

(1992) 07 MP CK 0021
In the Madhya Pradesh High Court
Case No : F.A. No. 45 of 1987

Punjab National Bank

APPELLANT

Vs

Ishwar Prasad Tiwari and Another

RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Limitation Act, 1963 — Article 37

Citation : (1994) 39 MPLJ 411 : (1994) MPLJ 411

Hon'ble Judges : K.M. Agrawal, J

Bench : Single Bench

Advocate : J.P. Sanghi, for the Appellant; Umesh Trivedi, for the Respondent

Judgement

K.M. Agarwal, J.

This first appeal by the plaintiff Bank is directed against dismissal of the suit on the ground of limitation.

It is not in dispute that the appellant is a nationalised Bank. On 30-8-1973 it had advanced a loan of Rs. 6,800/- to the respondent No. 1 Ishwar Prasad Tiwari for purchase of a three wheeler auto rickshaw. The loan was repayable in 36 equal monthly instalments, commencing from 30-9-1973. It was to carry interest at the rate of 12 per cent per annum with quarterly rests. The respondent No. 2 Suresh Chandra Mishra was the guarantor for repayment of loan. The loan was not discharged and, therefore, a suit for recovery of a sum of Rs. 29,992.75 paise was filed on 28-7-1984. The suit was resisted by the respondents, inter alia, on the ground of limitation. All the issues, except that on the point of limitation, were decided in favour of the appellant and the suit was dismissed as barred by time. Being aggrieved, the plaintiff Bank has preferred this appeal.

Having heard the learned counsel for the parties, I am of the view that the entire suit of the plaintiff could not have been dismissed as barred by time. Admittedly, the loan was taken on 30-8-1973 and it was repayable "in equal monthly instalments so that the entire loan and interest shall be repaid within a period of

3 (Three) years; the first monthly instalment shall be paid after one month of the date of the loan" as per clause 3 of Hypothecation Agreement dated 30-8-1973 (Annexure P. 3). The alleged acknowledgment dated 5-1-1976 (Ex. P. 17) may be excluded from consideration as it appears to have been fabricated by interpolating the date "5-1-1976" in place of "5-1-1978" by overwriting. But there are other acknowledgments dated 5-1-1978 (Ex. P. 18 to Ex. P. 21) and others made on 7-8-1978 (Ex. P. 22), 4-2-1980 (Ex. P. 23), 11-2-1981 (Ex. P. 24), 4-6-1982 (Ex. P. 25) and 12-12-1982 (Ex. P. 26). Accordingly instalment that was payable on 30-1-1975 and those payable thereafter were within time on the date of first acknowledgment dated 5-1-1978, it being within 3 years from the due date for payment of instalment for the month of January 1975. As the first instalment after the date of loan fell due on 30-9-1973, the 16th instalment would have been payable on 30-12-1974. The 17th instalment was due on 30-1-1975. Accordingly, on the face of acknowledgments dated 5-1-1978, the claim for the 1st to 16th instalments must be held to be barred by time and that for the 17th to 36th instalments must be held to be in time on the date of these acknowledgments. The other 5 acknowledgments made on 7-8-1978, 4-2-1980, 11-2-1981, 4-6-1982 and 12-12-1982 (Ex. P. 22 to Ex. P. 26) being correspondingly within three years from one another and from that of 5-1-1978 and the suit having been filed within 3 years from the date of the last acknowledgment, the claim for 17th and subsequent instalments must be held to be in time.

In paragraph 15 of its impugned judgment, the trial Court came to the conclusion that Article 36 of the Limitation Act, 1963, would be applicable in the present case, as there was no pleading or recital in the promissory note (Ex. P. 1) that in case of default in payment of any instalment, the whole amount of loan would become recoverable. However, in clause 3 of the Hypothecation Agreement (Ex. P. 3), it has been specifically mentioned that in case of default in payment of "three consecutive instalments it shall be lawful for the bank to recall the entire outstanding loan" and that the debtor shall "pay the same notwithstanding the period of instalments fixed as aforesaid." In this view of the matter, I am of the view that Article 37 of the Limitation Act would be applicable in the present case, which provides as follows :-

-----	Art.
Description of suit	Period of Limitation Time from which period begins to run.
-----	37 On
a promissory or	Three years. When the default is bond payable by made unless
where the instalments.	which payee or obligee provides that if default waives
the benefit of be made in payment of the provision and then one or more	instalments, when fresh default is the whole shall be due. made in respect of
which	there is no such waiver.

As the right to recover the whole amount on default of three consecutive

instalments was never exercised by the Bank, it must be held that the plaintiff Bank waived its said right for recovery of the whole amount that was due. Accordingly for the reasons stated in paragraph 3 hereinabove, the plaintiff's suit for recovery of 17th to 36th instalments with interest ought to have been held as in time.

In paragraphs 16 and 17 of its impugned judgment, the trial Court has given curious reasons for holding the entire suit of the plaintiff as barred by time and I do not think it necessary to deal with them at length in the light of the clear provisions of Article 37 of the Limitation Act and my discussions aforesaid.

As earlier stated, the loan amount of Rs. 6,800/- was payable in 36 equal monthly instalments. On computation, the instalment comes to Rs. 188.88 paise per month excluding interest. It may be Rs. 250/- per month with interest, as held by the Court below on the basis of plaint pleadings, but the specific figure of monthly instalment is not mentioned in the Hypothecation Agreement (Ex. P. 3) or in any other loan document. I, therefore, proceed to determine the subsisting recoverable liability of the respondents against the principal amount of loan by treating the amount of Rs. 188.88 Paise the amount of monthly instalment. As I have found that the first 16 instalments had become barred by time, the amount of time barred debt comes to Rs. 3022.08, or say Rs. 3022.00 on rounding up the figure, by multiplying the figure of monthly instalment of Rs. 188.88 P. by 16, the figure of instalments that were barred by time. After deducting this amount from that of the principal amount of loan of Rs. 6,800.00, an amount of Rs. 3,778.00 remains as the claim in time. Accordingly, a decree ought to have been passed in favour of the plaintiff for a sum of Rs. 3,778/- with interest at the rate of 12 per cent per annum with quarterly rests from the date of loan and till the date of suit, i.e., 28-7-1984.

A perusal of the statement of accounts (Ex. P. 8 and Ex. P. 9) would, show that the respondents had made certain payments towards the loan account of the respondent No. 1. These payments must be deemed to have been appropriated towards the loan that is held to be time barred, because the plaintiff had the right to do so by virtue of Section 60 of the Contract Act.

It may be mentioned that the various acknowledgments hereinbefore mentioned only confirm the correctness of the balance appearing to the debit of the loan account of respondent No. 1, without there being any promise to pay the same and consequently the appellant is not entitled to get any benefit u/s 25 of the Contract Act, as was argued on behalf of the appellant. Similarly, there being no acknowledgment of the payment appearing in the handwriting of, or in a writing signed by, the respondent No. 1, or his agent making the payment, the appellant is also not entitled to any extension of time u/s 19 of the Limitation Act, 1963.

Before parting, I wish to record my strong disapproval of the attempt made by the bank authorities to bring the entire suit within limitation by fabricating acknowledgment Ex. P. 17 by changing the date 5-1-1978 into 5-1-1976. I was

also considering to initiate proceedings u/s 340, Criminal Procedure Code against the officer concerned, who had made the said interpolation in the said document, but considering the fact that there is a long gap of time between the date of suit and the date of this judgment and the possibility of the responsible officer having been transferred or retired. I do not propose to initiate any such proceeding.

In the result, this appeal partly succeeds and it is hereby partly allowed. The decree passed by the Court below is set aside and the suit of the plaintiff is decreed to the tune of Rs. 3,778/- with interest at the rate of 12 per cent per annum from the date of loan till the date of suit, i.e., 28-7-1984. The plaintiff shall also be entitled to simple interest at the rate of 12 per cent per annum on the decretal amount from the date of suit and till the date of payment. It shall also be entitled to proportionate costs of both the Courts, here and below. The interest on the amount of Rs. 3,778/- as decreed shall be worked out during execution by the Court executing the decree. The decree shall be joint and several against both the respondents' counsel fee as per scheduled or certificate, whichever be less, if certified.