to his written statement, the respondent and one Gurcharan Singh Bakshi were partners of Messrs Sonico Distributors and Gurcharan Singh's mother Shrimati Anup Kaur had a deposit of Rs. 8,000 with the company, out of which the sum of Rs. 6,000 in question was

**Northern India Finance Corporation (P.) Ltd. v. R. L. Soni
(R. S. Narula, J.)**

drawn by the respondent on behalf of Shrimati Anup Kaur and credited to her account in the books of the respondent's partnership. In fact the respondent claims that Rs. 3,000 on one occasion and another Rs. 1,500 on another occasion were paid out by his partnership to Shrimati Anup Kaur out of the sum of Rs. 6,000 and only Rs. 1,500 remained due to her. Though he admitted having received Rs. 6,000 by cheque from the company,—*vide* voucher Exhibit P. 1, he denied having received it as a loan and stated that he merely signed the voucher in blank on December 27, 1962, when there was no other entry in it.

(4) The company filed a replication, wherein it was stated that Shrimati Anup Kaur did have a deposit of Rs. 8,000 with it, but that she had claimed the whole of that amount from the Official Liquidator without making any mention of any withdrawal of Rs. 6,000 out of that amount in the manner alleged by the respondent. From the pleadings of the parties, I framed the following issues :—

- (1) Whether the claim is within time?
- (2) Whether the amount in question was paid to the respondent as loan?
- (3) If the principal is due to the company, what interest, if any, is the company entitled to ?
- (4) Relief.

Issue No. (1)

(5) In view of the provisions of section 458-A of the Companies Act, this claim petition has been filed within time after June 9, 1969, the date of presentation of the winding up petition. It remains to be seen whether the claim was within time on that date, i.e., on June 9, 1969, or not. Even if the earlier payments of Rs. 594 and Rs. 500 are assumed to have been made by the respondent, the claim would not have been within time on the date of presentation of the winding up petition. It is conceded by Mr. Kuldip Singh Keer, the learned counsel for the Official Liquidator that this claim petition can be held to be within time only if the payment of Rs. 1,000

by cheque dated June 15, 1966, saves it from being barred by time. This being the common case of the parties, the only question that has to be answered in order to decide issue No. (1) is whether the payment by the said cheque, dated June 15, 1966, saves the claim from being barred by time or not. It is claimed that the suit is within time on account of payment of Rs. 1,000 by the said cheque by virtue of section 19 of the Limitation Act, 1963. The said provision reads as follows :—

“Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—For the purposes of this section,—

- (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment ;
- (b) ‘debt’ does not include money payable under a decree or order of a Court.”

The cheque Exhibit P. 7 was issued on the account of Messrs Sonico Distributors under the signature of G. S. Bakshi, partner of that firm. The cheque is dated June 15, 1966. It is not signed by the respondent. Without going into the question of the effect of the cheque being not signed by the respondent, but by the partner of his, and without going into the question of the effect of the cheque not being drawn by the respondent on his account, but having been drawn by his partner on the account of the firm of which the respondent was a partner, it appears to me that payment by the said cheque would not save limitation under section 19 of the Limitation Act as the cheque was admittedly dishonoured on presentation to

Northern India Finance Corporation (P.) Ltd., v. R. L. Soni
(R. S. Narula, J.)

the bankers of Messrs Sonico Distributors on whom the cheque had been drawn. Exhibit P. 8 is the memorandum of the Punjab Co-operative Bank Limited Amritsar, dated June 25, 1966, returning the cheque dishonoured with the endorsement that the drawee may "refer to the drawer". I have no doubt in my mind that if the cheque had been encashed and if the cheque could be treated to be of the respondent, this would have amounted to part payment within the meaning of section 19 of the Limitation Act, and would have saved the suit from getting barred by time. If, however, the cheque is not honoured, it cannot be said that the amount represented by the cheque has been "paid" by the drawer to the drawee. Section 19 starts with the words "where payment on account of a debt or of interest" is made before the expiration of the prescribed period "by the person liable to pay the debt" or by his agent duly authorised in this behalf. As already stated, I will assume that G. S. Bakshi was the duly authorised agent of the respondent for making the payment on behalf of the respondent to the company. But the cheque having, however, been dishonoured, it cannot be said that any payment at all was made by anybody to the company by that cheque. I am supported in this view by a Division Bench judgment of the Bombay High Court in *Chiniaman Dhundiraj v. Sadguru Narayan Maharaj Datta Sansthan and others* (1). It was held in that case that when the cheque in question was dishonoured, there was a revival of the original debt and the suit had to be filed within the normal period of limitation. It was observed that there is no acknowledgement of liability merely by giving a cheque which is dishonoured on presentation. The view of the Bombay High Court was followed by a learned Single Judge of the Patna High Court in *Arjunlal Dhanji Rathod v. Dayaram Premji Padhiar* (2). No authority to the contrary has been cited before me. I am in agreement with the view of the Division Bench of the Bombay High Court and following the same I hold that this claim has not been filed within time as it is not saved by the handing over of the cheque Exhibit P. 7 which was dishonoured on presentation.

Issue No. (2)

(6) Though this is a hotly contested issue, I am of the view that the company has been able to prove it. Leaving out of consideration

(1) A.I.R. 1956 Bom. 553.

(2) A.I.R. 1971 Patna, 278.

altogether the oral evidence led by the parties and relying only on the documentary evidence led in the case, it is clear that the sum of Rs. 6,000/- was actually taken by the respondent from the company by cheque on December 27, 1962, *vide* voucher Exhibit P. 1. That itself would not, however, show that it was a loan. It has, therefore, to be found out as to which of the two rival theories canvassed by the parties is correct, namely, whether it was a loan or it represented the withdrawal of Rs. 6,000 by the respondent out of the deposit of Shrimati Anup Kaur with the company under instructions from Shrimati Anup Kaur. Three pieces of unimpeachable evidence support the petitioner's version and are wholly inconsistent with the story of the respondent in this behalf. Firstly, the consistent entries in the books of account of the petitioner-company which had no venom against the respondent. On a payment of Rs. 6,000 to the respondent, his account was opened and the same was debited to him. It was not credited to the account of Shrimati Anup Kaur. Secondly, it being the admitted case of the respondent that he obtained the payment at the instance of Anup Kaur, her two letters Exhibits P. 17 and P. 19 clinch the issue. In the undated letter Exhibit P. 19 signed by Anup Kaur, she had asked the company to pay Rs. 6,000/- to the respondent against lien on her account (which means on her guarantee) as advance. She further stated that he would pay interest to the company on that amount. This clearly shows that it was a loan. This view is further strengthened by Anup Kaur's letter Exhibit P. 17 addressed to the Official Liquidator after the company went into liquidation claiming the total sum of Rs. 8,000/- representing her deposit with the company. Thirdly, the statement of Sardari Lal Khanna, accountant of the respondent, was not at all convincing. The real book of account which would have helped in the decision of the matter was held back by him or by the respondent. For all these reasons, I hold issue No. (2) to have been proved.

Issue No. (3)

(7) Interest at the rate of 12 per cent per annum has been claimed only on the basis of the customary rate at which interest was being charged by the company on hire-purchase agreements. The amount in question was admittedly not given to the respondent on any hire-purchase basis. If the claim had been filed within limitation, I would have allowed interest to the company only at the rate of six per cent per annum. This issue stands decided accordingly.

Messrs Mul Chand Chuni Lal v. The Union of India
(Harbans Singh, C.J.)

Issue No. (4).

(8) In view of my finding on issue No. (1), this claim fails as barred by time, and is accordingly dismissed though without any order as to costs.

N. K. S.

REVISIONAL CIVIL

Before Harbans Singh, Chief Justice.

Messrs Mul Chand Chuni Lal,—*Petitioner.*

versus.

THE UNION OF INDIA,—Respondent.

Civil Revision No. 709 of 1971.

February 18, 1972.

Sale of Goods Act (IX of 1930)—Section 2(4)—Railway receipt for despatch of goods in the name and possession of the consignee—Goods lost in transit due to negligence of the Railways—Suit by the consignee for damages—Whether maintainable.

Held, that sub-section (4) of section 2 of the Indian Sale of Goods Act, 1930, gives the definition of "document of title to goods" and it includes "railway receipt". In view of this definition a consignee, in whose name the railway receipt is and who is also in possession of it, will be entitled to the goods despatched as owner. However, that may not be conclusive and the consignee in such a case may be only an agent taking the delivery of goods. But in the absence of any such evidence and in the presence of the clear evidence of the consignee that he is the owner, he is entitled to maintain a suit for damages against the Railways if the goods are lost in transit due to the negligence of the Railways.

Petition under Section 25 of the Provincial Small Cause Courts Act for revision of the order of Shri K. K. Sethi, Judge, Small Cause Court, Amritsar, dated 30th December, 1970, dismissing the suit with costs.

Bhagirath Dass, Senior Advocate with B. K. Jhingan, Advocate, *for the petitioners.*

Harbans Lal, Advocate, *for the respondent.*