

(1987) 07 KL CK 0056
In the High Court Of Kerala
Case No : C.R.P. No. 107 of 1984

Bank of India

APPELLANT

Vs

James Fernandez and Another

RESPONDENT

Date of Decision : 20-07-1987

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : AIR 1988 Ker 89 : (1987) KLJ 922

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : M.P.R. Nair, M.K. Chandramohan Das and V.B. Unniraj, for the Appellant; C.T. Vincent, for the Respondent

Final Decision : Allowed

Judgement

S. Padmanabhan, J.—An acknowledgement u/s 18 of the Limitation Act must be of a liability. It must relate to some existing debt or other obligation to same property or right. The liability must be existing on the date of acknowledgement. It must be in writing and signed by the person against whom such property or right is claimed or by some person through whom he derives his title or liability. The acknowledgement must be before the expiry of the period prescribed for a suit or application in respect of such property or right. These are essential conditions for a valid acknowledgement in order to be effective for the purpose of enabling computation of a fresh period of limitation from the time the acknowledgement was so signed. When the writing containing the acknowledgement is undated, oral evidence can be given to prove when it was signed. But the additional question for consideration in this civil revision petition filed by the plaintiff in a money suit is whether the writing containing the acknowledgement must also be in the handwriting of the maker in order to make it effective.

2. Plaintiff Bank sued two defendants on the basis of a liability incurred on 28-5-1973. There are two acknowledgements dated 5-5-1976 and 16-4-1979

(Exts. A12 and A11). These acknowledgements were pleaded in the plaint and the suit was within time from the date of the second acknowledgement. Second defendant remained ex parte. First defendant denied the acknowledgements and raised other contentions also denying liability. Trial court on the evidence found that the acknowledgements to be signed by the defendants. Solely on the ground that the second acknowledgement is not written in the handwriting of the first defendant, though signed by him, the trial court refused to accept it as a valid acknowledgement capable of extending the period of limitation. The suit was dismissed on the ground of limitation alone without considering the other issues.

3. I do not think that such an interpretation is possible from the wording of Section 18. The wording is has been made in writing signed. It need not necessarily be by the party against whom the property or right is claimed. It is enough if the acknowledgement is by any person through whom the defendant derives his title or liability. An omission to specify the exact nature of the property or right will not make an acknowledgement ineffective. Even the signature need not necessarily be by the party himself. It is enough if it is signed by an agent duly authorised in that behalf. An acknowledgement merely renews the liability and gives the creditor a fresh period of limitation according to the nature of the liability that exists, on the date of acknowledgement. It cannot create a new title or a fresh cause of action as one sees in a promise to pay a barred debt. It is not a new contract. Acknowledgement need not necessarily be addressed to the creditor or the person entitled to sue or make the application. What is intended is mainly only an admission of the jural relationship with the intention of admitting the same. But no-where in the section it is stated that the writing, must be in the hand of the person against whom the property or right is claimed or by any person through whom he derives title or liability. In order to give such an interpretation we will have to read into the section something which is not there. There is nothing in the section to indicate a legislative intent that the acknowledgement must be written in the hand of the maker. Written and signed acknowledgements are insisted only because otherwise it will be a fruitful source of false pleas.

4. If such an interpretation as given by the trial court is accepted an illiterate or invalid person must be held to be incapable of making an acknowledgement because he cannot write in his own hand. That could never be the legislative intent. When the section is so clear that acknowledgement need only be in writing and signed, courts are not justified in reading into the section a condition that the writing should be personally by the maker. If an original liability itself could be created without the maker writing something in his own hand how could there be a further restriction in its acknowledgement. "Sign" with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions according to Section 3(56) of the General Clauses Act. Various modes of signing have been recognised in law. Thumb impression or mark or line or cross mark is accepted as signature in the case of persons who

could not write due to illiteracy or physical inability. Section 3(52) of the General Clauses Act says that signature with reference to a person who is unable to write his name includes his mark. What is required is only physical evidence of conscious admission of liability in an acknowledgement which is in writing whether the writing is by the person making the acknowledgement or by somebody else. Writing need not be by hand itself. It can be printed or type-written or by other possible methods.

5. We generally come across several acknowledgements in printed or typewritten forms with blank spaces filled up. There can be acknowledgements in documents written by scribes. So also there could be acknowledgements by a witness in his deposition recorded by somebody else. These are only instances. It is really unfortunate that the Subordinate Judge has given such an interpretation on the basis of which alone the suit happened to be dismissed.

6. The further unfortunate situation is that the Sub Judge has not cared to consider the other issues in the case, if those issues were also decided the matter could have been finally disposed of. The Subordinate Judge ought to have realised that her finding on limitation was subject to review by a superior court and in case the decision of the superior court is in favour of the plaintiff, consideration of other issues also may become necessary for a final disposal of the case. It is always necessary and advisable to enter findings on all the issues when a suit or any other proceeding is finally disposed of on the merits. Now it has become necessary to remand the case. Remand will involve further delay and inconvenience. But that has become inevitable.

7. The civil revision petition is therefore allowed and the judgment and decree are set aside. The finding that the suit is barred by limitation is vacated and it is found that the suit is within time. The case is remanded for the purpose of deciding the other issues and disposing of the suit on the merits. There will be no order as to costs. Parties will appear before the trial court on 3-8-1987. The office will transmit the records forthwith.