

(2000) 02 BOM CK 0054
In the Bombay High Court
Case No : Suit No. 1762 of 1979

M/s. Dalichand Jugraj Jain	Vs	APPELLANT
M/s. Madhu Wool Spinning Mills and Other		RESPONDENT

Date of Decision : 17-02-2000

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : (2000) 3 BomCR 753 : (2000) 3 CivCC 522 : (2000) 3 MhLj 843

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Advocate : H.R. Sharma, instructed by N.N. Vaishnawa and Co, for the Appellant; Prem Sood, instructed by y S. Malik, for the Respondent

Judgement

A.B. Palkar, J.—This is a suit for recovery of money. According to the plaintiff on 18-2-1974 at the request of the defendants a sum of Rs. 1 lakh was advanced. According to the plaintiff an amount of Rs. 25,000/- was advanced to the defendants on 25-1-1974 and a sum of Rs. 5000/- on 5-1-1974 and separate receipts have been executed. On further request of the defendants a loan of Rs. 54,125/- was also advanced on 16-9-1974 and lastly on 18-9-1974 further sums were advanced. Thus the total amount advanced to the defendants was Rs. 1 lakh including the earlier advances for which an agreement was executed by the defendants. On 20-9-1974, defendant No. 1 returned pay order for Rs. 54,125/- and requested the plaintiffs to pay the said amount in cash. Accordingly on 23-9-1974 the plaintiff took back the said pay order and gave cash of Rs. 54,125/-. The defendants have repaid Rs. 34,000/- during the period 1-11-1975 and 1-12-1976 details of which are stated in Exh. H annexed to the plaint. However, the balance with interest was not paid inspite of repeated demands. The plaintiffs have therefore filed this suit for recovery of Rs. 1,77,000/- inclusive of interest and with future interest on Rs. 1,00,000/- at 18% per annum.

2. The defendants filed written statement and contested the suit. According to the defendants the suit is barred by law of limitation. They denies the plaintiffs

claim in toto.

3. Issues were framed and by a separate order the issue of limitation, which is issue No. 1 was treated as preliminary issue. No oral or documentary evidence was adduced on the preliminary issue and arguments of learned Advocates appearing for the parties were heard. The preliminary issue was to the following effect:

"Whether the defendants prove that the suit is barred by Law of Limitation Act?"

My finding is that the suit is barred by law of limitation.

4. From the plaintiff case as pleaded it is clear that the plaintiff has not filed the suit on the basis of any account, but on the basis of certain transactions of lending. On the plaintiffs own showing, the amounts were advanced more than 3 years prior to the filing of the suit i.e. on 12-11-1979 and as such on the face of it, the claim is barred by law of limitation. What was contended on behalf of the plaintiffs was that due to the repayment made between 1-11-1975 and 1-12-1976 the suit is brought within limitation as the period got extended by the said payments.

5. Section 19 of the Limitation Act is as below :

19. Effect of payment on account of debt or of interest on legacy.--- Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation - For the purpose of this section,---

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a Court.

It is clear that in case of acknowledgment of payment appears in the hand writing of or in a writing signed by the person claiming payment then atone the said payment can be pleaded for the purpose of extension of period of limitation. Mere making payment before the expiration of the prescribed period is not sufficient. In this case there is no pleading that the acknowledgment of payment was obtained in the hand writing of the defendants or any person authorised by them. It is also clear from Exh. H. In view of this the learned Counsel for the plaintiff was not in a position to point out as to how by mere payment the period of limitation got extended. That being so, issue No. 1 will have to be answered in the affirmative and the said issue is answered accordingly.

6. The suit is barred by law of limitation and in fact such a suit should not have been entertained. The suit having been entertained, the defendants were required to face the suit and the same has been pending for an abnormal long period. The argument of the learned Advocate for the plaintiff that since issues are framed, the suit should be tried on all issues and the issues should be decided on merits and not one issue as preliminary has been rejected while taking decision to treat the issue of limitation as preliminary issue and therefore, in the result, the suit having been barred by law of limitation, it must fail on the decision of the preliminary issue itself.

7. The suit is dismissed with costs.

8. Suit dismissed.