

Bishambhar Nath vs Janki Ballabh Tripathi And Ors. on 13 October, 1950

Equivalent citations: AIR1952ALL402, AIR 1952 ALLAHABAD 402

JUDGMENT

P.L. Bhargava, J.

1. This appeal arises out of a suit, which was originally instituted by Shri Bishambhar Nath Khazanchi, against Shri Janki Ballabh Tripathi, the Official Receiver of Agra defendant 1 who will hereafter be referred to as the Official Receiver, representing the estate of two insolvents. Khwaj Bux and Riazuddin, who will hereafter be referred to as the insolvents, Nawal Kishore (defendant 2), a creditor of the insolvents, and Khaliluddin (defendant 3), a tenant of the insolvents' property. The suit was for obtaining a declaration that a certain building consisting of 17 shops and a hall and printing press known as "Abdul Ulai Electric Press", established in the building, was not liable to attachment by the Official Receiver as the property of the insolvents. The property admittedly at one time belonged to the insolvents; but, in the year 1925, they mortgaged the same to Ram Charan and subsequently, on 28-7-1928, they mortgaged it to the plaintiff, Bishambhar Nath Khazanchi. Later on, in 1932, the plaintiff instituted a suit for sale on the basis of his mortgage and in due course, obtained a decree for sale. On 28-2-1934, Nawal Kishore, who had obtained a simple money decree against the insolvents attached the printing press in execution of his decree. In the meantime, on 19-8-1934, the insolvents sold the property to the plaintiff, who leased it out to Khaliluddin on a monthly rental of Rs. 333-5-4. On 10-5-1934, the plaintiff filed an objection to the attachment of the printing press in execution of the decree of Nawal Kishore. The objection was allowed on 12-7-1934, and the printing press was released from attachment.

2. In the meanwhile on 30-5-1934 Nawal Kishore made an application under Section 9, Provincial Insolvency Act (V [5] of 1920) praying that Khwaj Bux and Eiazuddin, his debtors, be adjudged insolvents. On the same date Nawal Kishore made an application for appointment of an interim receiver under Section 20 of the Act. On 9-9-1934, the insolvency Court appointed the Official Receiver as an interim receiver. No direction was, however, given by the Court to the Official Receiver to take immediate possession of the debtors' property. The Official Receiver, however, attached the property, that is, the building along with the printing press, on 21-10-1934. Nawal Kishore, who was present at the time of attachment, identified the property as the property of the debtors. After attachment, the property was entrusted to the debtors. Some days later, on 2-11-1934, the debtors were adjudged insolvents.

3. Thereafter, on 8-11-1984, the plaintiff served a notice upon the Official Receiver through a lawyer

asking him to release the property and saying :

"In case you fail to accede to the request of our clients they would be obliged after the expiry of two months thereof to institute a suit for declaration of their right and for release, if necessary, of the properties attached and for damages at Rs. 30 per day and for other losses that may happen to the property and the machinery . . . or may take such other legal action as may be advised."

After the expiry of the period mentioned in the notice, on 11-4-1935, the plaintiff instituted the suit for declaration to which a reference has already been made.

4. Nawal Kishore then persuaded the Official Receiver to take steps to have the sale deed in favour of the plaintiff set aside; and an application under Section 64, Provincial Insolvency Act, was made to the Insolvency Court by the Official Receiver. The application was dismissed by the insolvency Court on 12-10-1936. The matter came up to this Court; but the order of the insolvency Court was upheld. The Official Receiver released the property from attachment on 10-11-1936, and the plaintiff obtained possession thereof.

5. The plaintiff alleged that on taking possession of the property he found that on account of the wilful and gross negligent conduct of the defendants 1 to 3 the properties have deteriorated, been damaged and ruined and that he had suffered a loss of about Rs. 5,000. Accordingly, he applied for amendment of his plaint. In consequence of the amendment the relief of declaration was omitted and the plaintiff confined his claim to damages: Rs. 2,000 on account of the loss caused to the building and the printing machines; Rs. 1957-12-0 at the rate of Rs. 333-5-4 per mensem together with interest amounting to Rs. 63-14-0 from 31-10-1934, till the date of the suit by way of damages for trespass. The suit had been originally instituted in the Court, of the Civil Judge of Agra, but, after the amendment, as the valuation was reduced, the plaint was returned by the Civil Judge for presentation to the proper Court. The suit was then filed in the Court of Munsif, Agra, on 31-5-1938. (4-7-1938, sic).

6. The plaintiff's allegation against the official Receiver was that he had at the instigation of Nawal Kishore and others attached the property aforesaid and this action of his was "highly prejudicial" to his rights. The case against Nawal Kishore was that he had instigated the Official Receiver to act in the manner in which he did, knowing full well that the property had been sold to him. The cause of action against Khaliluddin was that he was bound to inform him and resist the illegal action of the Official Receiver. Accordingly, it was alleged that all of them were liable for damages.

7. The suit was contested by the defendants on certain common grounds, viz., that it was barred by limitation; that the plaintiff had no cause of action against any of them; and that the damages claimed were excessive. The Official Receiver had further alleged that he had attached the insolvent's property in his official capacity "at the instance and motion of defendant 2 (Nawal Kishore) and as pointed out by him" and it was an official act; that the property was subsequently released and restored to the plaintiff in the same condition in which it was attached; that there was no wilful or any sort of negligence on his part and that the suit was not maintainable:

"Inasmuch as no statutory notice as required under Section 80, Civil P. C. and the Insolvency Act was given by the plaintiff...for the relief claimed in the present suit."

Nawal Kishore by way of further defence denied any collusion between him and the Official Receiver and also challenged the sale in favour of the plaintiff. Khaliluddin's further defence was that the rent note executed by him was a mere paper transaction and he was not in any way liable for the damages claimed.

8. The trial Court (Munsif of Agra) dismissed the suit on the ground, among others, that no valid notice under Section 80, Civil P. C. was given to the Official Receiver, who was acting or purported to act in his official capacity; that there was no collusion between the Official Receiver and Nawal Kishore and that the suit was barred by limitation.

9. The plaintiff preferred an appeal, which came up for hearing before the Additional District Judge of Agra. The learned Judge allowed the appeal in part and decreed the suit for Rs. 812-8-0 against the Official Receiver only, and upheld the decree against other. The learned Judge found that the plaintiff was bound to give notice to the Official Receiver under Section 80, Civil P. C ; that the notice given by the plaintiff on 8-11-1934, was valid and sufficient so far as the claim for compensation for trespass was concerned; that the claim for compensation for the period prior to 4-7-1935, was time barred but for the period from 4-7-1935, to 10-11-1936, it was within time; that Article 2, Limitation Act, had no application to the case as the Official Receiver was not acting under any enactment and the case was governed by Article 89 of the Act. As regards the plaintiff's claim for damages at Rs. 333-5-4 per month, the learned Judge observed that the letting value of the property was between Rs. 40 and Rs. 61-8-0 per mensem, consequently, Rs. 50 per mensem was a fair rate of compensation. At the said rate he worked out the figure of Rs. 812-8-0. The learned Judge agreed with the finding of the trial Court that the Official Receiver and Nawal Kishore had not acted in collusion and that neither Nawal Kishore nor Khaliluddin were liable for the damages claimed.

10. Against the decision of the learned District Judge the Official Receiver preferred an Appeal No. 1217 of 1944, which has since been dismissed as having abated. This appeal has been filed by the plaintiff; and on his behalf three points have been raised--firstly, that Nawal Kishore should also have been held liable for payment of damages claimed; secondly, that the notice given on 8-11-1934, was valid and sufficient to cover the entire claim against the Official Receiver and, lastly, that no portion of the claim was barred by limitation.

11. The plaintiff claimed damages amounting to Rs. 2000 for loss caused to the building and the garden attached to it, for loss of monthly rental fixed under the rent note, executed by Khaliluddin in his favour and loss due to some portions of two litho machines having been removed, together with interest from 21-10-1934 (the date of attachment) till the date of suit was well as pendente lite and future interest at Re. 1 per cent, per mensem. Let us now see how far Nawal Kishore was responsible for the damages claimed by the plaintiff. The Courts below concentrated their attention on the question whether the defendants had acted in collusion; and they have recorded a finding that they had not so acted. Neither of the Courts below seems to have approached the question whether Nawal Kishore was liable independently of any collusion between him and the Official

Receiver or Khaliluddin from the right angle. The trial Court observed in passing that the liability of Nawal Kishore was extremely doubtful; while the lower appellate Court has observed that the only circumstance that the plaintiff had succeeded in proving against Nawal Kishore was that he was present at the time of attachment; but that alone was not sufficient to fix any responsibility upon him. The lower Court further observed that there was nothing on the record to show that Nawal Kishore knew that the debtors had transferred the property to the plaintiff. That statement of fact is, however, not correct. It appears from the evidence on the record that Nawal Kishore had in execution of his decree attached the printing press in the building; and that on the basis of the sale in his favour the plaintiff had successfully objected to the attachment of the press and secured an order of release of the same. This was long before the attachment in question. It would thus appear that Nawal Kishore did, in fact, know about the sale of the property in favour of the plaintiff before the attachment.

12. There are other circumstances which are sufficient to fix the responsibility for the attachment on Nawal Kishore. He made an application under Section 9, Provincial Insolvency Act, praying that Khwaj Baksh and Reazuddin be adjudged insolvents and at the same time made an application for appointment of an interim receiver. The insolvency Court appointed the Official Receiver of Agra as the interim receiver, but gave no direction to him to take immediate possession of the debtors' property. The evidence on the record goes to show that Nawal Kishore approached the receiver and asked him to attach the property and he identified the same as the property of the debtors, although he knew that it had been transferred by the debtors to the plaintiff. Nawal Kishore tried to show that the receiver had approached him and had asked him to be present at the time of the attachment of the property; but the receiver has denied the fact, and it also appears to be highly improbable that of his own accord the receiver would have gone to attach the property. It has been clearly proved by the evidence on the record that the attachment was made at his instance and on the property being identified by him. Further, we find that Nawal Kishore had persuaded the receiver to take steps to have the sale deed in favour of the plaintiff set aside. An application under Sections 53 and 54, Insolvency Act was actually put in by the receiver challenging the sale deed in favour of the plaintiff; but the application was dismissed. The matter was fought upto this Court; but the order of the insolvency Court was upheld.

13. It would thus appear that the attachment in question was the direct result of the efforts made by Nawab Kishore and he was clearly responsible for the consequences resulting from the attachment.

14. Learned counsel for the plaintiff-appellant has, in this Connection, relied upon Abdul Rahim v. Sital Prasad, 17 ALL. L. J. 856 and, Binda Prasad v. Ram Chandar, 19 ALL. L. J. 277, in which the earlier decision was followed. He has also referred to a Privy Council decision in Ramanathan Chetty v. Meera Saibo, 1931 ALL. L. J. 541 and two decisions of this Court in Firm Jhandu Mal Shiam Lal v. Janki Ballabh Tripathi, 1942 ALL. W. R. 599 and Manak Lal Nihal Chand v. Hamid Ali, 1944 ALL. L. J. 273. These decisions support the contention put forward on behalf of the appellant that Nawal Kishore, who was mainly responsible for the attachment, was liable for the damages claimed.

15. In Abdul Rahim's case (17 ALL. L. J. 856) one Q was declared insolvent. A creditor of Q lodged an application in the Court of the District Judge of Meerut asking that certain woollen clothes in

possession of Q's son A should be attached as Q's. The clothes were attached and taken possession of by the receiver. They were, however, subsequently found to be A's. S prayed that they might not be made over to A pending his appeal to the High Court. The appeal to the High Court was dismissed. In the meantime the woollen clothes were damaged. In a suit for recovery of damages it was held that S was responsible inasmuch as the damage was the natural or ordinary consequence of his act in getting the clothes to be locked up. In this case the following observations of Bovilla C. J. in *Sharp v. Powell*, (1872) L. R. 7 C. P. 253, at p. 258 were quoted and they may usefully be repeated here :

"One who commits a wrongful act is responsible for the ordinary consequences which are liable to result therefrom. But generally speaking he is not liable for damage which is not the natural or ordinary consequences of such an act, unless it be shown that he knows or has reasonable means of knowing that consequences not usually resulting from the act are by reason of some existing cause likely to intervene so as to occasion damage to a third person."

16. The Privy Council decision in *Ramanathan Chetty's case*, (1931 ALL. L.J. 541) is very nearly in point. In that case the warrant did not authorise the Fiscal (bailiff) to seize any particular goods but only to search for the property of an insolvent and to seize it, if found, and the bailiff in pursuance of the warrant seized some property as belonging to the insolvent on information given to him by the respondent, and it was subsequently decided that the property did not belong to the insolvent at all but was owned by the appellant. It was held that the respondent was liable in damages without proof of malice.

17. In *Jhandu Mal Shiamlal's case* (1942 ALL. W.R. 599) Beni Ram was declared insolvent. Jafar Husain had approached the official receiver and requested him to take possession of certain moveable property which he alleged belonged to the insolvent. The Official Receiver was unwilling to take the responsibility of seizing security for his protection in the event of the property turning out to be the property of a third party. Jafar Husain moved the insolvency Court and in pursuance of the instructions issued by the Court the receiver proceeded to seize the goods. Jafar Husain was held liable for damages on the ground that he was the cause of the wrongful seizure of the goods and the consequential damage.

18. The view expressed in *Mankalal Nihal Chana's case*, (1944 ALL. L. J. 273) was that where the appellant had moved the insolvency Court for appointment of a receiver, who took possession of the property in spite of the objection of the plaintiff the appellant was held liable for all the loss which had been caused to the plaintiff to whom the goods legitimately belonged.

19. As has been pointed out above, Nawal Kishore was mainly responsible for the attachment of the plaintiff's property in the present case; and as such he must be held responsible for the damages suffered by the plaintiff in consequence of that attachment. The decision of the lower Court to the contrary is erroneous.

20. The next question which has been argued on behalf of the appellant relates to the finding of the learned District Judge that the plaintiff's claim "so far as it relates to the claim for damages arising

out of the alleged injury to the property in suit is barred as against defendant 1 (official receiver) by Section 80, C. P. C."

It has been argued that no notice was necessary as damages were not being claimed for any loss due to any act which the Official Receiver had done in his official capacity but for the loss due to something done by him, which he was not empowered to do in his official capacity as an interim receiver. In his plaint the plaintiff had merely alleged that the action of the Official Receiver in attaching the property was "highly prejudicial" to his rights; and he had nowhere alleged that in attaching the property the Official Receiver was not acting in his official capacity.

21. Admittedly, the Official Receiver, had been appointed an interim receiver, under Section 20, Insolvency Act; and he could be and should have been directed by the insolvency Court to take immediate possession of the whole or part of the debtor's property, because the appointment of an interim receiver implies the necessity of such an action for the preservation of the debtors' property pending disposal of the insolvency petition, Nawal Kishore, who had filed the insolvency petition, approached the Official Receiver and asked him to take possession of the property in his capacity of the interim receiver. After the debtors were adjudged insolvents, the whole of the property of the insolvents was to vest in the Official Receiver. Consequently, when Nawal Kishore approached the Official Receiver, no collusion between the two having been proved, the latter must be presumed to have acted in the honest and bona fide belief that he was entitled, in his capacity of the interim receiver, to take possession of the property, which had been identified as that of the debtors. The fact that the property belonged to a third party has no bearing on the point under consideration. We, therefore, see no reason to interfere with the finding of the learned District Judge that in taking possession over the property the Official Receiver acted in his capacity of an interim receiver.

22. As the Official Receiver had acted in his official capacity, no suit could be instituted against him until the expiration of two months next after notice in writing had been delivered to him or left at his office, as required by Section 80, Civil P. C. Learned counsel for the appellant has, however, contended that the notice given by the plaintiff on 8-11-1934, covered his entire claim. In this connection reference was made to that part of the notice in which it was pointed out that in case the property was not released a suit for declaration of right and for release of the property attached and for damages including losses to the property and machinery would be instituted.

23. On behalf of the appellant reliance has been placed upon a decision of the Bombay High Court in Chandulal Vadilal v. Government of the Province of Bombay, A. I. R. (30) 1943 Bom. 138. In that case, it was observed :

"That object (object of Section 80 Civil P. C.), as has been pointed out in a good many cases, is to give the public officer concerned notice of the claim which is going to be made against him, and to give him reasonable time in which to consider his reactions. In construing the section, one must remember that the suit cannot be brought for two months after the date of the notice. The cause of action which is to be stated in the notice, is the bundle of facts which go to make up the right in respect of which the plaintiff proposes to sue, and it is obvious that before the suit can be

brought, it may be that that bundle of facts will be added to or subtracted from, and I do not myself think that the notice is invalidated, because it refers to a possible additional claim, consequential upon the cause of action specified therein, and states that if such additional claim arises, the plaintiff, will sue also in respect of it. If that is not the right construction of the section it seems that in respect of any consequential relief which may arise after the date of the notice, the plaintiff cannot sue in the contemplated suit; he must issue a fresh notice, and file a fresh suit. Certainly the object of Section 80 was not to multiply suits or increase costs."

24. the main cause of action for the suit, which the plaintiff had in his contemplation when he gave the notice, dated 8-11-1934, was based upon the attachment of the property and all the consequential damages, including damages to the property and machinery, specifically referred to in the notice. The Official Receiver, therefore, had full notice of the damages which the plaintiff intended to claim in the suit to be instituted by him. As such the notice given by the plaintiff was sufficient to cover his entire claim. Consequently, the finding of the learned District Judge that a portion of the plaintiff's claim against the official Receiver was not maintainable for want of notice under Section 80, Civil P. C. is not correct.

25. The last question, which has been raised in this appeal is one of limitation. In the Court below it was contended on behalf of the Official Receiver that the suit was governed by Article 2, Schedule 1 Limitation Act, 1908, and it was instituted beyond the period of limitation prescribed thereunder. The contention was overruled by the learned District Judge on the ground that in making the attachment the Official Receiver had not acted in pursuance of any enactment". The contention has been repeated in this Court by the learned counsel appearing for the Official Receiver as well as Nawal Kishore. The argument was that Article 2, would govern cases which are based on an action actually done or alleged to have been done under the authority of a statute; that it would not apply when it was known even to the defendant that the action was not justified under any statute ; and that the said Article does not draw any distinction between the defendant, who does the act, and the one who instigates him to do so. The appellant's learned counsel has, on the other hand, argued that in order to bring a suit under Article 2, it is necessary for the defendant to show either that he acted striatly in accordance with the enactment, or where the action was in excess of the power conferred by the statute that be acted in good faith and honestly believed that he was acting in pursuance of an enactment and that where the defendant acted dishonestly and in bad faith knowing that he had no right to act under any enactment, Article 2, does not apply.

26. The argument advanced on behalf of the appellant is based upon a Full Bench decision of this Court in Shiam Lal v. Abdul Raof, 1935 ALL. L. J. 459, where Article 2 of Schedule I, Limitation Act, was interpreted. In that case it was pointed out:

"Taking it literally, it was not wide enough to cover the case of a person who in good faith had acted in pursuance of an enactment, when it was found later on that he had exceeded his powers. To protect such person it was necessary to widen the scope of the Articles and give him protection where, although the power was exceeded, he still acted in good faith and honestly believed that he was acting in pursuance of the

enactment. But the additional words should not be interpreted as implying that the Legislature has shortened the period of limitation in favour of persons who, knowing the falsity of the facts, did an act or omitted to do an act in order to harm another person."

It was further pointed out:

"As in England, the expression 'in pursuance of any enactment' must be interpreted as meaning acting in conformity with an enactment and not merely pretending to act or acting under colour of such an enactment. Where a person honestly believes that he is acting under some enactment he is protected. But where a person merely pretends that he was so acting and knows that he should not act under that enactment, he cannot "be said to be acting in pursuance of any such enactment."

It was also pointed out:

"It would follow that where a defendant has done an act or omitted to do an act knowing that he had no ground whatsoever for so acting or omitting to do an act, he does not come within the purview of Article 2. It is only defendants who have acted honestly, although they might have exceeded the actual power conferred upon them by an enactment who would be protected."

27. These are the tests which have to be applied in order to find out whether particular suit for compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force is or not governed by Article 2, Schedule I, Limitation Act. In the present case, the attachment was made by the Official Receiver while he was still an interim receiver. Under Section 20, Insolvency Act, the Court has to direct an interim receiver to take immediate possession of the debtors' property. No such direction having been given to the Official Receiver in the present case, he was not entitled to take immediate possession of the property, even if it had been identified as the property of the debtors. It is, therefore, not possible to hold that the Official Receiver had acted in strict accordance with an enactment in the present case, of the Insolvency Act.

28. It, however, appears that sometime after the appointment of the Official Receiver as an interim receiver, under Section 20, insolvency Act, the debtors were adjudged insolvent; and in view of the provisions contained in Section 28(7) of the Act, the order of adjudication related back to and took effect from the date of presentation of the insolvency petition on which it was made. On the making of order of adjudication the whole of the property vested in the Official Receiver. The property of the insolvent having thus vested in the Official Receiver, he was entitled to take possession of the debtors' property. In Sheonath Singh v. Munshi Ram, 42 ALL. 433, it was pointed out by this Court that the effect of Sub-section (2) and (6) of Section 16, Provincial Insolvency Act, 1907, was that while no vesting of the property of the insolvent in the Receiver takes place until an order of adjudication is made, and it is the order of adjudication which vests the property, nevertheless, by a legal fiction, the vesting of the property of the insolvent in the Receiver must be deemed to have taken place, when once an order of adjudication has been made, at the date of the presentation of

the petition, or, in other words, the commencement of the insolvency.

29. Learned counsel for the appellant has urged that the Official Receiver was, however, not entitled to attach property belonging to a third party. That is true, but if one of the creditors of the insolvent, who had filed the insolvency petition, identified certain property as belonging to the insolvent and there was no reason for the Official Receiver to think otherwise, he could, under a bona fide belief that the property was in fact of the insolvent, attach the same. Consequently, the fact that the property attached by the Official Receiver did not belong to the insolvent did not, in any way, alter the situation.

30. On the one hand, it is possible to argue that as the Official Receiver had been working as such for sometime, it may be presumed that he knew that as an interim receiver he was not entitled to attach the property, in the absence of a direction from the insolvency Court to do so, and, as such, it cannot be said that the Official Receiver acted under a bona fide belief that he was acting in pursuance of any enactment. On the other hand, it can be argued with equal force that the Official Receiver knew that after the order of adjudication was made, the property would vest in him and the order of adjudication would take effect from the date of presentation of insolvency petition, and under a bona fide belief he considered himself entitled to attach the property. It is true that the Official Receiver acted at the instance of Nawal Kishore, the creditor, but it has been found by both the Courts below that there was no collusion between the Official Receiver and Nawal Kishore. In the absence of anything on the record to show that the Official Receiver acted dishonestly or in bad faith, it must be presumed that he was acting in good faith.

31. No doubt, it was not sufficient for the Official Receiver to show that he acted in good faith ; and he was also bound to prove that he honestly believed that he was acting in pursuance of an enactment. The appointment of an interim receiver simultaneously with the admission of the insolvency petition implies the existence of an emergency ; consequently, the Official Receiver might have honestly believed that it was necessary for him to attach the property, and further he might have honestly believed that inasmuch as the property of the debtors would vest in him on the making of the order of, adjudication and that order would relate back to the date of the petition, he was entitled to attach the property.

There being nothing on the record to show that the Official Receiver acted dishonestly and in bad faith, knowing that he had no right to act under any enactment, it must be held that he acted in good faith and honestly believed that he was acting in pursuance of an enactment. Consequently the second test laid down by the Full Bench decision cited above is satisfied in the present case.

32. Article 2, Schedule I, Limitation Act, relates to suits for compensation for doing or omitting to do an act alleged to be in pursuance of any enactment. The Official Receiver was responsible for the act of attachment. Nawal Kishore had merely persuaded the Official Receiver to make the attachment. Consequently, a distinction has to be drawn between the person doing an act and the person at whose instigation it is done. It must, therefore, be held that the suit was covered by Article 2, so far as the relief claimed against the Official Receiver was concerned, and it was not so covered as far as the reliefs claimed against other defendants were concerned.

33. There is one more question which was raised on behalf of the appellant, viz., that the finding of the Court below in regard to the amount of damages was incorrect. That finding, however, relates to the amount of damages which the lower Court considered the Official Receiver was liable to pay. The lower appellate Court has not recorded any finding in regard to the damages payable by Nawal Kishore, who, in its opinion, was not liable to pay any damages. In our opinion, Nawal Kishore is liable to pay damages resulting from the attachment of the property. The amount of damages payable by Nawal Kishore will now be determined by the Court below.

34. The appeal filed by the Official Receiver against the decree of the Court below, as already stated, has been dismissed as having abated. The decree so far as it fixes the liability of the Official Receiver to pay Rs. 812-8-0 by way of damages to the plaintiff has, therefore, become final and will stand. The plaintiff's appeal for a decree against the Official Receiver for a higher amount must be dismissed, in view of the finding on the question of limitation recorded above. The appeal must also be dismissed as far as the plaintiff's claim to relief against Khalil Uddin is concerned. The appeal has, however, to be allowed so far as the plaintiff's claim for relief against Nawal Kishore is concerned, and the dismissal of the suit against Nawal Kishore set aside. The case is therefore remanded to the Court below with a direction to readmit the appeal to its original number and to determine the amount of damages payable by Nawal Kishore to the plaintiff and pass final orders against Nawal Kishore.

35. The appeal is, therefore, dismissed with costs against the Official Receiver and Khalil Uddin ; but is allowed as against Nawal Kishore and the case is remanded to the lower Court with the directions given above. The costs as between the plaintiff and Nawal Kishore here and hitherto will abide the final result.