

**IN THE COURT OF THE ADDL. DISTRICT JUDGE -CUM-
SPECIAL JUDGE, C.B.I.-II, BHUBANESWAR.**

PRESENT:

Dr.A.K.Mishra,

Additional District Judge -cum-
Special Judge, C.B.I. Court No.II,
Bhubaneswar.

R.F.A. No. 5/520 of 2015/14.

Arising out of Judgment dated 17.5.2014
passed by the learned 1st Addl. Senior Civil
Judge, Bhubaneswar in C.S. No.124/1235 of
2012/2011 (Money Suit).

Sri Nikhileswar @ Nandu Sahoo, aged about 49 years,
Son of late Prahallad Charan Sahoo,
At-Tenteikuda,P.O.Borikhi,P.S.Kujung, Dist.Jagatsinghpur,
Presently residing at Plot No.L-241, Housing Board
Colony,Baramunda, Bhubaneswar, Dist. Khurda.

... Appellant.

Versus.

Kishore Chandra Sahoo, aged about 73 years,
Son of late Prahallad Charan Sahoo,
At Vill. Tenteikuda, P.O. Borikhi, P.S.Kujanga,
Dist. Khurda.
Presently residing at Plot NO.245(p), Jayadev Vihar,
Bhubaneswar, Dist. Khurda.

... Respondent.

For the Appellant : Sri U.C.Satpathy & Associates, Advocates.

For the Respondent: Sri N.Satapathy & Associates, Advocates.

Date of hearing : 4.1.2016.

Date of Judgment : 8.1.2016.

JUDGMENT

This appeal is preferred by the plaintiff against the judgment and decree dated 17.5.2014 in dismissing the suit for claim of money Rs.64,450/- passed by 1st Addl. Senior Civil Judge, Bhubaneswar. The sole defendant is the respondent.

2. An amount of Rs.60,000/- was taken by defendant on 3.3.2094 from plaintiff-younger brother for his daughter's marriage and despite Panchayat Faisalanama amounting to acknowledgment on 25.2.2011 and demand notice dated 30.3.2011, when payment was not made, the suit was filed on 20.7.2011. The defendant-elder brother in the written statement denied the factum of payment and challenged the maintainability of the suit on the ground of limitation and cause of action. Four issues were framed. Plaintiff and two other witnesses were examined and eight documents including panchayat faisalanama Ext.4 were admitted into evidence. Defendant himself was examined as D.W.1 and two documents were exhibited from his side. Learned 1st Addl. Senior Civil Judge, Bhubaneswar analyzing the evidence recorded finding that for want of signature of the parties in Ext.4 Panchayat Faisalanama dated 25.12.2010, the claim for recovery of money advanced on 1.3.1994 was barred by limitation and consequentially dismissed the suit.
3. Learned counsel for appellant questioning the appreciation of evidence particularly Ext.4 vehemently urged that law of limitation should not be considered to defeat the legitimate claim of plaintiff and Ext.4 Panchayat Faisalanama should have been treated as an acknowledgement of liability. In support of his contention,

he relied upon a decision reported in **AIR 1961 1236, Khan Bahadur Shappoor Freedom Mazda -vs- Durga Prasad Chamaria and others.** As expected learned counsel for respondent supported the impugned judgment.

4. The point for determination is whether Ext.4 Panchayat Faisalanama dated 25.12.2010 is an acknowledgement for the debt dated 1.3.1994.
5. In the back drop of admitted position that money was advanced on 1.3.1994 I made an anatomical survey of Ext.4 dated 25.12.2010. Neither the appellant nor the respondent has signed therein. The Sarpanch P.W.2 and outsiders have signed in resolving the dispute to facilitate partition. The period of limitation for a suit for money payable for money lent is three years under Article-19 of the Limitation Act, 1963. In the case at hand, for the money advanced on 1.3.1994 the limitation expired in the year 2007. Any acknowledgement made thereafter is not protected u/s. 18 of the Limitation Act. The law of limitation does not admit any exception for equity. The legal requirement of acknowledgement to save limitation u/s.18 of the Limitation Act,1963 is well reiterated in a decision reported in **1999 (1) SCR 841 Sampuran Singh And Ors vs Niranjan Kaur And Ors on 23 February, 1999** as follows:

" The said submission is without any force. [Section 18](#), sub-section (1), itself starts with the words "Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made...". Thus, the acknowledgement, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if

any, such document is executed, the limitation would be revived afresh from the said date of acknowledgement. "

The Khan Bahadur Shappoor decision, stated above, relied by the learned counsel for appellant does not depict law differently. It reiterates on Section 19 of the Limitation Act, 1908 (applicable then) as follows:

"It is thus clear that acknowledgment as prescribed by s. 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledge judgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly s. excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly G. without intending to admit the existence of jural relationship such intention could' be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in s. 19, and there is really no

substantial difference between the parties as to the true legal position in this matter”.

In Khan Bahadoor case, the letter written by mortgagee himself was considered for the purpose of acknowledgement but in the case at hand, no such letter or document signed by defendant-respondent is available to show creditor or debtor relationship. This peculiarity of facts makes the plaintiff's case distinguishable for application of the ratio of above decision.

6. Tested in the touch stone of the above law and on the admitted position of the facts that acknowledgement is made after limitation period without signature of the parties concerned, the claim of money lent on 1.3.1994 is hopelessly barred by limitation. The finding recorded by learned lower court does not suffer from any infirmity and for that is hereby concurred.
7. Since no infirmity is found in the impugned judgment, the same cannot be interfered with in this appeal. The appeal being devoid of merit is to be dismissed. Hence, it is ordered.

ORDER

The appeal be and the same is dismissed on contest without cost.

Additional District Judge -cum-
Special Judge, C.B.I.-II, Bhubaneswar.

Typed to my dictation and corrected by me.
Judgment is pronounced in the open court today
this the 8th day of January, 2016.

Additional District Judge -cum-
Special Judge, C.B.I.-II, Bhubaneswar