(2004) 04 MP CK 0081

In the Madhya Pradesh High Court

Case No : F.A. No. 384 of 1994

Bank of Baroda APPELLANT

Vs

Shiv Prasad and Others RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96
Limitation Act, 1963 — Section 18

Citation : (2004) 2 MPJR 20

Hon'ble Judges : Dipak Misra, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : R.C. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

By this appeal filed u/s 96 of the Code of Civil Procedure, 1908, the appellant/ plaintiff has assailed the judgment dated 2/8/1994 and decree dated 4/8/1994 passed by IInd Additional District Judge, Khandwa, in Civil Suit No. 1-B/92 whereby the suit of plaintiff has been dismissed.

The necessary facts leading to this appeal are that defendant No.1 Shiv Prasad for purchasing a bus submitted an application for obtaining the loan which was allowed by the plaintiff-bank and thereafter gave the loan to the tune of Rs. 1,00,000/- (Rs. one lakh) to defendant No.1. The loan of Rs. 1,00,000/- was given on 1/9/1977 on the basis of document of demand (Ex.P/2). Defendant No.1, accordingly obtained a sum of Rs. 1,00,000/- with an interest at the rate 12% per annum. According to the agreement, defendant No.1 was required to pay monthly instalment at the rate of Rs. 3,000/w.e.f. October, 1977.

According to the plaintiff, the bus was hypothecated in the bank and the document to that effect was executed on 1st September, 1977. It has been further pleaded by the plaintiff that defendant No. 1 paid a sum of Rs. 1,31,851/

- but failed to pay monthly instalment regularly. The defendant No.1 was required to repay the loan amount along with the requisite rate of interest and according to the agreement the interest settled between the parties was compound interest. Since, the defendant failed to deposit the instalment in time, a sum of Rs. 1,18,464.60 became due upon the defendants upto 23/1/1990 and for the realisation of which, the plaintiff bank on 10/1/1990 sent a notice but defendants failed to deposit the amount.

According to the pleadings of the plaintiff the loan amount which was obtained on 1/9/1977 by defendant No.1, was accepted by him from time to time acknowledging his liability to repay and as such document of ''acknowledgment'' to that effect was executed by defendant No.1 on 25/8/1980, 30/8/1981, 30/6/1982, 31/12/1982, 14/5/1985 and 10/5/1988. Hence, according to the plaintiff, the suit is within limitation.

Defendants No.1 and 3 i.e. Shiv Prasad and Bhawani Shankar Tiwari filed joint written statement and defendant No.2 Jagdish Chand filed separate written statement. In the written statement the defendants denied the plaint averments and, inter-alia, setforth the plea of limitation. According to the defendants, Shiv Prasad never acknowledged the pre-existing debt and did not execute any document acknowledging the debt. The defendants specifically by raising plea of limitation pleaded that the suit is barred by time and hence it was prayed to dismiss the suit.

The learned trial Judge, on the basis of the pleadings of the parties, framed necessary issues. According to the trial Court defendant No.1 did obtain the loan and executed a document of demand note dated 1/9/1977 and also executed deed of hypothecation on 1/9/1977. The learned trial Judge further held that defendant No.2 being guarantor is also liable to pay the loan amount as he did execute the deed to that effect. On the basis of the evidence on record the learned trial Judge came to hold that a sum of Rs. 1,31,851/- had already been deposited in the plaintiff bank by dependent and a sum of Rs. 1,18,464/- is still required to be deposited by him, but the suit is barred by time as such dismissed it. Hence this appeal.

We have heard Shri R.C. Jain, learned counsel for the appellant. In this appeal though respondents were served but none appeared on their behalf.

In this appeal we have to decide a singular point whether the suit is barred by prescribed period of limitation, because there is no cross-objection on behalf of the respondents/defendants, on the decision of other issues decided against them.

On going through the pleadings of the parties and the evidence led by them, one thing is certain that the loan was given on 1/9/1977 to the tune of Rs. 1,00,000/ and except this loan no other amount towards loan was paid to defendant No.1 Shiv Prasad. If we go through the documents, we find that the plinth stone or we may say the basic document is demand note Ex.P/2 which was executed and duly signed by defendant Shiv Prasad. On going through this document, it is gathered that a sum of Rs. 1,00,000/- was obtained with interest at the rate of 12% yearly. Ex.P/5 is a letter of hypothecation of the vehicle for which the loan was obtained by defendant, Ex.P/6 is document of guarantee. Most important document is Ex.P/7 which is again a demand note dated 25th August, 1980, but one should not forget that the suit has not been filed on the basis of this document nor Rs. 1,00,000/- was paid to the defendants towards loan on the basis of this document and this position has not been disputed by the plaintiff. Ex.P/9 is another important document which, according to plaintiff, is an ''acknowledgment'' by defendant Shiv Prasad acknowledging his pre-existing loan. Similarly Ex.P/11 and P/12 these are again two important documents executed by defendant Shiv Prasad which, according to the plaintiff, are also documents of ''acknowledgment'' acknowledging the pre-existing loan of 1/9/1977. The learned trial Judge while deciding issues 7A, B, C and 8A and B gave his bestowed consideration to these documents and categorically came to hold that the suit is barred by time as the ''acknowledgment'' was not obtained in time in terms of Section 18 of Indian Limitation Act, 1963 (in short ''the Act'').

Before we scan the reasoning assigned by the trial Court and the relevant documents, we would like to re-write Section 18 of the Act which reads thus:

18. Effect of acknowledgment in writing.

Where before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect or 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.

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

Explanation.- For the purpose 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 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.

On going through the above said provision, we may say that a party who set up a case of "acknowledgment" as envisaged u/s 18 of the Act must prove that the ''acknowledgment'' :-

(i) had been made before the expiration of the period of limitation for the suit, appeal or application fin the present case, the suit);

(ii) must be clear and an unambiguous acknowledgment admitting the liability;

(iii) must be signed by the party or his authorised agent; and

(iv) must be of a subsisting liability or existing jural relationship for the exact nature or the specific character of the said liability may be indicated in the word;

If the above said essential ingredients exist in a particular case then a person can De jure set forth the plea of ''acknowledgment'' and thereby a fresh period or limitation is conferred in that person and a fresh period of limitation shall be computed from the time when the ''acknowledgment'' has been signed. But, if the prescribed period of limitation had expired and there had been no ''acknowledgment'' before such expiration, the suit, appeal or application, as the case may be, cannot be said to be within limitation and the same would be barred by prescribed period of limitation.

We shall now examine the present factual scenario on the basis of aforesaid enunciation of law. Ex. P/2 which is a demand note was executed by the defendant No. 1 and is dated 1/9/1977, it is said on behalf of the plaintiff that vide document Ex. P / 7 dated 25th August, 1980 the defendant Shiv Prasad acknowledged his pre-existing debt of 1st September, 1977 but if we x-ray document Ex-P/7 we are unable to accept the said contention for the simple reason that Ex.P/7 dated 25/8/1980 is a document of demand note by which defendant Shiv Prasad had promised to pay plaintiff a sum of Rs. 1,00,000/ - with 12% yearly interest. At this juncture, though at the cost of repetition we would not hesitate to say that it is not the case of the plaintiff that except vide document of demand dated 1/9/1977 by which loan of Rs. 1,00,000/- was paid to the defendant, an other loan of Rs. 1,00,000/- was paid to the defendant. For the present we may quote Ex. P/7 as under :

Khandwa (M.P.)

Dated 25th August, 1980

On Demand I, Mr. Shiv Prasad Tiwari---promise to pay BANK OF BARODA or order at their office in Khandwa ---the sum of Rupees One lac only---for value receive with interest thereon at 3% over Reserve Bank of India rate minimum 12% per annum with quarterly rests.

A Sd/- A

(Shiv Prasad Tiwari)

We have quoted hereinabove the whole document Ex.P/7 in order to show that no where in this document the defendant had acknowledged his liability in respect of his pre-existing loan. No where in this document it has been so mentioned that the loan which was taken by defendant Shiv Prasad on 1/9/1977 has been acknowledged for its payment by him and therefore, according to us, this document cannot be said to be an ''acknowledgment'' in terms of Section 18 of the Act,

Much has been said by the learned counsel for the appellant regarding execution of document Ex.P/9 dated nil that this document is an ''acknowledgment'' of liability which has been executed by the defendant by putting his signatures on it. On going through this document, we may say that this is a letter dated nil of plaintiff bank addressed to the defendant showing the balance of loan account on 30/6/1981. A debit of Rs. 91, 680 = 81 has been shown thereafter a request has been made in this document to return the form intact as soon as possible with the confirmation below signed by the party to the account. But on behalf of the plaintiff none has put his signature and the space in between "Yours faithfully" and "Agent", is blank. However, beneath to this, defendant Shiv Prasad put his signature confirming and acknowledging his indebtedness but we cannot accept this document to be an ''acknowledgment'' for the reasons to follow :

i) there is no averment in respect to acknowledging the liability;

ii) the entire space in which description of the document is to be given is totally blank;

iii) the account number has not been shown;and

iv) the date on which the loan was obtained has also not been shown.

Under sub-section (2) of Section 18 of the Act if the ''acknowledgment'' is undated, oral evidence may be given of the time when it was signed. In this context, we may see the evidence of P.W.I Ramesh Chand who was Branch Manager of the relevant branch of the plaintiff during the period 1978 to 1983 and who had proved this document Ex.P/9. In para 5 he specifically says that on 30/6/1981 defendant Shiv Prasad made confirmation accepting the liability of Rs. 91, 680=89, therefore, even if we ignore the above said reasonings in disbelieving the document of ''acknowledgment,'' an important fact which goes to the root of the matter and which cannot be marginalised and blinked away, that according to plaintiff''s own showing this document was executed on 30.06.1981 and, therefore, it cannot be said to have been executed before the expiration of the prescribed period of limitation, because the loan was obtained by defendant vide Ex.P/2 on 01.09.1977 and this document was executed after the expiration of three years. The other two important documents Ex. P/11 and P/12 are dated 30.06.1982 and 31.12.1982 respectively. Ex.P/11 is a letter of ''acknowledgment'' to debt, sent by the plaintiff to defendant Shiv Prasad in which the detailed description of documents including promissory note dated 1/9/1977 have been mentioned and an ''acknowledgment'' of indebtedness on 30.06.1982 in the sum of Rs. 68,102.64 has been shown and beneath of acknowledgment note signature of defendant Shiv Prasad is there but this ''acknowledgment'' was obtained for acknowledging the liability of 01.09.1977 on 30.06.1982 and therefore, this document cannot be said to have been executed before expiration of prescribed period of limitation. Similarly document dated 31.12.1982 (Ex.P/12) by which the defendant acknowledged the liability to pay Rs. 67,501 =59 towards the loan of 01.09.1977, we may say again that this would not help to plaintiff, since, this document was executed after the expiration of the prescribed period of limitation.

If we analyse Section 18 of the Act and the expression "acknowledgment" used in this section, according to us, "acknowledgment" means an admission of the truth of one''s own liability and in order to test whether the liability has been acknowledged the substance of the document must be looked to. We have already expressed our view on the basis of the document placed on record Ex.P/7 and according to us, it cannot be said to be a document of ''acknowledgment'' and the other documents Ex.P/9, P/11 and P/12 were not executed within prescribed period of limitation as they were executed after three years from 01.09.1977 when the loan vide Ex.P/2 was taken by the defendant. According to us, an ''acknowledgment'' must be an ''acknowledgment'' of existing liability acknowledging the debt so that it may create subsisting relationship on debtor and creditor and further an intention to continue the said relationship of debtor and creditor, unless and until the same is lawfully determined. Though Section 18 is luminously clear on the point and no case law is needed in this regard but we may profitably rely the decision of the Apex Court in the case of Sampuran Singh and Others Vs. Smt. Niranjan Kaur and Others, , wherein their Lordships while interpreting Section 18(1) of the Act has laid down the law of land that this section itself starts with the words "where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been... ". Thus, the ''acknowledgment'', if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if any, such document is executed, the limitation would be revived afresh from the said date of acknowledgment.

We have given our anxious consideration to the reasonings assigned by the learned trial Judge holding the suit to be time barred and we find them to be quite cogent and in consonance with Section 18 of the Indian Limitation Act and we do not think it proper to deviate ourselves from those reasonings and by this judgment we hereby give our stamp of approval to them.

Ex - Consequentie, the appeal is found to be bereft of any substance and ground and the same is hereby dismissed without any order as to costs.

