
(2007) 08 MP CK 0049
In the Madhya Pradesh High Court

Laxmi Prasad

APPELLANT

Vs

Seth Ramdayal Jat

RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Constitution of India, 1950 — Article 70
Evidence Act, 1872 — Section 3, 4, 43, 58, 62

Citation : (2008) 1 MPLJ 532

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

Plaintiff has filed this second appeal against the impugned judgment and decree passed by learned first appellate Court allowing the appeal of defendant and thereby dismissing the suit of plaintiff which was decreed by learned trial Court.

Present suit has been filed by the plaintiff for recovery of the pledged ornaments valuing Rs. 20,000/-and in the alternative a decree of Rs. 20,000/-with interest at the rate of 12% per annum. The suit was filed on 26.6.1998. According to the plaint averments in order to solemnize the marriage of his daughter gracefully, plaintiff pledged certain ornaments to the defendant who is a money lender and obtained a loan of Rs. 7,000/-. The description of the pledged ornaments has been mentioned in para 1 of the plaint. It has been further pleaded by the plaintiff that despite he repaid the entire amount of loan with interest, defendant has not returned the pledged articles to him. In para 2 of the plaint it has been further pleaded by the plaintiff that he lodged a report on 29.3.1997 in the concerning police station and a case under sections 3 and 4 of M.P. Money Lenders Act, 1934 (hereinafter referred to as "the Act") was registered against the defendant and the charge-sheet was submitted before the Sub-Divisional Magistrate, Jabalpur before whom defendant admitted the guilt and as such he was punished and was directed to pay a fine of Rs. 150/-, in default of payment

of fine amount, he was sentenced to suffer simple imprisonment of five days.

A very specific plea has been raised in para 3 of the plaint that plaintiff on 12.5.98 by registered notice made demand and requested defendant to return the pledged ornaments, but despite notice was received by the defendant on 14.5.98, the pledged ornaments were not returned by the defendant to the plaintiff and thus it has been prayed by the plaintiff that suit be decreed and defendant be directed to return those ornaments description whereof has been mentioned in para 1 of the plaint. In the alternative it has been prayed that a sum of Rs. 20,000/-with interest at the rate of 12% per annum till its realization be allowed to him.

Respondent/defendant filed written statement and denied the transaction. However, it has been admitted that he was prosecuted before the Sub-Divisional Magistrate under the Act, but he admitted the guilt on the advice of his counsel. It is pertinent to mention here that while replying the averments made in para 3 of the plaint, the averments have been specifically admitted by the defendant in para 3 of his written statement.

Learned trial Court after framing necessary issues and recording the evidence of the parties, decreed the suit of plaintiff and directed defendant to return the pledged ornaments and if those ornaments are not returned, the defendant was directed to pay a sum of Rs. 20,000/-to the plaintiff. But no decree in regard to payment of interest was passed.

Defendant assailed the judgment and decree of trial Court by filing an appeal before learned first appellate Court which has been allowed and the suit of plaintiff has been dismissed.

On 2.2.2007 this Court admitted the appeal on the following substantial questions of law:

1. Whether the suit filed by the appellant was barred by limitation while the suit was filed within 3 years from the date of demand and refusal by the respondent ?

Whether the admission of guilt in criminal case in respect of some transaction made by respondent is admissible in the present case to the extent of fact that there was transaction between the parties ?

It has been argued by Shri B.M. Dwivedi, learned Counsel for the appellant that approach of learned first appellate Court holding the suit to be barred by time is extraneous to the law and learned first appellate Court erred in substantial error of law by not applying Article 70 of the Indian Limitation Act, 1963 (in short "Act of 1963"). In support of his contention, learned Counsel has placed reliance on the Single Bench decision of this Court Kailash v. Kalka Prasad 1983 MPWN 393. It has been further argued by learned Counsel that vide Ex.P-4 defendant admitted the guilt under sections 3 and 4 of the Act before the Sub-Divisional Magistrate and he was punished and sentenced to pay a fine of Rs. 150/-, in default he was directed to suffer simple imprisonment of five days. By placing

reliance on the decision of Madras High Court Perumal Vs. Devarajan and Others, it has been argued that the order of Criminal Court is admissible to prove charge and conviction of defendant, in civil case. On these premised submissions it has been prayed by learned Counsel that suit of plaintiff be decreed by reversing the judgment and decree passed by learned first appellate Court.

On the other hand, Shri S.C. Sharma, learned senior counsel argued in support of the impugned judgment.

Having heard learned Counsel for the parties, I am of the view that this appeal deserves to be allowed.

Regarding Substantial Question of Law No. 1: In the plaint plaintiff has specifically pleaded that he pledged certain silver ornaments referred in the plaint to the defendant and obtained a loan of Rs. 7,000/-and he repaid the entire amount of loan. In para 3 of the plaint, it has been specifically pleaded by him that through his counsel he sent a registered notice dated 12.5.98 to defendant to return back the pledged ornaments and the notice was received by the defendant on 14.5.98, but, defendant did not return the pledged articles. The averments made in para 3 of the plaint have been admitted by the defendant in para 3 of his written statement. In this context I have also gone through the carbon copy of the notice Ex.P-1 which is primary evidence according to Section 62 of the Evidence Act. See Gulam Mohammad v. Alihussain Mullaji and Anr. 1973 J LJ-SN 27. This notice is dated 12.5.98 sent by Mr. Lalita Prasad Sanghi, Advocate to defendant. In para 2 of this notice it has been specifically mentioned that how many silver ornaments were pledged to the defendant and the factum of obtaining a loan of Rs. 7,000/-with 2% interest per month (24% per annum) by the plaintiff. In para 3 of Ex.P-1 it has been mentioned that from time to time the entire amount of loan along with interest was repaid to the defendant, but, he (plaintiff) did not return the pledged ornaments as such he lodged a report in the concerning police station and the defendant was prosecuted and was punished on account of admitting the guilt. To me, despite having received this notice by the defendant, the pledged articles were not returned to the plaintiff, which would amount refusal to return the pledged articles. There is no merit in the stand of defendant that no transaction took place between him and plaintiff. Since the defendant has admitted the entire averments of para 3 of the plaint in his written statement, there is not even a hair escape to show that there was no loan transaction between plaintiff and defendant and plaintiff did not pledge the articles to him. Thus, I am of the view that plaintiff pledged silver ornaments, description of which has been mentioned in his plaint, to the defendant and the plaintiff repaid the entire amount of loan to the defendant.

Now the question is whether learned first appellate was justified in dismissing the suit being barred by time. In this context I have also gone through the impugned judgment particularly paras 11, 12 and 13. According to learned first appellate Court last instalment of loan was paid in the month of February, 1989 and, therefore, from this date the suit ought to have been filed within a period of

three years. Under which law the said finding has been arrived at by the learned first appellate Court, has not at all been mentioned in the impugned judgment. Learned first appellate Court though referred Article 70 of the Act of 1963, but, according to it under this Article, the prescribed period of limitation is three years. At this juncture I would like to mention that learned appellate Court misread and misinterpreted Article 70 of the Act of 1963. Under this Article a suit to recover movable property deposited or pawned from a depositary or pawnee should be filed within a period of three years from the date of refusal after demand. In para 3 of the plaint it has been specifically pleaded by the plaintiff that demand of pledged articles was made by sending a registered notice to the defendant and these averments of plaintiff have been admitted in toto by the defendant in para 3 of his written statement. Since the entire averments made in para 3 of the plaint have been admitted by defendant in the written statement, therefore, no formal proof of the admitted facts is required under the law. In this regard Section 58 of Evidence Act is very clear. But, despite of it, the plaintiff has also proved notice Ex.P-1 in which demand to return pledged ornaments was made. No reply of the said notice Ex.P-1 was sent by the defendant, therefore, according to me it would amount to refusal. The notice (Ex.P-1) was sent on 12.5.98 and the same was received by the defendant on 14.5.98 as per plaint para 3 and because no reply was sent by defendant it would amount to refusal. The suit was filed on 22.6.1998 i.e. within three years from the date of refusal after demand was made. Thus, I am of the view that approach of learned first appellate Court holding the suit to be barred by time is extraneous to law. Art. 70 of the Act of 1963 has been misinterpreted. In this context I may profitably rely the decision of Kailash (supra) placed reliance by learned Counsel for the appellant in which it has been held that the limitation of suit for the return of gold chain would start from the date of refusal after demand. The substantial question of law No. 1 is thus answered that the suit of plaintiff was within limitation as it has been brought within three years from the date of refusal after demand.

Regarding Substantial Question of Law No. 2: It is no more in dispute that vide Ex.P-4 defendant admitted his guilt that he was prosecuted under sections 3 and 4 of the Act and was punished and was directed to pay a fine of Rs. 150/-, in default of payment of fine, he was sentenced to suffer simple imprisonment of five days. Indeed, in written statement also defendant has admitted that he was prosecuted under sections 3 and 4 of the Act and was also punished in terms of Ex.P-4. According to me, a conviction obtained against a person in criminal proceedings is normally inadmissible u/s 43 of the Evidence Act in civil proceedings, but, if the guilt has been admitted, the said admission would certainly be admissible in evidence in the civil case if it is relevant to the matter in issue and there would be no bar of such admissibility within the scope of Section 43 of the Evidence Act. Thus, according to me, the order of Criminal Court is admissible so far as it extends to conviction and the judgment of Madras High Court Perumal (supra) in that regard may be placed reliance. The

substantial question of law No. 2 is thus answered that admission of guilt in a Criminal Case would be admissible in evidence if it is relevant to the matter in issue.

Resultantly, this appeal succeeds and is hereby allowed. The judgment and decree passed by learned first appellate is hereby set aside and the judgment and decree passed by learned trial Court is hereby restored. The respondent shall bear the cost of appellant of this appeal. Counsel's fee Rs. 1,500/-, if pre-certified.