
(2001) 10 AP CK 0061

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 718 of 1998

Indian Overseas Bank

APPELLANT

Vs

Burugu Ramulu and Others

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Contract Act, 1872 — Section 25(3)

Citation : (2001) 10 AP CK 0061

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Vijay, for K. Suryanarayana, for the Appellant; None appeared, for the Respondent

Judgement

P.S. Narayana, J.—Heard Mr. Vijay, learned Counsel representing Mr. K. Suryanarayana, learned Counsel for the petitioner.

2. The revision is filed by the revision petitioner-plaintiff as against an order dated 30.8.1997 in S.R. No. 1144 of 1997 on the file of the learned District Munsif, Nalgonda as against an order directing to register suit as against the 1st defendant only if it is otherwise in order and rejecting the plaint against defendants 2 and 3 in the suit i.e., respondents 2 and 3 in the present revision on the ground that the claim against them is barred by limitation. A suit for recovery of an amount of Rs. 18,087/- was instituted by the revision petitioner-plaintiff, Indian Overseas Bank, Nalgonda against the respondents, defendants 1 to 3 and the plaint was returned by the Court below to satisfy how the suit can be said to be within the limitation and the plaint was represented stating that in view of promissory letter issued by the 1st respondent-1st defendant and in the light of Clause (3) to Section 25 of the Indian Contract Act, 1872 (for short the "Act") the suit is within limitation. It may be appropriate to look into the allegations made in the pleading itself for better and appropriate appreciation of the case. In the pleading it was stated as follows by the plaintiff:

"The defendant No. 1 applied for advancement of loan from the plaintiffs Bank through the Mandal Revenue Officer, Nalgonda for a sum of Rs. 10,000/- for the purpose of fair price shop at Gundlapally Village. The Mandal Revenue Officer, Nalgonda forwarded the application to the plaintiff's Bank with a request to sanction loan.

The plaintiffs Bank advanced a loan of Rs. 10,000/- (Rupees ten thousand only) on 18.11.1986 to the defendant No. 1 pursuant to the said borrowing the defendant No. 1 executed a promissory note as a collateral security undertaking to repay the said amount of loan with interest at 5% over the Reserve Bank of India official rate of interest with a minimum 15% p.a. from the date of loan till the payment in full with half-yearly rests or at such rates and rests as may be revised as per the instructions of the Reserve Bank of India from time to time.

The defendant No. 1 executed a document of agreement of term loan and hypothecation on 18.11.1986 in favour of the plaintiff's Bank undertaking to repay the said loan amount in instalments and hypothecated the stock, wheat, sugar, rice, oil etc., of the fair price shop at Gundlapalli village.

The defendant Nos. 2 and 3 executed a document of agreement of guarantee in favour of the plaintiffs Bank on 18.11.1986 undertaking to pay Rs. 10,000/- on the event of default of payment by defendant No. 1 with interest. Thus all the defendants are jointly and severally liable to pay the same.

The defendant No. 1 executed a document of letter of continuity in favour of the plaintiffs Bank on 18.11.1986 admitting that the demand promissory note for Rs. 10,000/- is security for the repayment of above said loan with interest and the defendant No. 1 is liable to pay the same.

The defendant No. 1 executed a letter of revival on 10.11.1989 for repayment of the suit loan promising to repay the same with interest and on 20.10.1989 the defendant No. 1 executed a letter of acknowledgement of debt in favour of the plaintiff's Bank confirming and admitting that he is due to the plaintiffs Bank the amount shown in the letter and signed by him and on 24.6.1992 the defendant No. 1 executed a document of express promissory letter in favour of the plaintiffs Bank acknowledging the debt and promising to repay the due amount of loan by seeking six months time and again the defendant No. 1 executed express promissory letter in favour of the plaintiff's Bank on 10.8.1994 acknowledging the debt and promising to repay the loan amount within nine months."

3. The Court below on appreciation of the facts had arrived at a conclusion that the suit can be numbered as against the 1st respondent-1st defendant only in view of revival letter, but not as against respondents 2 and 3. It is also brought to my notice that subsequent thereto after the suit was re-presented as against the 1st respondent-1st defendant the same was decreed on 23.12.1997. Now the question is whether the rejection of the plaint as against respondents 2 and 3-defendants 2 and 3 in the suit on the ground of bar of limitation at the threshold itself is sustainable. The relevant pleading already extracted above and the

allegations in the pleading are self-explanatory. Section 25(3) of the Act reads as follows :

"25, Agreement without consideration void, unless it is in writing and registered,--An agreement made without consideration is void, unless,--

(1) xxxx xxxx xxxx

(2) xxxx xxxx xxxx

(3) Or is a promise to pay a debt barred by limitation law - it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits."

4. In *Sri Kapaleeswarar Temple, Mylapore Vs. T. Tirunavukarasu*, , it was held that a debt might have become time barred on the date of the debtor entered into a fresh obligation with the creditor to pay the liability. The said obligation if it satisfies the conditions laid down in Section 25(3) of the Act will amount to a fresh contract and can be made the basis of an action for recovering the amount promised and acknowledged therein by the debtor. Order 7 Rule 11 of the CPC (for short the "CPC") specifies the rejection of plaint only when the suit appears from the statement in the plaint to be barred by any law. Hence, the allegations in the plaint alone have to be looked into for the purpose of deciding the question of limitation at the threshold and the merits and demerits of the matter, which may have to be normally decided after trial and while delivering judgment and need not be gone into at the stage of numbering the plaint. In *Syed Abdul Latif Vs. Kundo Mal and Others*, , it was held that the question of limitation is a mixed question of fact and law. In *British Airways Vs. Art Works Export Ltd. and Another*, , it was held that where on the face of the plaint a suit appears to be barred by any law in view of Article 30(1) read with Article 30(2) of the Carriage by Air Act, 1972, the Court shall dismiss the suit. But where it does not so appear, but requires further consideration or, in other words, if there be any doubt or if the Court is not sure and certain that the suit is barred by some law, the Court cannot reject the plaint under Clause (d) of Order 7 Rule 11, CPC and both the grounds as embodied in Clauses (a) and (d) of Order 7 Rule 11, C.P.C. must appear on the face of the plaint. In *Arjan Singh v. Union of India* AIR 1987 Delhi 165, it was held that normally a plaint has to be rejected not by taking evidence, or reading the written statement, but by finding out what is contained in the plaint itself and for the purpose of seeing whether a plaint is within time or not every allegation of the plaint has to be assumed correct and if the plaint itself shows that the claim is barred by time, then the plaint can be rejected, but however, if the real question of limitation is connected with the merits of the claim in the suit then it has to be tried along with the other issues. It is also pertinent to note that the Court below did entertain the suit as against the 1st respondent-1st defendant. In *Muddada Chayanna Vs. G. Veerabhadrarao*

and Others, , where a suit for damages against four defendants on the basis of cause of action arising from the acts of the defendants was instituted, the plaint was liable to be rejected against the 1st defendant due to protection u/s I -A of the Judicial Officers Protection Act, it was held that the plaint has to be rejected against all defendants. On the basis of the allegations in the plaint where the suit is within limitation as against respondents 2 and 3-defendants 2 and 3 and also in view of revival letter executed by the 1st defendant. This question is a matter touching upon the merits and after letting in evidence and also after putting them on notice inviting a written statement, if any by such parties also, then alone the said question can be decided. I am of the considered opinion that since the question of limitation is a mixed question of fact and law and especially in the light of allegations made in the plaint, the rejection of plaint at the threshold by the Court below as against respondents 2 and 3-defendants 2 and 3 is unsustainable in law. Hence the impugned order dated 30.8.1997 in S.R. No. 1144 of 1997 passed by the learned District Munsif, Nalgonda, is hereby set aside and the Court below is directed to register the suit as against respondents 2 and 3-defendants 2 and 3 also and proceed with the matter in accordance with law. In the facts and circumstances of the case, there shall be no order as to costs.