(1952) 01 AP CK 0010

In the Andhra Pradesh High Court

Case No : Appeal No. 831/4 of 1350 F

Barket Lal — APPELLANT

Vs

Devidas and Others — RESPONDENT

Date of Decision : 09-01-1952

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 13, 14

Citation : AIR 1953 AP 29

Hon'ble Judges : Naik, C.J;Mohammad Ahmed Ansari, J

Bench : Division Bench

Advocate : Irshad Hussain, for the Appellant; Vinayakrao Vaidya, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Ahmed Ansari, J.—This appeal by the Defendant and cross-objection by the Plaintiffs arise from a decree of the Original Side of the High Court, allowing the Plaintiffs'' suit on the basis of two judgments of the Bombay High Court; but disallowing them interest ''pendente lite''.

2. The Plaintiff Respondents are the sons of one Varadas Ambadas, who with his brother Devidas Vardasa constituted a firm called Devidas Vardasa. This firm had dealings with another firm of Messrs. Prem Raj Pannalal in the course of which they sold cotton to Prem Raj Pannalal. The purchasing firm gave to the seller''s firm three hundies of Rs. 2000 each, and on March 6, 1927, the latter posted two of the hunches to their commission agents Ramakaran Ramnath, which is the name of the Defendant''s firm to negotiate them and on getting the money either to remit cash or send Hali-coins to the firm at Sailu. The envelope containing these hundies did not reach the agent, whereupon enquiries were made and the Devdas Vardasa firm wired to Madhavdas Jethabhai asking them not to pay hundies when presented. The latter stated that they had the endorsement of Ramkaran Ramnath in favour of one Umarsab who had been paid. It appears that this Umarsab on March 13, 1927, approached the Defendant''s firm at

Hyderabad, and obtained a letter of introduction to their branch at Bombay, in which the Bombay branch was requested to make purchases as desired by him; but not to give him. credit. On March 15, 1927, Umarsab presented the letter to the Munim at Bombay, stated that he had two hundies and requested him to cash them. The Bombay Branch then received the hundies, presented them to Madhavas Jethabhai''s firm, who on seeing the signature of the Defendant''s firm as the last endorsees, paid the two amounts in the afternoon of the March 15, 1927. The Defendant''s firm at Bombay then purchased gold and. delivered it to Umarsab, who since then could not be found. The Devidas Vardasa firm then instituted a suit for the recovery of the two amounts of the hundi against Madhavdas Jethabhai and Defendant''s firms in the Original Side of the Bombay High Court. The Defendant''s firm appeared and contested the suit. During the pendency of the suit, the father of the Plaintiff-Respondents died and all the four Plaintiffs were substituted in his place. Kania J., on September 27, 1933, gave a judgment in favour of the Plaintiffs and directed the Defendants to pay Rs. 4000 with interest till judgment and costs, with further interest at the rate of six per cent on judgment. Madhavdas Jethabhai, it appears, appealed; but the appeal was dismissed. Some of the decretal amount had also been paid; but the costs of:the suit together with interest were not discharged. The firm of Devidas Vardasa also instituted another suit No. 892 of 1927 against Jethabhai Duji & the Defendant''s firm in the Original Side of the Bombay High Court for the recovery of Rs. 1,000 being the amount of another hundi, which was enclosed in the envelope containing the earlier two hundies and sent to the Defendant''s firm for purposes of realising the amount from the drawee. The endorsement on this hundi was similarly forged by Umarsab, the amount realised through the Defendant''s firm at Bombay and misappropriated. The Defendant''s firm contested this suit, which was also decreed on September 27, 1933 with interest from March 15, 1927 till judgment, and cost, with further interest on judgment at six per cent. This entire decretal amount has not been paid.

3. The four sons of the Vardas Ambadas without joining their uncle Devidas Vardasa as Plaintiffs on Amardad 23, 1345 Fasli (June 28, 1936) then instituted a suit in the Original Side of this High Court to recover the amounts clue on the two judgments with interest till their realisation. The other Defendants to the Bombay suits were not impleaded as they were not residents of this State, and the entire sum due on both the judgments together with interest which comes to Rs. 10367-1-0 has been claimed from the Defendant alone. Several pleas have been raised in the written statement; one being that all the parties to the two Bombay suits were necessary and in their absence the suit cannot proceed; another, that the two judgment debts cannot be joined in one action; and a third that the two allocators of the Bombay High Court giving interest on the amounts of the costs at six per cent were contrary to the practice prevailing in the Hyderabad State and cannot be decreed. From the Order-sheet of Shehre-war 13, 1346 Fasli (July 19, 1937) it appears that the Plaintiffs'' Counsel had stated that the suits were based not on the original causes of action; but on the

obligations arising from the two judgments of the Original Side of the Bombay High Court alone. After some delay and. by a judgment dated Shehrewar 8, 1350 Fasli (July 14, 1941) the entire claim has been decreed without interests ''pendente lite'' where against the appeal and cross-objection have been filed.

4. Before dealing with the objections raised in the written statement, which have also been urged before us, I would clarify the. principle or which such foreign judgments are enforced, The necessity has arisen in this case because the two judgments were passed at the time when this State had not been integrated, nor then existed any arrangement under which the judgments of British Indian Courts could be executed.

5. I shall first quote certain passages in authoritative books on private International Law relating to the principle. Cheshire in his third Edition of Private International Law at page 766 explains the ground as follows:

It is unnecessary, however, to consider theory of comity further for it has been supplanted by a far more defensible principle which has been called the doctrine of obligation. This doctrine, which was laid down in 1842, is that where a foreign court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, the liability to pay that sum becomes a legal obligation which may be enforced in this country by action. Once the judgment is proved the burden lies upon the Defendant to show why he should not perform the obligation In other words, a new right has been vested in the creditor and a new obligation imposed upon the debtor at the instance of the foreign Court. Lord Esher once said that ''the liability of the Defendant arises upon an implied contract to pay the amount of the foreign judgment. This does not mean that the justification for the enforcement of the obligation is an implied contract, but that for procedural purposes the debtor is regarded as having implicitly promised to pay. Historically this is well founded for according to the doctrine of ''SLADE''S case'' the mere existence of the debt raises an implied promise to pay the amount due. The creditor sues for the recovery of a simple contract debt, and since this is a liquidated amount he may proceed by way of a specially endorsed writ.

Schmitt off in his Text-book of the English Conflict of Law at page 417 also observes:

Subject to compliance with certain requirements, the decision of a foreign court imposes upon the parties against whom the decision is given a legal duty to obey it. To this legal DUTY corresponds the RIGHT of the person in whose favour the decision has been given that the foreign judgment should be obeyed. That a pronouncement of the sovereign power may impose on private persons a legal duty which gives rise to corresponding vested rights of others is well known from other provinces of English law, e.g., the legislature may create, by statute, a legal duty to take care, and any person belonging to the class of persons for whose benefit and protection the duty has been imposed, may bring an action for statutory negligence against the wrong-doers....

6. I need not multiply similar observations of other Text-book writers, for the above two extracts amply justify the conclusion that such judgments are now enforceable on the basis of their having created obligations. I will now cite two dicta of Blackburn J. in Godard v. Gray (1870) 6 QB 139, the Plaintiffs, who were Frenchmen, sued the Defendants, who were Englishmen, on a charter-party. The French Court treating a particular clause as fixing the amount of liquidated damages gave judgment against Defendants. On appeal, the superior court reduced the amount, and the persons in whose favour judgment was given sued the Defendants in the English Court. In this case, Blackburn J. observes:

It is not an admitted principle of the law of nations that a State is bound to enforce with- in its territories the judgment of a foreign tribunal. Several of the continental nations (including France) do not enforce the judgementsof other countries, unless, where there are reciprocal treaties to that effect. But in England and in those States which are governed by the common law, such judgments are enforced, not by virtue of any statute, but upon a principle very well stated by Parke, B., in Williams v. Jones (1845) 13 M. & W. 628 : 14 L.J. Ex 145 : "Where, a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay the sum, on which an action of debt to enforce the judgement may be maintained. It is in this way that the judgments of foreign and colonial Courts are supported and enforced". And taking this as the principle, it seems to follow that anything which negatives the existence of that legal obligation, or excuses the Defendant from the performance of it, must form a good defence to the action

7. Again, the same Judge in - Schibsy v. Westenholz (1870) 40 L.J.Q.B. 73 : 6 Q. B 155 observes:

It is unnecessary to repeat again what we have already said in Godard v. Gray (1870) 6 QB 139. We think that for the reasons there given the true principle on which the judgments of foreign tribunals are enforced in England is that stated by Parke, B., in ; Russel v. Smyth, and again repeated by him in Williams v. Jones (1845) 13 M & W 628 : 14 LJ Ex 145, that the judgment of a court of competent jurisdiction over the Defendant imposes a duty or obligation on the Defendant to pay the sum for which judgment is given, which the courts in this country are bound to enforce, and consequently that anything which negatives the duty or forms a legal excuse for not performing it is a defence to the action.

8. No useful purpose will be served by multiplying English authorities. I shall now cite some Indian authorities where the same principles are. held as guiding the Indian Courts. In Nallatambi Mudaliar v. Ponnusami Pillai 2 Mad 400, it is said at page 403:

The principles on which foreign judgments are enforced in English Courts as stated by Parke, B., in Russel v. Smyth and repeated by him in Williams v. Jones (1845) 13 M & W 628 : 14 L J Ex 145 are declared by Black-burn J. in Schibsby

v. Westenholz 1870 40 LJ QB 73 : 6 QB 155 The same principles have been adopted by the Courts of British India, and have been substantially recognised by the Legislature

9. Again in Nalla Karuppa Settiar v. Mahomed Iburam 20 Mad 112, at p. 114, the learned Judge observes:

The Courts of British India will be guided in matter by the same principles as are adopted by the Courts of England. The true principle on which the judgments of foreign Courts, are enforced in England is that the judgment of a Court of competent jurisdiction over the Defendant imposes a duty, or obligation on. the Defendant to pay the sum decreed which the English Court is bound to enforce, and consequently that anything which negatives that duty, or forms a legal excuse for not performing it, is a defence to the action...

9. The principle having been* clarified, the several objections have now to be adjudicated as sufficient grounds for discharging the obligation. The first is that all the parties to the suits in the Bombay High Court have not been impleaded in the claim. I do not think this objection is of any substance; for the duty to pay the judgment debts is placed equally on all the Defendants to each judgment. So long as the obligations are not fully discharged, it. is immaterial from which of the Defendants the fulfillments are claimed. This right cannot be defeated by insistence on impleading the persons who are neither residents of the State, nor whose failure to pay results in the Defendant being exonerated. The Plaintiffs are admittedly entitled to the performance and can claim such performance from any one of those liable to pay. According to the principle explained above, this cannot be a ground to release the Defendant from his liability, and therefore, this objection fails.

10. The next objection raised is that what is now being claimed is largely the amount given by allocates of the Bombay High Court and the procedure of allowing interest on costs is not followed in this Court. Were I to sustain this objection, it would mean deciding the correctness or otherwise of the judicial procedure of a foreign Court according to the procedure of this State. That does not appear to be one of the grounds of refusing to recognise the obligation thereby created. Then allowing interest on costs is not against the Hyderabad Law; for Section 245, Sub-section (3) of the repealed Hyderabad CPC authorises Court to award such interest. What is of importance in claims on foreign judgments is that the amount sued upon must be one allowed by judicial process. This means either that the judgments must allow definite sum or that they should contain sufficient particulars by which the amount sued can be ascertained by a simple arithmetical process. The two judgments of the Bombay High Court give costs with interest at six per cent and that appears to me to satisfy the requirement of the sum being definite.

11. Another objection raised is that two judgments'' obligations cannot be joined in one-suit. I do not see much force in this argument. The three hundies were

sent in one envelope to the Defendant for purposes of collection and the Bombay High Court has held the Defendant''s firm liable for their conversion. It is obvious that one suit could have been filed on the original causes of action, and I do not see how obligations arising from two judgments in these circumstances are governed by a procedural rule other than that contained in Order 2, Rule 3. The result is that the decision of the Original Side of the High Court on these objections cannot be reversed and the defend-ant''s appeal is dismissed.

12. I now come to the Plaintiffs'' cross-objection against disallowing of interests. Two grounds have been urged against the decision of the Original Side. One is that the Respondents are entitled to interests from the date of suit in this Court as the Bombay High Court has allowed such interest. This argument cannot be accepted. The Bombay judgments do create obligations to pay interest, but this like any other covenant for interest should not control the court''s discretion u/s 230 (b) of the repealed Hyderabad CPC Code, which is similar to Section 34 of the CPC Code. It has been held by their Lordships of the Privy Council in AIR 1942 61 (Privy Council) , that the rate of interest to be allowed after the institution of the suit is entirely a matter within the discretion of the Court, and therefore, the learned Judge on the Original Side was not bound to allow interests. Then it was urged that the exercise of the discretion in disallowing interest altogether was wrong. I have gone through the Order-sheet of the Original. Side and I am satisfied the long delay in deciding the case was not entirely due to the Appellant''s conduct. Further the delay in deciding the appeal cannot be attributed to him. In these circumstances, the decision of the Original Side is not such as I would interfere in appeal. The cross-objection is also dismissed.

13. The Appellant shall pay the costs to the Respondents and this judgment will govern both the appeal and cross-objections.

Naik, C.J.

14. I agree.

