Privy Council Appeal No. 47 of 1939

Suleman Haji Ahmed Umer - - - - - *Appellant*

v.

Haji Abdulla Haji Rahimtulla - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD MAY, 1940

Present at the Hearing:

LORD THANKERTON
SIR GEORGE RANKIN
SIR PHILIP MACDONELL

[*Delivered by* SIR PHILIP MACDONELL]

This is an appeal from a decision of the High Court of Bombay in its Appellate Jurisdiction, given in favour of the plaintiff-respondent, and reversing a judgment of the Original Side of that Court which judgment had dismissed the plaintiff-respondent's action to recover various sums of money bailed by him to the defendant-appellant between the years 1923 and 1928.

The only question for determination in this appeal is whether the respondent as plaintiff brought this action within time or whether his claim is barred under the Indian Limitation Act, No. IX of 1908, and the answer to this question depends on what was the character of the bailment under which the plaintiff handed over and the defendant received these sums of money. If by that bailment the respondent must claim these sums of money as "money payable for money lent," Article 57 of the Limitation Act, or as "money lent under an agreement that it shall be payable on demand," Article 59 of the Limitation Act, then and in each case the period of limitation would be three years commencing from the date when the loan was made, and the 14th April, 1932, when the present action was brought, will admittedly have been more than three years after the last of such loans was made, consequently the action would fail. If, however, by that bailment the respondent could claim these sums of money as "money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable," Article 60 of the Limitation Act, then the period of limitation would be three years commencing from the date when demand for these sums of money was made and this action was admittedly brought within three years after such demand by the respondent. The question has then to be determined whether he bailed these moneys to the appellant as a loan or as a deposit.

The authority ruling such a question is to be found in the judgment of the Board delivered by Lord Atkin in *Nawal Major Sir Mohammad Akbar Khan* v. *Attar Singh,* 63 I.A. 279 at 288 as follows:—

> " Was this then a loan, or was it a deposit payable on demand? It should be remembered that the two terms are not mutually exclusive. A deposit of money is not confined to a bailment of specific currency to be returned in specie. As in the case of a deposit with a banker it does not necessarily involve the creation of a trust, but may involve only the creation of the relation of debtor and creditor, a loan under conditions. The distinction which is perhaps the most obvious is that the deposit not for a fixed term does not seem to impose an immediate obligation on the depositee to seek out the depositor and repay him. He is to keep the money till asked for it. A demand by the depositor would, therefore, seem to be a normal condition of the obligation of the depositee to repay."

The trial Court concluded that the respondent handed these moneys to the appellant not as a deposit but as a loan, but founded this decision principally on its inability to accept the evidence of the respondent where in conflict with that of the appellant, and nowhere applied the test laid down in the case just cited, so as to ascertain whether on the admitted facts in the case there was an obligation on the appellant to " seek out " the respondent and repay him, or whether he was to keep the moneys till the respondent asked for them. The Appellate Court, however, held that on those admitted facts the respondent bailed these sums to the appellant as a deposit for safe custody, and their Lordships apprehend that this is the correct inference to draw from them.

The admitted material facts are these. The respondent lost his father in 1920 when of the age of 15. Thereafter he seems to have relied very much on the appellant and he married in 1922 a connection by marriage of the appellant. He had claims against certain firms of which his father had been a partner, and he made an agreement with the appellant that the latter should help him in litigation that might be necessary to enforce those claims, giving him a power of attorney for that purpose. The appellant did so help him, and under threat of action the partners of the respondent's deceased father paid up the sum of Rs.1,30,000/- in August, 1923. The appellant gives the story of what happened when this sum was paid, as follows:—

> " I and plaintiff took the money to my father at the pedhi and he told us to credit the sum in the account of the appellant's firm." " Under my father's instructions we put the money in the bank. . . . Plaintiff said to my father in my presence that the firm should keep the moneys at the pedhi but my father said that the amount was large and should be credited in the firm's account with the bank. So far as I remember nothing more was said by anyone."

The evidence shows that each other sum subsequently handed by the respondent to the appellant was treated in the same way, namely, handed to the appellant and placed by him in his bank account, and for the appellant it was conceded in argument that each of these subsequent moneys was handed over by the respondent and received by the appellant on the same terms as the Rs.1,30,000/-. The appellant's

evidence as to the bailment of that sum is strongly in favour of it being a deposit for safe custody and not a loan. The respondent and the appellant had numerous transactions during these years. The appellant had advanced sums to the respondent for maintenance and for litigation, and the respondent received sums of considerable size from rents of properties and from persons who had owed money to his father, and all of these he seems to have paid over to the appellant who put them into his bank account and credited them to the respondent. Whenever the appellant paid any of these moneys to the respondent, it was, according to the appellant's own evidence, because the respondent had asked for them. There is nothing in the evidence to suggest that the appellant ever "sought out" the respondent to repay him, it was always the respondent who made request of the appellant. The Appellate Court noted the total absence, on the admitted facts, of features one or more of which it would have expected to be present, had these bailments or any of them been a loan, the absence, namely, of any security for the alleged loans, of any receipt in writing, of any promissory note, or of any agreement as to what rate of interest the loan was to carry. If any one of these bailments had been a loan it would have been reasonable to expect it to be attended by one or other of these things. The course of dealing between the parties was that the appellant was acting very much as banker for the respondent, he received for safe custody whatever moneys the respondent wished to hand over to him, and he paid those moneys to the respondent only when the respondent asked him for them; there is no suggestion either in the appellant's evidence or in the unchallenged portion of the evidence of the respondent, that the appellant was under any duty to "seek out" the respondent to repay him.

On this view of the case it is unnecessary to consider the questions mainly discussed by the Court of trial, such as the significance of the appellant having destroyed the books of account which recorded these bailments, or the difficulty of believing the respondent where his evidence conflicted with that of the appellant; he may well have been an undependable witness even to the invention in places of false stories to get out of difficulties. The admitted facts bring the case within the test laid down in the judgment of the Board that has been quoted from. This was not a case disclosing any duty on the bailee of the moneys to seek out his bailor and repay him, but only a duty to repay if and when the bailor requested repayment. These bailments being deposits, the respondent brought his action within the time allowed by the Limitation Act, No. IX of 1908, and must succeed.

For these reasons their Lordships are of opinion that this appeal fails and must be dismissed, the respondent to have the costs of the same, and they will humbly advise His Majesty accordingly.

(24374) Wt. 8017—49 170 6/40 P. St. G. 338

In the Privy Council

SULEMAN HAJI AHMED UMER

v.

HAJI ABDULLA HAJI RAHIMTULLA

DELIVERED BY SIR PHILIP MACDONELL

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The trial Court concluded that the respondent handed these moneys to the appellant not as a deposit but as a loan, but founded this decision principally on its inability to accept the evidence of the respondent where in conflict with that of the appellant, and nowhere applied the test laid down in the case just cited, so as to ascertain whether on the admitted facts in the case there was an obligation on the appellant to " seek out " the respondent and repay him, or whether he was to keep the moneys till the respondent asked for them. The Appellate Court, however, held that on those admitted facts the respondent bailed these sums to the appellant as a deposit for safe custody, and their Lordships apprehend that this is the correct inference to draw from them.

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