(2017) 03 CHH CK 0007

In the Chhattisgarh High Court

Case No : 6 of 2002

LIC of India APPELLANT

Vs

Prem Chand Shukla RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Code of Civil Procedure, 1908, Section 96 - Appeal from original decree
Limitation Act, 1963, Article 19, Article 37 - Effect of payment on account of debt or of Interest on legacy

Citation : (2017) 03 CHH CK 0007

Hon'ble Judges : Shri Chandra Bhushan Bajpai

Bench : Single Bench

Advocate : Mukesh Sharma, Shaktiraj Sinha

Judgement

1. By this first appeal under Section 96 of the Civil Procedure Code, 1908 (in brevity "Code"), the appellant has challenged the legality and propriety of the judgment and decree dated 19-10-2001 passed by the Additional District Judge, Manendragarh Distt. Koriya in Civil Suit No. 4B/1998 whereby and where under learned Court below has dismissed the suit filed by the plaintiff/appellant for recovery of remaining loan amount and interest Rs. 1,92,399/- and held that as the suit filed by the appellant/plaintiff is barred by limitation, the plaintiff/appellant is not entitled for any relief. 2. As per claim of the plaintiff/appellant, the respondent/defendant was working as Development Officer under the services of the plaintiff. On his request on 17-11-1990, loan was granted to the respondent for Rs.2,17,300/-. The defendant purchased a four wheeler bearing Registration No. MP 23 B 3140. The vehicle was hypothecated. The appellant gave loan for purchase of the said vehicle. Both the parties entered into an agreement on 17-11-1990. As per said agreement, the loan amount was to be deducted from the salary of the respondent; First instalment was of Rs. 2,265/-, last being Rs.2,125/- starting from the month of January, 1991. On 30-3-1994,

services of respondent were terminated. The respondent after his termination not paid any instalment since April, 1994 and also not returned the said four wheeler to the plaintiff. Then the plaintiff filed a civil suit on 14-5-1998. As per pleadings, the amount due was Rs. 1,28,695/- till date along with interest at the rate of 12% i.e. Rs. 63,704/-. The appellant by filing said civil suit prayed that the defendant be directed to return Rs. 1,92,399/- and also the interest due after filing of the suit. It is submitted that cause of action arose on 18-12-1997. The defendant filed written statement, admitted the loan to purchase four wheeler, which was to be deducted on instalment as agreed from his salary but as the services of the respondent were illegally terminated, hence the agreement to repay the loan came to an end. The defendant prayed that the loan amount may be adjusted from whatever gratuity, PF and interim bonus deposited with the plaintiff, The plaintiff had not agreed on it. It is also pleaded that the suit is barred by limitation. Hence the suit may be dismissed as not maintainable. 3. Learned trial Court framed issues. 4. In order to prove their case, parties adduced their evidence and submitted documents in their support. 5. After affording opportunity of hearing to the parties, learned trial Court answered issue No. 1 as affirmative that till 15-5-1998, Rs. 1,92,399/- loan amount was due against the defendant. The trial Court further held that plaintiff failed to prove issue No. 2 that the suit is within limitation and held that as the suit is barred by limitation, the plaintiff is not entitled for any claim prayed for. 6. Against assessment on issue No. 1, the present defendant has not preferred any independent appeal or cross-appeal. 7. Against dismissal of the suit on the basis of the same being barred by limitation, the plaintiff has filed instant first appeal and the grounds taken in the memo of appeal are that the trial Court failed to appreciate the facts and evidence brought on record in its right perspective, failed to appreciate that the right accrues for recovery of suit amount, erred in holding that the suit is barred by limitation and as there was no any default clause in the hypothecation agreement, instalments were still payable by the respondent when the suit was filed before the trial Court and the suit was not barred by limitation prescribed. The vehicle in question still stands hypothecated in the name of plaintiff, delivery of vehicle ought to have been directed. With this, it is prayed that instant first appeal may be allowed, the Court may direct for recovery of remaining loan amount along with interest as mentioned in the said suit from the respondent: It is further prayed that interest after filing of the suit may be awarded at the rate of 12% till realization of the amount from the respondent/defendant. 8. Heard learned counsel for the parties. 9. Learned Counsel for the appellant duly supported the grounds taken in the first appeal. As submitted, document P-I is admitted, other facts regarding the loan, remaining loan amount are not disputed. The defendant had not preferred any cross-appeal or independent appeal against Issue No. 1 as held by the trial Court and as per facts, the instalments have to be started from February 1991 and last instalment was to be paid in the month of January 1999 i.e. within 8 years. Suit is filed on 14-5-1998. The loan amount, instalment amount were admitted in the evidence, also in the pleading by the respondent. The respondent was terminated in the month of March, 1994 from services. There is no any clause that agreement P-I would be terminated after the termination of service of defendant. The vehicle was not returned by the defendant. It would be improper to hold that the bond to pay amount on instalment is also terminated. As submitted, as the suit has been filed on 14-5-1998, with this as per Article 37 of the Limitation Act, 1963, the instalment due from June 1995 till January 1999 is recoverable within limitation. Forty four instalments are recoverable as they are within limitation though the plaintiff/appellant had filed the suit for recovery of 58 instalments but as per limitation laws 14 instalments are barred by limitation. With this Rs. 99,660/- for 44 instalments are recoverable. As there is no provision for interest recoverable from the defendant, the award regarding interest rests on the sound principles of law applicable and the judicial discretion of this Court. 10. Learned counsel for the appellant places reliance on a decision of High Court of MP in Punjab National Bank v. Ishwar Prasad Tiwari and anr. 1994 MPLJ 411. In the said matter, the appellant was a nationalized bank and the said bank advanced a loan to R-1 for purchase of an auto vehicle. Loan was repayable in 36 instalments, also interest was payable as per agreement. The loan was not discharged. With this suit for recovery of amount due was filed. In the said matter, learned Single Bench of High Court of MP held that the matter is covered under Article 37 of the Limitation Act and every instalment has to be seen for the purposes of limitation. With this, the court directed for instalment due within 3 years from the date of filing of the suit. Learned counsel further places reliance on a decision of MP High Court on Sardar Surendra Singh Bedi v. Dhannalal 2011 (5) MPHT 502. In the said judgment also, on similar issue where there is acknowledgement for instalment, the Court held that the matter is covered under Article 37 and the case is regarding bond payable in instalment which provides that even default is made in one or more instalment, whole shall be due and for every instalment the limitation of 3 years has to be seen. Learned counsel for the appellant submits that the trial Court held that the matter comes under Article 19 of the Limitation Act which is not proper because the respondent acknowledged the payment of entire loan in instalment and after acknowledgement as in P-1, the limitation shall be calculated for each instalment and the entire loan may not be held as loan simpliciter. Learned counsel further submits that instant first appeal may be allowed in part for aforementioned 44 instalments which stand due from June 1995 till January 1999. It may be directed for payment to the appellant. 11. Per contra, learned counsel for the respondent submits that present case comes under Article 19 of the Act of 1963, not under Article 37. With this as the respondent was terminated in the month of March 1994 and the suit has been filed on 14-5-1998 after more than 3 years, the entire amount outstanding is time barred. The matter is in relation to contractual liability for which para 8 of the agreement Ex. P-1 has to be seen. In the said para, after death or ceasing to be in the employment, the appellant was required to give one month notice and immediate after termination of respondent, whole amount unpaid is due in totality and the same may be recoverable from the respondent after a month''s notice. Clause 8 is applicable to both the parties till March 1994. Respondent had paid every instalment due. As per clause 8 of Ex. P-1, the plaintiff had not given any notice to the defendant for return of the vehicle, any loss, damage or anything occurred in which the amount due is also included. With this, the suit is barred by limitation as the suit was not filed within 3 years from one month''s notice because for the right to file the suit the limitation is already prescribed in clause 8 i.e. after one month''s notice from the first default and with this right to recover the entire outstanding amount was accrued. Said amount was not accrued in partial, with this the trial Court has rightly held that the suit was barred by limitation. As the plaintiff was authorised to sue after one month notice hence any of the clause of the Limitation Act is not attracted. Learned counsel further submits that the Ex. P-2 is the letter of authority to deduct amount from the salary given by the defendant for plaintiff. As per Ex. P-2 from the every month salary, the plaintiff has to deduct the amount and after his termination the department was very well aware that Ex.P-2 may not be enforceable and operative after March 1994. Hence the amount outstanding was due on the date of termination of services. Cause of action arose in April 1994 in totality not for instalment and as the plaintiff had filed the suit after 3 years, remaining entire amount was due in the month of April 1994. The trial Court rightly dismissed the suit as barred by limitation. Hence the appeal may be dismissed and the judgment passed by the trial Court may be affirmed. 12. In order to appreciate the arguments advanced on behalf of the parties, I have perused the material adduced, pleading and the evidence adduced by the parties before the trial Court. 13. Article 19 and Article 37 of the Act of 1963 is reproduced here for the purpose of relevance :-

19 For money payable for money lent Three years When the loan is made

37 On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due Three years When the default is made, unless the payee or obligee waives, the benefits of the provision and then when fresh default is made in respect of which there is no such waiver.

14. Also Clause 3 and clause 8 of Ex. P-1 is reproduced for relevance :- "3. The price of the said motor cycle/motor car/jeep scooter shall be debited to the Agent in a motor cycle/motor car/jeep/scooter Account to be opened in his name with the corporation including all transfer and registration charges if not paid or reimbursed by the Agent (hereinafter called "the said motor cycle/motor car/ Jeep/scooter Account") in which the balance of the price contributed by the Agent shall be credited and thereafter the Agent shall pay to the Corporation every month on or before the 1st day of each month a sum of Rs. 2265/- last being Rs.2125/- starting from the month of January, 1991 which shall also be credited in the said motor cycle/motor car/jeep/scooter Account. In default the Corporation shall be entitled to deduct the amount of each monthly instalment from the salary and other emoluments due to the Agent and credit such amount

in the said motor cycle/motor car/jeep/scooter Account. 8. In the event of the Agent ceasing to be in the employ of the Corporation for any reason or in the event of his dying while in the service of the Corporation, the Corporation shall be entitled to the exclusive possession of the said motor cycle/motor car/jeep/scooter for that purpose to enter upon any garage or premises in which the said motor cycle/motor car/jeep/scooter Account may be lying for the time being and the Agent and his heirs executors and administrators shall not be entitled to the payment made by him in the said motor cycle/motor car/jeep/scooter Account or any part thereof provided that if the Agent or his heirs executors and administrators as the case may be shall so desire he or they can pay to the Corporation within a period of one month from the date of such event the balance due to the Corporation under the said motor cycle/motor car/jeep/scooter Account after giving credit for all payments made by agent therein and upon payment of such balance the Corporation shall transfer the said motor cycle/motor car/jeep/scooter to the agent or his representative. If the balance due to the Corporation shall not be paid within the aforesaid period of one month the, corporation shall be entitled in its absolute discretion to sell the said motor cycle/motor car/jeep/scooter by public auction or private treaty and upon such terms and condition as it shall think fit and with power to give all necessary receipts and discharges on such sale and to go all acts that may be necessary for completing such sale without being answerable for any loss caused by such sale and the Corporation shall out of the moneys received from such sale pay and satisfy the moneys which shall then be owing to it under the said motor cycle/motor car/jeep/scooter Account and shall pay the surplus if any to the Agent or to his heirs executors and administrators. If there by any loss the Corporation shall be entitled apart from the right to recover the same by suit against the Agent or his estate to deduct the amount of such loss from the salary or other emoluments payable by it to the Agent on account of salary or other emoluments." 15. As the finding of the trial Court for issue No. 1 is not under challenge, said finding attains finality and this appellate court has to accept that finding if not otherwise illegal. On perusal of the entire material, admission of material facts Ex. P-1 and other documents, this Court is of the considered view that the finding of the Issue No. 1 does not require any interference in the matter. Same is in accordance with law, documents and the evidence adduced. 16. Now the question remains before this court for consideration is whether the transaction comes under the ambit of Article 19 or Article 37 of the Limitation Act. From careful reading of the entire Ex. P-1, as the entire P-1 has to be read in totality, this is not loan simpliciter given to the respondent. This agreement is for arrangement of repayment of loan amount. Instalment starts from January 1991 till last instalment upto repayment of entire loan amount. On perusal of above cited case law I am not agree with the arguments advanced that the matter comes under Article 19 of the Limitation Act, rather it is a case clearly covered under Article 37 of the Limitation Act because the said agreement is a bond payable by instalments. With this Article 37 is applicable in the matter, not article 19. 17. So far as the arguments regarding Clause 8 is concerned, said clause is not a termination clause, also the entire document has to be seen. This is a document wherein the respondent acknowledged repayment of loan amount due in instalment. This is not a simpliciter loan where the limitation runs from the date of loan. As per settled law and the case law cited, the court has to calculate the limitation regarding each and every instalment. The court below committed an error of law by holding that the matter is covered under Article 19 of the Limitation Act. As apparent, the suit has been filed on 14-5-1998. With this the instalment due on June 1995 and onwards are within limitation i.e. within 3 years. The instalment upto May 1995 and prior to that are barred by limitation. 18. By relying on the case law cited, the provisions of Article 37 of the Limitation Act, as the document itself has to be considered, there is no any termination clause that immediately after the death or termination from service, entire amount outstanding shall be due from the said date, I am not in agreement with the arguments advanced and the appreciation of the Court below that the entire amount is to be barred by limitation. It is not the case that the entire amount is due from the date of termination only. After consideration of the acknowledgement given by the defendant he was agreed to pay instalment till the last instalment. With this, the document simpliciter is not effective from 17-11-1990 but it was effective for the specific instalment within 3 years from the date of agreement. 19. So far as the interest part is concerned, as there is no provision for award of interest in case of termination from service or death for the sake of argument if the defendant would have continued to serve in the service, he was not required to pay any interest. The termination of service was correct or not is not the subject matter of this appeal. As there was no interest clause in the entire agreement, this Court is not agree with the argument advanced on behalf of the appellant for the interest part. 20. After due consideration, the instalments due from June 1995 onwards till January 1999 are within limitation. Those 44 instalments are recoverable from the defendant. Instalments due upto May, 1995 are barred by limitation. Hence the said instalment recoverable till May 1995 cannot be recovered as barred by limitation. Also in absence of any clause regarding interest and as submitted aforementioned this Court is not inclined to award any interest for outstanding amount due against the respondent. 21. Consequently, appeal filed by the appellant is allowed in part. The judgment and decree passed by the trial Court holding that as the suit is barred by limitation hence plaintiff is not entitled to any relief is hereby set aside. This appellate court partially allows the appeal on the following terms :- I. The appellant is entitled for recovery of remaining instalments due since June 1995 till January 1999 as per Ex. P-1 only. II. The appellant is not entitled for any of the instalments due and unrecovered from April, 1994 to May, 1995. III. The appellant is not entitled for any interest over the aforementioned outstanding instalments. IV. Looking to the facts of the case the respondent shall bear his cost of the appeal and also the cost of the appellant of the appeal. V. If the amount so outstanding is not paid within 3 months from today, then the appellant may also be entitled for the interest at the rate of 12% after three months till realization. Decree be drawn accordingly. Appeal is partly allowed.

