(1977) 08 BOM CK 0034

In the Bombay High Court

Case No : Second Appeal No. 363 of 1970

Hirachand Birdichand Kothari — APPELLANT

Vs

Vijay Cotton Company — RESPONDENT

Date of Decision : 23-08-1977

Acts Referred:

Limitation Act, 1963 — Section 20

Citation : (1979) 81 BOMLR 214 : (1978) MhLj 637

Hon'ble Judges : Chandurkar, J

Bench : Single Bench

Judgement

Chandurkar, J.—The only question in this second appeal by the plaintiff is, what is the starting point of limitation for a suit based on a hundi which is handed over to the holder on a date earlier than the date which is borne on the hundi.

2. Since this is the narrow question which arises at this stage in the second appeal, it will be sufficient to state the bare facts material to decide this question. Exhibits 32, 33 and 34 are three hounds which were admittedly handed over by the defendants, out of whom defendant No. 1 is a partnership firm of which defendant No. 2 is a partner, to the plaintiff in order to discharge its liability on the basis of accounts between the parties. Defendant No. 1 had purchased from the plaintiff''s shop certain articles such as cotton, jowar, etc. The hundi exh. 32 is dated April 15, 1958 and is for a sum of Rs. 1,500. Hundis exhs. 33 and 34 are each for Rs. 1,000 and are dated June 15, 1958 and June 30, 1958 respectively. According to the plaintiff, exh. 32 was dishonoured by the defendants and he, therefore, filed his suit claiming Rs. 3,992.50 on April 15, 1961 on the basis of the hundis. Among the various defences raised, which are not material for the purposes of this second appeal, the suit was contested by the defendants on the ground of limitation. The defendants'' case was that though the hundis bore the date April 15, 1958, June 15, 1958 and June 30, 1958, they were really handed over to the plaintiff about fourteen to fifteen days prior to the date on which exh. 32 was credited into the khata. Exhibit 32 was

credited on April 15, 1958 and thus, according to the defendants, the hundis were handed over either on March 31, 1958 or April 1, 1958 and the limitation for the suit would commence with effect from that date and, therefore, the suit filed on April 15, 1961 would be barred by limitation. The trial Court held in favour of the defendants that the suit hundis were delivered to the plaintiff by about March 31, 1958 or April 1, 1958 and as the suit was filed three years after the date of delivery, it was barred by limitation. The plaintiff''s suit, therefore, came to be dismissed. The plaintiff then filed an appeal against the dismissal of his suit. The appeal Court found that all the three hundis were post-dated and it confirmed the finding that the hundis were delivered to the plaintiff on March, 31, 1958. On a scrutiny of the hundis the lower appellate Court found that the hundis were Darshani hundis and the suit was governed by Article 73 of the Limitation Act, 1908. Relying on a decision of the Punjab High Court in Mangat Ram Shiv Nath Vs. Mange Lal Om Parkash, in which it was held that when a post-dated cheque is given, the promise to pay is made on the day on which the parties met and the cheque was given, the lower appellate Court held that the contract between the parties is concluded on the date on which the cheque or the bill is prepared and delivered to the payee, although it was post-dated as, according to the lower appellate Court, by postdating an instrument it is only the payment that is postponed and the contract is finalised long before the date of payment. In this view, the lower appellate Court held that the suit not having been filed in three years from March 31, 1958 on which date defendant No. 2 had signed and delivered the hundis to the plaintiff, it was clearly barred by limitation. The appeal filed by the plaintiff thus came to be dismissed.

3. The only question which is now argued in this second appeal is whether the lower appellate Court was right in holding that in the case of a post-dated hundi for the purposes of Article 73 of the Limitation Act, 1908, the date of the bill or note should be read as referring to the day on which the post-dated bill was handed over to the holder or whether it has reference to the date which is found on the bill itself. Article 73 of the Limitation Act is as follows:

Description of suit Period of Time from which limitation period begins to run ------------------ ----------- -------------------- On a bill of exchange or promissory note Three years The date of the bill or payable on demand and not accompanied note. by any writing restraining or postponing the right to sue.

There is now no dispute that the three hundis were payable on demand and they were not accompanied by any writing which had the effect of restraining or postponing the right to sue on the basis of the hundis. The question is, what is the construction to be placed on the words "The date of the bill or note" in Article 73. On a plain reading of the words in the third column, it is obvious that when the Legislature has used the words "date of the bill", those words had reference only to the date which appears on the bill and the question as to when these bills were handed over to the holder was entirely irrelevant for the purposes of computing the limitation of three years provided in Article 73. Introduction of the element of handing over of the bill in finding out the day from which the period for the suit begins to run will really amount to amending the entry in the third column in Article 73. Indeed in my view, no other construction is possible on a plain reading of the words in the third column in Article 73.

4. Now, both the trial Court and the lower appellate Court have placed heavy reliance on the decision of the Punjab High Court in Mangat Rain''s case cited supra. At the outset, it must be pointed out that Mangat Ram''s case was not a case which was concerned with Article 73 of the Limitation Act. It was a case which was dealing with the provisions of Section 20 of the Limitation Act, 1908, which provides that where a payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorised agent, a fresh period of limitation shall be computed from the time when the payment was made. The question involved in Mangat Ram''s case was as to when payment is said to have been made for the purposes of Section 20 of the Limitation Act in a case where a post-dated cheque is handed over to the creditor and a Division Bench of the Punjab High Court held that where a post-dated cheque is given in part-payment, the limitation begins from the date on which it is given and not from the date it bears or the date on which it is encashed. Now, apart from the fact that the scope of Section 20 and Article 73 is entirely different, it must be appreciated that for the purposes of s- 20, the relevant question to be determined where a post dated cheque is given is, when the payment can be said to have been made, while for the purposes of Article 73, the only relevant question for the purposes of the limitation is as to what is the date of the bill. Apart from this, the decision of the Punjab High Court is now no longer good law because it has been expressly overruled by the decision of the Supreme Court in Jiwanlal Achariya Vs. Rameshwarlal Agarwalla, where the majority view is that where a post-dated cheque is accepted conditionally and it is honoured, the payment for purposes of Section 20 of the Limitation Act can only be on the date which the cheque bears and cannot be on the date the cheque is handed over, for the cheque, being post-dated, can never be paid till the date on the cheque arrives. It was pointed out by the Supreme Court that where a bill or note is given by way of payment, the payment may be absolute or conditional, the strong presumption being in favour of conditional payment and where such conditional payment is made by a cheque, the mere delivery of the cheque on a particular date did not mean that the payment was made on that date unless the cheque was accepted as unconditional payment. Therefore, the view taken by the trial Court and the lower appellate Court on the basis of the Punjab High Court decision cannot be sustained. For the purposes of the present suit, therefore, the suit which is filed on April 15, 1961 will be within limitation and the lower Courts were, therefore, not justified in dismissing the suit as barred by limitation.

5. It is contended by Mr. Joshi on behalf of the defendants that the plaintiff had presented only the hundi dated April 15, 1958 for payment and that the two

other hundis were not presented at all and, therefore, the liability on the basis of the other two hundis could not be enforced in the suit. This argument has been considered in great detail by the lower appellate Court which has found that the drawer and the drawee of the two hundis (exhs. 33 and 34) were the same and that if the drawer has not suffered any damage, he cannot be permitted to be benefited if the rule of presentment was violated. The lower appellate Court has referred to the evidence of defendant No. 2 who is a common partner of both the drawer and the drawee firms and was not able to say whether he had suffered any damage. The lower appellate Court, therefore, held that the suit on hundis (exhs. 33 and 34) cannot be dismissed on the ground of non-presentment. Further, the lower appellate Court has also found that on the evidence of Bhagwan and Lambatkar, the two bills were presented to defendant No. 2 at Sholapur and this finding recorded by the trial Court in favour of the plaintiff was not challenged in appeal.

6. In the view which I have taken, it is not possible to sustain the decree of the trial Court and the lower appellate Court dismissing the plaintiff''s suit. The result, therefore, is that the plaintiff''s claim for Rs. 3,992.50 is decreed with costs. The plaintiff will be entitled to future interest on Rs. 3,000 from the date of the suit till realisation at 6 per cent, per annum. - The defendants shall pay the costs of the plaintiff throughout.