
(2018) 04 OHC CK 0076
In the Orissa High Court
Case No : SA No.126 of 1998

BRUNDABATI SATPATHY

APPELLANT

Vs

STATE BANK OF INDIA AND ANOTHER

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Indian Evidence Act, 1872 — Section 34
Bankers Book Evidence Act, 1891 — Section 4
Limitation Act, 1963 — Article 19

Citation : (2018) 04 OHC CK 0076

Hon'ble Judges : DR. A.K. RATH

Bench : Single Bench

Advocate : A.K. Mahakud, P.V. Balakrishna

Final Decision : Dismissed

Judgement

Dr. A.K.Rath, J

1. Defendant no.1 is the appellant against a confirming judgment in a money suit.

2. Plaintiff-respondent no.1 instituted the suit for realisation of Rs.72,271.03 ps. along with PI & FI from the defendants. Case of the plaintiff is that

the State Bank of India is a statutory body constituted under the State Bank of India Act, 1955 and is exempted from the provisions of the Orissa

Money Lenders Act by Government Notification dated 15.7.1974. Defendant no.1 made an application to the plaintiffbank for a loan to set up a chalk

industry. After examining the feasibility of the proposal, the plaintiff-bank sanctioned a term of Rs.9000/- and cash credit of Rs.15000/- to defendant

no.1. The husband of the defendant no.1 stood as a guarantor and executed a letter of guarantee on 17.12.1979. Defendant no.1 had executed the

agreement on 17.12.1979. She had executed a demand promissory note on

18.2.1980. The agreements for hypothecation and guarantee were executed on the same day. Thereafter, the plaintiff had advanced the loan to defendant no.1. They had also executed a letter of revival. The defendants became defaults. Since all the persuasions made by the plaintiff to clear the outstanding dues ended in a fiasco, the suit was filed seeking the reliefs mentioned supra.

3. Defendants filed a written statement denying the assertions made in the plaint. Case of the defendants is that as a precaution for disbursement of money, deed of agreement and deed of guarantee had been executed. Defendant no.1 is an illiterate woman. She executed the document without understanding the contents thereof. On the request made by the officers of the Bank, defendant no.2 signed the letter of guarantee. They denied to have executed the letter of revival. Â

4. Stemming on the pleadings of the parties, learned trial court framed four issues. Parties led evidence. On an analysis of the evidence on record and pleadings, learned trial court came to hold that the husband of defendant no.1 is a teacher in a High School. He executed the document after understanding the contents thereof. The loan was advanced after due execution of the relevant document. The defendants had not disputed their signatures either in the promissory note, agreement of hypothecation or letter of revival. Letter of revival had been executed by the defendants in presence of P.W.1 and the officers of the Bank. The suit was not barred by time. Held so, it decreed the suit. Unsuccessful defendant no.1 filed M.A No.5 of 1995 before the learned District Judge, Sambalpur, which was eventually dismissed.

5. The second appeal was admitted on the substantial questions of law enumerated in Ground Nos.1,2 and 4 of the appeal memo. The same are -
â??1) Whether the learned courts below are justified in fixing the liability relying on Ext.1 to 11 and whether due execution of those exhibits by the defendant no.1 has been proved in view of the fact that the defendant no.1 is an illiterate pardanasin lady ?

2. Whether the alleged revival letters as in exhibits 3 to 11 are acknowledgments of liability by the defendants in terms of Section 18 of the Indian Limitation Act and whether all the ingredients of Section 18 of the Indian Limitation Act has been satisfied to save the suit from being barred by the

law of limitation ?

4. Whether the courts below are justified in granting 9% interest per annum in deviation of 7 ½ % interest alleged to have been agreed between the parties ?

6. Heard Mr. A.K. Mahakud, learned counsel for the appellant and Mr. P.V. Balakrishna, learned counsel for the respondent no.1. None appeared for the respondent no.2.

7. Mr. Mahakud, learned counsel for the appellant submitted that no evidence had been adduced by the plaintiff to saddle the liability on the defendants. Since the alleged loan was cash credit of Rs.15000/- the plaintiff was required to file the accounts ledger showing day to day transaction.

So far as term loan of Rs.9000/- is concerned, the terms and conditions of the loan agreement had not been proved by the plaintiff. The plaintiff had

not adduced any documentary as well as oral evidence with regard to the loan made to the defendants. The courts below had not rendered any finding

as to when the loan was advanced to the defendants. He further submitted that as per Article 19 of the Limitation Act, 1963, the suit has to be filed

within three years when the loan was made. Exts.6 to 11 are the revival letters of the year 1982 and 1985. The revival letters of the year 1982 and

1985 had not been proved. The loan transaction alleged to have taken place in the year 1980. The suit was filed in the year 1990. The accounts ledger,

agreement of loan and the revival letters of the year 1982 and 1985 having not been proved by the plaintiff, the liability cannot be saddled on the

defendants on the basis of the statement of P.W.1. He further submitted that since the suit was filed after ten years of the alleged loan, it is barred by

limitation. The plaintiff had not proved that the revival letters had been signed during subsistence period of limitation and as such, the suit was barred

by time. He further submitted that defendant no.1 is an illiterate woman. Burden lies on the plaintiff to prove that defendant no.1 executed the

document after understanding the contents thereof. The findings of the courts below are perverse. To buttress his submission, he cited the decisions in

the case of Chandradhar Goswami v. Gauhati Bank Ltd. AIR 1967 SC 1058, Tilak Ram v. Nathu, AIR 1967 SC 935, Sampuran Singh v. Smt.

Niranjan Kaur, AIR 1999 SC 1047 and Nirakar Das v. Gourhari Das, 1995 (I) OLR 526.

8. Mr. Balakrishna, learned counsel for the respondent no.1 submitted that the plaintiff had executed the documents marked as Ext.1 to 11. The

defendants were the chronic defaulters. To wriggle out of the liability, they had taken a vague plea. They had not denied the signatures made in all the documents. There is no perversity in the findings of the courts below.

9. Defendant no.2 is the husband of defendant no.1. The evidence on record reveals that defendant no.2 is a teacher in a High School. They have

filed a joint written statement. They took the plea that defendant no.1 does not know reading and writing in any language, but some how know only

signing the name in oriya. She is an illiterate woman. Defendant no. 2 is the advisor and well-wisher of defendant no.1. On the request of the Bank, he

signed the letters of guarantee dated 17.12.1979 taking into consideration the future prospects of the industry. He was not aware that the liability was

coextensive. It was further stated that the plaintiff-bank got the promissory note executed as a coercive measure to advance the loan. With regard to

the deed of hypothecation, it is stated that the defendants have not signed on the documents in free will and consent. In paragraph-12 of the written

statement, it is stated that the plaintiff took three years to pay the advance and required the presence of the defendant in their premises for

innumerable times. Learned court below is quite justified in holding that the defendants have admitted the acceptance of loan, both term and cash

credit. The documents had been marked without objection.

10. The decisions cited by the learned counsel for the appellants are distinguishable on facts. In Nirakar Das (supra), this Court held that the plaintiff

has to stand or fall on the basis of evidence led by him. Merely because defendant does not establish his case, plaintiff does not automatically succeed.

There is no quarrel over the proposition of law.

11. In Chandradhar Goswami (supra), the apex Court held that no person can be charged with liability merely on the basis of entries in books of

account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the

money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be

charged accepts the correctness of the books of account and does not challenge them. The original entries alone under Section 34 of the Evidence

Act would not be sufficient to charge any person with liability and as such copies produced under Section 4 of the Bankers' Books Evidence Act

obviously cannot charge any person with liability.

12. In *Tilak Ram* (supra), the apex Court held that the right of redemption no doubt is of the essence of and inherent in a transaction of mortgage. But

the statement in question must relate to the subsisting liability or the right claimed. Where the statement is relied on as expressing jural relationship it

must show that it was made with the intention of admitting such jural relationship subsisting at the time when it was made. It follows that where a

statement setting out jural relationship is made clearly without intending to admit its existence an intention to admit cannot be imposed on its maker by

an involved or a far-fetched process of reasoning. It was further held that statements could not be regarded as acknowledgments of subsisting jural

relationship or of subsisting right and corresponding liability of being redeemed.

13. In *Sampuran Singh* (supra), the apex Court held that the acknowledgment should be made during subsistence period of limitation.

14. In the instant case, the loan was sanctioned on 17.12.1979. The revival letters had been executed by defendants vide Exts.3 to 11. All the revival

letters had been signed during subsistence period of limitation. Thus the suit is within the time. The substantial questions of law are answered

accordingly.

15. In the result, the appeal, devoid of any merit, is dismissed. There shall be no order as to costs.