APPELLATE CIVIL

Before K. L. Gosain and Shamsher Bahadur, JJ.

MST. *BIRO*,—*Appellant.*

versus

DULLA SINGH,—*Respondent.*

Regular Second Appeal No. 76/P of 1956.

1960

Feb., 4th

Indian Limitation Act (IX of 1908)—Section 19—Acknowledgement of the existence of an account with assertion of payment having been made and nothing remaining due—Whether amounts to acknowledgment of liability—Punjab Relief of Indebtedness Act (VII of 1934)—Section 26—Time during which application remained pending before the Debt Conciliation Board—Whether can be excluded from the period prescribed for a suit or acknowledgement.

The plaintiff filed an application before the Debt Conciliation Board on 2nd May, 1953, for getting conciliation in respect of his debt. The defendant filed his written statement on 27th June, 1953, containing the following words:—

> "I had affixed my thumb impression in the *bahi*. No account was explained and the amount consisted of interest and compound interest and as such the entire amount should be disallowed. During this period I have paid thousands of rupees and nothing is due from me. From one account two accounts have been prepared. The accounts from the very start should be summoned and examined and the entire amount should be rejected. In case any amount is found due from me, I may be allowed instalments."

The application was dismissed on 20th May, 1954. The plaintiff then filed a suit in which the bar of limitation was pleaded, on the ground that the written statement did not entitled to exclude the time between 2nd May, 1953 and 20th May, 1954, during which the application remained pending before the Debt Conciliation Board.

Held, that where the debtor has admitted the existence of an account, it must be deemed to be an acknowledgement of liability for whatever is found due from him on the settlement of the said account. A debtor may, while admitting the existence of an account, also say that on account of a set-off which he claims, nothing will be found due to the creditor, or may say that on account of the payments which he has made the balance of the account will be found to be in his favour. All the same he would be deemed to have admitted the existence of the account and would be deemed to have acknowledged his liability to pay whatever money is found due on the basis of the said account.

Held, that acknowledgements have to be liberally constured and if the debtor has really intended to admit his liability whatever may be found on settlement of the account, it must be held that he acknowledged the debt.

Held, that in the present case the defendant has clearly said in his written statement that he affixed his thumb impression in the *bahi*. There is no doubt that he has also said that the account was not explained to him and that the amount consisted of interest and compound interest, but these pleas do not take away the admission of an account. The fact that the defendant has further said that he had paid thousands of rupees and that nothing was due from him only means that if his allegation that he had paid thousands of rupees is found to be correct nothing would be found due from him. The matter is clinched by the last sentence in which the defendant has said "In case any amount is found due from me, I may be allowed instalments." By writing this sentence, the defendant clearly meant that he was prepared to pay the amount in case it was found to be due from him after checking up of the complete account and after giving him the credit for the amounts which he had paid and which he described as "thousands of rupees." The document read as a whole leaves no doubt at all that the defendant admitted the existence of the account with the plaintiff and further admitted that he was willing to pay such amount as may be found due from him. When he said that he had paid thousands of rupees and nothing was due, he could not be deemed to have meant anything else than saying that the account of the payments might be gone into and probably it would be found that nothing was due from

him. The document acknowledges a subsisting liability to pay to the plaintiff whatever is found due after the account of the payments made by him is gone into.

Held, that under the provisions of section 19 of the Limitation Act, an acknowledgement must be made "before the expiration of the period prescribed for a suit." The period of limitation available to the plaintiff for instituting the present suit must be reckoned as the period of three years allowed by the Limitation Act *plus* the period during which the application for the conciliation of the debt remained pending before the Debt Conciliation Board. The acknowledgement having been made within this period was a proper acknowledgement. The words "before the expiration of the period" cannot be interpreted only to mean before the expiry of the period prescribed by the Second Schedule of the Indian Limitation Act. If by any local law any particular time is to be excluded for calculating the period prescribed by the Indian Limitation Act, the provisions of the Second Schedule of the Act have to be read in the light of the provisions of the said local law and the period prescribed has to be determined after excluding the period which the local law provides for exclusion.

Second Appeal from the decree of the Court of Shri S. L. Chopra, Additional District Judge, aCamp at Sangrur') dated the 03th day of November, 1955, affirming with costs that of Shri Shamsher Singh Attri, Sub-Judge 1st Class, Sangrur, dated the 21st December, 1954, dismissing the plaintiff's suit and passing no order as to costs.

TIRATH SINGH, for the Appellant.

J. K. KHOSLA for MR. KISHORI LAL, for the Respondents:

JUDGMENT

Gosain, J.

GOSAIN, J.—This is a second appeal against the appellate decree of Shri S. L. Chopra, Additional District Judge, Sangrur, dated the 30th of November, 1955, confirming that of the trial Court dated the 21st of December, 1954.

Smt. Biro, plaintiff-appellant, filed a suit which has given rise to this appeal against Dulla Singh, defendant-respondent, for the recovery of a sum of Rs. 1,470 principal and Rs. 530 interest, on the

basis of *Bahi* account. She alleged that the defendant had struck a balance for Rs. 1,470 on Jeth *badi* 2007 Bk. (corresponding to the 3rd of May, 1950), and had agreed to pay interest at the rate of 12 per cent per annum. The suit was instituted on the 31st of May, 1954, obviously more than three years from the date of the striking of the balance. The plaintiff, however, alleged that the defendant had made an acknowledgement of liability in the written statement filed by him to an application filed by the plaintiff before the Debt Conciliation Board for the purpose of getting conciliation in respect of the plaintiff's debt. The said written statement was filed on the 27th of June, 1953, and was admittedly thumb marked by the defendant. It contained the following words :—

> "I had affixed my thumb impression in the *bahi*. No account was explained and the amount consisted of interest and compound interest and as such the entire amount should be disallowed. During this period I have paid thousands of rupees and nothing is due from me. From one account two accounts have been prepared. The accounts from the very start should be summoned and examined and the entire amount should be rejected. In case any amonut is found due from me, I may be allowed instalments."

The defendant contested the claim and urged *inter alia* that the suit was barred by time. He denied having struck the balance in suit and also denied having made any acknowledgement. The learned trial Court came to the conclusion that the balance of Rs. 1,470 was struck by the defendant respondent in favour of the plaintiff-appellant, and that the plaintiff-appellant was entitled

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to recover Rs. 1,470 principal amount, along with Rs. 530 as interest. That Court, however, dismissed the suit on the ground that the same was barred by time. He held that the written statement, Exhibit P.B., dated the 27th of June, 1953, referred to above, did not in fact amount to acknowledgement of liability. He also came to the conclusion that the acknowledgment, even if it be deemed to have been made, would not give a fresh period of limitation as it was made beyond three years from the date of the balance, and therefore, could not be said to have been made within the period of limitation prescribed for filing the suit. In the result, the trial Court dismissed the plaintiff's suit who, feeling aggrieved against the decree of the trial Court, went up in appeal to the learned District Judge, Sangrur. There also she did not meet with any success inasmuch as the learned Additional District Judge, who actually heard the appeal, confirmed the various findings arrived at by the learned trial Court, as also the decree passed by the said Court. In the second appeal filed in this Court, two points arise for decision—

(1) Wether the written statment, Exhibit P.B., dated the 27th of June, 1953, amounts to acknowledgement of liability so as to give a fresh period of limitation to the plaintiff in terms of section 19 of the Indian Limitation Act ?

(2) Whether the aforesaid acknowledgement can be deemed to have been made within the period of limitation prescribed for filing the suit ?

It is urged on behalf of the appellant that the document, Exhibit P.B., clearly amounts to acknowledgement of liability inasmuch as the debtor has admitted therein that he had an account with the

plaintiff and had shown his willingness to pay such amount as may be found due from him.

The learned counsel for the respondent on the other hand urges that the defendant has clearly said in the written statement that nothing is due from him and the document cannot, therefore, be taken to be an acknowledgement of any subsisting liability.

After giving my careful consideration to the whole matter, I am of the opinion that this document must be held to be a good acknowledgement. The defendant has clearly said in his written statement that he affixed his thumb-impression in the *bahi*. There is no doubt that he has also said that the account was not explained to him and that the amount consisted of interest and compound interest, but these pleas do not take away the admission of an account. The fact that the defendant has further said that he had paid thousands of rupees and that nothing was due from him only means that if his allegation that he had paid thousands of rupees is found to be correct nothing would be found due from him. The matter is clinched by the last sentence in which the defendant has said "In case any amount is found due from me, I may be allowed instalments." By writing this sentence, the defendant clearly meant that he was prepared to pay the amount in case it was found to be due from him after checking up of the complete account and after giving him the credit for the amounts which he had paid and which he described as "thousands of rupees". The document read as a whole leaves no doubt at all that the defendant admitted the existence of the account with the plaintiff and further admitted that he was willing to pay such amount as may be found due from him. When he said that he had

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paid thousands of rupees and nothing was due, he could not be deemed to have meant anything else than saying that the account of the payments might be gone into and probably it would be found that nothing was due from him. I am unable to agree with the learned counsel for the respondent that the document really denies the liability, because in my opinion this document acknowledges a subsisting liability to pay to the plaintiff whatever is found due after the account of the payments made by him is gone into.

The learned counsel for the appellant relied on *V. Subbaramayya* v. *Yerri Iragam Reddi and another* (1), *Abdul Latif Gulam Nabi Patil* v. *Jawhar State* (2), *Municipal Committee, Amritsar* v. *Ralia Ram and others* (3), *Smt. Diwanni Widyawati* v. *Ramji Dass and Company* (4), *Lekshmi Amma Janaki Amma and others* v. *Ittiavira Abraham and others* (5), and *Mani Ram Seth* v. *Seth Rupchand* (6), in support of his contention that the written statement, Exhibit P.B. should be taken to amount to an acknowledgement of liability.

In the case reported as *V. Subbaramayya* v. *Yerri Iragam Reddi and another* (1), it was held that "where there is an admission of accountability by the person liable to pay to the person to whom payment is due, an admission that the account was not settled, an expression of willingness to have it settlted and a query whether anything would be due as a result, the admission implies an admission of liability for the amount which may be found due upon the settlement, and is sufficient to save limitation for

(1) A.I.R. 1939 Mad. 300
(2) A.I.R. 1940 Bomb. 172
(3) A.I.R. 1936 Lah. 629
(4) A.I.R. 1939 Lah. 216
(5) A.I.R. 1951 Tran.-Cochin 93

a suit for the balance due on an account." The learned Judge, who decided this case placed his reliance on a judgment of their Lordships of the Privy Council reported as *Mani Ram Seth* v. *Seth Rupchand* (1), and also on a judgment of the Madras High Court, *Sitayya* v. *Rangareddi and others* (2),

In the case, reported *Abdul Latif Gulam Nabi Patil* v. *Jawahar State* (3), it was held that "under section 19, Explanation I, the omission to specify the exact nature of the amount of the liability is immaterial, or even the averment that no balance is due and therefore, words "you should take proper account and if on taking accounts some balance be found due from the defendant you should absolve him from those dues' addressed to the creditor by a counsel on behalf of his client constitute a valid acknowledgement."

In *Municipal Committee, Amritsar* v. *Ralia Ram and others* (4), a Division Bench of the Lahore High Court held that "wherever there is an acknowledgement of an outstanding account, without more, then there is an acknowledgement of liability to pay the balance due which might be found to arise upon a taking of those accounts and, therefore, an acknowledgement of liability within the terms of section 19."

In *Smt. Diwanni Widyawati* v. *Ramji Dass and Company* (5), it was held that "a letter of a debtor, who as agent collected rent of and looked after the bungalow of his principal, to the effect that according to his accounts kept correctly only a definite particular amount was due from him, being an admission of existence of an outstanding unsettled

(1) I.L.R. 33 Cal. 1047
(2) I.L.R. 10 Mad. 259
(3) A.I.R. 1940 Bomb. 172
(4) A.I.R. 1936 Lah. 629
(5) A.I.R. 1939 Lah. 216

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account between them amounts to an acknowledgement, as his assertion does not in any way make the unsettled outstanding account into a settled closed account."

In *Lekshmi Amma Janaki Amma and others* v. *Ittiavira Abraham and others* (1), an admission had been made in a written statement that an account existed, but it had further been said that there was no liability on the said account as the claim was barred by limitation, and the said written statement was accepted to be an acknowledgement of liability, inasmuch as the existence of the account had been acknowledged.

The basic ruling is *Mani Ram Seth* v. *Seth Rupchand* (2), in which their Lordships of the Privy Council held that "an acknowledgement of liability, should the balance turn out to be against the person making it, is a sufficient acknowledgement under section 19 of the Limitation Act (XV of 1877) and there is no distinction in this respect between the English and the Indian Law."

It is true that the various acknowledgements, which were held to be effective in the rulings aforesaid had their own peculiar language, and obviously it is difficult to find two cases where the acknowledgement would be contained in the same words. The *ratio decidendi*, however, of all these cases is that where the debtor has admitted the existence of an account, it must be deemed to be an acknowledgement of liability for whatever is found due from him on the settlement of the said account. A debtor may, while admitting the existence of an account, also say that on account of a set-off, which he claims, nothing will be found due to the creditor, or may say that on account of the payments

(1) A.I.R. 1951 Tray.-Cochin 93
(2) I.L.R. 33 Cal. 1047

which he has made the balance of the account will be found to be in his favour. All the same he would be deemed to have admitted the existence of the account and would be deemed to have acknowledged his liability to pay whatever money is found due on the basis of the said account. In the present case, the debtor has expressly said that if any amount is found due from him, instalments may be fixed for the same which evidently means that he has admitted the existence of his liability to pay whatever is found due from him, although he likes to pay the same by instalments. Explanatoin I to section 19 of the Indian Limitation Act lays down as under :—

> "Explanation I. For the purposes of this section an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right."

It is well settled that acknowledgements have to be liberally construed and if the debtor has really intended to admit his liability whatever may be found on settlement of the account, it must be held that he acknowledged the debt. I would, therefore, decide the first point in favour of the plaintiff and hold that the written statement, Exhibit P.B. containing the paragraph, which I have quoted above, does amount to an acknowledgement of liability on the part of the debtor and is sufficient to give to the plaintiff-creditor a fresh period

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of limitation from the date when the said acknowledgement was made.

On the second point, it is pertinent to note that the application before the Debt Conciliation Board was made by the creditor on the 2nd of May, 1953, and it remained pending till the 20th of May, 1954. The period from the 2nd of May, 1953, to the 20th of May, 1954, has, therefore, to be excluded from the three years period of limitation in order to find the period, which was available to the creditor for filing the suit in question. Section 26 of the Punjab Relief of Indebtedness Act (No. VII of 1934) expressly provides for this and is in these terms :—

> "26. The time spent in proceedings before a conciliation board and time during which a person is debarred from suing or executing his decree under the provisions of this Part of this Act shall be excluded when counting the period of limitation for any application, suit or appeal."

The creditor could have filed a suit on the 27th of June, 1953, when the acknowledgement in question was made in his favour. Under the provisions of section 19 of the Limitation Act, an acknowledgement must be made "before the expiration of the period prescribed for a suit." The period of limitation available to the plaintiff for instituting the present suit must be reckoned as the period of three years allowed by the Limitation Act plus the period during which the application for the conciliation of the debt remained pending before the Debt Conciliation Board. The acknowledgement in question was evidently made within this period.

The learned counsel for the respondent contends that a restricted interpretation should be

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placed on the words "before the expiration of the period" and that these words must be interpreted only to mean before the expiry of three years, i.e., the period prescribed by II Schedule of the Indian Limitation Act. I regret, I cannot accept this interpretation. If by any local law any particular time is to be excluded for calculating the period prescribed by the Indian Limitation Act, the provisions of the II Schedule of the Act have to be read in the light of the provisions of the said local law and the period prescribed has to be determined after excluding the period which the local law provides for exclusion. It is conceded that if calculation of the period of limitation is made in this way, the acknowledgement of liability must be deemed to have been made within the period of limitation. In the result, I find that the acknowledgement contained in the written statement, Exhibit P.B., falls within the ambit of section 19 of the Limitation Act and gives a fresh period of limitation to the creditor for filing a suit.

This appeal, therefore, succeeds and is allowed. The decrees of the two Courts below are set aside and the plaintiff's suit is decreed with costs throughout.

SHAMSHER BAHADUR, J.— I agree.

Shamsher Bahadur, J.

R.S.

FULL BENCH

Before D. Falshaw, G. L. Chopra and A. N. Grover, JJ:

DURGA PARSHAD,—*Appellant.*

versus

CUSTODIAN OF EVACUEE PROPERTY AND OTHERS,—

Respondents.

Execution First Apptol No. 54 of 1952.

1960

February, 10th

East Punjab Evacuee (Administration of Property) Act (XIV of 1947) and Evacuee Property (Chief Commissioner's