
(1959) 09 MAD CK 0030
In the Madras High Court
Case No : Appeal No. 447 of 1955

A.R.G.B. Balagurumurthy Chettiar and Others	APPELLANT
Vs	
Ranganayaki Ammal and Others	RESPONDENT

Date of Decision : 24-09-1959

Acts Referred:

Limitation Act, 1963 — Article 60

Citation : AIR 1960 Mad 264 : (1960) ILR (Mad) 300 : (1960) 73 LW 67 : (1960) 2 MLJ 48

Hon'ble Judges : P.V. Rajamannar, C.J; Ganapatia Pillai, J

Bench : Division Bench

Judgement

(1) The only question raised in this appeal is that the plaintiff's suit is barred by time. The suit was for recovery of a sum of Rs.7,077-2-6 in the following circumstances. It is common ground that the plaintiff deposited sums of money with the defendants' family firm doing business in the name and style of A. R. G. Balarama Chettiar Sons with first defendant as Manager sometime in 1943 and 1944. The plaintiff was an employee of the defendant firm and apparently the amounts were deposited in his capacity as an employee. The plaintiff left the service of the defendant firm in or about February 1951. On 18-2-1951 the first defendant on behalf of the family firm passed a letter to the plaintiff in the following terms: "On 13-4-1950 there is a credit of Rs. 7,244-1-3 in your name in our accounts". The plaintiff alleged that subsequent to the letter the defendants paid on different dates sums of money aggregating to Rs. 1,400 and there was still a sum of Rs. 7,077-2-6 due to him and in spite of repeated demands the defendants had not chosen to pay him the amount. The plaintiff issued a notice through his lawyer making a demand but the defendants refused to

receive the notice. The suit was filed on 31-3-1953. The main plea in the written statement was the bar of limitation. The defendants pleaded that limitation would run from date of the deposit and as the suit had been laid several years after the three years period of limitation, it was barred.

Referring to the letter dated 18-2-1951, which was admitted, the defendants contended that it did not save limitation as it was not an

acknowledgment of liability. At best it was a recital of fact alleged to exist on 13-4-1950 in the accounts. The learned Subordinate Judge of

Coimbatore held that the suit claim was not barred by limitation. He applied Art. 60 of Schedule 1 of the Limitation Act. He placed reliance on the

acceptance by the defendants of the fact of deposit in 1943 and 1944 and evidently the learned Judge was of the opinion that the demand by the

plaintiff was made only within three years from the date of the suit, apparently referring to the notice before suit.

(2) It is quite true, as learned counsel for the defendants appellants contends, that the reasoning of the learned Subordinate Judge is neither clear

nor unassailable. But on the evidence of the plaintiff it appears to us that the case might be brought under Art. 60, because the plaintiff who alone

gave evidence in the case deposed that the money was deposited as directed by the defendants and at the end of the year when he asked the first

defendant to pay interest on the sum he was told that interest would be added to the sum and both principal and interest would be paid next year.

So there was a deposit with an agreement that it was re-payable on demand. According to the plaintiff, by common consent the deposit was

allowed to continue till February 1951 when the defendants passed the letter above mentioned, to inform the plaintiff the exact amount which was

to the credit of the plaintiff in their accounts. There is no evidence of any refusal on the part of the defendants to pay the plaintiff the amount

deposited by him with interest

Indeed the only refusal can be said to be when they refused to receive the notice of demand issued by the plaintiff through his lawyer before the

institution of the suit. The suit was filed within three years of the date of the refusal of this notice. None of the defendants gave evidence that at any

time the firm refused to pay the amount deposited by the plaintiff. Indeed the plaintiff's statement stands uncontradicted that subsequent to

February 1951 he was being paid amounts aggregating to Rs. 1,400 towards the amount payable under the deposit. The defendants did not produce their accounts. In the absence of such account we must accept the plaintiff's case both as regards the nature of the deposit and the amounts standing to the plaintiff's credit in 1950 and the payment of Rs. 1,400 towards the amount deposited and interest thereon. The suit was therefore not barred by limitation.

(3) Even assuming that Art. 60 did not apply, then the only other article which can apply is Art. 120, the residuary article and that provides a period of six years from the date when the right to sue accrues. It appears to us reasonable to hold that in the case of money deposited the right to sue will not arise till there has been a demand and a refusal. Otherwise even though by common consent money is allowed to be in deposit for a period exceeding six years it would be open to the person with whom the money is in deposit to plead the bar of limitation when there is a demand to be paid back the amount. It is impossible to subscribe to such an astounding proposition. If Art. 120 is the article which applies, then we hold the right to sue accrued only when the defendants refused to accept the notice issued by the plaintiff through his lawyer. The suit was therefore well within time. In the result the appeal fails and is dismissed with costs.

(4) Appeal dismissed.