Nokhey Lal vs Pt. Swarup Narain And Anr. on 1 May, 1953

Equivalent citations: AIR1953ALL761, AIR 1953 ALLAHABAD 761

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a defendant's appeal filed against a judgment of a learned Single Judge of this Court.

2. The suit for recovery of money due on a bond, dated 15-5-1938, was filed on 4-12-1944. The amount of the bond was payable in thirteen instalments of Rs. 100/- each and a fourteenth instalment of Rs. 64/-. No instalment was, however, paid and the suit was brought for the recovery of the last eight in-

stalments, the first six having become time-barred. The defence was that the whole claim had become due under the default clause in the bond. The clause relied upon is in these terms :

> "In the event of default in payment of any instalment ('basurat kisi kisht khilafi ke), the creditor will have the right ('daen ko ikhtiar hoga') to recover his whole money in a lump sum ('apna kul rupya ek musht') with interest at Re. 1/- per cent per mensem."

This clause clearly meant that the amount of the bond was payable by instalments but if the defendant was not regular in his payments, the creditor, if he so desired, could claim the whole amount in a lump sum at a particular rate of interest. The creditor did not choose to avail himself of the default clause and treated the bond as a pure instalment bond and brought the suit for recovery of the last seven instalments. The question is whether the creditor was bound to claim the whole amount on the first default made by the debtor. Evidently, from the language of the bond, it is clear that no such obligation was cast on the creditor.

3. Reliance is placed by learned counsel on the language of Article 75, Limitation Act. Learned counsel urged that the question, whether, under the contract, the creditor was or was not bound to claim the amount within three years of the first default, was not relevant and, by reason of the provisions of Article 75, the suit had to be brought within three years and not thereafter. Article 75 provides that on a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole amount shall become due, the period of

limitation would be three years from the date when the default was made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver. The language of the Article makes it clear that it applies to a case where the promissory nute or bond is so worded that, on a default made in payment of one instalment, the creditor has to claim the whole amount or to a case where the creditor relies on the default clause and bases his claim on that cause of action. In a Full Bench decision of this Court in -- 'Sheo Lal v. L. Devi Das', AIR 1952 All 900 (A), a similar question was considered with reference to an instalment decree and it was pointed out that the decree providing for the payment if the amount by instalments is for the benefit of the judgment-debtor, and the clause giving the decree-holder a right, if he so desired, to claim the whole amount is for the benefit of the decree-holder, and a right given to him under the decree should not be treated as an obligation compelling him to take action at the risk of getting his decree time-barred. It was also pointed out that if there is more than one cause of action available to a creditor and the document is so worded that on the happening of a contingency he is not compelled to rely on only one of them, there is no reason why the period of limitation appropriate to the cause of action on which the claim is based should not be applied to determine the question whether the claim is within time. Though the-Full Bench decision was under Article 181, Limitation Act, it was pointed out that the same principles, which govern the case of an instalment bond, govern the case of an instalment decree also.

4. If the creditor had relied on the default clause and brought his suit on the basis thereof, the default being the cause of action for the suit, no doubt, he would have to bring his suit within three years of the first default as pro-vided for in Article 75, Limitation Act, unless that default had been waived. The creditor, however, in the case before us, completely ignored the default clause and, though no instalment were ever paid, he did not enforce the default clause, and claimed merely the instalments due to him and recoverable at the time when the suit was filed. In the circumstances of this case, there was no reason to apply Article 75. If after the first six defaults the \ plaintiff had brought a suit claiming merely the 7th and 8th instalments it could not be urged that he had relied on the default clause and had not waived it. The mere fact that he claimed all the instalments that had fallen due and were not time-barred should not make any difference. The case was, to our minds, correctly decided.

5. The appeal has no force and is dismissed with costs.