Jiwanlal Achariya vs Rameshwarlal Agarwalla on 26 August, 1966

Equivalent citations: 1967 AIR 1124, 1967 SCR (1) 93, AIR 1967 SUPREME COURT 1118

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, J.C. Shah, R.S. Bachawat

PETITIONER:
JIWANLAL ACHARIYA

Vs.

RESPONDENT:
RAMESHWARLAL AGARWALLA

DATE OF JUDGMENT:
26/08/1966

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
SHAH, J.C.
BACHAWAT, R.S.

CITATION:
1967 AIR 1124 1967 SCR (1) 93
CITATOR INFO :
R 1981 SC1417 (6)

ACT:
Bihar Money Lenders (Regulation of Transactions) Act, 1939 (Bihar No. 7 of 1939), s. 4-Loan, if includes promissory note.
Indian Limitation Act (9 of 1908), s. 20-Handing over post-dated Cheque-Date of payment for purpose of limitation.

HEADNOTE:
The respondent advanced a loan to the appellant before he was registered as money-lender in 1952 under the Bihar Money-Lenders Act, 1939. On February 4, 1954 the appellant executed a promissory note in renewal of this loan and on the same day delivered to the respondent a postdated cheque

dated February 25, 1954 towards part payment of the debt. The cheque was cashed soon after February 25, 1954. On February 22, 1957, the respondent filed, a suit for recovery of the sum on the basis of the promissory note. The appellant contended that (i) the suit was not maintainable under s. 4 of the Bihar Money-Lenders Act, because, the suit promissory note was not a loan within the meaning of s. 4, but was really renewal of a loan advanced when the respondent was not registered as a money-lender under the Act, and (ii) the suit was barred by limitation as the part payment was made on February 4, 1954 when the post dated cheque was given to the respondent.

HELD : (i) (Per Full Court) Section 4 of the Bihar Money-Lenders Act was not a bar to the maintainability of the suit. [195 F]

The word 'loan' used in s. 4 has the same meaning as it has in s. 2(f) and includes a transaction on a bond bearing interest executed in respect of past liability. [195 E]

Surendra Prasad Narain Singh v. Sri Gajadhar Prasad Sahu Trust Estate and Ors. [1940] F.C.R. 39 and B. S. Lyle v. Chappeli, [1932] 1 K.B. 591, relied on.

The promissory note of February 4, 1954 was a loan within the meaning of s. 2(f) and it was made after the respondent had been registered. [195 F]

(ii) (Per Wanchoo and Shah, JJ.) The suit was not barred by limitation.

Where a post-dated cheque is accepted conditionally and it is honoured the payment for purposes of s. 20 of the Limitation Act can only be the date which the cheque bears and cannot be on the date the cheque is handed over, for the cheque, being post-dated, can never be paid till the date on the cheque arrives. [197 H]

Commissioner of Income-tax v. Messrs. Ogale Glass Works Ltd. [1955] 1 S.C.R. 185, Marreco v. Richardson, L.R. [1908] 2 K.B. 584 and Felix Hadley v. Hadley, L.R. [1898] 2 Ch. 680, distinguished.

Per Bachawat, J.-The suit was barred by limitation.

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The doctrine that the payment takes effect from the date of the delivery of the negotiable instrument is as much applicable to a post-dated cheque and a bill payable on a future date as to a cheque and a bill payable on demand. During the currency of the post-dated cheque or of the bill payable on a future date, the creditor cannot sue to recover the original debt. The post dated cheque or the running bill, if it is duly met operates as payment of the debt from the date of its delivery. For the purposes of s. 20 of the Limitation Act, also the date of the payment of the debt is the date when the post-dated cheque was delivered to the creditor and not the date which the cheque bare nor the date when it was cashed. [199 G]

Commissiner of Income-tax, Bombay South Bombay v. Messrs. Ogale Glass Works Ltd. Ogale Wadi, [1955] 1 S.C.R. 196,

Marreco v. Richardson, [1908] 2 K.B. 584 and Felix Hadley & Co. v. Hadley [1898] 2 Ch. 680, relied on.
Kedar Nath Mitra v. Dinabandhu Saha, (1915) I.L.R. 42 Cal. 1043, .approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 606 of 1966. Appeal by special leave from the judgment and decree dated August 5, 1964 of the Patna High Court in Appeal from Original Decree No. 362 of 1959.

P. K. Chatterjee, for the appellant.

The respondent did not appear.

The Judgment of WANCHOO and SHAH, JJ. was delivered by WANCHOO, J. BACHAWAT, J. delivered a dissenting Opinion. Wanchoo, J. Two questions of law arise in this appeal by special leave against the judgment of the Patna High Court. The facts which have been found by the High Court and which are necessary for our purposes may be briefly narrated. The appellant was the defendant in a suit filed by the plaintiff-respondent for recovery of money on the basis of a promissory note for Rs. 10,000 executed on February 4, 1954 by the defendant-appellant in favour of the plaintiff- respondent. 12 per cent per, annum interest was to run on the promissory note which was payable on demand or to the order of the plaintiff-respondent. The suit was filed on February 22, 1957 and was thus obviously beyond time from February 4, 1954. The plaintiff-respondent relied on a payment by cheque on February 25, 1954 to bring the suit within time.

The two questions raised by the defendant-appellant which now survive for decision arose in this way. The appellant claimed that no money was in fact advanced on February 4, 1954 and that .the promissory note executed on that date was to pay by renewal a loan for Rs. 4,000 which had been taken as far back as October 1946. The sum of Rs. 10,000 included the principal amount of Rs. 4,000 and the remainder was towards interest. The defendant-appellant therefore claimed that the suit was barred by s. 4. of the Bihar Money-Lenders (Regulation of Transactions) Act, No. 7 of 1939 (hereinafter referred to as the 1939-Act) which lays down that "no court shall entertain a suit by a moneylender for the recovery of a loan advanced by him after the commencement of this Act unless such money lender was registered under the Bihar Money-Lenders Act 1938 at the time when such loan was advanced." It appears that the joint family consisting of the respondent and his brother was registered as a money-lender sometime about 1952, and the case of the defendant-appellant was that as the loan was advanced really in 1946 when there was no registration the suit was barred by s. 4 of the 1939-Act. The other main defence was of limitation. The respondent's case on that point was simple, namely, that on February 25, 1954 a cheque for Rs. 1,000 was given in part payment and therefore the three years period of limitation would start from that date. The appellant's case on the other hand was that it was on February 4,1954 that a postdated cheque for Rs. 1,000 was given and though the cheque might have been cashed on or after February 25, 1954, the payment must be

deemed to have been made on February 4, 1954 and therefore the three years period of limitation ran from that date and the suit was out of time.

Thus two main questions arose for decision of the High Court, namely, (i) whether the suit was not maintainable in view of s. 4 of the 1939-Act and (ii) whether the suit was barred by limitation. On the first question the High Court held that s. 4 was not a bar to the maintainability of the suit. On the facts the High Court held that there was no actual advance of money on February 4, 1954 and that the promissory note for Rs. 10`000/- executed on that date was in lieu of an earlier promissory note for Rs. 8,000 executed on February 21, 1951. Even so the High court held that the suit was maintainable as it was based on a loan alleged to have been advanced in 1954 which was long after the respondent's family was registered as a money-lender. The High Court was of the view that the maintainability of the suit depended upon the pleadings on which the plaintiff came to court and on the pleadings of the case, s. 4 had no application. On the question of limitation the High Court held that the case of the plaintiff-respondent that the cheque for Rs. 1,000 dated February 25, 1954 was given on that date was not correct. The High Court was of the view that the cheque for Rs. 1,000 was given in fact on February 4, 1954, though it was post-dated to February 25,1954 and was actually realised sometime after February 25, 1954. Even so the High Court held that the delivery of the post-dated cheque on February 4, 1954 could not be treated as an unconditional payment and that for the purpose of s. 20 of the Indian Limitation Act, No. 9 of 1908, the payment must be held to have been made at the earliest on February 25, 1954 for the cheque could not possibly have been paid before that date. The High Court therefore held that s. 20 applied as part payment had been made on February 25, 1954 and the cheque itself was an acknowledgment of the payment and was in the handwriting of the appellant. The High Court therefore over-ruled both the contentions of the defendant-appellant and after going into the accounts decreed the suit for an amount which was slightly less than that claimed by the plaintiff

-respondent.

In the present appeal the same two questions of law have been raised before us, namely-(i) whether the suit was not maintainable in view of s. 4 of the 1939-Act, and (ii) whether the suit was barred by the three-year rule of limitation.

Re. (i).

We have already set out s. 4 of the 1939-Act and it does bar a suit by a money-lender for recovery of a loan advanced by him after the commencement of the 1939-Act unless the money- lender is registered under the Bihar Money-Lenders Act, 3 of 1938. In the present case it is not in dispute that the joint family of which the plaintiff-respondent was a member was registered as a moneylender sometime about 1952. The promissory note on the basis of which the suit was filed was executed in 1954 after the registration and therefore prima facie s. 4 would not bar the suit for the loan was advanced after the plaintiff-respondent's family had been registered as a money-lender. But the appellant's contention is that the High Court found that real loan of Rs. 8,000 was advanced in 1951 and that the promissory note for Rs. 10,000 executed February 4, 1954 was only in renewal of that loan, and therefore s.4 applied.

We are of opinion that there is no force in this contention. It is necessary in this connection to refer to the definition of the word "loan" in s. 2 (f) of the 1939-Act.

> " 'Loan' means an advance, `whether of money or in kind, on interest made by a money-lender. and shall include a transaction on a bond bearing interest executed in respect of past liability and any transaction which in substance is a loan, but shall not include..... (rest is immaterial)....."It will be seen from this definition that the word "loan" for purposes of the 1939-Act includes not only an actual advance whether of money or in kind but also a transaction on a bond bearing interest executed in respect of past liability, i.e. an instrument which is in renewal of a past advance of money . It is, however, urged on behalf of the appellant that a promissory note is not a bond, even though the promissory note in dispute might have been executed in respect of past liability and bore interest. Now the word "bond" has not been defined in the 1939-Act. It is true that a bond for the purpose of the Stamp Act is not the same thing as a promissory note. But it appears to us that the word "bond" is not used in s. 2 (f) in the special sense in which it has been defined in the Indian Stamp Act. It appears to have been used in its general sense, that is, a deed by which one person binds himself to pay a sum to another person. This was the view taken by the Federal Court in Surendra Prasad Narain Singh v. Sri Gajadhar Prasad Sahu Trust Estate and others (1) and we respectfully agree with it. Sulaiman J. after referring to the definition of the word "bond" in the Indian Stamp Act and the Limitation Act pointed out that "the essential common feature of these de- finitions is 'any instrument whereby a person obliges himself'." He accordingly held that the meaning of the word "bond" for the purpose of the 1939-Act was an instrument which itself obliges the obligor to the obligee, that is to say, "the language of the instument itself must expressly create the obligation." This view of Sulaiman J. was apparently accepted by the other two learned Judges. Theirefore all that s. 2 (f) requires is that there should be an instrument in writing by which the obligor obliges himself to pay the past liability and the instrument should bear interest. These conditions are satisfied in the present case, for by the promissory note of February 4, 1954 the defendant-appellant obliged himself to the respondent and it was in respect of past liability and bore interest. Clearly therefore this transaction of February 4, 1954 was a loan within the meaning of s. 2(f) of the 1939-Act. But it is urged that when s. 4 speaks of loan, it does not include the inclusive part of the definition given in s. 2(f) of the 1939-Act and only refers to that part of the definition in s. 2(f) which says that a loan means an advance whether of money or in kind on interest made by a money-lender. It is true that definitions in s. 2 begin with the words "in this Act, unless there is anything repugnant in the subject or context" and therefore it may be possible to argue that in s. 4 the word "loan" should not be given the meaning which has been given to it in s. 2(f). But what learned counsel argues is that it should be given that meaning in s. 2(f), which says that it has to be an advance whether of money or in kind, but it should not be given the extended meaning which it has in s. 2(f) by the inclusive part of the definition. We cannot accept this contention. We have to use the definition of "loan" given in s. 2(f) in its entirety for the purpose of s. 4 or we should not use it at

> all. But we cannot say that half the definition should be used for the purpose of s. 4 and not the other half. Further we see no reason to hold that the intention was that in s. 4 the word "loan" should have any meaning other than that given to it in s. 2(f). In this connection stress is laid on the words "advanced by him"

which qualify the word "loan", and it is said that when a promissory note is made in renewal of a past liability arising out (1) [1940] F.C.R. 39.

of an earlier advance, it cannot be said that any loan was advanced'. when the renewal was made. There are two answers to this argu-ment. When a loan is renewed by the execution of a fresh docu-ment there is no difficulty in holding that the former loan was repaid by borrowing a fresh loan on the document of renewal : (see B. S. Lyle Limited v. Chappeli (1). So the transaction of February 4, 1954 itself can be treated as a fresh loan for the purpose of s. 4 of the 1939- Act. Secondly, we are of opinion that there is no reason to lay such emphasis on the word "advanced" in s. 4 as is being done on behalf of the appellant. The word "advanced" appears to have been used there for convenience of language, particularly to indicate that the loan must have been made after the commencement of the 1939-Act. If we were to substitute the first part of the definition of "loan" in s. 4, (for it is not disputed on behalf of the appellant that the first part certainly applies to the word "loan" in s.

4), the relevant part of the section will read like this :

> "for the recovery of an advance whether of nioiley or in kind advanced by him". That will show that the word "advanced" was used in s. 4 merely for convenience of language and means no more than what would have been meant by using the word "made" or "given" in place of "advanced".

It does not imply that there should have been an actual advance whether of money or in kind. All that it means is that a loan as defined in s. 2(f) should have been made and if it was after the commencement of the 1939-Act the money- lender would have to be registered before he could maintain a suit. We have therefore no hesitation in holding that the word "loan" used in s. 4 has the same meaning as it has in s. 2(f) and includes a transaction on a bond bearing interest executed in respect of past liability. As the promissory note of February 4, 1954 is a loan within the meaning of s. 2(f) and as it was made after the joint family firm of the respondent had been registered s. 4 is not a bar to the maintainability of the suit. We therefore hold accordingly.

Re. (ii).

This brings us to the question of limitation. The facts are not in dispute now. The promissory note was executed on February 4, 1954. On the same date a post-dated cheque bearing the date February 25, 1954 was given by the defendant-appellant to the plaintiff-respondent, the intention being that on being realised it would be credited towards part payment. It was realised sometime after February 25, 1954 and was credited towards part payment, the appellant himself having made an endorsement admitting this part payment. But it is contended on behalf of the appellant that as the

post-dated cheque was given on February 4, 1954, that must be held to be the date on which part payment was made... It has been held by the High Court that the acceptance of the post-

(1) [1932] 1 K.B. 691.

dated cheque on February 4, 1954 was not an unconditional acceptance. Where a bill or note is given by way of payment, the payment may be absolute or conditional, the strong presumption being in favour of conditional payment. It follows from the 'finding of the High Court that the payment was conditional, i.e. that the payment will be credited to the person giving the cheque -in case the cheque is honoured. In the present case the cheque was realised and the question is what is the date of payment in the ,circumstances of this case for the purpose of s. 20 of the Limitation Act. Section 20 inter alia lays down that where payment on ac,,count of debt is made before the expiration of the prescribed period by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made. Where therefore the payment is by cheque and is conditional, the mere delivery of the cheque on a particular date does not mean that the payment was made on that date unless the cheque was accepted as unconditional payment. Where the cheque is not accepted as an unconditional payment, it can only be treated as a 'Conditional payment. In such a case the payment for purposes of s. 20 would be the date on which the cheque would be actually payable at the earliest, assuming that it will be honoured. Thus ,if in the present case the cheque which was handed over on February 4, 1954 bore the date February 4, 1954 and was honoured when presented to the bank the payment must be held to have -been made on February 4, 1954, namely, the date which the cheque bore. But if the cheque is post dated as in the present case it is obvious that it could not be paid till February 25, 1954 which -was the date it bore. As the payment was conditional it would only be good when the cheque is presented on the date it bears, namely, February 25, 1954 and is honoured. The earliest date therefore on which the respondent could have realised the cheque which he had received as conditional payment on February 4, 1954 was the 25th February 1954 if he had presented it on that date and 'it had been honoured. The fact that he presented it later and was then paid is immaterial for it is the earliest date on which the payment could be made that would be the date where the conditional acceptance of a post-dated cheque becomes actual payment when honoured. We are therefore of opinion that as a post- dated cheque 'was given on February 4, 1954 and it was dated February 25, 1954 and as this was not a case of unconditional acceptance, the payment for the purpose of s. 20 of the Limitation Act could only be on February 25, 1954 when the cheque could have been presented .at the earliest for payment. As in the present case the cheque was honoured it must be held that the payment was made on February 25, 1954. It is not in dispute that the proviso to s. 20 is ,complied with in this case, for the cheque itself is an acknowledgment of the payment in the handwriting of the person giving the cheque. We are therefore of opinion that a fresh period of limitation began on February 25, 1954 which was the date of thepost-dated cheque which was eventually honoured. The decision of this Court in Commissioner of Income-tax v. Messrs. Ogale Glass Works Ltd.(1) does not support the propo-sition that even where the acceptance of a post-dated cheque is conditional the date on which payment is made is the date of acceptance of the post-dated cheque provided it is honoured. It is true that there are observations in that case to the effect that if' the cheque is not dishonoured the payment related back to the date of the receipt of the cheque, and in law the date of payment was the date of the delivery of the cheque. There is nothing to show however that this Court was dealing with

a post-dated chequein that case. The cheques in question in that case were issued by the Government of India and we have no reason to suppose that they were post-dated. The observations therefore made in that case must in our opinion be read in the light of the fact that the cheques in that case were not shown to be post-dated. Where therefore the cheque bears the date on which it is delivered and it is honoured, Ogale's case lays down that the payment is on the dateon which the cheque was delivered. But it is difficult to accept the proposition that the same would be the position where the cheque is post-dated, for it is clear that no payment of a post-dated chequeis possible before the date which it bears. Section 20 of the Limitation Act saves limitation from the date of payment, and if the payment is made by a post-dated cheque, unless the cheque is accepted as unconditional payment, it cannot be regarded as payment before the due date. We see no reason to hold that in such a casealso the payment is on the date the cheque is delivered.

In the case of Marreco v. Richardson (2) the cheque bore thedate on which it was delivered, though there was an oral arrangement that it would not be presented for sometime, and it was in those circumstances that the court held that the date of payment must be the date of delivery, notwithstanding the oral arrangement.That case in our opinion is no authority for the proposition that if the cheque is in fact post-dated the payment even though condi-- tional would still have been on the date it was handed over. The case of Felix Hadley v. Hadley (3) also does not help, the appellant as that case did not deal with a post-dated cheque. We may however add that we are expressing no opinion as to what would happen in case there was a bill payable on a future date,, for the question does not directly arise in the present appeal. But there can in our opinion be no doubt that where a post-dated cheque is accepted conditionally and it is honoured, the payment for purposes of s. 20 of the Limitation Act can only be the date which, (1) [1955] 1 S.C.R. 185. (2) L.R. [1908] 2 K.B. 584. (3) L.R. [1898] 2 Ch. 680.

the cheque bears and cannot be on the date the cheque is handed over, for the cheque, being post-dated, can never be paid till the date on the cheque arrives. In the present case the cheque was dated February 25, 1954 and was honoured soon after and therefore the date of payment for the purpose of s. 20 of the Limitation Act would be the 25th February, 1954. The suit was therefore within time and the second contention raised on behalf of the appellant must also fail. We therefore dismiss the appeal, but as the respondent has not appeared in this Court we make no order as to costs. Bachawat, J. For the reasons given by Wanchoo, J. I agree that the suit is not barred by s. 4 of the Bihar Money- Lenders (Regulation of Transactions) Act No. 7 of 1939, but, in my opinion, the suit is barred by limitation. On February 4, 1954, the appellant executed a promissory note for Rs. 10,000. On the same date, he delivered to the respondent a cheque dated February 25, 1954 and signed by him for Rs. 1,000 towards part payment of the debt. The respondent received the cheque as conditional payment. The chequewas cashed soon after February 25, 1954. The suit was instituted .on February 22, 1957. Under s. 20 of the Indian Limitation Act, 1908, a fresh period of limitation has to be computed from the time when the part payment of the debt was made, provided an acknowledgment of the payment appears in the handwriting or in a writing signed by the person making the payment. Now, the question is when was the part payment of the debt made ? Was it made on the date of the delivery of the cheque or on the date which the cheque bore or on the date when the cheque was encashed ?

A creditor may receive a bill or a cheque as a conditional payment of a pre-existing debt, i.e. as a payment conditional on ,the instrument being duly honoured on presentation. If the cheque is honoured, the date of the payment of the debt is the date when the cheque was delivered and not the date when it was honoured. For purposes of s. 20 of the Indian Limitation Act, 1908 also, the cheque is the payment and the date of the payment is the date of the delivery of the cheque. The cheque also serves as an acknowledgment of this payment, see Kedar Nath Mitra v. Dinabdndhu Saha(1). When the banker honours the cheque, the cheque is paid and discharged but the debt is not paid over again ; the debt was paid when the cheque was delivered. These principles are well settled. In Marreco v. Richardson(2), Farewell, L. J. said:

> "In the more recent case of Felix Hadley & Co. v. Hadley(3) Byrne J. held that a cheque or a bill of exchange given in respect of a pre-
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> existing debt operated as a condi-
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> (1) [1915] I. L. R. 42 Cal. 1043,1048. (3) [1898] 2 Ch. 680.
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> (2) [1908] 2 K. B. 584, 593.

tional payment thereof, and on the condition being performed by actual payment, the payment related back to the time when the cheque or bill was given. That is only expressing the same principle in another form, and I should prefer to say that the giving of a cheque for a debt is payment conditional on the cheque being met, that is, subject to a condition subsequent, and if the cheque is met it is an actual payment ab initio and not a conditional one. There was only one act of payment here, that on May 10, and that was out of time for the purpose of avoiding the operation of the statute."

In the last case, the cheque was delivered on May 10, 1900. It was post-dated May 20, 1900. It was agreed that the cheque would not be presented for payment until June 20, 1900 on which day it was presented for payment and was paid by the bankers. It was held that the date of the part payment of the debt was May 10 and not May 20, nor June 20. In The Commissioner of Income-tax, Bombay South Bombay,v.Messrs. Ogale Glass Works Ltd. Ogale Wadi(1) this Court held:

"..even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payment ",ere the dates of the delivery of the cheques."

It is to be observed that the Court made no distinction between a cheque bearing the date on which it was delivered and a postdated cheque. It is immaterial whether the cheque is post-dated or ante-dated or dated the day of the delivery. On the cheque being met, the payment of the debt relates back to the date of the receipt of the cheque and, in law, the date of the payment is the date of the delivery of the cheque, and not the date which the cheque bore nor the date when it was cashed.

The doctrine that the payment takes effect from the date of the delivery of the negotiable instrument is as much applicable to a post-dated cheque and a bill payable on a future date as to a cheque and a bill payable on demand. During the currency of the post-dated cheque or of the bill payable on a future date, the creditor cannot sue to recover the original debt. The post-dated cheque or the running bill, if it is duly met, operates as payment of the debt from the date of its delivery. For the purposes of s. 20 of the Indian Limitation Act, 1908 also, the date of the pay- ment of the debt is the date when the post-dated cheque was delivered to the creditor and not the date which the cheque bore nor (1) [1955] 1 S. C. R. 185,196.

the date when it was cashed. I cannot subscribe to the novel view that the date of the payment is the date written on the cheque. In my opinion, the payment was made on February 4, 1954 and not on February 25, 1954 nor on the date when the cheque was subsequently cashed. It follows that the suit is barred by limitation and should be dismissed.

In the result, the appeal is allowed with costs, the decree of the High Court is set aside and the decree of the trial Court is restored.

ORDER In accordance with the opinion of the majority, the appeal is dismissed. There will be no order as to costs. Y.P