

(1995) 10 GAU CK 0002
In the Gauhati High Court
Case No : First Appeal No. 7 of 1983

Amar Chandra Chakraborty	Vs	APPELLANT
State of Tripura		RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Limitation Act, 1963 — Section 18, 18

Citation : (1996) 1 GLJ 206 : (1996) 2 GLR 43 : (1996) 3 GLT 651

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : S.Deb, U.B.Saha, R.Das Gupta, Advocates appearing for Parties

Judgement

1. This appeal has been filed by the plaintiffs. A suit being Money Suit No.8 of 1980 was filed for realisation of Rs.75,900/ and the suit was dismissed by the learned Subordinate Judge, West Tripura on 20.12.1982. The suit was dismissed by taking of two issues as preliminary issues. They are :

(i) Whether the suit is barred by limitation ?

(ii) Whether the jurisdiction of this Court is barred in view of section 91" and 92 of the Bengal Excise Act as extended to Tripura ?

2. The brief facts of the case are as follows.

3. That the plaintiff since 1957 engaged himself as an Excise Wholesale Contractor for supply of Country Liquor on obtaining a licence under the Tripura Excise Rules, 1962. That on 13th day of March, 1968 there was an agreement in writing entered into between the plaintiff and the Government of Tripura where upon he was appointed as the contractor of the warehouse at Agartala for supply or rectified spirit for the Government of Tripura to the excise vendors of Tripura for a period of 5 (five) years from 1.4.1968 to 31st March, 1973 on the terms and conditions specified in the said agreement and also in the licence which was issued in favour of the plaintiff on 13.3.1968 by the District Magistrate and

Collector, Tripura. According to the plaintiff, as per the terms of the said licence the plaintiff deposited on or about 22.1.68 a sum of Rs. 1,000/ as the security and he also supplied empty galvanised drums 350 in number to the defendants for which of course he was entitled to receive rents. Moreover, he had to establish as required by the said licence a warehouse at Agartala for storage of bond wholesale bond of country liquor to be procured by import from outside the territory of Tripura. Thereafter he had been carrying the work as contractor of the warehouse regularly in the compliance with the terms and conditions of the agreement as well as the licence. But the Collector of Excise, ie the defendant No.2, by this order dated 5.7.70 ie before the expiry of the period of his (plaintiff) licence, had wrongfully withdrawn the licence granted to the plaintiff. The plaintiff submitted his claims for refund of the security deposited and for payment of the sums which he was entitled by submitting bills the total amount to which was Rs. 1,18,767.01. The particulars of the plaintiffs claims in that bills has been detailed in paragraph 10 of the plaint. It is further stated that the Excise Commissioner provisionally accepted the claims of the plaintiff to the extent of Rs.57,757.68 and ordered for payment of the said sum after settlement of the Government's claim, if any, from the plaintiff, by his letter dated 24.3.1977 which was addressed to the plaintiff. That was followed by another letter from Collector of Excise, West Tripura dated 5.4.1978 which also informed the plaintiff that his claim shall be paid upon settlement of outstanding Government dues from the plaintiff and informed him that the details of the said alleged claim can be had from the office of the Excise Commissioner, Tripura. Thereafter the plaintiff alleged that he requested the Collector of Excise, Tripura by a letter dated 10th, April, 1978 to furnish the details of the alleged Government dues and also for finalising the matter and payment of the plaintiffs claim. Several reminders in that line were also sent by the plaintiff but to no effect. Then the plaintiff stated that the Under Secretary of the Government of Tripura vide his letter dated 28.5.79 raised some allegations against the plaintiff, regarding causing loss of excise revenue to the Government of Tripura during his tenure. This allegation, according to the plaintiff is totally false. To that letter the plaintiff gave his reply on 7.6.79 and explained the position while denying the charges brought against him. But even after that the defendants failed and neglected to pay the claims of the plaintiff on the plea of adjustment of Government dues. Now according to the plaintiff the cause of action for his present suit has arising on and from 20.5.79 due to nonpayment of the plaintiffs claim on false allegation of loss caused to the State excise revenue by the plaintiff, and also from the fact of non consideration of the plaintiffs explanation given on 7.6.79. The plaintiff has also stated that as required he had duly served notice under section 80 CPC upon the defendants and the defendants also received that notice. The plaintiff claims for money decree for Rs.57,757.68 with interest @ 10% per annum since 24.3.77 to 22.5.80 and other reliefs.

4. All the defendants appeared and filed a written statement wherein it is stated inter alia as follows :

"The defendants stated that the plaintiff has no cause of action for the suit against the answering defendants or against anybody else. In paragraph 2 it was stated that the suit of the plaintiff is not maintainable in its present form and nature in view of section 91 and 92 of the Bengal Excise Act as extended to Tripura. In paragraph 3 it was stated that the suit is hopelessly barred by law of limitation and even if the suit was valid or legal the suit is liable to be dismissed on the ground of limitation."

5. Earlier to the filing of the suit, a writ petition was filed and that was dismissed by the Judicial Commissioner, Tripura and an appeal preferred before the Supreme Court also was dismissed. The claim of the plaintiff has been denied by the defendants but the defendants admitted the dues of the amount of Rs.57,757/ to the plaintiffs by the Govt. and it provisionally accepted subject to adjustment of the amount which was due from the plaintiff to the Govt. The defendants raised a counter claim of Rs. 1,36,895 and in view of this counter claim of Rs. 1,36,895 it is contended that there was no question of payment of any sum to the plaintiffs. In deciding issue No. 1, the trial Court took into account that in paragraph 17 of the plaint, it was stated that the cause of action for the suit arose on 28.5.79 and the suit was filed in the year 1980. The trial Court held that Article 113 of the Limitation Act was applicable to the suit. Article 113 of the Limitation Act provides that the suit is to be instituted within a period of 3 years from the date when the right to sue accrues. The letter dated 28.5.79 by the Under Secretary to the Govt. of Tripura made some allegations against the plaintiffs regarding causing loss to the Excise Revenue to the Govt. of Tripura. This letter did not contain any admission regarding the dues of the plaintiffs. So, that was not found to be the date of cause of action and the trial Court looked to the entire plaint and the bundle of facts mentioned therein to decide the question of limitation. The licence in this case was withdrawn on 5.7.70 and the suit was filed on 23.5.80 i.e., more than 10 years after withdrawal of the licence. The plaintiff in support of his claim for the refund and realisation of money relied on letter dated 24th March, 1977 written by the Excise Commissioner, Govt. of Tripura wherein it was stated that the plaintiff was entitled to get the payment of Rs.57,757.68 out of his total claim and the plaintiffs contended before the trial Court that in view of this letter, the suit is within time. The learned Judge found that the right to get the refund accrued in 1970 when the licence was withdrawn and thereafter refusal was made and the claim was preferred on 4.8.72 but in spite of it, the suit was not brought within time. The question is that whether the letter dated 24th March, 1977 by the defendant can be deemed to be all acknowledgement of the right of the plaintiffs. The letter dated 24.3.77 is Annexure D to the plaint and that is quoted below :

"Government of Tripura : :Revenue Department

No.F.1 (10)REV/75 Dated, Agartala, the 24th March, 1977

To, The Collector of Excise,

West Tripura District, Agartala.

Subject: Claim of Sri Chandra Chakraborty, ExExcise Wholesale

Contractor for country spirit of Central Warehouse, Agartala.

Sir,

I am to refer to the above subject and to inform you that claim of the following amount has been provisionally accepted against the amount claimed by Sri Amar Chandra Chakraborty ExExcise Wholesale Contractor for country spirit of Central Warehouse. Agartala. Payment of the claim will be made after settlement of Government of claim, if any, from Sri Chakraborty.

- (i) Cost of liquor Rs. 17,518.42
- (ii) Security money refund Rs. 1,000.00
- (iii) Earnest money refund Rs. 4,655.99
- (iv) Rent of Drum Rs.21,700.00
- (v) Rent for other materials Rs. 3,347.77
- (vi) Rent of the building Rs. 8,611.00
- (vii) Licence fee refund Rs. 824.50

Rs.57,757.68

Your faithfully,

Sd/ C. S. Samal,

Excise Commissioner, Government of Tripura."

6. The learned Judge found that the suit having been filed after about 10 years from the date when the right to sue accrued the suit is barred by limitation. Regarding issue No.11, the learned Judge found that there is no provision in section 91 and 92 in West Bengal Excise Act so as to exclude the jurisdiction of the Court in trying the suit. That in view of the decision on limitation the suit was dismissed. Hence this appeal.

7. I have heard Shri S. Deb, learned Senior Advocate for the appellant and Mr. UB Saha, learned Govt Advocate for the respondents. Shri Deb submits as follows:

- (i) That the decision on the question of limitation is erroneous.
- (ii) That there was an acknowledgement of the dues of the plaintiffs and there existed a relationship between the parties as debtor and creditor and in view of the matter, the suit ought not to have been dismissed. Both the parties cited the following decisions in support of their rival contentions :

(a) AIR 1967 SC 935 (Tilak Ram & others vs. Nathu & others). There, reliance was placed on four statements for the purpose of saving the limitation and it was alleged that they were acknowledgements within the meaning of section 19 of the Limitation Act, 1908. The Court after considering a large number of decisions, finally relied on AIR 1961 SC 1236 (SF Mazda vs. Durga Prasad) and laid down the law as follows :

"Nevertheless, the statement on which a plea of acknowledgement is based must relate to a subsisting liability. The words used in the acknowledgement must indicate the jural relationship between the parties and it must appear that such a statement is made with the intention of admitting that jural relationship. Such an intention, no doubt, can be inferred by implication from the nature of the admission need not be in express words, it was then observed :

If the statement is fairly clear then the intention to admit the 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.

The Court also observed that stated generally the Courts leaned in favour of a liberal construction of such statements though that would not mean that where no admission was made one should be inferred or where a statement was made clearly without intending to admit the existence of jural relationship such an intention would be fastened on the maker of the statement by an involved or a farfetched process of reasoning Similarly, while dealing with an admission of debt, Fry LJ in *Green vs. Humphreys*, (1884) 25 Ch. D 481 observed that an acknowledgement would be an admission by the writer that there was a debt owing by him either to the receiver of the letter or to some other person on whose behalf the letter was received but that it was not enough that he referred to a debt as being due from some body. In order to take the case put of the statute there must, upon a fair construction of the letter read by the light of the surrounding circumstances, of an admission that the writer owed" the debt."

(b) (1979) 4 SCC 176 (Madras Port Trust vs. Hymanshu International by its proprietor) wherein the Supreme Court pointed out as follows :

"The plea of limitation based on this section is one which the Court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that Governments and public authorities adopt the practice of not reiving upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizen. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is welf founded, it has to be upheld by the Court but what we feel is that such a plea should not ordinarily be taken up a Government or a public authority, unless of course the claim is not well founded and by

reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable."

(c) (1991) 1 GLR 223 (Umesh Chandra Chakraborty vs. United Bank of India) [1991 (1) GLJ 150] wherein the Single Judge this Court laid down the law as follows:

"Under subsection (3) of section 25 of the Contract Act a written promise to pay debt barred by limitation law is a contract constituting a new cause, of action which can form a basis for a suit by the creditor. As regards the old debt, limitation bars the remedy, but does not extinguish the debt and, therefore, the old debt may be, or may not be revised. It depends upon the terms of the agreement. The distinction between section 18 of the Limitation Act and subsection (3) of section 25 is that in case of section 18, the written acknowledgement of liability must be made before the expiration of period of limitation for a suit, and the promise under subsection (3) of section 25 may be made after the expiration of period of limitation."

(d) (1993) 1 SCC 572 (Binod Bihari Singh vs. Union of India) wherein the Supreme Court laid down the law as follows :

"That it may not Be desirable for the Government or the public authority to take shelter under the plea of limitation to defeat a just claim of a citizen. But if a claim is barred by limitation and such plea is raised specifically the Court cannot straightway dismiss the plea simply on the score that such plea is ignorable. A bar of limitation may be considered even if such plea has not been specifically raised. Limitation Act is a statute of repose and bar of a cause of action in a Court of law which is otherwise lawful and valid, because of undesirable lapse of time as contained in the Limitation Act, has been made on a well accepted principle of jurisprudence and public policy."

8. Acknowledgement is section 18 of the Limitation Act, 1963 5" (corresponding section was 19 of the Act, 1908).

9. An acknowledgement in order to save limitation can only be useful if it is made before the expiry of the limitation. If there is a acknowledgement by letter, the suit filed within 3 (three) years of the date of acknowledgement would be in time. The section will apply even where the admission is conditionally made provided that the conditions are fulfilled. This section operates to create a new period of limitation by means of acknowledgement made during the time when the cause of action for recovery of a debt or the enforcement of a right is still subsisting. It does not cover cases where the old debt is extinguished and the new contract is entered into. The renewal of a debt barred by limitation is provided by section 25 of the IndianContract Act. Some statement expressing jural relationship between the parties does not constitute acknowledgement. The statement to fall within acknowledgement must show that it was made with the intention of admitting such jural relationship subsisting at the time when it was made. The word acknowledgement appearing in the section can only mean an

admission of the truth of one's own liability. Such admission may be express or implied. An acknowledgement which contains a promise to pay even by implication is an agreement and it creates a new right of action on which a suit can be filed. The function of the section is to provide a later date to count the period of limitation afresh and that fresh period of limitation will be computed from the time when the acknowledgement is signed. The object is to postpone the date of reckoning limitation and not to create a different substantive period of limitation. Though an acknowledgement may not specify other legal consequence thereof, it has to be "unconditional one from which an absolute promise to pay the specific debt can be inferred or if the promise to pay is conditional one, there should be evidence that the conditions have been performed.

10. In the instant case as well as seen from the letter dated 24th March, 1977 quoted above that this acknowledgement was not made in time ie during the subsistence of the liability of the defendant to pay the debt. The liability of the defendant to pay the amount arose in 1970 when the licence was withdrawn but the so called acknowledgement was made in the year 1977. Further it is also conditional with a rider that this is subject to any amount due from the plaintiff and in the written statement it has been claimed that such acceptance was provisional and it was subject to settlement with regard to the money to which the Govt. is entitled.

11. It appears that the plaintiff was in deep slumber from 1970 and they filed the suit on 23.5.80 after 10 years from the date of withdrawal of the licence. It also appear that the plaintiffs earlier filed a writ application and that having been dismissed, the plaintiff went to the Supreme Court and that also was dismissed and thereafter, the plaintiffs took resort to this section by filing a suit to realise the money.

12. From all these I find that the decision of the trial Court on the question of limitation is a correct decision and no interference is called for. Accordingly, this appeal is dismissed. However, I leave the parties to bear their own costs.