

Allahabad High Court

Jiwan Mal And Ors. vs Jageshar Kasondhan on 1 March, 1922

Equivalent citations: 66 Ind Cas 655

Author: Ryves

Bench: Ryves

JUDGMENT Ryves, J.

1. This application in civil revision raises a somewhat difficult point. The defendant executed a registered bond on the 8th of July 1911 for Rs. 250. It was recited in the bond that on making up accounts this Bum was due to the predecessor-in-title of the plaintiffs by the defendant and that he was unable to pay the money at once, it was agreed between the parties that he would pay it by twelve six monthly instalments. So long as the instalments were paid no interest was chargeable. But it was covenanted that if the instalments were not paid the failure of one instalment would entitle Ram Deo Marwari to recover the whole amount due at once together with interest Rs. 12 per cent. per annum. The suit was filed in the Court of Small Causes on the 26th of May 1921. The bond was a registered one and, therefore, was governed by the rule of six years' limitation. The plaintiff claimed that his cause of action arose on the 7th of May 1917, the day on which the last instalment was due. The defendant admitted execution and consideration, but pleaded that the suit was barred by limitation. The Court below has found that not a single instalment had been paid and held that the suit was time-barred. This is the question which is raised before me. A number of rulings have been cited but I do not think there is really any conflict between the various decisions of this Court. In all of them it has been held that the point to consider in each case is, whether the plaintiff had an option to waive his, right to bring a suit at once on the happening of the default and whether, as a matter of fact, he did exercise this right of waiver; so it comes, after all, to a question of fact in each case. It is pointed out that a test of waiver or not may be found (?) prayer in each suit---did the plaintiff claim the whole amount, if so, was there no waiver, or only the amount due on unpaid instalments not time-barred? In this case it is argued that the plaintiff clearly did waive his right to bring his suit on the failure of the first default. This argument is based on the paragraph in the plaint in which the plaintiff states that as the defendant is a poor man he is suing only for the principal amount and not for the interest agreed on. Under the terms of the bond interest would only be payable if default had been made. If the plaintiff waived his rights, no question of interest would arise. Apart from this statement in the plaint and the fact that the suit was not brought till a long time after wards, there is no evidence pointing to any waiver. The statement in the plaint that the plaintiff does not ask for interest far from being evidence of waiver may be explained by the opening words of the paragraph that the reason for doing so is because the defendant is a poor man and, therefore, presumably would not be in a position to pay. On the one side, we have the cases such as Babu Ram v. Jodha Singh 18 Ind. Cas. 690 : 11 A. L. J. 89 and Amolak Chand v. Baij Nath 20 Ind. Cas. 933 : 35 A. 455 : 11 A. L. J. 664 and on the other side Mohan Lai v. Tika Ram 47 Ind. Cas. 926 : 16 A. L. J. 929 : 41 A. 104 and Arudhia v. Kunjal 30 A. 123; S. A. L. J. 72; A. W. N. (1908) 36. It seems to me that this case falls within the first class and in that view the decision of the Court below was right. I reject the application with costs.