
(1999) 07 MAD CK 0079

In the Madras High Court

Case No : Second Appeal No. 844 of 1999 and C.M.P. No's. 8646 of 1999

K.K. Palaniappan

APPELLANT

Vs

P.S.K. Subramaniam and two others

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Limitation Act, 1963 — Article 113
Negotiable Instruments Act, 1881 (NI) — Section 117, 138
Partnership Act, 1932 — Section 19, 4

Citation : (1999) 3 CTC 404 : (1999) 4 RCR(Criminal) 763

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

Bench : Single Bench

Advocate : Mr. M.M. Sundresh, for the Appellant;

Judgement

S.S. Subramani, J.—Third defendant in O.S. No. 384 of 1992 on the file of Additional Subordinate Judge, Erode is the appellant herein.

2. First defendant in the suit is a Firm of which defendants 2 and 3 are partners. First defendant is a registered partnership firm. Plaintiff alleged that

on behalf of the firm, defendants 2 and 3 had borrowed a sum of Rs. 60,000 from plaintiff on 9.3.1989 agreeing to return the same within 15 days.

A post-dated cheque dated 24.3.1989 was also handed over to plaintiff evidencing the transaction. On 27.3.1989, plaintiff presented the cheque

into the bank. But the same was returned due to want of funds. Immediately plaintiff informed defendant about the dishonoured cheque and second

defendant representing the firm wrote a letter to plaintiff that he will settle the transaction on or before 26.7.1989 and evidencing the same, letter

was also written on 27.4.1989. Immediately after expiry of the promised date, plaintiff again presented the cheque into the bank on 28.7.1989 for

encashment, which was also dishonoured. Plaintiff again informed defendants about the dishonour of cheque and demanded payment.

Simultaneously complaint was also filed before Magistrate's Court u/s 138 of Negotiable Instruments Act. On the date of complaint an amount of

Rs. 92,400 was payable including interest.

3. In the written statement filed by second defendant he denied the transaction. He even denied that plaintiff presented the cheque into the bank

and also denied the letter alleged to have been written by him agreeing to settle the transaction by 26.7.1989. He further said that after

31.12.1988, third defendant alone is doing business and plaintiff has filed the suit colluding with third defendant. Criminal case is over and it is said

that in the Panchayat third defendant agreed to pay Rs. 70,000 to plaintiff and therefore he is not liable to pay any amount.

4. In the written statement filed by third defendant, he pleaded ignorance of transaction between plaintiff and second defendant. He also contended

that if any letter is written by second defendant agreeing to pay the amount and that is not binding on him. It is alleged in the written statement that it

is only because of the misunderstanding between second defendant and himself, plaintiff filed the suit. He prayed for dismissal of the suit.

5. Trial Court marked Exs. A1 to A16 on the side of plaintiff and Ex.B1 on the side of defendants. Plaintiff got himself examined as PW1 and

defendants 2 and 3 were examined as DWs.1 and 2 respectively.

6. Trial Court found that the transaction pleaded by plaintiff is true and on behalf of the firm the amount was borrowed by the partners. It is also

found that second defendant had executed documents whereby he agreed to settle the transaction on or before 26.7.1989. Even thereafter they

could not keep their promise. The contention that the partnership is dissolved on 31.12.1988 was found to be not true and both defendants 2 and

3 were found to be liable for the amount. During evidence plaintiff admitted that a sum of Rs. 40,000 was received pending suit and for the balance

amount decree was granted.

7. Against the Judgment and Decree of the trial Court, third defendant alone preferred appeal in A.S. No. 13 of 1998 on the file of Principal

District Judge's Court, Erode. Lower appellate Court also did not think of interfering in the decision of trial Court and all the findings were

confirmed dismissing the appeal with costs. The concurrent judgments of courts below are assailed in this second appeal.

8. In the memorandum of appeal, following substantial questions of law have been raised:

(1) Have not the Courts below committed an error of law in holding that the appellant/3rd defendant is also jointly and severally liable to pay the suit amount?

(2) Have not the courts below committed an error of law in holding that the suit firm was not dissolved much earlier than the suit cheque?

(3) Is the finding by the appellate court that the suit is in time correct in view of the fact that the money was lent on 9.3.1989 and the suit was laid on 23.3.1992?

(4) Is the First Appellate Court correct in awarding interest has ordered in its judgment in para 19?

9. After hearing counsel for appellant, I do not think that any question of law much less substantial question of law arises for consideration in this appeal.

10. According to plaintiff, defendants 2 and 3 on behalf of the firm borrowed an amount of Rs. 60,000 on 9.3.1989 and they agreed to return the same on or before 29.3.1989.

11. According to the appellant, he had no knowledge about the borrowing by second defendant and at any rate, even if there is any borrowing, that is not for the benefit of the firm. A further contention is raised that even long before the borrowing, the firm has been dissolved and consequently, third defendant cannot be made liable for the amount borrowed by second defendant. It is also contended that the suit is also barred by limitation.

12. On the question of limitation. I do not think that there is any substance. The suit was filed on 23.3.1992. Counsel for appellant submitted that if the amount is borrowed on 9.3.1989 and suit is instituted only on 23.3.1992, the same is barred by limitation since it is filed beyond three years.

Though the argument seems to be attractive, I do not think that the submission could be accepted. Amount was borrowed on 9.3.1989 on the

understanding that it has to be returned on 24.3.1989 and that is why a post dated cheque dated 24.3.1989 was issued. So, right to make demand

arises only on 24.3.1992. The suit was filed on 23.3.92 and the same is within time. Both the courts below have found that a post dated cheque

dated 24.3.1989 was issued. In that view of the matter, the contention that suit is barred by limitation is only to be negated.

13. Further question arises is whether third defendant is also to be made liable. The contention is that long before institution of suit, partnership has

been dissolved. Third defendant has given the date of dissolution as 31.12.1988. Absolutely no evidence has been let in with by appellant or by

second defendant to show that on 31.12.1988 the firm has been dissolved. But plaintiff has produced Ex.A.14 which shows that the firm was

constituted on 30.6.1987 and the same was dissolved only on 10.5.1989. On the date of transaction, the firm was much subsisting. The fact that

defendants 2 and 3 are partners is admitted. It is also settled law that the act of an agent binds the firm and every partner is the agent of other

partners. Once it is found that the firm was subsisting on the date of transaction, plaintiff is entitled to realise the amount against the firm and its

partners irrespective of the fact that it was subsequently dissolved. Plaintiff is not concerned about the mutual arrangements between partners. All

the partners are jointly and severally liable to pay the debt.

14. The only other question that requires consideration is whether the interest awarded by the lower appellate court is excessive or not. Both the

courts have found that the amount was borrowed on defendant agreeing to pay 18% interest. The award of interest is also in accordance with law.

Lower Court has only awarded 18% interest. Lower appellate court modified the decree and held that even though date of borrowing is 9.3.1989,

interest is awarded only from 24.3.1989. Since the amount of Rs. 40,000 was paid on 20.1.1995, appellate court directed that from 24.3.1989 till

20.1.1995 plaintiff is entitled to 18% interest on Rs. 60,000 and from 20.1.1995, plaintiff is entitled to 18% interest on the balance amount till the

date of decree and thereafter till date of payment at 6%. This is in accordance with Section 34 of the Code of Civil Procedure.

15. Further u/s 117(e) of Negotiable Instruments Act, plaintiff is entitled to 18% interest. Originally, under this section only 6% interest was

awardable and section was amended under Negotiable Instruments Laws Amendment Act 1988 (Act 66 of 1988) with effect from 30.12.1988.

The suit transaction was subsequent to the amendment. Therefore, the interest awarded is also in accordance with law.

16. In the result, I do not find any merit in this appeal and the same is dismissed. No costs. Consequently. C.M.P. No. 8646 of 1999 is also dismissed.