
(2015) 06 KL CK 0149

In the High Court Of Kerala

Case No : Regular Second Appeal No. 860 of 2014

E.M. Gireesh Babu

APPELLANT

Vs

Venu K. and Others

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 2
Consumer Protection Act, 1986 — Section 2(d)
Limitation Act, 1963 — Section 14, 3

Citation : (2015) 06 KL CK 0149

Hon'ble Judges : A. Hariprasad, J

Bench : Single Bench

Advocate : Mohanan V.T.K., for the Appellant; K. Rakesh Roshan and Thushara V., Advocates for the Respondent

Final Decision : Dismissed

Judgement

A. Hariprasad, J.—Appellant is the plaintiff in a suit for realisation of money said to have been borrowed by the first defendant. It is contended that the first defendant borrowed an amount of Rs. 30,000/- on 28.05.2001 from the plaintiff. On the same day, he executed and issued a post dated cheque in discharge of that liability, promising to make payment through the said cheque. Plaintiff presented the cheque for collection before the second defendant Co-operative Bank. The second defendant in turn forwarded the cheque to the third defendant, the District Co-operative Bank. It is an admitted case that the cheque was lost while it was in the custody of the third defendant. The plaintiff, therefore, approached the Consumer Disputes Redressal Forum, Kozhikode under the provisions of the Consumer Protection Act, 1986 (in short, "Act of 1986") claiming the cheque amount with interest. The District Forum allowed the claim of the plaintiff, against which the second defendant filed an appeal before the Consumer Disputes Redressal State Commission under the said Act. During the pendency of appeal, the third defendant was impleaded in the proceedings. After considering the entire facts and circumstances, the State Commission modified

the decree passed by the District Forum allowing the plaintiff to realise a compensation of Rs. 10,000/- for the proved deficiency in service. Dissatisfied with the amount awarded, the plaintiff approached the National Consumer Disputes Redressal Commission, New Delhi with a revision petition. As per order dated 24.04.2008, the National Commission confirmed the order passed by the State Commission, but the liability to pay the amount awarded was shifted from the second defendant to the third defendant. It is also observed in the order that if it is permissible, the plaintiff may take advantage of the observations made by the Supreme Court in *Laxmi Engineering Works Vs. P.S.G. Industrial Institute*, AIR 1995 SC 1428 : (1995) 84 CompCas 121 : (1995) 3 JT 433 : (1995) 2 SCALE 626 : (1995) 3 SCC 583 : (1995) 3 SCR 174 : (1995) 2 UJ 253 for claiming exclusion of time spent before the Commission under Section 14 of the Limitation Act, 1963. On the abovesaid reasons, the plaintiff approached the trial court with a suit for realisation of cheque amount against the first defendant impleading the second and third defendants as eo nomine parties.

2. The first defendant contended that there was no such transaction as averred in the plaint. He denied the execution of any cheque for any amount in favour of the plaintiff. Second defendant admitted presentation of the cheque for collection. But, it is the case of the second defendant that the cheque had been sent to the third defendant. The second defendant has no liability as the cheque was not lost while it was in the possession of the second defendant. The third defendant contended that it is an unnecessary party as no relief is claimable against them.

3. After hearing both sides, the court below dismissed the suit finding that the claim is barred by limitation and the plaintiff cannot get any benefit under Section 14 of the Limitation Act, 1963 (in short, "Act") for exclusion of the time of the proceedings before the Consumer Disputes Redressal Forum. The appellate court also concurred with the view expressed by the trial court and dismissed the appeal. Hence this second appeal.

4. Heard the learned counsel for the appellant and the respondents.

5. Maintainability of the appeal directly depends on the question whether the appellant/plaintiff could claim benefit of Section 14 of the Act for instituting the suit. The cheque was issued on 30.06.2001 as per the averments in the plaint. The first defendant has disputed the factum of issuance of such a cheque. Admittedly the suit was filed only in the year 2008. It clearly shows that it was beyond the period of three years from the date of cheque. Ostensibly, the suit is barred by the provisions of Section 3 read with Article 19 of the Act as it is beyond a period of three years from the date of alleged borrowal and also issuance of cheque.

6. Learned counsel contended that the appellant is entitled to get the benefit of Section 14 of the Act for exclusion of time as he was bona fide prosecuting the action for recovery of amount before the Forum. For clarity, Section 14 of the Act

is reproduced hereunder:

"Exclusion of time of proceeding bona fide in court without jurisdiction.-

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation,-For the purposes of this section,-

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

In order to get the benefit of Section 14 of the Act, following essential aspects will have to be satisfied: (i) the plaintiff must have been prosecuting a civil proceeding in a forum with due diligence, and (ii) proceeding must relate to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, was unable to entertain it. Therefore, the essential questions to be answered is whether all these conditions are satisfied in this case. It is undisputed in this case that the first defendant, the alleged borrower was not a party before the proceedings under the Act of 1986. Therefore, it cannot be said that there is identity of parties in the civil suit as well as in the proceedings before the Consumer Disputes Redressal Forum. Secondly, the claim before the Forum was to allow the plaintiff to recover the cheque amount with interest and costs. Although the claim was allowed by the District

Forum, the State Commission and the National Commission found that the plaintiff is not entitled to claim the cheque amount from the respondents therein (defendants 2 and 3) and what could be recovered by the plaintiff is only compensation for deficiency in service. Hence, it cannot be said that there is identity of the subject matter of the claim.

7. Now the question remaining is whether the benefit of the law laid down by the Supreme Court in *Laxmi Engineering Works*" case (supra) can be extended to the facts of this case. It has to be noted that the National Commission while disposing of the matter has cautiously mentioned that the observations in *Laxmi Engineering Works*"s case can be used by the plaintiff, if it is legally permissible. Let us examine whether the law declared by the Supreme Court can be applied in this case. In *Laxmi Engineering Works*"s case, the question posed was related to the meaning and ambit of the expression "for any commercial purpose" occurring in Section 2(d) of the Act of 1986. The expression "consumer" excludes from its purview "a person who obtains such goods for resale or for any commercial purpose". Supreme Court, after examining various provisions of the Act, held inter alia that in the facts and circumstances of the case, the appellant in the action cannot be said to be a consumer within the definition of the Act. In paragraph 23 of the decision, following observations are made:

"The appeal accordingly fails and is dismissed but without costs. If the appellant chooses to file a suit for the relief claimed in these proceedings, he can do so according to law and in such a case he can claim the benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act, while computing the period of limitation prescribed for such a suit."

It is contended by the learned counsel for the respondents that the observations were made only on the basis of the finding that the appellant therein was not a consumer as defined under the Act of 1986. Therefore, it was permitted to claim remedy in a civil court. The essential difference in this case is that the complaint filed by the plaintiff before the Forum was perfectly maintainable as he claimed compensation for deficiency of service, a claim which could have only been entertained by the authorities constituted under the Act of 1986. Therefore, it cannot be said that the plaintiff approached a wrong Forum for redressal of his grievance. The catch words in Section 14 of the Act are that the first proceedings of a civil nature could not be entertained by a court due to defect of jurisdiction or other cause of a like nature. In this case, it cannot be said that the claim for deficiency of service was wrongly instituted before an authority under the Act of 1986. It is true that the claim for recovery of amount from the first defendant could not have been entertained by the District Forum under the Act of 1986 because it lacks inherent jurisdiction to entertain such a claim. But, in order to apply the principle in *Laxmi Engineering Works*"s case, there must be complete lack of jurisdiction, which is absent in this case. Hence, the court below correctly concluded that the suit is barred by limitation as the plaintiff cannot derive any

benefit either from Section 14 of the Act or from the principles in Laxmi Engineering Works's case.

I find that the substantial questions of law raised in this case can only be decided against the appellant. The appeal fails. It is dismissed.