

(2010) 03 SHI CK 0100

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 126 of 2000

H.P. State Civil Supply Corporation

APPELLANT

Vs

Nanak Chand and Another

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1908 — Section 19, 20
Limitation Act, 1963 — Article 91, 18, 19

Citation : (2011) 1 ShimLC 321

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—Vide order dated 2nd April, 2000, this appeal was admitted on the following questions of law:

1. Whether both the courts below were right in applying the provisions of Section 18 of the Limitation Act?
 2. Whether both the courts below have misdirected themselves in law in applying the provisions of Section 18 of the Limitation Act completely ignoring the provisions of Section 19 of the Act, as aforesaid?
 3. Whether the judgment and decree passed by both the learned courts below on issue No. 7 dismissing the suit of the Appellant/Plaintiff on limitation can be sustained in the face of the admissions made by Respondent/ Defendant No. 1 which evidence has been totally ignored and not considered at all?
 4. Whether the judgment and decree of both the learned courts below is vitiated for non-consideration of the oral and documentary evidence on record?
2. This second appeal u/s 100 of the Code of Civil Procedure, is against the judgment and decree dated 6th December 1999, passed by the learned District

Judge, Shimla in Civil Appeal No. 125-S/13 of 1998, whereby the first appellate court while dismissing the aforesaid first appeal filed by the Appellants, herein affirmed the judgment and decree passed by the learned Senior Sub Judge, Shimla, on 28th May, 1998, vide which the suit of the Appellant-corporation for the recovery of Rs. 1,01,905.70 was dismissed as having been barred by limitation.

3. Factual backgrounds in brief, can be status thus. Defendant Nanak Chand was working as a Salesman-cum-Incharge in a depot of the Plaintiff-corporation w.e.f. 1.4.1977 to 24.2.1988. He is alleged to have misappropriated the goods worth Rs. 97,162.34 and misappropriation was detected at the time of physical verification of the stock. Appellant-corporation filed a suit for recovery, alleging that the goods worth Rs. 97,162.34 were misappropriated by Nanak Chand (Defendant No. 1). Insurance Company (Defendant No. 2) had insured the Appellant against the losses caused by its employees. It was also the case of the Appellant that an amount of Rs. 10,000/- was recovered from Defendant No. 1, but the remaining amount to the tune of Rs. 87,162.34 remained unsatisfied. Thus, claimed the balance amount with interest @ 18% per annum, which was Rs. 14,743.36, at the time of filing of the suit, thus in total sought a decree to the extent of Rs. 1,01,905.70 paise.

4. Defendants resisted and contested the suit and took up the point of limitation.

5. On the pleadings of the parties, the leaned trial Court framed the following issues:

1. Whether the Plaintiff corporation is entitled for recovery of suit amount from Defendants, as alleged? ...OPP.

2. Whether the Plaintiff corporation is also entitled for interest on suit amount as claimed in plaint? ...OPP.

3. Whether the suit is not maintainable as alleged? ...OPD-1.

4. Whether the matter is still sub-judice as alleged. If so its effect? ...OPD-1.

5. Whether the Plaintiff corporation is estopped from maintaining present suit by its own acts, conduct or deeds as alleged? ...OPD-1.

6. Whether the Plaintiff corporation has deliberately suppressed material facts from court as alleged? ...OPD-1.

7. Whether the suit is time barred? ...OPP.

8. Relief. ...OPP.

6. Both the parties led their evidence and at the end of the trial, the learned trial court held that although the Plaintiff corporation was entitled for recovery of the suit amount alongwith interest @ 6% per annum from Defendant No. 1, however, the liability of Defendant No. 2-Insurance Company has been to the extent of Rs. 50,000/- only, and held the receipt of Rs. 10,000/- Ex.PW1/D did not satisfy the

ingredients of Section 19 of the Limitation Act, 1963 and dismissed the suit, on the ground of limitation. The First Appellate Court concurred with the above findings and dismissed the appeal.

7. The learned Counsel for the Appellant submitted that after passing the decree by the learned trial court Defendant/Respondent No. 2 (Insurance Company) has paid the insurance amount to the extent of Rs. 50,000/- thus the claim is restricted to the balance amount with interest and strenuously argued that the value of the misappropriated goods is a debt, which is fairly and squarely covered u/s 19 of the Limitation Act. The payment of Rs. 10,000/- by Defendant No. 1 vide receipt Ex.PW1/D is an acknowledgement within the meaning of Section 19 of the Act aforesaid. Therefore, the suit of the Plaintiff could not have been dismissed. Thus, the learned courts below wrongly applied the provisions of Sections 18 and 19 of the Limitation Act.

8. Contra, the learned Counsel for Respondent No. 1 supported the concurrent findings on this issue of limitation arrived at by both the courts below.

9. To appreciate the rival contentions, it is relevant for me to reproduce Sections 18 and 19 of the Limitation Act, 1963, to resolve the controversy.

10. Section 18 of the Limitation Act reads as under:

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, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

(2) Where the writing containing the acknowledgement 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 (1 of 1872), oral evidence of its contents shall not be received.

Explanation- For the purpose of this section.-

(a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by 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.

This section corresponds to Section 19 of the repealed Act IX of 1908 in all respects. It lays down the law as to effect of acknowledgement in writing on the computation of the period of limitation for institution of a suit or making an application.

11. Section 19 reads:

19. Effect of payment on account of debt or of interest on legacy.-

Where 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 agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1982, an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation- For the purposes of this section-

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment.

(b) "debt" does not include money payable under a decree or order of a court.

This section corresponds to Section 20 of the repealed Act IX of 1908, with certain modifications.

12. This section and the preceding section reproduced above are not mutually exclusive. They lay down the law in their respective particular spheres. The preceding section only operates against the person who makes the acknowledgement but section *ibid* makes the part-payment good in favour of any suit on that liability.

13. The conjoint reading of these aforesaid sections says that an acknowledgement u/s 18 should also be in writing as in the case of payment u/s 19 aforesaid. But while u/s 18, the writing must carry an admission of a subsisting liability, all that Section 19 requires is that the writing should record the fact of payment. It may well be that a writing which records a payment may also amount to an acknowledgement, if the foregoing test is satisfied.

14. Further, there is a fine distinction between both the sections. Section 18 applies to any right or property, whereas, Section 19 covers cases of debts and legacies only. While u/s 18, the acknowledgement should be signed by the person acknowledging, but u/s 19, it may suffice if the payment is acknowledged in the handwriting of the person making the payment without need for his signature. Whereas, Section 18 requires only a writing admitting a subsisting liability regarding the debt or right claimed, Section 19 requires a payment as well as a writing recording the same. An acknowledgement u/s 18 need not be endorsed to the person entitled but the payment u/s 19 has to be made to the

person entitled. Moreover, whereas u/s 18 the fresh period of limitation falls to be computed from the date of signing the acknowledgement, but u/s 19 the period is computed from the date when the payment is made and not from, the date when it is recorded.

15. In nut shell, the part payment made u/s 19 of the Limitation Act saves limitation when the payment was made under circumstances from which the promise was made to pay the debt or it can be implied.

16. Section 19 has two distinct and separate limbs. The first one is that the payment should be on account of a debt and such payment should constitute an acknowledgement. The second is that the acknowledgement should be in the handwriting of the debtor or the person making the payment under his authority. Where payments are not in writing the section will not be attracted. If the payment towards the debt was made by the debtor himself, the writing required is that of the debtor, but if the payment was made through his agent duly authorized the acknowledgement must be by such agent.

17. Thus, there must be debitum in praesenti; solvendum may be in praesenti or in futuro that is immaterial.

18. This is a case where the recovery is qua the value of the misappropriated goods which became the pecuniary liability. But however, there is a difference between the "debt" or a "liability". All debts are liabilities, but all liabilities may not be debt.

19. Having made this concept clear, in the instant case, as stated above there has been a shortage of goods entrusted to Defendant No. 1. He was liable to count for it, therefore, in my opinion it is not a debt, but a liability, which could have been recovered by the Plaintiff corporation within three years under Article 91 of the Limitation Act.

20. In Sant Lal Mahton Vs. Kamala Prasad, the apex court held that to claim exemption u/s 20 of the Limitation Act (now Section 19 of the 1963 Act), the Plaintiff must be in a position to allege and prove not only that there was a payment of interest on a debt or part payment of the principal, but that payment has been acknowledged in the manner contemplated by that section. The ground of exemption is not complete without the second element and unless both these elements are proved to exist at the time of filing the suit would be held to be time barred.

21. On the above touch-stone having examined the facts in hand, I find that the photocopy of the receipt of the amount of Rs. 10,000/- on 7.6.1990 is neither signed by the Plaintiff nor his agent and this amount was never offered by the Plaintiff as a part payment to satisfy his liability. It was recovered by the Plaintiff corporation from the Defendant No. 1 from his salary being its employee and there is also no writing to that effect that he had acknowledged the liability u/s 18 of the Act and further there is absolutely nothing on record to show that it

satisfies the ingredients of Section 19 of the Act as well, to take a lease of life to file the suit for recovery.

22. The record also reveals that the police challan was presented against him qua misappropriation of goods in the year 1998 and he remained an employee of the Plaintiff-corporation in the year 1990 when the amount of Rs. 10,000/-was recovered by making a deduction from the salary of the Defendant would not fall within the purview of either of the Sections, so as to give limitation to the Plaintiff to file the suit. Thus, the Courts below rightly held the suit to be barred by limitation. The points above are accordingly answered.

23. For the reasons aforesaid, I have no manner of doubt in my mind that in this second appeal, no interference is either called for and the appeal is accordingly dismissed with costs.