

(1995) 12 DEL CK 0035
In the Delhi High Court

Bank of Baroda

APPELLANT

Vs

S.K. Aggarwal

RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : (1996) 1 AD 203 : (1996) 1 BC 429 : (1996) 61 DLT 271 : (1995) 35 DRJ 687

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : P.B. Agarwal, Praveena, B.R. Narang, M.C. Kochhar and P.C. Kapur, for the Appellant;

Judgement

Jaspal Singh, J.

(1) Although as many as five issues stand framed on the pleadings of the parties, only the question of limitation has generated heat. It is common case of the parties that if the suit comes out unscathed with the help of section 18 of the Limitation Act, a decree for the sum claimed would follow. Is the protective umbrella of section 18 available to the plaintiff Bank? This, then, is the question. However, before I proceed to answer it, let me provide the facts.

(2) The case of the plaintiff Bank is that in or about October, 1972 the defendant was granted a cash credit hypothecation limit of Rs.35,000.00 which, on request, was enhanced in December, 1975 to Rs.40,000.00 . On August 21, 1976 the defendant requested for reduction in the rate of interest. This was followed on January 17, 1977 by a request for further facilities to enable him to repay the pending dues. On September 12, 1977 the defendant wrote yet another letter which, as per the plaintiff, amounted to acknowledgment of his liability. The grievance of the plaintiff Bank is that the defendant has not cleared his liability despite service of notice. Hence its suit for the recovery of Rs.1,10,421.65.

(3) The defendant, however, claims that there being no acknowledgment within

the meaning of section 18 of the Limitation Act, the suit is barred by limitation. It is further claimed that the plaint has not been signed and verified and the suit had not been instituted by a duly authorised person.

(4) The pleadings led to the framing of the following issues:

1. Has the suit been instituted on behalf of the plaintiff by a duly authorised person and the plaint signed and verified by such person? 2. What amounts are due to plaintiff under the two accounts in dispute which the defendant opened with the plaintiff? 3. At what rate is plaintiff entitled to interest? 4. Is the suit within time? 5. Relief.

(5) As already noticed above, arguments have been addressed only on the point of limitation. The objection leading to the framing of Issue No.1 has been given up and it is not disputed, and rightly so, that otherwise the claim of the plaintiff with regard to the suit amount stands established.

(6) Before I proceed to deal with the question of limitation I may mention that admittedly the cause of action arose on June 20, 1977 when the defendant was called upon to repay the dues. The suit having been instituted on July 28, 1980 would thus be barred by limitation unless saved by the alleged acknowledgment.

(7) On the point of acknowledgment, reliance has been placed by the plaintiff Bank on two letters of the defendant. The first is of January 17, 1977 and the other of September 12, 1977. It so happened that when the defendant wrote the letter of September 12, 1977, he admittedly attached Along with it a copy of the letter of January 17, 1977 also for ready reference. The argument of the learned counsel for plaintiff Bank is that since the letter of January 17, 1977 was again sent Along with letter of September 12, 1977, Therefore, the acknowledgment made therein must be taken to have been renewed or freshly made on September 12, 1977 saving thereby the suit from the clutches of the bar of limitation. In the alternative, it is contended that the letter of September 12, 1977 itself constitutes an acknowledgment.

(8) I think time is now ripe to reproduce the letters of January 17, 1977 and September 12, 1977. They are, in that order, as under:

The Agent, Bank of Baroda, Con. Place, New Delhi. (Sub: Cash Credit Account with you in the name of M/s. Raj Super Service Station) Dear Sir, I have to advise you that I am maintaining a cash credit account with you in the name of M/s. Raj Super Service STATION. I started the business in the year 1972 with my own investment of Rs. 25,000.00 . I was allowed a limit of Rs. 25,000.00 by you in the year 1972 for my business. My account with you was being maintained in a regular and proper manner till 1975 when unfortunately I got unwell. During my continued illness when I was bedridden and was not in a position physically to look after the job and the business got mismanaged and petrol pump did not function in a satisfactory manner. That put me in to financial difficulties and the business came to stop. The account with you was also overdrawn substantially

beyond the limit. All the money inclusive of Banks assistance to me was lost. After I got quite physically fit I started taking keen interest in my business again so that I could properly run the petrol pump in order to square up my dues with you. I again started my business from May 76 by investing about Rs. 37,000.00 from my own resources which amount however is insufficient to run the business on economically viable lines. I have to often borrow funds from the market. These are very uncertain and are often not available at the time of need. I request you to give me further financial assistance to the extent of Rs. 25,000.00 with a view to nursing up my unit so that I am put in a position to economically run the petrol pump. I submit herewith my statement justifying the proposed financial assistance of Rs. 25,000.00 , If you kindly grant me this limit, I shall be in a position to make a increase in my profit. I shall, Therefore, be in a position to repay my loan by monthly Installment of Rs. 1500.00 plus interest with a view to liquidating the previous limit granted to me with in a reasonable period. I am prepared to give adequate security for my old dues and the proposed advance. I shall be ever grateful to you for kind financial help to enable me to come out of my present financial difficulties. Thanking you, Yours Faithfully, sd/- S.K.Aggarwal. Raj Super Service Station Ring Road, Moti Bagh, N.Delhi. The Agent, Bank of Baroda, Con. Circus, New Delhi. Dear Sir, (Sub. : Cash Credit A/C with you in the name and style of M/s. Raj Super Service Station) Kindly refer to our letter dt. 17th Jan.1977 (copy attached for your reference) vide which we had submitted to your goodself our previous difficulties and requested for some temporary limit so that we can bring our account in order. In this connection it will not be out of place to mention that we had discussed the matter in details with the previous manager in charge but no reply has been received so far regarding our letter mentioned above inspire of reminders. I, Therefore, request you please to consider our request sympathetically., Thanking you and assuring you of our best cooperation at all times. Yours faithfully, For Raj Super Service Station. Sd/ Prop."

(9) Before construing the letters referred to above, it is necessary to ascertain the principle and rule of law to be applied. However, before I do so, I may mention that both the sides have failed to cite any authority, either for or against the points involved.

(10) Section 18 of the Limitation Act says:

"18.Effect of acknowledgment in writing. (1)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 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 acknowledgments 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."

(11) Apparently, in order that an acknowledgment may give a fresh starting point u/s 18 of the Limitation Act

(I) IT must have been made before the expiration of the period of limitation for the suit, appeal or application, as the case may be. (ii) it must be of a subsisting liability or existing jural relationship though the exact nature or the specific character of the specific liability may not be indicated in words. (iii) it must be signed by the party or his authorised agent.

(12) As we know, the acknowledgment does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question. Such an acknowledgment need not be accompanied by a promise to pay either expressly or even by implication. As regards acknowledgment of jural relationship, it should be positive though not necessarily express and should have been made with the intention of admitting such a relationship.

(13) With these principles in view, let me proceed to consider the arguments advanced.

(14) That the letter of January 17, 1977 does contain an acknowledgment admits of no doubt. It surely does. However, looked at it independently, it extends no help to the plaintiff as the suit was instituted on 28th July, 1980. That is why the learned counsel wants me to read the acknowledgment as having been freshly made on September 12, 1977 when the copy of the letter of January 17, 1977 was attached with the letter of September 12, 1977.

(15) Undoubtedly, the letter of the defendant dated September 12, 1977 makes a reference to the earlier letter of January 17, 1977. It is also true that the defendant attached a copy of his said earlier letter with his subsequent letter of September 12, 1977. However, despite all this I am not inclined to take the acknowledgment of January 17, 1977 as having been freshly made on September 12, 1977.

(16) The function of section 18 of the Limitation Act is to provide a later date to count the period of limitation afresh, and that fresh period of limitation will be counted from the time when the acknowledgment is signed. The expression "when the acknowledgement was signed" in section 18(1) makes it clear. If the document is dated, the date is prima facie, though not conclusive, evidence of its having been made on that date. The letter in question bears the date of January 17, 1977 and thus, in the absence of any evidence to the contrary, has to be taken to have been made on that date.

(17) It is contended on behalf of the plaintiff Bank that the letter of January 17, 1977 having been delivered again Along with the letter of September 12, 1977, it should be taken to operate from the date of its subsequent delivery.

(18) Undoubtedly, an acknowledgment may be dated and signed at one time and

delivered at a later time. Though according to the English law such an acknowledgment will operate from the date of its delivery only [See: Brown on Limitation pp.639, 640), section 18 of our Act intends that fresh period of limitation will be computed from the time when the acknowledgment is signed (See: Kamla Devi and Others Vs. Pt. Mani Lal Tewari and Others,). This being the position, the plaintiff bank cannot take advantage of the mere fact that copy of the letter of January 17, 1977 was delivered again Along with the letter of September 12, 1977, more so when there is no evidence that the copy of the letter bears the signatures of the defendant or even if it does, when did he sign it. The document Constituting the acknowledgement must be actually signed by the maker or his authorised agent. It is not sufficient that it is accompanied by another letter making only a mention of the earlier letter merely by way of reference [See: Williams v. Griffith (1849) 3 Exch. 335]

(19) Though, with respect, I do agree with the observation of Maclean, C.J., in Jogeshwar Roy v. Raj Narain Miller (1904) 31 Cal. 195 that unless the language of the document be identically the same, a decision upon the construction of one document is not of much assistance in construing another, I may venture to mention, only with a view to lending some force to what has been observed by me above, that in Chiman Lal v. Ram Rikh 86 I.C. 1925 Lah 859 there was an admission in an unsigned plan filed with the plaint. It was held "An admission in a plan filed with a plaint might possibly for certain purposes be regarded as an admission made in the plaint, but such an assumption could not convert an unsigned plan into a writing signed by the plaintiff or plaintiffs."

(20) I need, thus, say no more than this that as far as the first limb of the argument is concerned, I find it devoid of force.

(21) It is next contended that even the letter of 17th September 1977 constitutes acknowledgment as it admits the existence of jural relationship.

(22) Does it?

(23) Before I proceed to deal with this question, it needs to be reminded that it is common case that the only relationship that existed between the parties on the day of execution of this letter was that of debtor and creditor. No other relationship existed between the parties. If the substance of the letter is looked into keeping this in view, the admission of existence of jural relationship becomes apparent. True, the specific character of the liability has not been indicated in words but then it is not necessary to do so. In construing the letter what is necessary to bear in mind is, first, the general tenor of the letter considered as a whole and, secondly, the surrounding circumstances and, in the case before me, the defendant represents facts consistent with the inference that he admits the subsistence of jural relationship.

(24) Though, as already observed by me, the letter of 17th January, 1977 cannot be taken to constitute an acknowledgement made in 12th September 1977 merely on the ground that the letter of 12th September, 1977 was accompanied

by a copy of the letter of 17th January, 1977, I do feel that, while construing the letter of 12th September, 1977, an intention to make the admission may be inferred from the contents of the attached letter to which reference is pointed and not merely incidental and that, to that extent, the letter of 17th January, 1977 is relevant.

(25) In short thus, keeping in view the general tenor of the letter of 12th September, 1977 considered as a whole and the fact that the only existing relationship was that of debtor and creditor and taking into consideration the contents of the attached letter in the manner as indicated above, I hold that the defendant did acknowledge in September, 1977 the existence of jural relationship. The suit, under the circumstances, cannot be held to be barred by limitation.

(26) Since the suit has been contested only on the point of limitation and as even otherwise, the claim of the plaintiff stands proved from the evidence on record, a decree in favor of the plaintiff has to be passed. Consequently, I do pass a decree for the recovery of Rs.1,10,421.65 with costs in favor of the plaintiff Bank and against the defendant. The plaintiff Bank shall also be entitled to interest at the rate of 19.5% per annum on the decretal amount from the date of institution of the suit till realisation.