

(2000) 05 GUJ CK 0052
In the Gujarat High Court
Case No : First Appeal No. 734 of 1979

Hindustan Apparel Industries

APPELLANT

Vs

Fair Deal Corporation

RESPONDENT

Date of Decision : 09-05-2000

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : AIR 2000 Guj 261 : (2000) 3 CivCC 227 : (2000) 2 GLR 1422 : (2000) 3 RCR(Civil) 586 : (2000) 3 RCR(Criminal) 448

Hon'ble Judges : R.P. Dholakia, J;R.M. Doshit, J;M.S. Parikh, J

Bench : Full Bench

Advocate : S.H. Sanjanwala, for the Appellant; Aspi M. Kapadia and S.B. Vakil, for the Respondent

Judgement

M.S. Parikh, J.—Short question which requires consideration by this Full Bench as referred to by a learned single Judge of this Court as per oral judgment dated 14-10-1999 [Coram : K.R. Vyas, J.] is: Whether the payment by cheque which is dishonoured amounts to acknowledgement of a debt and a liability ?

2. For the purpose of answering the Reference, let there be a brief resume of the facts and reasons for Reference.

The plaintiff sued to recover Rs. 61,886-16 plus Rs. 11,124/- by way of interest at the rate of 9% p.a. from 4-3-1974 from the defendant (The parties were respectively the appellant and the respondent in the First Appeal proceedings). The trial Court decreed the suit for Rs. 26,371.86 with running interest at the rate of 6% p.a. from the date of the suit till payment holding that that such claim was within the time, whereas the rest of the claim was barred by law of limitation. It was contended in the appeal that the cheques Exhs. 117 and 119 dated 15-4-1974 and 27-3-1974 each for a sum of Rs. 5,000 issued in favour of the plaintiff on account of the dues amounted to acknowledgment of liability by the defendant in as much as the original transactions for purchase of goods of Rs. 98,428.50 ran between 7-1-1972 and 9-1-1973 and the issuance of the

aforesaid cheques was quite before the expiry of period of limitation and by virtue of provisions of Section 18 of the Limitation Act, 1963 (for short "the Act") fresh period of limitation should start from the date of issuance of the cheque. Reference was made on behalf of the plaintiff to the decisions in the case of Prafulla Chandra Nag Vs. Jatindra Nath Kar, , Thavva Subrahmanyam Vs. Chenna Venkataratnam, and Rajpati Prasad Vs. Kaushalya Kuer and Others, . Learned single Judge has referred to decision of the Patna High Court in Rajpatiprasad's case (supra) expressing the view that all the post dated cheques in satisfaction of dues would amount to acknowledgment of liability irrespective of the fact whether the cheques were subsequently dishonoured. A reference has also been made to the decision of Andhra Pradesh High Court in Subrahmanyam's case (supra) which has held that a cheque is not only evidence of payment, but it ex facie contains the recitals admitting the payment and would satisfy the requirements of Section 20 of the Limitation Act (previous). Thus, a cheque together with subsequent receipt of money by payee would amount to acknowledgement of payment within the meaning of proviso to the said section. The learned single Judge has observed that by issuing a cheque, a person is admitting debt owing by him to the person to whom he is making payment by cheque. The admission of debt has to be determined with reference to the point of time at which the purported admission was made, that is to say, when the cheque was issued. An admission did not cease to be an admission merely because it is subsequently retracted. For any reason, if the cheque is not honoured subsequently, it will not change the intention of the party of accepting the debt at the time of issuance of cheque. The learned single Judge has finally observed that justice and equity would demand such a construction of the provision contained in Section 18 of the Act.

3. However, in view of the fact that there was a binding decision of Bombay High Court rendered during the period prior to reorganisation of States of Maharashtra and Gujarat, rendered in Chintaman Dhundiraj Vs. Sadguru Narayan Maharaj Datta Sansthan and Others, , the learned single Judge has proposed reference as aforesaid.

4. The matter went before a Division Bench in the first place and bearing in mind the fact that the question required consideration at the hands of Full Bench in view of the fact that validity of Division Bench decision of Bombay High Court in Chintaman's case (supra) was in essence involved, by order dated 6-12-1999 the Bench (Coram : Y.B. Bhatt and A.K. Trivedi, JJ.) directed the reference accordingly. That is how the present Reference before this Full Bench.

5. The, learned advocates appearing on behalf of the rival parties repeated their submissions from the aforesaid decisions. In order to appreciate the same, Section 18 of the Act may first be reproduced :--

"18. Effect of acknowledgement in writing : (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been

made in writing signed by the party against whom such property or right is claimed or by any person through whom he derives his title or liability, fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed, but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation :-- For the purposes of this section,

(a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off or is addressed to a person other than a person entitled to the property or right.

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

It is not in dispute that the aforesaid provision stands for Section 19 of the previous Limitation Act (Act No. 9 of 1908). There has been a long line of decisions construing the provision and the essence thereof is that there must be a subsisting jural relationship between the parties in respect of the claim and there must be an intention to accept such jural relationship by the writing canvassed as the acknowledgement. The statement on which the plea of acknowledgment is founded need not amount to promise and need not indicate the exact nature or the specific character of the liability. Thus, the statement on which the plea of acknowledgement is founded must relate to a present subsisting liability and indicate the existence of Jural relationship between the parties such as, for instance, that of a debtor and creditor and intention to admit such jural relationship is present. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. (See *Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd.*, . The Supreme Court has observed in para 11 of the citation that generally speaking a liberal construction of the statement in question should be given. Besides, explanation (a) of the provision would also assume importance in similarly dealing with a statement in writing canvassed as the acknowledgement.

6. Now a statement written in the form of a cheque will obviously amount to acknowledgement in writing. This proposition is well settled and finds acceptance even in *Chintaman Dhundiraj Vs. Sadguru Narayan Maharaj Datta Sansthan and Others*, . What the Division Bench has observed is that unless the cheque is honoured it could not be regarded as an acknowledgement in writing as

contemplated in the provision regarding part payment in writing as appearing in Section 20 of the previous Limitation Act (now Section 19). According to the Bench, if the cheque is dishonoured the original debt which was conditionally satisfied would be deemed to revive. In our considered opinion, the Division Bench of the Bombay High Court was considering proposition of payment by cheques which ultimately were dishonoured as part payment in writing as contemplated by Section 20 of the previous Limitation Act (now Section 19). While doing so the Bench has observed that such a cheque would not amount to acknowledgement of liability in writing when the cheque is dishonoured since the original debt would revive. With respect, in Chintaman's case (supra) the stages of issuance of cheque and realisation thereof clearly appear to have overlapped. Such stage would be more relatable to the state of mind of the drawer of the cheque. When he issues the cheque, it is very much in his mind that he does so as part of his jural relationship with the person to whom he issues the cheque. There may be different state of his mind at the stage when the cheque is presented for payment. This can well be explained by making a reference to a decision of the Hon"ble Supreme Court in the case of The Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi, , where dealing with Section 82 of the Negotiable Instruments Act, 1881 it has been observed as under :--

"When it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand."

It has proceeded further to observe as under :--

"The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques."

The aforesaid decision came to be distinguished in Jiwanlal Achariya Vs. Rameshwarlal Agarwalla, . That was a case of issuance of post dated cheque and the question that was required to be considered was with regard to what would be the relevant date of its payment. Section 20 of the previous Limitation Act came to be considered in that light. In the process the Hon"ble Supreme Court has observed in the last part of para- 8 of the citation thus : "it is not in dispute that the proviso to Section 20 is complied with in this case, for the cheque itself is an acknowledgment of the payment in the hand writing of the person giving the cheque. The distinguishing feature has been highlighted by saying that where the cheque is post dated, it is clear that no payment of a post dated cheque is possible before the date which it bears. Therefore, the proposition that the payment is on the date on which the cheque was delivered as appearing in The

Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi, will hardly apply to a case of issuance of a post dated cheque since it is clear that no payment of a post dated cheque is possible before the date it bears.

7. What is important to be noticed from the above noted decisions of the Hon"ble Supreme Court is that in the first place a cheque is undoubtedly an acknowledgement of right or debt or liability and when the same is not issued as a post dated cheque, date of issuance of cheque would assume importance, whether subsequently it is honoured or dishonoured. It is thus at the stage of issuance of the cheque that there surfaces an intention on the part of the debtor to acknowledge the liability/right/debt owing to the person in whose favour the cheque is issued. In case the cheque is honoured it would undoubtedly amount to part payment in writing and the same would fall u/s 19 of the Act (Section 20 of the previous Act). While dealing with such part payment in the context of date of such part payment, facts of each case will assume importance in the light of the aforesaid two decisions of the Hon"ble Supreme Court. In this view of the position of law reflecting upon issuance of a cheque, it has to be stated that a cheque would prima facie amount to an admission of debt unless a contrary intention has been expressed by the person issuing the cheque. Such an admission of payment of debt is to be determined with reference to the point of time at which the purported admission was made, that is to say, when the cheque was issued. Merely because subsequently such a cheque is dishonoured and the admission is retracted the admission or the acknowledgement can hardly be said to cease as an admission/acknowledgement of liability. To hold otherwise would be contrary to fair play between the parties, and justice and equity. With profound respect to the Bench in Chintaman Dhundiraj Vs. Sadguru Narayan Maharaj Datta Sansthan and Others, , we are unable to endorse the view expressed on the question in the said decision. We endorse the view expressed by the Patna High Court in Rajpati Prasad Vs. Kaushalya Kuer and Others, , which is recent in point of time in so far as decisions referred to on behalf of the plaintiff are concerned. The view expressed by the learned single Judge in the referring judgment also merits acceptance.

8. In the result, we answer the question as under :--

"The payment by cheque which is dishonoured would amount to acknowledgement of a debt and a liability. By necessary consequence there will be saving of limitation as envisaged by Section 18 of the Act.

9. Having answered the question referred to this Bench, we propose to remit the matter to the learned single Judge as jointly submitted by the learned advocates for the parties for the disposal of the appeal. This Reference will accordingly stand disposed of.