1960

April 21.

SAHEBZADA MOHAMMAD KAMGAR SHAH

v.

JAGDISH CHANDRA DEO DHABAL DEO AND OTHERS.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Document—Construction of—Discrepancy between earlier and later parts—"Duly authorised", meaning of—Indian Limitation Act, 1908 *(IX of* 1908), *Explanation II, s.* 19.

In 1900 the then proprietor of the Dhalbhum estate who was the predecessor-in-interest of the first respondent granted a permanent lease of the mining rights for certain metals and minerals in the estate to one Prince Mohammad Bakhtyar Shah. During the lifetime of the said proprietor the management of the estate was taken over by the Deputy Commission of Singhbhum under the Chotanagpur Encumbered Estates Act and after the former's death the manager of the Estate granted to the Official Receiver to the estate of Prince Mohammad Bakhtyar Shah another lease in respect of mining rights in the same area in 1919. The first respondent commenced the present litigation for the purpose of recovering rents and royalties on the basis of the second lease from the heirs and representatives of the estate of Prince Mohammad Bakhtyar Shah and also from the appellant as the Receiver to that Estate. The decision of the case depended upon the construction of the two leases of 1900 and 1919 and the Trial Court and the High Court decided the case in favour of the plaintiff respondents. On appeal by the contesting defendant appellant on a certificate granted by the High Court:

Held, that the intention of the parties to a dispositive document must be gathered from the words used by the parties themselves and they must be presumed to have used the words in their strict grammatical sense. If the statements made in the earlier part of the document were irreconcilable with those made in the later part, the earlier part must prevail. In cases of ambiguity the court should look at all the parts of the document to ascertain the intention of the parties. If ambiguity still remains, the Court should interpret the document strictly against the grantor and in favour of the grantee.

Under Exp. II of s. 19 of the Limitation Act the words "duly authorised" would include duly authorised either by the action of the party indebted or by force of law or order of the court.

Annapagonda v. *Sangadiappa,* (1901) Bom. L.R. 221 (F.B.), *Rashbehari* v. *Anand Ram,* 43 Cal. 211, *Ramcharan Das* v. *Gaya Prasad,* 30 *All.* 422, *Lakshmanan* v. *Sadayappa,* A.I.R. 1919 Mad 816 and *Thankamma* v. *Kunhamma,* A.I.R. 1919 Mad. 370, approved.

Currimbhai v. *Ahmedali*, 58 Bom. 505 and *Lakshmanan Chetty* v. *Sadayappa Chetty*, 35 M.L.J. 571, considered.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 81 of 1956.

Appeal from the judgment and decree dated September 24, 1952, of the Patna High Court in First Appeal from Original Decree No. 2 of 1947, arising out of the judgment and decree dated August 31, 1946, of the Special Subordinate Judge, Chaibassa, in Money Suit No. 3 of 1941.

L. K. Jha, B. K. Saran, S. T. Husain, S. K. Jha and *K. L. Mehta,* for the appellant.

H. N. Sanyal, Additional Solicitor-General of India J. C. Das Gupta and *R. C. Prasad,* for respondent No. 1.

1960. April 21. The Judgment of the Court was delivered by

DAS GUPTA. J.— Dhalbhum estate which covers an area of more than 1,000 sq. miles and lies partly in the District of Midnapur and partly in the District of Singhbhum is rich in minerals. In 1900 the then Proprietor of this estate Raja Satrughan Deo Dhabal Deo the predecessor-in-interest of the first respondent Jagdish Deo Dhabal Deo granted permanent lease of the mining rights for certain metals and minerals in this estate to Prince Mohammad Bakhtyar Shah of Tollygunge in the District of 24-Parganas. Raja Satrughan Deo Dhabal Deo died in 1916. Before his death, however, the management of the estate had been taken over by the Deputy Commissioner of Singhbhum under the Chotanagpur Encumbered Estates Act. In the course of such management the Manager of the Estate granted on September 1, 1919, to the Official Receiver to the estate of Prince Mohammad Bakhtyar Shah another lease in respect of mining rights in the same area. The present litigation was commenced by the first respondent with a view to recover rents and royalties on the basis of the second lease from the heirs and representatives of the estate of Prince Mohammad Bakhtyar Shah and also from the present appellant as Receiver to that estate. As under the terms of the lease the lessor is entitled to the half

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share of the receipts on account of rents and royalties and other incomes in respect of the minerals demised and the exact income could not be known until accounts were furnished by the lessee, the defendant prayed for a decree for accounts from January 1, 1926, and for a decree for the sum found due on such accounts. As the suit was brought on August 12, 1941, the period prior to August 12, 1935, would prima facie be barred by limitation. According to the plaintiff, limitation was saved by the acknowledgments that had been made from time to time by the then Receiver of the estate. Two defences were raised by the Receiver who was the only contesting defendant. The first was that the lessor had dispossessed him from part of the leasehold property and so there ought to be total suspension of rents and royalties. The second defence was as regards the claim for the period prior to August 12, 1935. It was pleaded that the letters which are claimed to have acknowledged the liability did not in law amount to acknowledgement of liability and that in any case the alleged acknowledgements being by the Receiver who was an agent of the court and not an agent of the parties the acknowledgments would be of no avail in saving limitation.

Though the written statement itself did not in terms mention the nature of the lessee's dispossession from the leasehold property the definite case at the trial was that this dispossession was in respect of minerals which had been specifically excluded from the earlier lease of 1900 but according to the defendant included in the later lease. One of the main questions in the appeal is whether the minerals specifically excluded in cl. 16 of the earlier lease were demised to the lessee by the later lease of 1919. Of the several issues that have been framed we are therefore concerned now only with the two issues in respect of these two defences. The first of these is: "Is the defendant entitled to suspension of rents and royalties as claimed"; the second is: "Is any portion of the plaintiff's claim barred by limitation?" The Subordinate Judge held on a construction of the lease of 1919 that it did not include minerals specifically excluded by cl. 16 of the earlier lease and as the only

case of dispossession from leasehold property was made in respect of these minerals the plea of suspension of rent must fail. He also negatived the plea of limitation, being of opinion that the Official Receiver was competent to make such acknowledgments and that in fact there were acknowledgments of the plaintiff's liability within the meaning of s. 19 of the Limitation Act. With regard to the period from 1935 to 1941, regarding which no question of limitation arose, the Subordinate Judge gave a decree of rendition of accounts and for payment of such amounts as would be found on accounting by the Commissioner. On the basis of his finding that there was an acknowledgment of liability to the extent of Rs. 67,459-3-3 as due under the terms of the two leases up to the year 1935 but that there was no material on the record to find out as to what was the amount due up to that year on the basis of that second lease, he made an order in the following terms :

> "The defendant is hereby directed to assess and state the amount due under the lease in suit out of the said sum of Rs. 67,459-3-3 on the basis of the accounts of his office.....in respect of the plaintiff's dues within two months from this date, failing which a commissioner will be appointed to make accounts and ascertain the amount due to the plaintiff, and the defendant shall be liable for the costs of the same."

Against this decree the contesting defendant, the Receiver appealed to the High Court of Judicature at Patna. Before the appeal court two points were raised. The first was that on a proper construction of the 1919 lease it should be found that the minerals specifically excluded in clause 16 of the earlier lease were included in the 1919 lease and consequently, the lessor having granted certain leases to other parties in respect of these minerals in the area the lessee was entitled to suspension of rents. The other point raised was that in law there was no acknowledgment which could save limitation in respect of the claim prior to August 12, 1935.

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On both these points, the learned judges of the Patna High Court who heard the appeal agreed with the conclusions of the Trial Judge. On the first point they held that the minerals excluded by clause 16 of the 1900 lease were not included in the second lease and so there was no question of any suspension of rents. They also held that quite apart from the question of construction of the document, the lessee was not entitled to suspension of rents as in order to justify withholding of the rents, the act of the landlord must be forcible or, at any rate, tortious and that these conditions had not been established in the present case. On the second question, the learned judges held that the letters on which the plaintiff relied to show acknowledgments by the Receiver did in law amount to acknowledgments and the acknowledgments being by the Receiver who was himself bound to pay the rent due to the superior landlord were good acknowledgments within the meaning of s. 19 of the Limitation Act. Accordingly they dismissed the appeal.

The present appeal has been brought by the contesting defendant the Receiver on a certificate given by the High Court under Art. 133 of the Constitution.

Both the defences raised in the court of appeal have been pressed before us. The alleged dispossession on the basis of which the first defence of a right to suspension of rent is urged is only in respect of minerals mentioned specifically in clause 16 of the earlier lease of 1900. It is necessary therefore to decide in the first place whether these minerals mentioned in clause 16 of the earlier lease have been included in the second lease. If as found by the courts below they have not been so included no question of suspension will arise. If they have been included, some other questions of law and fact may have to be considered in deciding whether the defendant's plea of suspension of rent can succeed. While primarily we have to construe the 1919 lease to find an answer to the question indicated above, it will be necessary for that very purpose to refer to several portions of the earlier lease of 1900. The very first clause in the operative portion of the 1900 lease is in these words:—

"That you shall prospect, raise, purify, melt and sell gold, silver, copper, lead, zinc, iron, mercury, mica, sulphur, copper sulphate, coal, chalk, red-earth, etc., mati slate stone and all kinds of precious stones such as diamond, ruby, emerald, topaz, crystals, etc., lying on the surface and subsoil of Ghatsila otherwise called pargana Dhalbhum, mentioned in the Schedule excluding the 2 mouzas Narsinghgarh and Ghatsila and the Dibkulis mentioned in Schedule below."

It will be noticed that this clause does not mention stones, lime-stones, ghuting or ballasts. Clause 6 of the lease however provided that the lessee shall be "competent to take stones, lime-stones, ghuting and ballast which may be required for constructing buildings, bungalows and pathways, etc., necessary for the aforesaid mining work free of cost and rent." Clause 16 of the lease contains some further provisions as regards these and is in these words :—

"That by virtue of the aforesaid patta, you shall not be competent to offer any obstruction either to me or to my any authorised person to raise stones (used) for utensils or stones, lime-stone and ghuting, etc., for buildings which are not covered by this patta and sell the same to me or to tenants, etc., under me to dig bandh, tank, canal and wells, etc., but the terms of the said patta shall hold good in respect of the underground minerals, etc., lying under the said wells, etc."

Two things that are abundantly clear from this document are:—(1) that the mining rights were specifically granted in respect of gold, silver, copper, lead zinc, iron, mercury, mica, sulphur, copper sulphate, coal, chalk, red-earth and certain precious stones such as diamond, ruby, emerald, topaz, crystals, etc., and (2) that stones for utensils or stones, lime-stones, ghuting, etc., and ballast for buildings were specifically excluded from the lease. By the later lease of 1919 the lessor gave and the lessee obtained mining rights in respect of certain minerals not granted by the earlier lease. The question is whether what was granted by the later lease included in addition to things which had not been specifically named in the earlier grant also things which

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had been specifically excluded there. The important portion of the operative clause of the later lease is in these words:—

"In consideration of the rent hereby reserved and of the covenants and conditions hereinafter contained the Manager hereby grants demised unto the Receiver all and singular all metals and minerals of whatsoever kind or description other than those specifically comprised in and granted by the principal lease.....

.....for such purposes to have all and every the rights, privileges and powers comprised in and granted to the said Prince Mohammad Bakhtyar Shah by the said principal lease in all respects as though the same were repeated herein so far as they do not contradict any of the provisions herein contained and are still existing and capable of taking effect."

The covenant runs thus:—

"Receiver covenants with the Manager that he will at the time and in the manner provided for in the said principal lease pay the rent or royalty reserved hereby and will carry out and comply with all the provisions and conditions comprised in the said principal lease so far as they are applicable to these presents in the same manner as though they had been inserted herein."

The document contains next an agreement that the Receiver shall be at liberty to grant under-leases subject to certain conditions and provisions. One of the conditions mentioned is:—"That all such under-leases shall be subject to such special terms in regard to specific minerals as may be prescribed from time to time by the Government Rules relating to Mining Leases and shall be subject to the provision of clause 16 of the said principal lease."

The lease concluded with the words:—

"Provided always and it is hereby agreed that nothing herein contained shall be deemed to show that the Pottah of the tenth day of January one thousand and nine hundred made between Raja Satrughan Deo Dhabal Deo, son of Gopinath Deo Dhabal Deo, deceased and the Hon'ble Prince

Mohammad Bakhtyar Shah, son of Prince Mohammad Anwar Shah, deceased is not still valid and subsisting."

In his attempt to establish that by this later lease the lessor granted a lease even of those minerals which had been excluded specifically by clause 16 of the earlier lease, Mr. Jha has arrayed in his aid several well established principles of construction. The first of these is that the intention of the parties to a document of grant must be ascertained first and foremost from the words used in the disposition clause, understanding the words used in their strict, natural grammatical sense and that once the intention can be clearly understood from the words in the disposition clause thus interpreted it is no business of the courts to examine what the parties may have said in other portions of the document. Next it is urged that if it does appear that the later clauses of the document purport to restrict or cut down in any way the effect of the earlier clause disposing of property the earlier clause must prevail. Thirdly it is said that if there be any ambiguity in the disposition clause taken by itself, the benefit of that ambiguity must be given to the grantee, the rule being that all documents of grants must be interpreted strictly as against the grantor. Lastly it was urged that where the operative portion of the document can be interpreted without the aid of the preamble, the preamble ought not and must not be looked into.

The correctness of these principles is too well established by authorities to justify any detailed discussion. The task being to ascertain the intention of the parties, the cases have laid down that that intention has to be gathered by the words used by the parties themselves. In doing so the parties must be presumed to have used the words in their strict grammatical sense. If and when the parties have first expressed themselves in one way and then go on saying something, which is irreconcilable with what has gone before, the courts have evolved the principle on the theory that what once had been granted cannot next be taken away, that the clear disposition by an earlier clause will not be allowed to be cut down by a later

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clause. Where there is ambiguity it is the duty of the Court to look at all the parts of the documents to ascertain what was really intended by the parties. But even here the rule has to be borne in mind that the document being the grantor's document it has to be interpreted strictly against him and in favour of the grantee.

Bearing these principles in mind we shall now examine the 1919 lease to perform this task of ascertaining the intention of the parties as to what was being granted by this lease. The disposition clause as has already been set out is in these words:—"The Manager hereby grants demised unto the Receiver all and singular all metals and minerals of whatsoever kind or description other than those specifically comprised in and granted by the principal lease." On behalf of the appellant it is argued that if the totality of metals and minerals in the area is denoted by the symbol "X" and what was granted by the earlier lease is denoted by the symbol "Y" the intention of the parties in using the words set out above was that this lease should be in respect of "X" minus "Y". We are afraid however that this is an over-simplification of the problem which we must resist. While it is true that strict grammatical sense of the words must be given effect to, words and phrases are not used by people always and invariably in the same sense. As has often been emphasised by eminent judges the intention of persons using certain words cannot be discovered by considering the words in the abstract. When in this lease the grantor used certain words, what we cannot ignore is that when words set out above were used in the present lease both the parties had present in their minds the fact of the principal lease. They were not only well aware of the fact of the earlier lease but actually referred to it as the principal lease and repeatedly emphasised the fact that the terms and conditions of the principal lease in so far as not contradicted by the present lease would remain valid and effective. One of the principal facts of that earlier lease is that while some metals and minerals were specifically granted thereby some were specifically excluded. In interpreting the words of

the disposition clause we have to take notice of the fact that no reference is being made to that fact of specific exclusion. The question that arises for determination is whether by this omission to make a specific reference to the exclusion clause of the previous lease the parties intended that the exclusion clause will have no effect. The appellant's argument is that the necessary result of the words "grants demised unto the Receiver all and singular all metals and minerals of whatsoever kind or description other than specifically comprised in and granted by the principal lease" is that the exclusion clause of the earlier lease was itself being excluded. While there is some scope for that interpretation, if we do not look further, we are unable to agree with the learned Advocate that it is clear and unambiguous that by this reference to the granting clause of the earlier lease and the words used in respect thereof, the exclusion clause of the earlier lase was being necessarily excluded. There is in our opinion as much scope for arguing that the exclusion clause not being in terms referred to would remain valid and active as there is for the appellant's argument that the words used show an intention to exclude the exclusion clause itself. In cases of ambiguity it is necessary and proper that the court whose task is to construe the document should examine the several parts of the document in order to ascertain what was really intended by the parties. In this much assistance can be derived from the fourth condition of the conditions which were imposed by the lease as regards the grant of sub-leases. This condition provided inter-alia that all such under-leases to be granted by the lessee shall be subject to the provisions of clause 16 of the principal lease. In other words, the sub-lessees shall not be competent to offer any obstruction to the head lessor or to any other person authorised by him to raise stone for utensils or stones or lime-stone and ghuting, etc., for buildings and in selling the same. Nor will he be competent to offer any obstruction to any person authorised by the lessor in digging bandh, tank, canal and wells, etc. In terms this is a provision as regards under-leases only. But the question which springs to the mind is : What could be the sense of

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such a term being imposed in respect of under-lessees if so long as under-leases were not given, the lessee himself would not be bound by the provisions of clause 16 of the principal lease and would be competent to obstruct the head lessor in the several matters mentioned in clause 16? It is in our opinion unthinkable that such a clause as this fourth clause would be included in respect of sub-leases unless it was also the intention of the parties that the lessee himself would be bound by the provisions of cl. 16 of the principal lease. The view that this must have been the intention is strengthened by the concluding words of this lease which provide in substance that notwithstanding anything in the later lease the principal lease would be valid and subsisting. Here also there would be no point in saying that the principal lease would be valid and subsisting as regards merely the minerals which had been specifically granted by the principal lease. As regards the principal lease being binding in respect of those minerals, there could be no doubt whatsoever and the concluding clause of the 1919 lease would be unnecessary and meaningless. As regards the metals and minerals which are excluded by cl. 16 there might however be some scope for argument as to what would prevail. But for some apprehension in the mind of the grantor perhaps on account of clause 6 that there might be some scope of difference as regards the metals and minerals mentioned in cl. 16 of the earlier clause, the inclusion of this clause in the principal lease itself would perhaps be unnecessary. It was as a safeguard against that uncertainty that the concluding sentence of the later lease uses the words that we find.

It appears to us reasonable therefore to hold that of the two meanings of which the words in the disposition clause are capable the meaning that the parties intended that the minerals excluded by clause 16 of the principal lease were not covered by the present grant but would remain excluded, should be accepted.

We have so long not referred to the preamble of the document. The relevant portion of the same which is of some assistance in construing the document before us, occurs where the Manager mentions the

consent of the High Court as regards this later lease. The passage runs thus:—

> "Whereas recently certain disputes have arisen betwen the Manager as representing the Estate of the said Sri Sri Satrughna Deo Dhabal Deb, and the Receiver as representing the estate of the said Prince Mohammad Bakhtyar Shah now deceased with regard to the construction of the principal lease and the minerals comprised therein, and whereas in order to put an end to all such disputes and differences of opinion and for the purpose of preventing litigation and consequent loss of both the said Estates it has been agreed by and between the parties hereto subject to the consent and approval of the said High Court that the Manager shall grant to the Receiver a lease of all minerals other than those specifically mentioned in the said principal lease."

In the judgment of the Trial Court there is a statement that the dispute which had arisen as regards the construction of the principal lease was whether a mineral known as wolfram was included in the lease of 1900 or not. The correctness of this observation in the Trial Court's judgment based apparently on statements made at the bar has not been disputed before us. If that was the dispute then the object of the second lease was obviously to include therein, in respect of the purposes of the granting clause of the first lease even those minerals which had not been included. That the dispute must have been of the nature, as the Trial Court believes, appears probable also from the use of the words "other than those specifically mentioned" in the preamble. The dispute being on the question of what was mentioned and what was not mentioned in the granting clause, the object of granting the second lease was that what had not so long been mentioned in the granting clause would also be included in such grant by a supplementary lease. The question of what had been excluded was not in the contemplation of the parties at all. It is significant to note that there was no evidence that before the date of the second lease, any dispute had arisen as regards the operation of the exclusion clause, viz., Clause 16. A consideration of

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the preamble therefore further strengthens the conclusion that this later lease did not grant any mineral rights in respect of what had been excluded by the principal lease in its 16th clause.

If we interpret the disposition clause in the second lease in this way, as we think we must, there is no repugnancy between this clause and the later clauses and there is no scope therefore for the applicability of the doctrine relied on by Mr. Jha that if there be two clauses or parts of a deed one repugnant to the other the first part shall be accepted and the latter rejected. Nor is there any question in the present case of the words being constructed strictly against the grantor. It is only if the meaning is not otherwise clear that the courts would by recourse to that rule give the grantee something which he might not clearly have received. As however on a proper construction of the document as a whole we reach the conclusion that the intention of the parties has been clearly established to be that the minerals excluded by clause 16 of the principal lease will remain excluded from the later lease also, there is no scope of any benefit accruing to the lessee by reason of the rule that all deeds are to be construed strictly against the grantor and in favour of the grantee.

We have therefore come to the conclusion that the courts below were right in their conclusion that the minerals mentioned in cl. 16 of the principal lease were not granted by the later lease also.

The appellant's plea of suspension of rents based as it is on the allegation that the metals and minerals mentioned in cl. 16 of the principal lease were covered by the later lease must therefore fail. We think it unnecessary to consider in this appeal the question whether if the construction which the appellant wanted to place on the document was correct the plea of suspension of rents would have been available to him and we express no opinion on the correctness or otherwise of the views expressed by the High Court as regards the circumstances in which a plea of suspension of rent can succeed.

There remains for consideration the question of limitation as regards the period of the claim prior to

August 12, 1935. On this point the learned counsel for the appellant has advanced a two-fold contention before us.

In the first place he has contended that the alleged acknowledgments were conditional, the condition as stated being that the statements of account enclosed with the letters which are said to constitute the acknowledgments must be accepted as correct. In support of his argument Mr. Jha drew our attention to the words used in Exhibit 2(1) dated March 7, 1931, which typifies the nature of acknowldegments in the other letters relied on by the plaintiff. This letter addressed by the Official Receiver to Raja Jagdish Deo Dhabal Deo is in these words:—

"Sir,

I have the honour to send herewith two statements of account showing an aggregate sum of Rs. 4,993-6-1 as royalty due to the Dhalbhum Raj by the above estate from 1st January to 31st December, 1930. On your accepting the statements as correct a cheque for the said sum of Rs. 4,993-6-1 will be sent to you.

Besides the above, there is lying to credit of the Dhalbhum Raj the sum of Rs. 31,944-8-3 being the royalty upto the end of December, 1929. I shall be obliged if you will kindly let me know whether you are prepared to accept the same and on hearing from you I shall be glad to forward to you a cheque in payment thereof."

According to Mr. Jha the first statement as regards the sum of Rs. 4,993-6-1 due to the Dhalbhum Raj by the above estate from 1st January to 31st December, 1930, was not a clear and independent statement of the dues but was made subject to the condition that this was accepted as correct. Similarly he argued that the statement in the next paragraph of the letter as regards the sum of Rs. 31,944-8-3 being the royalty up to the end of December, 1929, was also not a clear and independent statement of what is due but is made subject to the acceptance of the same. That in our opinion is not a proper reading of what is stated in the letter. In the very first sentence of the letter the Receiver is saying that a sum of Rs. 4,993-6-1 as shown

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in the enclosure to the document was according to him due to the Dhalbhum Raj for the year 1930 on account of royalty; to this he was adding a statement in the second sentence that as soon as this statement of dues was accepted as correct a cheque in payment thereof would be sent. To say that however was not to say that the earlier statement of what is due is subject to the acceptance of the accounts. The idea in the second sentence clearly was that in case the statement of what was due was not accepted as correct the matter will have to be decided by further discussion before payment will be made. This second sentence cannot by any stretch of imagination be read as a condition to the statement made in the first sentence. Similarly the first sentence in the second paragraph of the letter as regards the sum of Rs. 31,944-8-3 being royalty up to the end of December, 1929, is, as we read the letter, made independent of what was stated in the following sentence and was not subject thereto. The argument that these acknowledgments were conditional acknowledgments has therefore been rightly rejected by the High Court.

The second contention urged by the learned counsel is that in any case an acknowledgment by the Receiver of an estate is not an acknowledgment by an agent of the owners of the estate "duly authorised in this behalf" within the meaning of Explanation II of s. 19 of the Limitation Act, and so is not an acknowledgment within the meaning of s. 19(1) of the Limitation Act.

According to the learned counsel "duly authorised in this behalf" in Explanation II of s. 19 means "duly authorised by the debtor" and does not include duly authorised by law or by an order of the Court. For this proposition we can find no support either in authority or principle. Explanation II to s. 19 of the Limitation Act in saying "for the purposes of this section 'signed' means signed either personally or by an agent duly authorised in this behalf" has not limited in any way the manner in which the authority can be given. The view taken in this matter by a Full Bench of the Bombay High Court in *Annapagonda* v. *Sangadiappa* (1) that "duly authorised" would include

(1) [1901] Bom. S.R. 221 (F.B.).

duly authorised either by the action of the party indebted or by force of law or order of the Court has been followed in other High Courts also (Vide : *Reshbehary* v. *Anand Ram* (1); *Ramcharan Das* v. *Gaya Prasad* (2); *Lakshumanan* v. *Sadayappa* (3) and *Thankamma* v. *Kunhamma* (4) and in our opinion represents the correct state of law.

Mr. Jha has next argued that, in any case, law does not authorise the Receiver of an Estate to make acknowledgments of debt due from the estate. For this proposition he has relied on a decision of the Bombay High Court in *Currimbhai* v. *Ahmedali* (5). In that case it was held that an acknowledgment by an official assignee will not amount to an acknowledgment by an agent of the debtor. Though this case does not deal strictly with the case of a Receiver, Mr. Jha has relied on the reasoning therein as supporting his contention. Our attention has been drawn by Mr. Sanyal, on behalf of the respondent to the fact that a contrary view has been taken in *Lakshmanan Chetty* v. *Sadayappa Chetty* (6). Mr. Sanyal has argued that in respect of a debt due from the estate the Receiver of the estate fully represents the owners of the estate and that once it is held as it must be, that the Receiver had authority to pay the debt, Mr. Sanyal argues, it must necessarily be held that acknowledgment of a debt as incidental to the Receiver's duties in respect of the payment of the debts, is also within his authority. So, he argues that in every case an acknowledgment by a Receiver is an acknowledgment by a duly authorised agent of the debtor.

The above is a brief indication of the arguments on either side on Mr. Jha's contention that the Receiver has no authority to acknowledge debts on behalf of the Estate. It is unnecessary for us however to decide for the purpose of the present appeal the question whether a Receiver is an agent of the owners of the estate of which he is the Receiver for the purposes of an acknowledgment of a debt under s. 19 of the Limitation Act.

(1) 43 Cal. 211.
(2) 30 All. 422.
(3) A.I.R. 1919 Mad. 816.
(4) A.I.R. 1919 Mad 370.
(5) 58 Bom. 505.
(6) 35 M.L.J. 571.

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In the present case the suit is based on the second lease of 1919 which was executed in favour of the then Receiver. The acknowledgments by which limitation is claimed to have been saved is by a previous Receiver of the Estate through whom the appellant who is the present Receiver has derived his liability to pay the debt. Section 19 is therefore in terms applicable as the acknowledgments have been signed personally by those previous Receivers, and no recourse is needed by the plaintiff to the second part of Explanation II. This position was indeed fairly concluded by Mr. Jha who agreed that in view of this it was not necessary for us to decide whether the Receiver of an Estate is by that fact itself an agent of the owners of the estate duly authorised to make acknowledgments under s. 19 of the Limitation Act.

There can be no doubt that the acknowledgments on which the plaintiff relies are acknowledgments within the meaning of s. 19 of the Limitation Act and save limitation in respect of the period prior to August 12, 1935. The Courts below were therefore right in rejecting the defendant's plea of limitation.

As both the contentions raised before us fail, the appeal is dismissed with costs.

Appeal dismissed.

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April 21.

THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY, BOMBAY

v.

NANDLAL GANDALAL.

(S. K. Das, J. L. Kapur and M. Hidayatullah, JJ.)

Income-tax—Assessment—Hindu undivided family carrying on business outside British India—Partnership entered into by coparceners with strangers in British India financed by remittances received from undivided family funds—Hindu undivided family, if resident in taxable territories—Indian Income-tax Act, 1922 (*XI of* 1922), *ss.* 4*A*(*b*).

N, a coparcener of the Hindu undivided family of G, carrying on business in Kathiwar, then outside British India, entered into a partnership with strangers in Bombay in 1944. A total sum of Rs. 1,50,000 was remitted to N from the undivided family