
(1962) 01 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Second Appeal No. 2 of 1961

Puran Chand

APPELLANT

Vs

Jammu and Kashmir Bank Ltd.

RESPONDENT

Date of Decision : 08-01-1962

Acts Referred:

Limitation Act, 1963 — Article 60, 90

Citation : AIR 1963 J&K 29

Hon'ble Judges : Janki Nath Wazir, C.J.; K.V. Gopala Krishnan Nair, J

Bench : Division Bench

Advocate : V.S. Malhotra, for the Appellant; Amar Chand, for the Respondent

Judgement

J.N. Wazir, C.J.—This is Plaintiff's second appeal and arises out of a suit instituted by him for the recovery of Rs. 1500/- against the Jammu

and Kashmir Bank Defendant. The Plaintiffs case was that he had deposited in the savings bank account a sum of Rs. 1400/- on 11-03-1947 and

Rs. 350/- on 22-03-1947 in the branch of the Jammu and Kashmir Bank at Mirpur. The Plaintiff alleged that out of this amount he had withdrawn

Rs. 250/- and claimed the balance of Rs. 1500/- from the Defendant Bank. The Defendant denied liability and pleaded that it had, no knowledge

of the deposit made by the Plaintiff in its branch at Mirpur. It was further pleaded that the suit was barred by time.

The trial Court after examining the evidence adduced by the parties found that the Plaintiff had proved that Rs. 1500/- was due to him from the

Bank but his suit was barred by time. The Plaintiff's suit was accordingly dismissed. On appeal the learned District Judge reversed the finding of the

trial Court on the point of limitation and held that the suit was within time. But after going through the evidence he came to the conclusion that the

Plaintiff had failed to establish that a sum of Rs. 1500/- was due to him from the Bank. The Plaintiff's appeal was dismissed. The Plaintiff has come up in further appeal to this Court.

2. It is argued on behalf of the Appellant that the learned District Judge was in error in reversing the finding of the trial Court in regard to the amount deposited by the Plaintiff in Mirpur branch of the Jammu and Kashmir Bank. We have been taken through the entire evidence adduced by the Plaintiff in support of his claim for Rs. 1500/- against the Defendant Bank. The Plaintiff has produced Tara Chand who worked as a treasurer in the Mirpur branch of the Defendant Bank. According to this witness Rs. 1300/- or Rs. 1400/- were deposited by the Plaintiff on one occasion and at Anr. time a few hundred rupees were again deposited by him. The witness was not definite about the amount which the Plaintiff had deposited on the second occasion.

The learned district Judge has discarded his evidence with the remark that it was difficult for the witness to remember the name of a person who had deposited some amount in bank about 13 or 14 years ago. This in our opinion is no good ground for ignoring the testimony of Tarachand witness produced by the Plaintiff. It is not disputed that Tara Chand was helping his son who was a Cashier in the Mirpur branch of the Defendant Bank. He disposed that the Plaintiff had twice deposited money in the savings bank account at the Mirpur Branch of the Defendant (sic).

According to this witness on one occasion the Plaintiff had deposited Rs. 1300/- or Rs. 1400/- but he did not know the amount which was deposited by him on the second occasion. The witness has not given the exact figure which it was perhaps impossible for him to remember. But it was not improbable for the witness to remember the name of the; person who was already known to him and to say that he had deposited money in the Bank on two occasions.

The Plaintiff has produced Barkat Ram and Baldev Ram who were taken prisoners by the raiders and were residing with him at All Beg Camp.

According to these witnesses the Plaintiff was deprived of all the documents along with the Pass Book which he had in his possession. The witnesses stated that they had seen the Pass Book and had noticed an entry therein in regard to the deposit of Rs. 1500/- in the savings bank

account of the Mirpur branch of Jammu and Kashmir Bank to the credit of the Plaintiff. The learned district Judge has brushed aside their evidence

on the ground that the Plaintiff in his plaint has mentioned that he lost his Pass Book in enemy action whereas the evidence showed that the Pass

Book was lost in All Beg Camp. We do not see there is any inconsistency in the averments made in the plaint and the evidence led by the Plaintiff

in regard, to the loss of the Pass Book. In the plaint the Plaintiff has not mentioned the place where he lost the Pass Book. He has averred that the

Pass Book was lost during enemy action. The incident when the Plaintiff was taken as a prisoner to All Beg Camp is covered by enemy action and

the evidence adduced by the Plaintiff to show that he lost the Pass Book in All Beg Camp does not contradict the averments made in the plaint.

We find no reason to disbelieve the testimony of Barkat Ram and Baldev Ram who were detained in All Beg Camp along with the plain tiff. They

had seen the Pass Book of the Mirpur branch of the Jammu and Kashmir Bank in which there was an entry of Rs. 1500/- to the credit of the

Plaintiff and that Pass Book was taken away from him by the raiders in All Beg Camp.

Moreover, the Plaintiff had informed the Defendant soon after he was released from All Beg Camp that he had Rs. 1500/- in the savings bank

account with the Mirpur branch of the Defendant Bank and had requested the Defendant to arrange to make payment of the same. The fact that

the Plaintiff informed the Bank about his claim immediately after his release shows that it was a genuine demand. The evidence produced by the

Plaintiff, in our opinion fully establishes the claim made by him against the Defendant Bank and the Trial Court had rightly held sc.

3. It has been argued on behalf of the Respondent Bank that the suit was barred by limitation inasmuch as the Plaintiff had made demand in regard

to the amount in the year 1948 and 1952 and the suit was brought after the lapse of six years from the date of the demands. The Defendant

Respondent has not produced any letter of the Plaintiff to show that an unqualified demand was made by the Plaintiff for the suit money. The

Defendant relies upon copy of a letter written by one Ram Prakash, a relation of the Plaintiff. In September 1952 requesting the Bank for the

return of the amount deposited by the Plaintiff. The original letter was in the possession of the Defendant and it has not been produced. The copy

of the letter on which reliance has been placed was produced by Ram Parkash but no question was asked from him whether the original letter was

actually posted to the Bank or not. Under these circumstances the copy of the letter produced by the Plaintiff is of no avail to the Defendant

Moreover, under Article 90 of the State Limitation Act the demand which would start limitation to run against the Plaintiff ought to have been an

unqualified and effective demand made by him for the money deposited with the Defendant. But we find that the demand was not made by the

Plaintiff but by a relation of his requesting the Defendant to make arrangements for the return of money. The mere request by a person who was

not competent to give a valid discharge of the debt would not be such a demand as would start limitation against the Plaintiff under Article 90 of the

State limitation Act. Reliance in this behalf may be placed on Subbiah Chetty v. Visalakshi Achi AIR 1932 Mad 685, in which it has been held:

A demand as is contemplated in Article 60 (which corresponds to Article 90 of the State Limitation Act must, be an unqualified demand for the

whole sum due.

In Gopaldas Metharam v. Lokamal Chellaram AIR 1939 Since 173, it was laid down:

The demand contemplated in Article 60 must be a legal demand. It must be made by a person capable of giving a valid discharge in the event of

payment being made.

The present suit, in our opinion, was clearly within time and the Plaintiff had fully established his claim for Rs. 1500/- against the Defendant Bank.

The Plaintiff is, therefore, entitled to a decree for Rs. 1500/ -. We allow this appeal and decree the Plaintiff's suit to the extent of Rs. 1500/ -, but

keeping in view the circumstances of the case we leave the parties to bear their own costs in this Court.

K.V. Gopalakrishnan Nair, J.

4. I agree.