
(1916) 04 MAD CK 0019
In the Madras High Court

Bollapragada Ramamurthy trading under the name and style of Bollapragada Ramamurthi and Co. APPELLANT

Vs

Thammana Gopayya and Others RESPONDENT

Date of Decision : 28-04-1916

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : (1917) ILR (Mad) 701 : 35 Ind. Cas. 575 : (1916) 4 LW 48 : (1916) 31 MLJ 231

Judgement

1. Plaintiff is the appellant. He sued in 1912 to recover damages for breach of a contract of which performance was due before 20th September

1906 and relied upon a letter dated 20th September 1909 to save a bar of limitation. Both the lower Courts dismissed the plaintiff's suit on the

ground that the letter does not contain an acknowledgment of liability sufficient to bring the case within Section 19 of the Limitation Act.

2. The letter Exhibit B signed by the defendants states that, as disputes about the contract were not settled and a suit was threatened, both parties

agreed to refer matters to the arbitration of the persons mentioned therein. The material part of the document runs as follows:--" I shall agree to the

decision made by them (arbitrators). Without having to do anything with the limitation of time, if they decide that I should pay any amount to you, I

shall pay it immediately to you. If, perhaps, for any reason the said three mediators do not give their decision, it is settled that, on this letter, suit

etc., proper steps may be taken and conducted in the court without having anything to do with the time-bar.

3. It is argued for the appellant that the letter contains a promise to pay whatever may be found due on arbitration and that there is an

acknowledgment of liability. It is also argued that the agreement to refer to arbitration and not to plead limitation as a bar if the arbitration fell

through is valid and binding on the parties amounting as it does to a covenant by one party not to sue till the arbitration was over and by the other

not to plead limitation should it be necessary to file a suit.

4. We do not think that the terms of Exhibit B amount to an unconditional undertaking by the defendants to pay the debt. The plaintiff was setting

up a claim for damages and the defendants were denying that they were liable to the plaintiff. When a suit was threatened, the parties agreed to

refer the dispute to arbitration. Exhibit B is a conditional promise to pay whatever the arbitrators may find to be due. What the defendants in effect

state is "" we deny that anything is due to you but as you threaten a suit we shall agree to refer matters to arbitration and if the arbitrators give an

award holding us liable to pay any sum, we shall pay it to you.

5. In cases of conditional acknowledgments of liability the law is clear that where there is a promise to pay on a condition, that condition, in order

that the promise may operate as an acknowledgment, must be fulfilled. In *In re River Steamer Co* (1871) L.R. 6 Ch. App. 822 which has been

approved of by their Lordships of the Privy Council in *Maniram Seth v. Seth Rupchand* ILR (1906) C. 1017 Lord Justice Mellish observed that in

order to take the case out of the statute of limitation there must either be an acknowledgment of the debt from which a promise to pay may be

implied, or an unconditional promise to pay the debt and evidence that the condition has been performed. This case was referred to and followed

in *Arunachella Rao v. Rangiah Appa Rao* ILR (1906) M. 519 where Justices Subramania Ayyar and Benson were of opinion that the English and

Indian Law are the same as regards conditional promises and that an acknowledgment of a conditional liability would not give a fresh start so long

as the condition remained unfulfilled.

6. It is well settled law that to operate as an acknowledgment, a subsisting jural relationship of debtor and creditor must be admitted. A mere

reference to arbitration which prima facie is only a mode of settling disputes and not an admission of any liability by the parties does not import any

such relationship. No authority has been cited for the proposition that the mere fact that parties agree in writing to refer matters to arbitration

amounts to an acknowledgment. The result of the English authorities seems to be that a mere submission to arbitration containing a promise to pay

whatever the arbitrators decide is not available as an acknowledgment if the arbitration proves abortive unless the submission contains an

unqualified acknowledgment of the debt. (Halsbury, Vol. 19, page 66 : Banning on Limitation, page 45). There is nothing in Section 19 of the

Limitation Act to suggest that the law in India is different.

7. We do not think that the promise of the defendants not to raise the plea of limitation, should a suit have to be filed, is valid. It is argued that the

effect of the clause is not to restrict the time but to extend it and that Section 28 of the Contract Act which only applies to cases where time is

limited has no application. Reference has been made to the observations of Sir Frederick Pollock in his Commentaries of the Contract Act at page

179.

8. Whatever doubts may exist as to the applicability of Section 28, we think that the case falls u/s 23. The effect of the covenant is, in our opinion,

to defeat the provisions of the Limitation Act and falls u/s 23 of the Contract Act as being an agreement which defeats the provisions of the

Limitation Act.

9. It has been argued that the period between the date of the agreement to refer and the date when the plaintiff knew that the proceedings became

abortive should be excluded.

10. It is difficult to see how a reference to arbitration though it may imply, a covenant not to sue, would prevent the operation of the law of

limitation when once the period commenced to run. Though parties to a contract may agree to postpone the accrual of any rights under it, they

cannot postpone the period of limitation in case a suit should have to be filed for its breach. In the pre-sent case the agreement to refer was long

after the period when limitation for a suit on a breach of contract began to run and Section 9 of the Limitation Act is clear as it enacts that once

limitation begins to run it cannot be stopped by anything that happens subsequently. The case does not fall within the provisions relating to stay of

suits by injunction.

11. As regards the argument that the defendants are estopped from pleading limitation, there can be no question of estoppel as the parties cannot

estop themselves from pleading the provisions of the statute. *Seetharama Chetti v. Krishnaswami Chetti* ILR (1913) M. 374 s.c. 25 M.L.J. 269.

12. We are of opinion that the decrees of the Lower Courts are right and dismiss the second appeal with costs.