

1919.

JESHA
BATHA,
In re

orders proposed but it is unusual to proceed on petitions received merely from the relations of parties and should not be taken as a precedent under section 439 of the Criminal Procedure Code.

Rule made absolute.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

1919

October 21.

SAKHARAM MANCHAND GUJAR (ORIGINAL PLAINTIFF), APPELLANT
v. KEVAL PADAMSI GUJAR (ORIGINAL DEFENDANT), RESPONDENT.*

Indian Limitation Act (IX of 1908), section 20—Part-payment—Handwriting in respect of part-payment—Part-payment must appear in the handwriting of the person making payment.

The defendant purchased certain goods from the plaintiff on the 10th September 1912 for which he owed Rs. 1,350. He also owed another debt of Rs. 301 to the plaintiff. On the 4th and 5th July 1913, the defendant paid two sums of Rs. 500 and Rs. 235, accompanied by a letter which ran thus:—

“ I have sent currency notes of Rs. 500 and a Hundí for Rs. 235, in all Rs. 735. Credit them.”

The plaintiff applied the sum in wiping out the smaller debt; and credited the balance as part-payment of Rs. 1,350.

On the 14th October 1915, the plaintiff sued to recover the unpaid balance of Rs. 1,350 with interest, and sought to bring his claim in time by relying on the part-payment in 1913:

Held, that the plaintiff's claim was in time, for the requirements of section 20 of the Indian Limitation Act were satisfied, as the fact of the payment appeared in the handwriting of the person making the same, and it appeared that the payment was in part satisfaction of the principal of the debt.

SECOND appeal from the decision of J. H. Betigiri, First Class Subordinate Judge, A. P., at Satara, confirming the decree passed by B. B. Kunte, Second Class Subordinate Judge at Rahimatpur.

* Second Appeal No. 441 of 1915.

Suit to recover a sum of money.

The defendant owed to the plaintiff the sum of Rs. 1,350 for commodities supplied to him on the 10th September 1912. He also owed to the plaintiff another sum of Rs. 301 on a different account.

On the 4th and 5th July 1913, the defendant paid to the plaintiff two sums of Rs. 500 and Rs. 235 ; these payments were accompanied by a letter which ran as follows :—

“ Greetings of Keval Padamsi from Koregaum.

“ The reason for writing the letter is that your letter is received. I have sent currency notes of Rs. 500 and a Hundi for Rs. 235, in all Rs. 735. Credit them. They have been sent by registered post. One register cover contains notes and the other the Hundi. Acknowledge receipt of the same.”

The plaintiff applied these sums first in wiping out the smaller amount and credited the balance as part-payment of the principal of the larger amount.

On the 14th October 1915, the plaintiff sued to recover the balance due with interest, alleging that his claim was within time under section 20 of the Indian Limitation Act, 1908, on account of part-payment of principal in 1913.

The lower Courts held that the payment in 1913 did not serve as part-payment of principal, and dismissed the suit as barred by limitation.

The plaintiff appealed to the High Court.

Patwardhan, with *M. V. Bhat*, for the appellant :—
The proviso to section 20 of the Indian Limitation Act simply lays down that the fact of the payment should appear in the handwriting of the person making it. That condition is satisfied by the letter, Exhibit 14, written by the defendant at the time of making the payments of Rs. 500 and Rs. 235. The proviso does not require that the description of the debt towards which the payments were made should also appear in the handwriting of the debtor. The words “ as such ” are used

1919.

SAKHARAM
MANCHANDv.
KEVAL
PADAMSI.

1919.

SAKHARAM
MANCHANDP
KEYAL
PADAMSI.

with reference to the payment of interest only. The lower Courts were, therefore, wrong in holding that the claim was barred because the principal sum was not specified in the letter.

The correctness of the account was not disputed and the defendant knew very well at the time of writing the letter the balance due to the plaintiff. The case of *Ranchordas v. Pestonji*⁽¹⁾ is not against us; on the contrary some of the remarks therein support our argument.

G. S. Rao, for the respondent :—There is nothing to show that the payments were made in respect of the debt in question. The letter does not specify the principal amount towards which they were made. The description of the principal amount must also appear in the handwriting of the defendant. The plaintiff did not call upon us to produce his letter to which Exhibit 14 was a reply. Only a lump sum was paid by the defendant. The debtor may have intended to make the payments in full satisfaction of the whole claim. The ambiguous letter merely asking the plaintiff to credit the amount does not help the plaintiff. The following English cases support my contention: *Tippets v. Heane*⁽²⁾; *Ashlin v. Lee*⁽³⁾; *Evans v. Davies*⁽⁴⁾.

SHAH, J. :—The plaintiff in this case sued to recover the price of certain goods sold to the defendant on the 10th of September 1912 with interest up to date of suit; and deducting therefrom the amount received he claimed in all Rs. 1,197 at the date of the suit. The suit was filed on the 14th of October 1915. It was filed more than three years after the date on which the goods in question were supplied. But the plaintiff relied upon part-payments in respect of the debt made in two sums in July 1913, one of Rs. 198-8-0 forming part of the cash payment of Rs. 500 and the other of Rs. 235 by a Hundi

(1) (1907) 9 Bom. L. R. 1329.

(3) (1875) 44 L. J. Ch. 376.

(2) (1834) 1 Cr. M. & R. 252.

(4) (1836) 4 Ad. & E.840.

received from the defendant and upon the fact of the payments appearing in a letter written by the debtor on the second of July 1913.

In the trial Court the defendant denied the claim on the merits and pleaded limitation. It was, however, found that the goods in question were sold by the plaintiff to the defendant and that the price of the goods was Rs. 1,350 with certain incidental charges in respect of the transaction. The trial Court, however, found that the part-payments in question did not satisfy the requirements of section 20 of the Indian Limitation Act and that the claim was time-barred. Accordingly the plaintiff's suit was dismissed. The plaintiff appealed to the District Court and the First Class Subordinate Judge with appellate powers upheld the plea of limitation and dismissed the appeal.

In the appeal to this Court by the plaintiff the same question of limitation has been raised. It is urged on behalf of the appellant that the requirements of section 20 of the Indian Limitation Act are satisfied in this case; that the two payments appear in the handwriting of the defendant and that they were made in respect of an account under circumstances under which the inference must necessarily arise that they were made in part-payment of the debt in question. On the other hand, on behalf of the respondent it is urged that the requirements of section 20 of the Indian Limitation Act have not been satisfied, as the writing in question does not show in terms that the payments were in respect of the debt in question, and that the payments were intended to be only part-payments, even if they were otherwise referable to the debt in question. It is contended that the debtor may have intended to make the payments in full satisfaction of the claim, that at least there is an ambiguity on the point and that an ambiguous writing of that character cannot serve the purpose of the plaintiff.

1919.

SAKHARAM
MANCHANDv.
KEVAL
PADAMSI

1919.

SAKHARAM
MANCHAND

v.

KEVAL
PADAMSI.

It is necessary at the outset to state that the account between the plaintiff and the defendant at the date of these two payments showed only a balance of about Rs. 301 apart from the debt in suit. There is no dispute in the present case about the correctness of this account. Over and above this balance at the date there was the debt of about Rs. 1,350 relating to the transaction in question. Thus the total amount due at the date of the two payments was a little over Rs. 1,650. When on the 4th and 5th of July 1913 the debtor paid two sums of Rs. 500 and Rs. 235, he necessarily paid a part of the debt in question. There is no other account between the parties and there is no other debt due by the defendant to the plaintiff than that appearing in the account. When he made these two payments, the defendant wrote a letter to the plaintiff as follows: "The reason for writing the letter is that your letter is received. I have sent currency notes of Rs. 500 and a Hundi for Rs. 235, in all Rs. 735. Credit them." It is true that this letter does not in terms contain any reference to the debt in question, nor does it state in terms that the sums were to be treated as part-payments of the debt in question. But the letter itself refers to a letter received by the defendant from the plaintiff. That letter which would be in the possession of the defendant has not been produced, and there is no evidence of the contents of that letter. The account shows that the debt in question was ascertained some time before the payments. The state of the accounts and the terms of the letter clearly show that the defendant was either aware or made aware at the time of these payments of the existing state of the accounts which would include the debt in question, and further that he made the payments not intending that they were to be treated as payments in full satisfaction of the amount then due, but in the ordinary course

intending thereby satisfaction of the amount due on the account to the extent of the payments.

1919.

SAKHARAM
MANCHANIE
v.
KEVAL
PADAMSI.

The question is whether, on these facts, the payments made satisfy the requirements of section 20 of the Indian Limitation Act. That section provides that where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor, a fresh period of limitation shall be computed from the time when the payment was made, subject to the proviso that in the case of part-payment of the principal of the debt the fact of the payment appears in the handwriting of the person making the same. In the present case there can be no doubt about the fact of a part of the debt having been paid by the debtor on the state of the accounts. There is no doubt also that the fact of the payment appears in the handwriting of the person making the same. It is urged, however, that the proviso is not satisfied, as the fact that the payment was made in part satisfaction of the debt in question does not appear in the handwriting of the person making it. I do not think that the proviso requires that to be done in terms. It seems to me on the words of the proviso that if the fact of the payment appears in the handwriting of the person making the same and if it appears on the evidence in the case that the payment was in part satisfaction of the principal of a debt the requirements of the section would be satisfied. The argument urged on behalf of the respondent requires the reading of words in the proviso, which are not there. The words in the proviso refer to the fact of payment and not to the fact of the payment being a part-payment of the principal. It is not without significance that the words "as such" used with reference to the payment of interest are not used with reference to the part-payment of the principal. The view I take is

1919.

SAKHARAM
MANCHAND.v.
KEVAL
PADAMSL.

consistent with the decision in *Ankamma v. Rama* ⁽¹⁾ and the observations in *Kedar Nath Mitra v. Dinabandhu Saha* ⁽²⁾. In the present case the lower appellate Court seems to me to have proceeded upon an erroneous view as to the meaning of the proviso. The decision in *Ranchhordas v. Pestonji* ⁽³⁾ relied upon by the lower appellate Court does not seem to me to conflict with the view which I take of the proviso; on the contrary, some of the observations in the judgment seem to support that view. All that is necessary, in my opinion, for the creditor to prove in such a case is that the fact of the payment appears in the handwriting of the person making the same and further that the payment is really in part satisfaction of the principal of a debt. If these two facts are established, the creditor is entitled to have the benefit of the saving provisions of section 20 on the question of limitation. In the present case both the facts are proved. The payments appear in the letter written by the debtor; and the same letter taken along with the undisputed facts as to the state of the accounts between the parties clearly shows that the payments were in part satisfaction of the debt in question.

I would, therefore, allow this appeal, set aside the decree of the lower appellate Court, and allow the plaintiff's claim for Rs. 1,197 with interest at 6 per cent. from the date of the suit to the date of payment with costs throughout on the defendant.

HAYWARD, J.:—I agree. The account in the books of the plaintiff showed that there was a sum of about Rs. 300 due besides the debt of Rs. 1,350 sought in this litigation to be recovered from the defendant. The

⁽¹⁾ (1883) 6 Mad. 281.

⁽²⁾ (1915) 42 Cal. 1043 at p. 1048.

⁽³⁾ (1907) 9 Bom. L. R. 1329.

1919.

SAKHARAM
MANCHAND

v.

KEVAL
PADAMSI.

defendant-made two payments, one of Rs. 500 and the other of Rs. 235, in response to a letter received by him, but which he has not produced. The first payment was sufficient to wipe off the Rs. 300 odd due besides and to leave a balance of some Rs. 200 which together with the other payment of Rs. 235 would be available against the debt of Rs. 1,350 odd demanded in this litigation from the defendant. It seems to me that the inference naturally to be drawn from these facts would be that this balance of Rs. 435 was intended as a part-payment of the principal sum of Rs. 1,350 odd which must have been included in the demand which was no doubt made in the letter which has not been produced by the defendant. This inference would seem to me to be justified on the principles laid down in the cases of *Evans v. Davies*⁽¹⁾ and *Friend v. Young*⁽²⁾. It was, however, held at the trial that that would not be enough and that it would be necessary to show not only that such part-payment was noted in the handwriting of the defendant, but also that the principal sum towards which it was paid should also be noted in the handwriting of the defendant under the proviso to section 20 of the Indian Limitation Act. It seems to me, however, that that was an error. It was not required by the express words of the proviso that anything but the payment should be noted in the handwriting of the person making it. It was not expressly provided that the principal debt to which the payment was made should also be noted in the handwriting of the person making it and that was pointed out by Sir Lawrence Jenkins in the case of *Kedar Nath Mitra v. Dinabandhu Saha*⁽³⁾. There a cheque drawn in favour of the payee was the document which noted the part-payment and there would not be in such a document any

⁽¹⁾ (1836) 4 Ad. & E. 840.⁽²⁾ [1897] 2 Ch. 421 at p. 436.⁽³⁾ (1915) 42 Cal. 1043 at p. 1048.

1919.

SAKHARAM
MANCHAND
v.
KEVAL
ADAMSI.

mention of a principal debt towards which the payment was made. It would appear to me, therefore, that it was sufficient to prove that the payment was noted in the handwriting of the defendant and it was not necessary to prove besides anything more than that the payment was intended to be a part-payment of the principal sum demanded from the defendant. It was not necessary, that is to say, to have a description of the principal debt also noted in the handwriting of the defendant. The demand, therefore, for the balance due upon this debt of Rs. 1,350 odd was, in my opinion, saved from the bar of limitation by the provisions of section 20 of the Indian Limitation Act.

There ought, therefore, in my opinion, to be a decree in favour of the payee as proposed for Rs. 1,197 principal with interest at 6 per cent. from the date of suit till payment with costs from the defendant in all Courts.

Decree set aside.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Hayward.

1919.

September
11.

EMPEROR v. MOHIDIN WALAD KARIM AND OTHERS (ACCUSED).^{*}

Criminal Procedure Code (Act X of 1882), section 16—Rules 1, 2, 4† of the rules framed for the guidance of Special Magistrates' Bench in the Municipal

^{*} Criminal Application for Revision No. 221 of 1919.

† The rules run as follows:—

1. The Bench may try any case triable by a Third Class Magistrate.
2. The Bench shall ordinarily consist of three Special Magistrates, but may consist of two only, if not more than that number are present on any day fixed for a sitting of the Bench. If on any such day more than three Special Magistrates are present, the names of the three who are to sit shall be drawn by lot in open Court.

The Special Magistrates may arrange themselves for sitting in rotation or otherwise as may be convenient.

4. If for any cause it is found necessary to adjourn the hearing of a case after the evidence has been partly taken, the trial must be completed before the same Magistrates who commenced it, or must be held afresh before a different set of Magistrates.