

Swayamber Singh vs Ghasitey Ram on 25 July, 1950

Equivalent citations: AIR1952ALL479, AIR 1952 ALLAHABAD 479

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for recovery of money due upon a simple money-bond.
2. The defendant executed a simple money-bond in favour of the plaintiff respondent on 23 11 1933 for a consideration of Rs. 980. The bond contained a provision that if any amount of six monthly interest was not paid, the creditor will have a right or option (akhtiyar hai) to recover the entire amount due under the bond without waiting for the period fixed in the bond. The interest was not paid. The creditor brought the Suit on 1-12-1943, that is, within 3 years of the expiry of 10 years. The defence inter alia was that the suit was barred by time. Both Courts below have repelled this contention and decreed the suit.
3. On behalf of the appellant, Mr. Harnandan Prasad has strongly relied upon a Full Bench decision of this Court in Jawahar Lal v. Mathura Prasad, 1934 ALL. L. J. 1035 : 57 ALL. 108, and on two other subsequent cases, namely, Rup Narain v. Tirleni Sahai, 1943 ALL. L. J. 28 and Munshi Lal v. Sagarmal, 1943 ALL. L. J. 238. He has also referred us to a Division Bench case of Ball v. Stowell, 2 ALL. 322.
4. The main argument addressed to us is that the observations made in the Full Bench case referred to above are applicable to the facts of the present case as well, even though that case was of an instalment bond which fell within the provisions of Article 75, Limitation Act. It is urged that Article 66 could not apply to this case and that Article 80 was the proper Article to be applied and since under Article 80 limitation begins to run from the date when "the money becomes payable," the limitation in the present case began to run when the first default in the payment of the six monthly interest occurred and that it was at that point of time when the money became payable because it could be recovered at that time.
5. In our opinion, the argument is not sound. In the Full Bench case of Jawahar Lal v. Mathura Prasad, 1934 ALL. L. J. 1035, the bond was an instalment bond, because the principal money was payable by instalments. There was a stipulation to the effect that in case of default in the payment of

two successive monthly instalments the creditor was entitled to sue at once for the recovery of the whole amount together with interest. It was held by Sulaiman C. J. and King J. (Mukerji J. dissenting) that in the absence of proof that the creditor waived the benefit of the default clause, the whole amount became due within the meaning of Article 75, and limitation for the suit began to run from the date of the default. Their Lordships observed that the observations of the Privy Council in *Lasa Din v. Gulab Kunwar*, 1932 ALL. L. J. 913, were not applicable to the facts of the case before them.

6. In *Lasa Din v. Gulab Kunwar*, (1932 ALL. L. J. 913) a mortgage bond provided that the principal sum would be paid within 6 years and the stipulated interest every year and further that in case of default in punctual payment of interest the mortgagee shall, within the expiry of the stipulated period of 6 years, had power to realise the entire mortgage-money and the remaining interest and compound interest due to him in a lump sum through Court by sale of the mortgaged property. There was default in payment of interest, but the mortgagee did not avail himself of the option given to him. He sued upon the mortgage after 12 years from the date of such default but within 12 years from the date of the expiry of the stipulated period of 6 years. It was held that the suit was within time. Their Lordships observed that a proviso of the nature inserted in the mortgage bond was "exclusively for the benefit of the mortgagees, and that it purports to give them an option either to enforce their security at once, or, if the security is ample, to stand by their investment for the full term of the mortgage. If on the default of the mortgagor--in other words, by the breach of his contract--the mortgage money becomes immediately due, it is clear that the intention of the parties is defeated, and that what was agreed to by them as an option in the mortgagees is, in effect, converted into an option in the mortgagor."

7. These observations, to our mind, are fully applicable to the present case, even though it is a simple bond instead of a mortgage bond. The bond gives an option to the creditor to sue for the whole amount due under the bond within a period of ten years. It does not make it obligatory upon him to do so. The result of holding that the limitation *eo instanti* began to run from the date of default in the payment of interest, whether or not the creditor exercised his option, would be to make the condition obligatory and for the detriment of both the debtor and the creditor. It would clearly defeat, as their Lordships observed, the intention of the parties.

8. The matter was considered by another Full Bench of this Court in *Muhammad Husain v. Sanwal Das*, 1934 ALL. L. J. 261. In that case there was a mortgage bond which provided that the principal sum would be paid in eight years and the stipulated interest every month and further that if the interest for one full year remained unpaid the mortgagee shall be at liberty to recover the principal and interest without waiting for the expiry of the stipulated period. No interest was paid and there was default at the expiry of one year, but the mortgagee did not avail himself of the option given to him. He sued for the recovery of his mortgage money within six years from the date of the expiry of the stipulated period, and obtained a decree. The sale proceeds of the mortgaged property having proved insufficient to pay up the mortgage money, the mortgagee applied for a simple money decree for the balance under Order 34, Rule 6, Civil P. C. The Full Bench held that Article 116 read with Article 80 was applicable to the claim and that limitation began to run after the expiry of the stipulated period of 8 years and not after the expiry of one year within which the mortgagor made

continued default in payment of interest and that the claim was accordingly within time. The Full Bench observed that the words "money becomes due" under Article 132 and the words "bond become payable" under Article 80 amount very much to the same thing, and followed the ratio decidendi of *Lasa Din v. Gulab Kunwar*, (1932 ALL. L. J. 913).

9. It is true that in that case there was a mortgage bond, but the question of limitation fell to be considered when the bond had ceased to be a mortgage bond and when it had to be considered as simple money bond for the purpose of claim under Order 34, Rule 6. The terms of the bond in that case were similar to the terms of the bond in the present case and, in our opinion, that case fully covers the present case.

10. The considerations which are applicable to Article 75 are quite different. Under that Article, time begins to run when the default is made, "unless where the payee or the obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver."

That Article, therefore, specifically provides that time will begin to run from the first default unless there is waiver, and it has been held that a waiver under that Article does not mean mere omission to enforce the default clause. The words of Article 80 are quite different. The considerations which apply to Article 75 cannot be held to apply to Article 80. In our opinion, the observations made in the Full Bench case of *Jawahar Lal v. Mathura Prasad*, 1934 ALL. L. J. 1035, must be confined to an instalment bond which falls under Article 75.

11. The cases of *Rup Narain v. Tirbeni Sahai*, 1943 ALL. L. J. 28, and *Munshi Lal v. Sagarmal*, 1943 ALL. L. J. 238, were also the cases of instalment bonds falling under Article 75.

12. There has been a catena of cases in this Court as well as in the Oudh Chief Court bearing upon the point to be decided in the present case. In *Gaya Prasad v. Sher Ali*, 15 ALL. L. J. 313; *Makrand Singh v. Kallu Singh*, 17 ALL. L. J. 647; *Sham Lal v. Tehariya Lakhmi Chand*, 18 ALL. L. J. 476; *Lalta Prasad v. Gajadhar Shukul*, A. I. R. (20) 1933 ALL. 235; *Narain Das v. Mannoo Lal* A. I. R. (22) 1935 ALL. 405 and *Umrao Singh v. Mangla*, A. I. R. (22) 1935 ALL. 443, this Court held that a suit on a bond of a similar nature was within time if filed within 3 years of the expiry of the period fixed in the bond, even though there was a default in payment of interest. In a Full Bench case of the Oudh Chief Court, in *Raghunandan Tewari v. Mt. Sheoraji* 16 Luck 464, a similar view was expressed.

13. There is no doubt a conflict of opinion upon the question whether in a case of a bond of this nature, Article 66, is applicable or whether Article 80 applies.

14. In *Ball v. Stowell*, 2 ALL. 322, it was held that Article 80 applied, as Article 66 referred to "a single bond".

15. In other cases, however, Article 66 has been applied on the ground that the stipulation referred to above is not a condition mentioned in Article 68 and that, therefore, it falls under Article 66, as a single bond. It is not necessary for us to express any definite opinion on this question, as whatever view we take -- whether the bond falls under Article 66 or it falls under Article 80 -- in both events

the result is the same. The starting point of limitation is the date when the term fixed in the bond expires. There being an option with the creditor to sue or not to sue upon the occurring of a default in payment of interest, the amount did not become payable unless he exercised the option to claim the amount on the happening of that event. In this view of the matter, the suit was not barred by limitation.

16. The result, therefore, is that we dismiss this appeal with costs.