

Messrs Jawahar Singh and others
 v.
 Union of India,
 (2) Punjab State
 (Bharat), (3)
 Province of
 Punjab
 (Pakistan)
 —————
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resided in the Court for its preservation, for the maintenance of its dignity, for securing obedience to its process and for protecting its officers engaged in executing its orders. But this inherent power cannot be stretched to cover a wider field. In the disguise of exercising their inherent powers Courts cannot proceed to arrogate the functions of Legislature. It is true that occasionally Courts may fell tempted on grounds of hardship or in the interest of justice or fair-play to invoke these powers, but vague and nebulous considerations of hardship or injustice are snares into which Courts should not permit themselves to be drawn. These considerations are apt to introduce uncertainty and obscurity in the interpretation of statutes where exactness and precision should be the objective.

Guided by the principles mentioned above I am in entire agreement with the view expressed by my Lord the Chief Justice that the power of a Court to remit or refund court-fees is confined only to fees which have been illegally erroneously assessed or collected, and does not extend to fees which have been paid or collected in accordance with the provisions of the Court-fees Act.

D. K. M.

CIVIL ORIGINAL.

Before Tek Chand, J.

FIRST NATIONAL BANK, LTD.,—*Applicant.*

versus

THE MANDI (STATE), INDUSTRIES, LTD., JOGINDER NAGAR,—*Respondent.*

Case No. 5 in Civil Original No. 40 of 1954.

1957
 August, 22nd

Limitation Act (IX of 1908)—Section 19 and Articles 57 and 120—Entries of liability in a balance-sheet, whether amount to acknowledgement—Pledge—Suit to enforce a pledge—Limitation.

Held, that a statement in a balance-sheet furnished in compliance with statutory requirements is a sufficient acknowledgement of a debt within the meaning of section 19 of the Limitation Act.

Held also, that a suit to enforce a pledge is not governed by Article 57 but by Article 120 of the Limitation Act.

Petition under Sections 45D/45M of the Banking Companies Act, X of 1949, as amended by Act 52 of 1953, praying that the list of debtors of the petitioner Bank be settled and a decree against each of the debtors with costs and future interest be passed.

B. R. TULI, for Petitioner.

H. L. SARIN, for Respondent.

JUDGMENT

TEK CHAND J.—This case arises out of an application made on behalf of the First National Bank Limited, Ambala, under sections 45D/45M of the Banking Companies Act X of 1949 as amended by Act 52 of 1953 for the settlement of the list of debtors of the petitioner. The respondent is Mandi State Industries Limited, Joginder Nagar, District Mandi, Himachal-Pradesh, owing a sum of Rs. 76,224/8/- including interest calculated up to 31st March, 1954. It is prayed that payment order be passed for the above amount with costs and future interest at 7 per cent per annum from 1st April, 1954, to the date of payment in full against the pledged property now in the possession of the debtor. The amount was secured against the pledge of Textile Woollen Mills' machinery by the debtor as per list. The goods were secured by the Bank but were handed over to the debtor. On 24th April, 1946, the respondent executed a promissory note Exhibit P. 14 for Rs. 90,000 at Lahore undertaking to pay the amount due on demand. After the list of debtors was filed on 26th May, 1944, the present respondent raised

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several objections to the petitioner's claim which gave rise to three issues which are reproduced below—

1. Whether the claim is within time.

2. Whether the amount cannot be recovered in India.

3. What amount is due to the Bank.

On behalf of the petitioner two witnesses were produced but the counsel for the respondent made a statement that he did not wish to produce any evidence in the case. Mr. Tuli, learned counsel for the petitioner, contends that the petitioner's claim against the respondent is within limitation in view of the provisions of Article 120 of the Limitation Act. The only provision to which reference may possibly be made has no applicability as it applies to the case of a suit for money payable for money lent. This, however, is a claim for the recovery of the money lent by enforcing a lien on movable property pledged with the petitioner. Such a right is different from the right to recover the amount from the debtor personally. A suit to enforce the pledge is not governed by Article 57 but by Article 120,—vide *Madan Mohan Lal and another v. Kanhai Lal* (1), and *Mahalinga Nadar v. Ganapathi Subbien* (2). Under the provisions of section 19 of the Limitation Act a fresh period of limitation is computed from the time when the acknowledgment of liability is made in writing in respect of the property or the right which is the subject-matter of the claim. In this case acknowledgment is to be found in the form of entries in the balance sheets and letter Exhibit P. 23 dated the 7th of February, 1950, addressed by the respondent to the

(1) I.L.R. 17 All. 284.

(2) I.L.R. 27 Mad. 528.

petitioner confirming the balances. Six balance sheets of the respondent company have been produced, Exhibits P. 1 to P. 6, relating to the period between 1949 and 1955. In each of these balance sheets, there is an entry referring to this advance showing the amount borrowed from the First National Bank Limited against the machinery pledged at 7 per cent per annum interest. Exhibit P. 6 is the balance sheet of the respondent as on 31st March, 1955, containing the following entry—

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“CAPITAL AND LIABILITIES”

Loan and Advances—

(Against Machinery Pledged
First National Bank Ltd.

Last Balance	...	Rs. 62,907-2-6
Add interest @ 7%	...	Rs. 14,054-7-6

Rs. 76,961-10-0

There is ample authority for the proposition that a statement in a balance sheet furnished in compliance with statutory requirement is a sufficient acknowledgment of a debt within the provisions of section 19 of the Indian Limitation Act. It was held in *Rajah of Vizianagaram v. Official Liquidator* (1), in para 33, that where a balance sheet presented to the shareholders at annual general meeting of a limited liability company signed by the chartered accountants etc., contained the statement that a sum was due to sundry creditors, it was a sufficient acknowledgment to prevent the debt from being statute barred.

In *Jones v. Bellegrove Properties, Ltd.* (2), the balance sheets of the debtor's company contained the following entry—

“Sundry creditors £7,638 8s. 10d.”

(1) A.I.R. 1952 Mad. 136.

(2) (1949) 2 K.B.D. 700.

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It was contended on behalf of the defendant-company in that case that that entry was not a clear admission of liability to any one, and would not be an acknowledgment within the provisions of section 23(4) and section 24 of the Limitation Act, 1939. The provisions run as under:—

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“23(4) where any right of action has accrued to recover any debt or . . . pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment: provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.”

“24(1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment.

(2) Any such acknowledgment or payment as aforesaid may be made by the agent of the person by whom it is required to be made under the last foregoing section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.”

The contention on behalf of the defendant-company was repelled, as it was found, that in the balance-sheets there was a general figure of £7,638 8s. 10d. which included the specific sum of £1,807 which had been lent by the plaintiff to the defendant-company. Evidence was given in that case to show that the larger figure included the loan in question to the company.

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In *re: Atlantic and Pacific Fibre Importing and Manufacturing Co.* (1), which was cited with approval by Birkett, J. in *Jones v. Bellegrove Properties, Ltd.* (2), it was held, that a balance-sheet contained in an annual report sent by a company to its shareholders, and filed with the Registrar of Companies, in which it was stated that the total amount of the company's indebtedness under its debentures was, although not sent to the debenture holders, a sufficient acknowledgment by the company of its liability. In that case Clauson, J., observed—

“In my judgment the issue of the balance-sheets constituted, in the circumstances, a sufficient acknowledgment of the company's indebtedness to the plaintiff and the other debenture-holders under the debentures.”

My attention has also been drawn to an entry in Exhibit P. 7 which is a statement of account of the petitioner, contained in the books of the respondent-company showing, that on May 29, 1948, a sum of Rs. 100 was paid to the petitioner and there was also an entry indicating that on July, 30, 1954, there was a balance due to the petitioner of Rs. 76,961/10. In view of several written acknowledgments of indebtedness made by the respondent-company before the expiration of the period prescribed for instituting a suit, I am of

(1) (1928) Ch. 836.

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the opinion that the claim of the petitioner is with-
in time.

On the second issue, there is no force in the objections of the respondent, that recovery cannot take place in India. The respondent-company was incorporated in India and has always been doing its business at Joginder Nagar (Himachal Pradesh), the pledged goods are also lying at Joginder Nagar where the registered office of the respondent-company is situated. The First National Bank was no doubt doing its business in Lahore and before the partition of the country in 1947, its registered office was shifted to Ludhiana. Winding up petition was presented in this Court which passed winding up order. It does not admit of the least doubt that the amount in question can be recovered in India.

Lastly, it is amply established on the record that the amount claimed, is due from the respondent to the petitioner. Exhibit P. 7 referred to above shows, that a sum of Rs. 76,961/10/- was due from the respondent to the petitioner on July 30, 1954. Thus, the claim of the petitioner for Rs. 76,224/8/- including interest calculated up to 31st March, 1954, stands proved. I, therefore, pass a payment order for Rs. 76,224/8/- with interest at 7 per cent calculated up to the date of this order from 1st April, 1954, against the pledged property. There will be no order as to future interest. Parties will bear their own costs.

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CIVIL WRIT

Before Falshaw, J.

TEJ RAM,—Petitioner

versus

THE UNION OF INDIA AND OTHERS,—Respondents

Civil Writ No. 136-D of 1957.

Land Acquisition—Land acquired for the use of a Co-operative House Building Society—Such acquisition, whether for a public purpose—Public purpose with reference to acquisition of land, what is, stated.

1957

August, 26th