

(2001) 08 OHC CK 0006
In the Orissa High Court
Case No : First Appeal No. 133 of 1993

Baladev Raj Agarwal alias Baldev Agarwal	APPELLANT
Vs	
State Bank of India and Others	RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Contract Act, 1872 — Section 25, 25(3)
Limitation Act, 1963 — Section 29

Citation : (2004) 4 BC 416 : (2002) 1 CivCC 300 : (2001) 92 CLT 779 : (2001) 2 OLR 398

Hon'ble Judges : L. Mohapatra, J;B. Panigrahi, J

Bench : Division Bench

Advocate : N.C. Pati, S. Ratho, A.K. Mishra and A.K. Sahoo, for the Appellant;
P.V. Ramdas and P.V. Balakrishna Rao, for the Respondent

Final Decision : Dismissed

Judgement

B. Panigrahi, J.—This appeal assails the propriety of the judgment and decree passed in Money Suit No. 66 of 1988 of the Court of the Subordinate Judge, Balangir.

2. The respondent-State Bank of India had advanced an amount of Rs. 98,000/- to the appellant as medium term loan for purchasing a truck. The defendant-appellant as well as, the guarantor agreed to repay the loan to the State Bank of India in 36 instalments at the rate of Rs. 2.750/- per mensem along with interest at the rate of 13 per cent per annum with quarterly rest. But the appellant as well as the guarantor did not repay the money, in the meanwhile, plaintiff-Bank allowed the claim to be barred by limitation. After the claim was barred by limitation, the appellant approached the Bank for executing a deed of acknowledgment in their favour and on the basis of the deed of acknowledgment, the plaintiff-respondent filed the suit for recovery of Rs. 2,15,645.84 p.

3. The learned counsel appearing for the appellant has contended that since the

suit was originally barred by limitation, by executing a deed of acknowledgement on 4-10-1985 the limitation to file the suit could not have, been saved and for that reason the judgment and decree passed by the trial court is not valid in law. It has been further contended that in case the question of limitation is decided against the appellant, then he should be allowed some easy instalments to clear up loan dues.

Mr. Ramdas, learned senior Advocate appearing for the Bank has submitted that by virtue of Section 25(3) of the Contract Act, if the borrower undertakes and acknowledges to pay the time-barred debt, it would also save the limitation and the period of filing of the suit would commence from the date of such acknowledgement.

4. While appreciating the contention of Mr. Ramdas, we feel it appropriate to quote the relevant portion of Section 25 of the Contract Act:

"25. Agreement without consideration void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.-

An agreement made without consideration is void, unless-

... ..

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.-- Nothing in this Section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.-- An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent to the promisor was freely given."

While considering the question of limitation, we also take into consideration the provision of Section 29 of the Limitation Act in which Section 25 of the Contract Act is an exception. Therefore, in the aforesaid back-drop of the case, on careful consideration of the points raised by the learned counsel for appellant, we find that if the borrower acknowledges his debt, then u/s 25 of the Contract Act, the period for filing the suit is saved and it would commence from the date of such acknowledgement. We also derive support from the judgment reported in 41(1975) C.L.T. 506 (Nimma Chitti Appayamma v. P. V, Narasimham). An identical question was considered by the learned Single Judge of this Court (Mr. S. K. Ray, J-- as his Lordship then was) who held as follows :

"6. The next question which has been raised is whether the Ext. 1 was for consideration or not. The recital of Ext. 1 clearly indicated that it was executed in respect of the past liability of defendant's husband. Thus, the transaction on the basis of Ext. 1 is a loan as defined in Orissa Money Lenders Act and could be enforced against the defendant in the same manner as the old pronote executed by Jagannathayya could have been enforced on his death, against her. The debt of Jagannathayya was incurred in the year 1956 and there being no evidence on record to show that it was kept alive till 1964 when Ext. 1 is executed, transaction under Ext. 1 must necessarily be taken to be a transaction in respect of a barred debt. But Ext. 1, being a promise in writing and signed by the defendant to pay wholly or in part a debt of which the creditor might have enforced payment but for the law of limitation, constitutes an enforceable agreement. This is borne out by Section 25(3) of the Indian Contract Act which runs as follows :--

"25. An agreement made without consideration is void unless-

(3) it is a promise made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt which the creditor might have enforced payment but for the law for the limitation of suits."

In order to satisfy this provision of law,

(a) there must be a "promise" to pay a debt,

(b) there must be a debt of which the creditor might have enforced payment but for the law for the limitation of suits,

(c) the promise must be made in writing,

(d) the writing must be signed by the person to be charged therewith or by his agent generally or specially authorised on his behalf.

"If these conditions are Satisfied, then the "promise" becomes a contract, though there may not be any consideration for it. There is evidence in the case that there was a demand made by plaintiff for the payment of his money advanced to the defendant's husband and acknowledgement made by the defendant and her power of attorney holder. Veeraswamy, on examination of the Jagannathayya's account, of liability to the tune of Rs. 4000/- only and that the plaintiff having become willing to settle his account for that sum, Ext. 1 was accordingly written and executed by defendant. Thus, it is clear that Ext. 1 is a promise made in writing and signed by the defendant to pay part of the debt of Jagannathayya, her husband to the plaintiff who might have enforced her husband's debt against her but for the law of limitation. Therefore, even though there may not be any consideration for Ext. 1, it could nevertheless be enforced against the defendant. There are authorities in support of this view in the case of *Sriram Arjundas Vs. Governor General in Council*, and *K.K. Rm. Muthayee Achi (died) and Another Vs. A.K. Rm. S. Rm. Sabbiah Chettiar and Another*, .

Mr. Murty has cited *Perumayammal v. Chinnamal*: I. L. R. 1967 Mad. 189, in support of his stand that the plaintiff could not rely on Section 25(3) of the Indian Contract Act. That was a case where wife executed the pronote in favour of the plaintiff in renewal of one executed by her husband. By the time of execution of the pronote her husband was alive and the promissory note was executed by the wife in her personal capacity. In that case, their Lordships said that wife had no liability for the debt of her husband on the date she executed the pronote. Accordingly, Section 25(3) of the Indian Contract Act was not attracted. I think the decision is correct and is inapplicable to the present case. Here, the defendant's husband was dead and Ext. 1 was executed by defendant undertaking liability to pay her husband's debt which could have been enforced against her but for law of limitation.

XX XX XX"

We, therefore, following the aforesaid judgment of this Court, hold that the suit filed by the respondent-Bank was well within time.

5. Since no other point was canvassed before us, we, therefore, dismiss the appeal with a direction that the decretal amount be paid in thirty-six equal monthly instalments, deducting the amount, if any, already paid by, the appellant. In case the appellant defaults in paying any four consecutive instalments, it would be open for the decree-holder Bank to realise the entire balance decretal dues at a time by putting the decree to execution. With the aforesaid observation, the appeal is dismissed with costs.

L. Mohapatra, J.

I agree.

6. Appeal dismissed.