
(1967) 01 MP CK 0018
In the Madhya Pradesh High Court
Case No : First Appeal No. 49 of 1962

Balchand Champalal Bhandari	Vs	APPELLANT
India Pictures and Others		RESPONDENT

Date of Decision : 03-01-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, Order 6 Rule 7
Limitation Act, 1963 — Section 12, 20

Citation : AIR 1967 MP 280 : (1971) ILR (MP) 529

Hon'ble Judges : M.A. Razzaque, J; A.R. Krishnan, J

Bench : Division Bench

Advocate : W.Y. Pande, for the Appellant; S.L. Garg, for the Respondent

Final Decision : Allowed

Judgement

1. This is an appeal by the plaintiff from the decision of the trial Court holding that, while he has proved all the elements necessary for obtaining the money decree sought against the defendants, his suit fails all the same, on the ground of limitation, because even using the giving of cheques as step-in-aid of limitation, the starting point of the new term of limitation would be the date on which the cheques were actually handed over, and not the later one on the "post-dated" cheques. The questions for decision are the following: (1) First, what has been raised during this appeal by the respondents, namely, whether the appeal itself is time barred the appellant not being entitled to the exclusion of the entire period taken in the preparation of the copy of the judgment and decree. (2) Secondly, whether in the circumstances of the case the trial Court was at all justified in inferring without any pleading in this regard that the three cheques had been post-dated and had been given, two of them Ex. P/1 and P/2 on 7-9-1954 and Ex. P/8 "two days later", that is, on 9-9-1954. (3) Even on the assumption that the cheques were post-dated, whether the trial Court was justified in starting the new term of limitation not from the date on the cheques themselves, but on the dates they were found to have been handed over, thus

applying with a very material variation, the principle in a decision of a single Bench actually presided over by one of us, reported in *Gorilal Baldeodas Vs. Ramjeelal Bhuralal*, a case in which this question did not arise and the date of handing over was treated as identical with the date actually on the cheques.

It is not necessary to go into the facts of this case; for one thing, the parties have not pressed them in arguments here; for another, the liability of the defendants on the facts is clear and beyond doubt, the suit being one on the basis of a promissory note executed by both the defendants, the cheques themselves which the plaintiff seeks to use as steps-in-aid, signed by both of them.

2. It is only necessary for the purpose of this appeal to note that on account of the principal and interest on the pro-note the plaintiff had a claim for Rs. 11,875 against the defendants Omprakash and Ramnarayan--partners of a concern doing business under the name of M/s. India Pictures. The details of the transactions leading to this have been set out and in spite of the various arguments made in the trial Court have been proved and have not been seriously challenged in this appeal by the defendant-respondents who have taken a sole stand on limitation. The original loan having been incurred on 16-7-1953 the suit which was filed on 13-9-1957 was apparently timebarred. Accordingly the plaintiff pleaded as steps-in-aid by way of part payment and acknowledgment the passing of three cheques to him, the first dated 15-9-1954 which was cashed and the second and the third respectively dated 11-10-1964 for Rs. 200/- and 7-12-1954 for Rs. 801/- both of which on presentation to the bank were dishonoured. Incidentally I note there were two other payments by cheque; but they relate to earlier dates which are of no consequence in any view of the matter in regard to limitation and will not be referred to again.

3. The defence in the written-statement was that these cheques had not been issued by them paragraphs 8 and 9 of the written-statement being somewhat vaguely worded, so that the effect seems to be that there is a total denial in respect of the first two cheques and in respect of the last, namely, "the one dated 8 (?) 7-12-1954 as being "quite uncollected with the transaction that was the "subject matter of the suit".

"Ees vadgrata lene pete nahi diya".

There is no indication whatsoever that these cheques had been post-dated, and had actually been passed on dates earlier than those mentioned on the cheques themselves. There were, besides, other grounds which it is unnecessary for us to discuss in this appeal because the parties have gone on issue in this court on limitation only.

4. As things shaped in the evidence the plaintiff accepted the suggestion that the three cheques which he is seeking to use as steps-in-aid had been handed over to him "some days before" the dates which they bear; in other words, that they were post-dated. However, examined in 1961 seven years after the passing of

the cheques he was not able to give any idea whatsoever of the exact dates on which he received them. Yet D. W. 2 Laxminarayan was definite that two of the cheques had been issued on 7-9-1954 and the third "some two or three days after 7-9-1954" Support for this theory was found from the evidence of Kaschanlal one of the witnesses on the side of the plaintiff, and the trial Court now proceeded to assess the legal effect of the situation, namely, whether the passing of the cheques--one honoured and two dishonoured--was equivalent to part payment or acknowledgment in the writing of the debtor for the purposes of Section 20 of the Limitation Act, Having found that it was, on the strength of ruling of this Court in Gorilal Baldeodas Vs. Ramjeelal Bhuralal, it went on further to decide whether the starting points for the fresh term of limitation were the dates on the cheques themselves, or whether it was the dates on which on oral evidence the Court found that these cheques, post-dated as they were, had actually been handed over to the plaintiff.

It proceeded to apply the principles in the ruling already referred to to the situation understanding the "date of giving the cheque mentioned there as applicable to the date of handing over of a post-dated cheque, as distinguished from the date on the cheque itself though in that case this question did not arise. This refinement between the actual date of handing over and the date on the face of the post-dated cheque has been made in the Punjab ruling reported in Mangat Ram Shiv Nath Vs. Mange Lal Om Parkash, which, otherwise lays down the principle that the passing of a cheque generally speaking is equivalent to an acknowledgment. In that ruling this principle has been followed, and naturally, the Punjab ruling approved for that purpose without any reference to this distinction. Unfortunately, the trial Court assumed that this distinction had also been approved by this Court in the said ruling though the problem did not arise there. The result was that having found that the new term of limitation had started on 7-9 and 9-9-1954 respectively, and not on the actual dates on the face of the cheques, it came logically to the conclusion that the suit filed on 18-9-1957 was time barred. The ultimate result was that in spite of favourable findings on all the other relevant points the plaintiff was unsuited on limitation.

5. Before the filing of the appeal the plaintiff had to obtain the copy and there are certain happenings in the copying department which had to be extracted after an elaborate inquiry by us with reference to the document and registers of the District Judge's Copying Department. From that also it is urged that even apart from limitation of the suit, the appeal in this Court is timebarred. Question (1) Limitation of this appeal:

6. The judgment in the suit had been delivered on 30-11-1961 and the appeal was filed on 18-4-1962. Since the 17th was a holiday, the actual duration is 137 days only and the appellant has to answer for 47 days He applied for copy immediately, that is, on the 1st December 1961 without any delay and was as usual asked to come on 5-12-1961 for knowing about the requirements Meanwhile the requisition was sent to the record-room and the particulars seem

to have come in two instalments on the 18th December and the 20th December respectively. Actually the plaintiff or his agent did not appear on 5-12-1961 which by itself was not of any consequence, because the record room's particulars had not reached the copying department. He actually turned up on 3-1-1962; he states that he was too ill to come earlier. The main question is whether the period between 20-12-1961 on which date the copying department was in a position to advise him if he had come about the requirements, and the 3rd January 1962 when the appellant did come should be counted against him or should be excluded as being incidental to the obtaining of the copy. The period upto that date would certainly be excluded.

7. Again, on the 3rd January 1962 he gave the requirements and was advised to come on the 17th January to collect the copy. As it was, the copy was ready on the 8th. Certainly the appellant could not be held responsible for the period upto the 17th January; but what he did was to come on the 1st February, after another 12 days, then he collected the copy. Having the copy in his hands on 1-2-1962 he actually filed the appeal on 18-4-1962, as already noted, with 47 days to be accounted for. He is prepared to concede that he cannot get the exclusion of the period after the 17th January because coming on that date he could have collected the copy which was ready by then.

8. The problem being about the period between the 5th December and the 3rd January in particular between 20th December 1961 and 3rd January 1962 we shall examine the position at some length. The usual routine is that the copying department makes an assessment of the time that the record room might take to send the particulars and advises the applicant for copy to come on that date, this being noted on the latter's counterfoil of the receipt. If by that time the particulars arrive and the applicant also presents himself he is immediately asked to produce the requirements and the copying process starts. Sometimes it happens either that the record room particulars do not reach as expected or the applicant does not come, or both. In the instant case the position was that on 5-12-1961 the date fixed neither the particulars had come nor the applicant himself. Even if the latter had reached the copying department would have been still helpless; all that it could have done was to give him yet another date by which they would be expecting the record room to send the particulars.

As it was, the record room particulars did reach on the 18th and the 20th; if the applicant had come again on any day after the 20th they could have started. The applicant did come on the 3rd, that is to say, eleven days after the copying department was in a position to prepare the copy and could not start because of the non supply of the requirements. There is no express provision in the rules for any postal notice at that stage; but Rule 520 of the Rules and Orders (Civil) does expressly provide that the postal address should be given and failure to do so would be the risk of the applicant for copy. This does imply that he would be spared unnecessary attendances at the office on such dates as are needed only to apprise him when he should come again. Against him it can be urged that by

keeping the appointment on the 5th he would have got another date. For him it is pointed out that by coming on the 5th he could not have helped the copying department in any manner; it should have been proper for the latter to have informed him by post as soon as they were in a position to take the appropriate steps. Looked at this way, the whole period between the 1st December and the 3rd January 1962 would call for exclusion. On that view and excluding only upto the 17th January for the actual preparation of the copy the plaintiff would be in time for this appeal.

9. Frankly, we do not find any express, provision in the rules to meet a contingency like this that arose or is presumed to have arisen on the 5th December, namely, that the particulars having been sent for from the record room it does not reach in time by the date given to the party. We are aware that it can be argued that even on such a contingency the applicant for copy should be coming on every date given by the department till ultimately the record room is pleased to send the particulars. and the department is in a position to apprise him of the actual requirement. We are not, however, prepared to take this view which would inflict unavoidable inconvenience on the applicant for copy. It may be necessary in a case where the applicant for copy makes it impossible for the department to contact him during the interval But in the instant case, however, the applicant had made it perfectly easy for the copying department to contact him by post. In these circumstances on the ground of reasonableness we would not penalise him for what had been a default in the office which could have been remedied by an appropriate communication. Accordingly, we would hold that the appeal is in time.

Question No. 2

10. On the facts the trial Court has found that the three cheques with which alone we are concerned were post-dated and had been given on the dates mentioned in the evidence by D. W. 2 As a finding of fact this calls for criticism. It is not the case of the defendant in the written-statement that any of the cheques were post-dated. There is a general denial in the manner already set out without the least indication (either as the main defence or as an alternative) of their being post-dated. Nor is there anything to that effect in the cast of the defendant till Kanchanlal P.W. 1 is cross-examined and Laxminarayan D.W. 2 is examined. We are always in favour of accepting a factual position which is patent and unmistakable from the evidence provided there is no device about it; we do not approve in principle the rejection of any factual material suitable to the case of a party, simply because it has not been pleaded in so many words. On the other hand, when a party tries to shape his evidence to suit the context, and springs surprises with an ulterior purpose we would apply the principle strictly that the case should emerge out of the pleadings. That is the position in the instant suit. The defendant was throughout asserting that two of the cheques had never been passed and one of them had been given in connection with some other transaction, and was never even hinting at the possibility of their being

post-dated, and the suit getting timebarred on that basis.

Naturally, whenever any negotiable instrument is passed, we would assume that it is done on the date which is marked on the face of the document, unless the party makes out an express case of another date and explains the circumstances in which it was postdated (or as for that matter pre-dated either). That too is not the position here. At a late stage the defendant thought that he should exploit a case of limitation, without its having been pleaded and as it was not patent, called upon the plaintiff to state if the cheques had not been passed sometime before the dates put on them; and on his vague admission, challenged him to give the exact date, and as he could not, after the lapse of years do it himself, brought out a date suitable to his version of limitation. This in our opinion is a sheer device on after-thought which should not have been accepted. On this view of the matter we would have to hold that there was no post-dating and the cheques were issued on the dates mentioned on their face.

Question No. 3: Limitation assuming the post-dating of the cheques:

11. It is on this part of the case that we are called upon with all respect to observe that the trial Court has applied the single Bench ruling in *Gorilal Baldeodas Vs. Ramjeelal Bhuralal*, to a situation unlike the one that arose in that case. That ruling is certainly authority (on the basis of a large number of other cases) for the proposition that the passing of a cheque signed by the debtor is the starting point of a new period of limitation u/s 20 and this is so whether or not the cheque has been honoured. Since the reasoning is contained in extenso in that judgment and we are adopting it, it is unnecessary to set it out over again. But the trial Court has applied this proposition with an important refinement which did not arise in that case, namely, that the date on which the cheque is passed being different from the date put on the cheque limitation starts from the former and not the latter. Actually this refinement is found in only one of the cases mentioned in that Single Bench judgment, namely *Mangat Ram Shiv Nath Vs. Mange Lal Om Parkash*, In our case itself there was no such question and naturally all the cases involving the general thesis that the passing of a cheque starts a new period of limitation were approved. But the "approval" does not extend to a special refinement found in one of the other cases without its occurring in the case under consideration.

12. Viewing the question generally there are two crucial dates whenever a cheque or similar instrument is passed by the debtor to the creditor, namely, the date on which the acknowledgment implicit in the cheque is made, and the date on which the promise is implemented by the encashment when it can become part-payment. As far as the latter date goes the discussion in that judgment is sufficient. Now exceptionally a third date may also come for notice; the cheque being post-dated the date on which the instrument as a piece of paper is actually handed over. Now there are two dates calling for discussion here, namely, the date of handing over and the date on the face of the instrument; in other words, the date on which or with reference to which the acknowledgment is made.

Normally, and in the vast majority of cases these dates would be identical; but assuming that they differ and a post-dated cheque is handed over, the problem is as to the point of time to which the acknowledgment or promise which is the essence of the new period of limitation is attributable. If a person passes a cheque on which he notes a later date he is in our opinion not acknowledging the debt on the date on which he is actually handing it over, but acknowledging it on the date which is put on the instrument. Treating the acknowledgment as a promise in its broad sense, it is dormant during the period between the handing over and the date put on the instrument; no bank would cash it till the arrival of the later date; as soon as it arrives the acknowledgment or promise is alive and from that point and only from that point, all the consequences and implications mentioned in our single Bench case begin to operate. Thus we would for the same reasons contained in that judgment hold that even in the exceptional cases where there is post-dating the acknowledgment is effective from the date on the instrument irrespective of whether it is post-dated and handed over earlier or it is dated on the occasion it is made over to the creditor.

13. We are aware that we are differing in this respect from *Mangat Ram Shiv Nath Vs. Mange Lal Om Parkash*, . While agreeing with the general proposition already formulated which is also contained there, the cheque in question was delivered on 15-1-1943 but it was dated 16-1-1943 and cashed on the 18th. On the facts, if limitation had been started on the 16th or the 18th the suit would have been in time; but as the Court held that the 15th was the starting point it was found to be timebarred. For reasons already set out above we would hold that the promise or acknowledgment is referable to the date on the face of the cheque and we would in respectful difference with the Punjab view hold that the latter date is the starting point. On that test the present suit brought on the 13th September 1954 was within time treating any one of the three cheques as acknowledgment u/s 20 of the Limitation Act.

14. In the result, therefore, we would allow the appeal, set aside the trial Court's judgment of dismissal and decree the suit for principal and interest; future interest also payable at 6 p.c. p.a. The defendants shall pay the costs of the plaintiff-appellant in both the Courts along with pleader's fee calculated according to rules.