

(1998) 07 KAR CK 0001

In the Karnataka High Court

Case No : Civil Revision Petition No. 4031 of 1994

K. Premananda and Another

APPELLANT

Vs

Syndicate Bank, Millers Road, Bangalore

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Limitation Act, 1963 — Section 18, 19, 24, 3

Citation : AIR 1999 Kar 231 : (1999) 3 CivCC 311 : (1999) 96 CompCas 128 : (1999) 5 KarLJ 456

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Ramesh P. Kulkarni, for the Appellant; Sri K. Balachander, for the Respondent

Judgement

1. This revision petition u/s 18 of the Karnataka Small Causes Courts Act arises from the judgment and decree dated 31-10-1994 passed in Small Causes Case No. 6556 of 1993 decreeing the plaintiffs suit for recovery of a sum of Rs. 15,401-50 ps. with costs and current interest at the rate of 18.5% p.a. from the date of suit till the date of decree and at 6% p.a. from the date of decree till realisation.

2. Learned Counsel for the revision petitioners contended that the defendants had taken the plea that the suit is barred by limitation as it has been filed beyond three years period of limitation as under Article 19. Learned Counsel for the respondent contended that the plaintiff had acknowledged the liability to pay the suit debt by means of a letter dated 9-5-1985. Respondent's Counsel contended that payments had been made on various dates and so the suit was within limitation. Learned Counsel also contended that there was material on record to show plea raised and evidence of acknowledgement of liability to pay vide letter dated 9-5-1985 and as such if revision petitioner so presses plea of limitation the Court below may be required to decide the question of limitation afresh including the point of acknowledgement and case may be remanded for

decision.

3. From a perusal of the judgment, I find that the Court below has not considered the plea of limitation raised in the written statement. The Court below has not applied its mind to the question of acknowledgment of debt liability or to the question of alleged payment. If the suit has been barred by limitation and the plaintiff fails to prove the acknowledgement and the subsequent payments, then suit is prima facie barred by limitation. The Trial Court has mentioned in the judgment that the defendant has taken the plea that the suit is barred by limitation. When¹ the Court observed as a fact that plea of limitation had been raised before it, then it was the duty of the Court to see whether the suit has been within limitation. Section 3 of the Limitation Act reads as under:-

"Section 3. Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

(2) For the purposes of this Act.-

(a) a suit is instituted,--

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in Court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court".

Section 3 imposes a duty on the Court to dismiss the suits which are barred by limitation. Even if plea of limitation is not raised and the suit appears prima facie barred by limitation, then it should be dismissed. Here plea of bar of limitation has been raised as is mentioned in the Trial Court's judgment even then it appears not to have been decided. In my opinion, as suggested also by Counsel for parties, the question of limitation needs to be decided and considered. The issue or question is whether the suit was really barred by limitation or this limitation was saved by virtue of provisions of Sections 18 and 19 of the Limitation Act and as it goes to the root of jurisdiction of Court and the Court has

not considered it, the decision decreeing the plaintiffs suit per se is not according to law as such the decree passed by the Court below needs to be set aside and case needs to be remanded back for decision afresh according to law.

4. Revision, as such, is allowed. Decree is set aside. The learned Court below is directed to decide the suit afresh in the light of the above observations as well as to decide the question whether the suit has been barred by limitation, if so, its effect. Suit will be decided on the materials already produced by the parties. No party should be allowed to produce any material other than already existing on record.