

(1999) 03 MAD CK 0019
In the Madras High Court

Indian Cotton Mills Federation Export Incentive Department	APPELLANT
Vs	
Transworld Trading Corporation and Another	RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1999) 3 LW 152 : (1999) 3 MLJ 122

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—These appeals are filed by second defendant on O.S. No. 8542 of 1977 and O.S. No. 7722 of 1977 on the file of IX

Assistant City Civil Judge's Court, Madras. A.S. No. 720 of 1985 arises from O.S. No. 8542 of 1977 and A.S. No. 721 of 1985 arises from

O.S. No. 7722 of 1977.

2. Suits were filed by respective plaintiffs against two defendants; one Union of India and appellant herein in respective suits for recovery of cash

incentives. Plaintiffs are exporters of handloom garments and it is their case that Government of India had announced a scheme in or about 1970

promising to release incentives to exporters on value basis of exports every month. Government had declared a cash incentive of 15% of export

value of goods exported to be paid to exporters through second defendant. Evidence of exports will have to be forwarded to second defendant

and processed through it and second defendant would pay the same from out of funds provided by first defendant. It is said that believing the

representation made by Government and on the basis of scheme, plaintiffs entered into contract with buyers at abroad and fixed the price for

export of goods after taking into account incentive amount which is promised under the scheme.

3. In O.S. No. 8542 of 1977, export was made in 1974. It is the further case of plaintiff that incentive upto April, 1974 was paid and the same

was also paid after 1974. But during May, 1974 to September, 1974, incentive were not paid. Section 80 CPC notice was issued to first

respondent on 15.7.1977 for which no reply was sent.... Therefore the suit was filed for recovery of 15% incentive.

4. In O.S. No. 7722 of 1977 also similar claim is made. There, export was made in April, 1974. It is also alleged in the plaint that whenever

export was made, a claim will have to be made to second defendant within a period of two months. Plaintiff moved such a claim and the amount

was not paid. It is further alleged that notice was issued u/s 80, CPC to first defendant. Plaintiff wanted relief from both defendants for incentives

declared by first defendant.

5. Both defendants 1 and 2 filed detailed written statement and one of the contention that was raised by appellant was that the suits are barred by

limitation. First defendant also contended that for the months April, 1974 to September, 1974, no amount was paid to second defendant for

releasing incentive amount. Even though other contentions are taken, only point which I need consider in these appeals is whether the suit is barred

by limitation, I am confining myself with the question of limitation alone since that is the only point argued by learned Counsel for appellants.

6. Even though notices have been served on respondents, I did not have opportunity of hearing counsel for respondents nor plaintiffs since they

were not represented at the time of arguments.

7. Lower court has found that the allegation of plaintiffs that claim will have to be made within two months from the date of export is not supported

by any evidence and therefore limitation will have to begin from the date of export. Last portion of paragraph 20 of the judgment reveals the same.

That finding is not challenged in these appeals. If that be so, limitation will have to be computed from the date of respective exports.

8. O.S. No. 7722 of 1977 relate to incentives for the exports made in April, 1974. Plaint was presented on 21.9.1977, admittedly beyond three

years. Suit notice was issued on 9.5.1977. It may be mentioned that a notice u/s

80 of CPC is necessary only as against first defendant.

9. Lower court relied on Exs.A-63, A-68 and also A-78 and A-79 for the purpose of coming to the conclusion that the suit is not barred by

limitation. It also came to the conclusion that when notice will have to be issued as pre-condition for institution of suit, period of notice also will

have to be excluded.

10. Learned Counsel for the appellants also agree that cause of action arises when export was made as per Section 113 of Limitation Act. In fact,

that is the finding of lower Court also. It is argued that Exs.A-63 and A-68, dated 12.5.1975 and 26.11.1976 respectively cannot be treated as

acknowledgment of liability. How far the said finding of lower court is correct is the only question to be considered in this case.

11. In Exs.A-63 and A-68, appellants herein wrote to plaintiff that the matter is still under negotiation of Government of India and the matter will

be settled by Government of India if it provides necessary funds. In this connection, case of plaintiffs also will have to be considered. The incentive

is promised by Government of India and as per the scheme it is routed through second defendant. Second defendant also is not acting as an agent

of first defendant. Reading of Exs.A-63 and A-68 do not show that appellant acknowledged the subsisting liability which is the basic requirement

u/s 18 of Limitation Act. Lower court seems to think that if the liability is not repudiated and if a reference is made to the incentive, that will be

sufficient to constitute acknowledgment. Lower court seems to think that acknowledgement simply means an admission of truth of one's liability. It

also held that acknowledgment need not be expressed but must be made by circumstances and by acts from which the court should reasonably

infer that persons making acknowledgment intended to refer to a subsisting liability.

12. In Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others, in paragraph 6 of the judgment, their Lordships held

thus,

6. It is thus clear that acknowledgment as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere

acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by

implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear than the intention to admit jural relationship may be implied from it. The admission in question need not be expressed but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests, oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in Section 19, and there is really no substantial difference between the parties as to the true legal position in this matter.

[Italics supplied]

13. The said decision was considered in *Tilak Ram and Others Vs. Nathu and Others*, . In paragraphs 9 and 10 of the judgment, their Lordships held thus,

9. It is not, however, necessary to go into the details of these decisions or to decide which of the two views is correct as this Court in *Khan*

Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others, has examined the contents and the scope of Section 19. After first

stating the ingredients of the section, this Court stated that an acknowledgment may be sufficient by reason of Explanation 1 even if it omits to

specify the exact nature of the right. Nevertheless, the statement on which a

plea of acknowledgment is based must relate to a subsisting liability.

The words used in the acknowledgment must indicate the jural relationship between the parties and it must appear that such a statement is made

with the intention of admitting that jural relationship. Such an intention, no doubt, can be inferred by implication from the nature of the admission

and need not be in express words. It was then observed:

If the statement is fairly clear then the intention to admit the jural relationship may be implied from it. The admission in question need not be

expressed but must be made in circumstances and in words from which the Court can reasonably infer that the person making the admission

intended to refer to a subsisting liability as at the date of the statement.

The court also observed that stated generally the courts leaned in favour of a liberal construction of such statements though that would not mean

that where no admission was made one should be inferred or where a statement was made clearly without intending to admit the existence of jural

relationship such as intention would be fastened on the maker of the statement by an involved or a farfetched process of reasoning. Similarly, while

dealing with an admission of a debt. Fry, L.J. in *Green v. Humphreys*, (1884) 26 Ch. D. 474 observed that an acknowledgment would be an

admission by the writer that there was a debt owing by him either to the receiver of the letter or to some other person on whose behalf the letter

was received but that it was not enough that he referred to a debt as being due from somebody. In order to take the case out of the statute there

must, upon a fair construction of the letter read by the light of the surrounding circumstances, be an admission that the writer owed the debt.

10. 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.

14. In *Reet Mohinder Singh Sekhon Vs. Mohinder Parkash and Others*, the

principle in Tilak Ram and Others Vs. Nathu and Others, , was

reiterated. In paragraph 6 of the judgment, it is held thus,

We are of the opinion that the High Court erred in accepting the above contention. It is true, as pointed out in Tilak Ram and Others Vs. Nathu

and Others, , that the period of limitation cannot be extended by a mere passing recital regarding the factum of the mortgage but that the statement

on which the plea of an acknowledgment is based must relate to a subsisting liability. The words used must indicate the jural relationship between

the parties and it must appear that such a statement is made with the intention of admitting such jural relationship....

[Italics supplied]

15. As stated earlier, second defendant is not a debtor and the promise is made only by first defendant. So any statement made by second

defendant will not save limitation. Only when the amounts are entrusted to second defendant a duty is cast on it to disburse the same to exporters.

In this case, first defendant has admitted that during April to September, 1974, no amount was entrusted to second defendant. There is also no

privity of contract between parties, in Exs.A-63 and A-68, the appellants only say that the matter is still under consideration of Government. u/s 18

of the Limitation Act, even if the second defendant is construed as an agent, agent must be authorised to make acknowledgement. Alleged liability

is not acknowledgment as contemplated u/s 18 by an agent duly authorised.

16. Exs.A-78 and A-79 are two letters written by Small Industries Service Institutes, Ministry of Government of India dated 2.9.1976 and

14.9.1976. In those letters also, there is no acknowledgment of liability. Only reason found by lower court is that the liability has not been

repudiated. Reasoning of the lower court that Exs.A-63, A-68, A-78 and A-79 will constitute as valid acknowledgement is not correct.

17. Further finding of lower court is that notice will have to be issued u/s 80 of CPC and that is a pre-condition for institution of the suit, period

covered by notice also will have to be excluded. Reliance is placed u/s 15(2) of Limitation Act. I do not think that the exclusion of time will save

plaintiff in this case. O.S. No. 7722 of 1977 relates to incentives for the export made in April, 1974. Plaint is presented on 21.9.1977. But it could

be seen from the allegations in the plaint that suit notice itself was issued only

on 9.5.1977 i.e., after the expiry of three years. Once the time has already expired, plaintiff cannot get benefit of further two months u/s 15(2) of Limitation Act. Likewise in O.S. No. 8542 of 1977 also the suit was instituted on 14.10.1977, and that relates to incentive for the month of May, 1974. Suit notice was issued on 15.7.1977, which is also beyond the period of three years.

18. Lower court has also found that second defendant is a trustee and therefore cannot plead limitation. I do not find any merit in the said finding of

lower court. Only when first defendant entrust amount to second defendant for disbursement of incentive, it can be treated as trustee. When the

first respondent itself says that it has not entrusted any amount from the month of April to September, 1974, there cannot be any question of

trustee-beneficiary relationship as found by lower court.

19. No other point was argued by learned Counsel for appellants.

20. I hold that the suits filed by plaintiffs are barred by limitation and the same should not have been entertained by lower court.

21. In the result, both the appeals are allowed, O.S. No. 8542 of 1977 and O.S. No. 7722 of 1977 on the file of IX Assistant City Civil Court,

Madras stand dismissed with costs throughout.