(1962) 04 MP CK 0016

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 152 of 1961

Nemichand Chhogalal and Others APPELLANT

Vs

Rekhchand Akhechand and Another RESPONDENT

Date of Decision : 05-04-1962

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 20
Limitation Act, 1908 — Section 14

Citation : AIR 1964 MP 258 : (1963) JLJ 102

Hon'ble Judges : V.R. Nevaskar, J

Bench : Single Bench

Advocate : R.G. Waghmare, for the Appellant; S.D. Sanghi, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Newaskar, J.—The only question involved in this appeal against ai order of remand under Order 41 Rule 23 Civil Procedure Code, is, whether the plaintiffs are rightly held entitled to the benefit of Section 14 of the Limitation Act.

2. The plaintiffs Rekhchand and Gokalchand in their capacity as principals filed the present suit against their adhtiyas-Keshrimal Indarmal of Khargone. The firm Keshrimal Indarmal is alleged to be owned by the four partnars who are named as defendants in this suit. The claim made in the suit was for accounts in respect of transactions which took place on Pos Sudi 15, Samvat 2004, corresponding to 26th January 1948. There were no further transactions between the parties. The cause of action in the suit was mentioned to arise on the 26th January 1943 and also on the data of notice demanding account and the date of reply sent by the defendants that is, 10th August 1949 and 2nd September 1949 respectively. The suit was Initially filed in the court at Barwaha on 14th December 1950. It was alleged in the plaint in Paragraph 12 that the defendants resided and carried on business within the jurisdiction of the Barwaha Court and consequently that court had jurisdiction to try the suit. The defendants contended that the Barwaha

Court had no jurisdiction, to try the suit inasmuch as the defendants did not carry on business within the jurisdiction of that Court, nor were they resident of a place within its jurisdiction.

The suit went on in the Barwaha Court for some time. It was disclosed during the pendency of that suit in Barwaha Court that only three of the partners of the firms of Keshrimal Indarmal were the partners of the firm of Mannalal Tarachand which carried on business in Barwaha. The plaintiffs thereupon submitted an application on 18th December 1952 seeking leave of the Court for continuing the suit against all the defendants on the ground that three of the defendants carried on business within the ju''risdiction of the Barwaha Court. This application was rejected by the Court at Barwaha on 28th August 1953 and the plaint was directed to be returned for presentation, to the proper Court. It was so presented in the Court of Civil Judge, Khargone on 2nd September 1953.

3. It is beyond dispute that in case the plaintiffs are held entitled to the exclusion of the period during which the suit was pending in the Barwaha Court, the suit is wei! within time. It was however, contended on behalf of the defendants that the plaintiffs cannot be said to have carried on the suit in the Barwaha Court with due care and attention and consequently they are not entitled to the exclusion of this period. The trial Court upheld their contention and dismissed the suit as barred by limitation. The lower appellate Court came! to a contrary conclusion and held the suit to be within time. The principal ground on which the lower appellate Court held the suit as not time barred is that having regard to the circumstances of the case it could not be said that the plaintiffs while prosecuting the suit in the Barwaha Court were acting without due care and attention.

On behalf of the plaintiff reliance was sought to be placed upon documents exhibited as P-l to P-6 which were printed envelopes of the defendants'' firm. On the face of these envelopes it was mentioned that this firm had a separate firm in the name of Mannalal Tarachand, Barwaha. The defendants do not dispute the fact that these envelopes belong to the defendants'' firm Keshrimal Indarmal. There was, therefore, perfect justification for (he plaintiffs to assume that the defendants carried on business though under a different firm name within the jurisdiction of the Barwaha Court. It is no doubt true that it was disclosed during the conduct of the suit in Barwaha Court that ail the partners of Keshrimal Indarmal are not the partners of Mannatal Tarachand. In these circumstances, having regard to the provisions contained in Section 20, CPC it was perfectly open to them to apply for leave to continue the suit against all the defendants on the ground that three of the defendants carried on business within the jurisdiction of the Barwaha Court. The question of leave is no doubt a matter resting within the discretion cf the Court and that discretion was not used in favour of the plaintiffs. But merely because this was so, it cannot be said that the suit in the Barwaha Court had been prosecuted by the plaintiffs without due care and attention.

4. Section 14 of the Limitation Act provides as follows:

"14 (1) In computing the period of limitation prescribed for any suit, the, time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a Court of Appeal, against the defendant, shall be excluded, where the proceeidng is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction, or other cause of a like nature is unable to entertain it.. .. .."

It is not disputed that except the requirement as to good faith, all other requirements of the section are fulfilled. The word "good faith" has be"n defined in Section 2(7) of the Limitation Act. According to that definition, nothing is deemed to be done in good faith unless it is done with due care and attention. In the present case, there is sufficient material to hold that there was due care and attention on 1he part of the plaintiffs. The defendants themselves were wrong when they mentioned on the face of the envelopes that the shop of Mannalal Tarachand of Barwaha belonged to them. The plaintiffs cannot ba said to have acted without due care and attention in relying upon this mistaken assertion on the part of the defendants. Moreover, they acted with equal care and attention when they applied to the Court for permission u/s 20 when the true state of the constitution of the defendants'' firm in Barwaha was made known to them. In these circumstances, the decision of the Court below holding that the plaintiffs were entitled to the benefit of Section 14 Limitation Act cannot be said to be erroneous either in fact or in law.

5. The appeal is therefore found to be without force and is dismissed with costs.

