
(2015) 09 TP CK 0032
In the Tripura High Court
Case No : Regular Second Appeal 14 of 2011

Ayub Ali	Vs	APPELLANT
The State of Tripura and Others		RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 80
Limitation Act, 1963 — Section 18

Citation : (2015) 09 TP CK 0032

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : Somik Deb, for the Appellant; G.S. Bhattacharjee, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J—This second appeal under Section 100 of the Code of the Civil Procedure is directed against the judgment and decree dated 09.11.2010 passed by the learned District Judge, South Tripura, Udaipur, in Money Appeal No. 01 of 2010 where-under the learned District Judge has upheld the judgment and decree of dismissal dated 25.05.2010 passed by learned Civil Judge, Jr. Division, Udaipur, South Tripura in Money Suit No. 01 of 2009.

2. The second appeal has been admitted for hearing on the following substantial questions of law:--

"(i) Whether the learned courts below committed error by failing to hold that the letter dated 15-3-06 (Exhibit-6) issued by the respondent No. 2 was an acknowledgement within the meaning of Section 18 of the Limitation Act?

(ii) Whether the learned courts below committed error by dismissing the suit on the ground of limitation by holding that there was no acknowledgment within the meaning of Section 18 of the Limitation Act?"

3. Heard learned counsel Mr. Somik Deb for the appellant and learned counsel

Mr. G.S. Bhattacharjee for the respondents.

4. The appellant as plaintiff instituted Money Suit No. 01 of 2009 in the Court of Civil Judge, Jr. Division, Udaipur seeking decree for realization of money amounting to Rs. 79,999/- with interest from the defendants. The plaintiff, inter alia, contended that he maintains a business of supplying motor parts and fitting, fixing and repairing of vehicles at Brahmma Bari Udaipur in the name and style "Ali Engineering Workshop". On 15.01.2003 defendant No. 3 appeared in his workshop and entered into an oral agreement for supplying of motor parts as well as fitting, fixing and repairing of vehicles of 5th Bn. TSR. Pursuant to that oral agreement, the defendant No. 3 time to time issued 35 Nos. of supply orders and during the period from 25.01.2003 to 16.08.2003 the plaintiff supplied various motor parts and also done maintenance works of the vehicles of defendant No. 3. He submitted 58 Nos. of bills amounting to Rs. 79,999/-, but in spite of repeated claims, bills were not paid and it was kept pending. By writing a letter dated 25.08.2003 the defendant No. 3 invited the plaintiff to attend his office with all records and accordingly the plaintiff attended the office of the defendant No. 3 on 30.08.2003 and after examining all records defendant No. 3 made a commitment that the payments of those bills will be made within 31.03.2004. As per that commitment bills were not paid. So the plaintiff through his engaged counsel issued a notice on 19.01.2007 under Section 80 of CPC. The defendants through Assistant Inspector General of Police by writing a letter dated 15.03.2007, in response to that notice under Section 80 CPC, declined to make payment of the bills on different grounds. The plaintiff, thereafter instituted the suit on 15.01.2009.

5. The defendant-respondents by filing a common written statement denied the averments made in the plaint and contended that there was no such oral agreement between the plaintiff and defendant No. 3 and that the plaintiff was not entitled to get the payment of the bills claimed by him. It was also contended that the suit was barred by limitation.

6. The trial Court framed 5 issues namely--

"1. Whether the plaintiff has cause of action in his favour?

2. Is the suit barred by limitation?

3. Had there been any valid oral agreement in between the plaintiff and the defendant No. 3 on 15.01.03 A.D. for maintenance of motor vehicles?

4. Is the plaintiff entitled to get decree as prayed for?

5. To what other relief/reliefs the parties are entitled to?"

7. Issue Nos. 1 and 3 were decided in favour of the plaintiff but issue No. 2 was decided by the trial Court against the plaintiff and hence, the suit was dismissed.

8. Aggrieved the plaintiff preferred Money Appeal No. 01/2010 and by the impugned judgment dated 09.11.2010, the appeal has been dismissed.

9. Learned counsel Mr. Deb appearing for the plaintiff-appellant has urged that the trial Court and the appellate Court failed to construe the provision of Section 18 of the Limitation Act and thereby arrived at a wrong finding. He has further contended that the trial Court did not at all consider Section 18 while deciding issue No. 2. The first appellate Court considered Section 18 of the Limitation Act but in a negative sense and thereby arrived at a wrong finding. According to Mr. Deb, learned counsel for the appellant, the limitation started running from 01.04.2004 as stated by the trial Court while deciding issue No. 2 and so, the limitation would expire after 3 years i.e. 31.03.2007. The plaintiff issued notice on 19.01.2007 and the notice was replied by the defendants on 15.03.2007. So the plaintiff will get a fresh period of limitation from 15.03.2007 in view of the explanation (a) to Section 18 of the Limitation Act. According to Mr. Deb, the reply to the notice i.e. Exbt. 6 clearly contemplates a jural relation between the plaintiff and defendants regarding the acknowledgment of liability by the defendants and so, the period of limitation shall start running afresh from 15.03.2007.

10. On the contrary, Mr. Bhattacharjee, learned counsel for the respondents submitted that the period of limitation shall start running afresh only in the event of an acknowledgement of liability in writing as contemplated in Section 18 of the Limitation Act. By writing Exbt. 6 in response to Exbt. 5 (notice under Section 80 CPC), the defendants denied the liability and so the period of limitation cannot be held to be extended and so the trial Court as well as the appellate Court rightly dismissed the suit on the point of limitation.

11. While deciding issue No. 2, the trial Court did not consider Section 18 of the Limitation Act. The trial Court in view of the pleading of the plaintiff as contained in Para 8 of the plaint that defendant No. 3 promised to make payment within 31st day of March 2004 has held that the right to sue accrued on 1st day of April, 2004. But the appellate Court has arrived at a contrary finding. The appellate Court has held that the plaintiff supplied the goods during the period from 25.01.2003 to 16.08.2003 as clearly stipulated in the plaint. So as per Article 14 of the Limitation Act the period of limitation shall start from the date of delivery of the goods.

The appellate Court in Para 16 and 17 of the judgment observed thus:--

"16. Exhibit-6 series shows that, AIGP vide reply dated 15.03.2007 refused to make any payment to the plaintiff-appellant. In this reply, there is no acknowledgement of any liability to make any payment so as to extend the benefit of Section 18 of the Limitation Act, are that, there has to be a valid acknowledgement in writing of a subsisting liability; his acknowledgment has to be before the expiration of the prescribed period for a suit. In that event a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

17. In the case at hand, the plaintiff-appellant allegedly delivered motor parts

during the period 25.01.2003 to 16.08.2003. Exhibit-6 series i.e. the reply of legal notice by the defendant-respondent was signed on 15th March, 2007, i.e. not before expiration of the prescribed period of 3 years and also do not contain any sort of acknowledgement of liability. Meaning thereby, the plaintiff-appellant by delivering a legal notice after expiry of the period of limitation, cannot get the period of limitation extended. Hence, I do not find any reason to interfere with the finding of the Learned Trial Court in Issue No. 2 by which Learned Trial Court was pleased to decide that the suit was barred by limitation."

12. To decide the substantial questions of law formulated in this appeal and to consider the submission of learned counsel of both sides, let us first reproduce here for ready reference Section 18 of the Limitation Act which reads as follows:--

"18. Effect of acknowledgment in writing.--

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.--For the purposes of this section,--

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

13. It is the clear case of the plaintiff that the defendant No. 3 entered into an oral agreement with him on 15.01.2003 to supply motor parts as well as maintenance and repairing works of the vehicle of defendant No. 3 and pursuant to that oral agreement the defendant No. 3 issued 35 Nos. of supply orders and the plaintiff supplied different articles during the period from 25.01.2003 to 16.08.2003. There is no pleading of the plaintiff that there was a fixed period of credit. So according to law the claim for price of the goods supplied by the plaintiff shall run from 17.08.2003 and indisputably the period is of 3 years. The

plaintiff did not institute the suit within the period of 3 years from the date of the supply made pursuant to the alleged supply orders. The plaintiff pleaded that the defendant No. 3 by a letter dated 25.08.2003 asked the plaintiff to meet him with all papers and accordingly the plaintiff met the defendant No. 3 on 30.08.2003 and it is pleaded by the plaintiff that on that day defendant No. 3 promised him to make payment by 31st March, 2004. That date of commitment alleged to have made by defendant No. 3 cannot be the date of cause of action for recovery of money towards price of goods. That commitment even if accepted as made by defendant No. 3 cannot be termed as an acknowledgement of liability since it is not in writing and signed by the defendant No. 3. So the observation of the trial Court that the limitation started running after 31.03.2004 was not correct and the appellate Court rightly held that the limitation shall run from the date the last supply was made pursuant to the alleged oral agreement. Learned counsel Mr. Deb has made his submission on the point of limitation taking into consideration that the limitation started running from 01.04.2004 since the commitment of payment made by defendant No. 3 was made within 31.03.2004. That submission of learned counsel Mr. Deb is not acceptable and therefore, the submission that limitation would expire on 31.03.2007 is not acceptable.

14. The plaintiff issued the notice on 19.01.2007 under Section 80 CPC through his engaged counsel and the notice is proved as Exhibit-5. It is an admitted position that notice was replied by Asstt. Inspector General of Police on behalf of the defendants by writing letter dated 15.03.2007 (Exbt. 6). The said reply i.e. Exbt. 6 reads as follows:--

"To Shri Narayan Naha, Ld. Advocate, South District Bar Association, Udaipur.

Subject:-- Reply on the Demand Notice dated 19-1-2007 served on behalf of Ayub Ali, Proprietor of M/S Ali Engineering, Udaipur.

Sir,

Please refer to the subject cited above.

2. As requested by the Home Department, I like to inform you that, the Demand Notice served by you was duly received and on scrutiny of records of the concerned unit and as per report, the following facts came to the light.

Para-(a):

No genuine bill of the claimant is pending with the Office of the Commandant, 5th Bn. TSR.

Para-(b):

1. The claimant has mentioned 38 (thirty eight) Nos. of supply orders of different dates, but he mentioned only one File number of M.T. Section of the aforesaid office without showing any dispatch number.

2. Bills claimed are based on supply order issued by unauthorized person and without dispatch number which cannot be entertained by any govt. institution. The copy of the Supply Orders which is mentioned by the claimant is not available in the aforesaid office. Moreover, on physical checking of the dispatch register for that period and the dispatch numbers on the corresponding dates are not found, as reported.

3. It is also reported that, the claimant furnished 60(sixty) Nos. of bills whereas he stated that he supplied the spare parts in respect of 36 (thirty six) Nos. of supply order, but he did not mention any corresponding supply orders against the bills submitted by him.

4. No date and no "Office Received seal" are found on the body of the bills and it is not clear who received the same.

5. No documents are enclosed with the bills except one copy of the challan which was also signed by the unauthorized person like drivers/Class-IV employees.

Para-(c):--

Commandant of a Battalion changes room time to time, so verbal assurance given by the ten authority should be regularized at that time.

Para-(d):--

Without confirmation about the genuineness of the bills and without observing official procedure, no Government office is able to make payment of a bill.

3. On the above mentioned facts and circumstances the claim made by your client can not be considered.

This is for information please.

Yours faithfully,

(B.K. Ray) Assistant Inspt. Genl. of Police (HQs), For Director General of Police, Tripura"

15. Learned counsel Mr. Deb referring to the above letter has submitted that there is no clear acknowledgement of the liability but since there is a refusal to make payment it also amounts to acknowledgement of liability and further it shows a jural relationship between the plaintiff and the defendants. He has referred the case of Food Corporation of India Vs. Assam State Cooperative Marketing and Consumer Federation Limited and Others, (2005) 140 PLR 541 : (2004) 9 SCALE 25 : (2004) 12 SCC 360 : (2005) 1 UJ 205 . We may gainfully refer here para 14, 15 and 16 of the judgment which reads as follows:--

"14. According to Section 18 of the Limitation Act, an acknowledgement of liability made in writing in respect of any right claimed by the opposite party and signed by the party against whom such right is claimed made before the expiration of the prescribed period for a suit in respect of such right has the

effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed. It is well-settled that to amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication.

15. The statement providing foundation for a plea of acknowledgement 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. The words used in the acknowledgement must indicate the existence of jural relationship between the parties such as that of debtor and creditor. The intention to attempt such jural relationship must be apparent. However, such intention can be inferred by implication from the nature of the admission and need not be expressed in words. A clear statement containing acknowledgement of liability can imply the intention to admit jural relationship of debtor and creditor. Though oral evidence in lieu of or making a departure from the statement sought to be relied on as acknowledgement is excluded but surrounding circumstances can always be considered. Courts generally lean in favour of a liberal construction of such statements though an acknowledgement shall not be inferred where there is no admission so as to fasten liability on the maker of the statement by an involved or farfetched process of reasoning. (See : Khan Bahadur Shapoor Freedom Mazda Vs. Durga Prosad Chamarla and Others, AIR 1961 SC 1236 : (1962) 1 SCR 140 and Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd., AIR 1971 SC 1482 : (1971) 1 SCC 67 : (1971) 2 SCR 623 . So long as the statement amounts to an admission, acknowledging the jural relationship and existence of liability, it is immaterial that the admission is accompanied by an assertion that nothing would be found due from the person making the admission or that on an account being taken something may be found due and payable to the person making the acknowledgement by the person to whom the statement is made.

16. The two letters dated 29/03/1977 and 30/07/1977(Exhibits 8 and 9) clearly acknowledge the amount of Rs. 2 crores having been received by the Federation from the Food corporation of India whether by way of advance or by way of deposit. The letters also indicate that the amount of two crores was by way of advance or deposit against paddy procurement. This is admission of jural relationship of buyer and seller which stood converted into relationship of creditor and debtor on the failure of the principal transaction. However, the acknowledged liability is sought to be disowned by submitting that on an account being taken nothing would be found due and payable by the plaintiff to the Federation. Disputing the liability to repay the amount acknowledged to have been received does not dilute the fact of acknowledgement in so far as Section 18 of the Limitation Act is concerned. The two letters have the effect of extending the period of limitation prescribed for filing the suit and calculated from the date of the latter of the two letters i.e. 30-07-1977, the suit filed on 30-05-1980 was well within the period of limitation."

16. In my considered opinion the ratio of this judgment cannot help the case of the plaintiff. Learned counsel Mr. Deb contended that if explanation (a) to Section 18 is clearly read it will be evident that an acknowledgement may be sufficient even if it is accompanied by refusal to pay etc. I am of considered opinion that there must be an acknowledgment of liability at first and after such acknowledgement of liability even if the refusal is made to pay, deliver, perform or permit to enjoy then also it would be amounting to an acknowledgment of liability.

A reading of Exbt. 6 no doubt contemplates that there was a jural relationship but the Supreme Court in the case of Prabhakaran and Others Vs. M. Azhagiri Pillai (Dead) by LRs. and Others, AIR 2006 SC 1567 : (2006) 2 CTC 412 : (2006) 5 JT 57 : (2006) 3 SCALE 235 : (2006) 4 SCC 484 : (2006) AIRSCW 1482 : (2006) 3 Supreme 245 has held that a mere reference or description of jural relationship would not be enough, an intention to admit the jural relationship, over and above a mere reference or description of the jural relationship, must be evident from the statement in question for it to amount to an "acknowledgment" within the meaning of Section 18.

We may gainfully refer here Para 21 of the judgment which reads as follows:--

"21. There is no difficulty in holding a statement to be an "acknowledgement" under section 18, where the mortgagee makes a direct admission that he is liable to deliver back possession to the mortgagor or that the mortgagor has the right to redeem the property from the mortgage. But when there is no direct admission, but an acknowledgement is to be implied from an admission of jural relationship, we have noticed some confusion in the decisions rendered, as to what is an "admission of jural relationship". The term "jural" means "legal" or "pertaining to rights and obligations". "Jural relationship between parties" means legal relationship between parties with reference to their rights and obligations. In a mortgage, both the mortgagor and the mortgagee, have certain rights and obligations against each other. The rights/obligations of a mortgagor or a mortgagee co-exist, like the two sides of a coin. The mortgagor's right of redemption is coextensive with the mortgagee's right of sale or foreclosure (where such right is recognized in law). Any statement by either, admitting the jural relationship with the other, will extend the limitation for a suit by that other, against the person acknowledging. It follows that when a mortgagee makes a statement about his right to recover the mortgage amount, such statement impliedly acknowledges the corresponding right of redemption of the mortgagor. Further, a statement admitting jural relationship, need not refer to or reiterate the rights and obligations flowing therefrom. Where a party to the mortgage, by his statement, admits the existence of the mortgage or his rights under the mortgage, he admits all legal incidents of the mortgage including rights and obligations of both parties, that is mortgagee and mortgagor."

17. In the case of State of Kerala Vs. T.M. Chacko, (2000) 7 JT 594 : (2000) 9 SCC 722 , the Supreme Court has held that acknowledgment can be inferred if

necessary facts constituting the liability are admitted. After referring Section 18 of the Limitation Act in Para 7 of the judgment, the Supreme Court in Para 8 and 10 of the judgment has observed thus--

"8. From a perusal of sub-section (1) of Section 18 it is evident that to invoke this provision:

- (1) there must be an acknowledgement of liability in respect of property or right;
- (2) the acknowledgement must be in writing signed by the party against whom such right or property is claimed (or by any person) through whom he derives his title or liability; and
- (3) the acknowledgement must be made before the expiration of the period prescribed for a suit or application (other than application for the execution of a decree) in respect of such property or right.

The effect of such an acknowledgement is that a fresh period of limitation has to be computed from the time when the acknowledgement was so signed.

10. It may be noted that for treating a writing signed by the party as an acknowledgement, the person acknowledging must be conscious of his liability and the commitment should be made towards that liability. It need not be specific but if necessary facts which constitute the liability are admitted an acknowledgement may be inferred from such an admission."

18. In the case at hand, the plaintiff instituted the suit on 15.01.2009. According to him pursuant to oral agreement dated 15.01.2003 he supplied goods to the defendant No. 3 during the period from 25.01.2003 to 16.08.2003 in compliance of 35 Nos. of supply orders. There is no pleading or evidence that there was any fixed period of credit agreed between the plaintiff and the defendant No. 3. So the payment was due from the date the supply was made or at least from the date the last supply was made i.e. 16.08.2003. So, the limitation of 3 years shall start running from 17.08.2003 to file the suit for recovery of the amount claimed by the plaintiff. Because of the promise alleged to have made by defendant No. 3 on 30.08.2003 that the payment will be made within 31st March, 2004, the period of limitation cannot get fresh breathe to start running from 01.04.2004 i.e. after 31.03.2004. Learned counsel Mr. Deb concentrated his argument taking into account the date 01.04.2004 and according to him the limitation started to run from 01.04.2004 but that argument is not acceptable. The plaintiff issued the notice through his Advocate on 18.01.2007 (Exbt. 5) and the notice was replied on 15.03.2007. It is, therefore, evident that the notice under Section 80 of CPC was issued after expiry of 3 years from the date the supply was last made. Had the notice was issued within the period of limitation of 3 years from the date of last supply was made, the plaintiff would have a case otherwise to argue. Since the plaintiff did not take any step within 3 years from the date the last supply was made pursuant to supply orders, alleged to have issued by the defendant No. 3, the suit instituted by the plaintiff is rightly held to be barred by limitation.

19. The appeal, therefore, is found to be devoid of any merit and hence stands dismissed.

20. Send down the L.C. records along with a copy of this judgment.