(2007) 07 MAD CK 0200

In the Madras High Court

Case No : S.A. (MD) No. 1286 of 1996

R. Krishnasamy — APPELLANT

Vs

State Bank of India and Krishnamoorthy — RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:
Limitation Act, 1963 — Article 36

Citation : (2007) 07 MAD CK 0200

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : T.R. Rajaraman, for the Appellant; K.M. Vijayakumar, for the Respondent

Judgement

P.R. Shivakumar, J.—The first defendant in the original suit is the appellant in this second appeal. The plaintiff in the suit, namely the State

Bank of India, Nagercoil is the first respondent, whereas the second defendant in the suit is the second respondent in this second appeal.

2. The appellant/first defendant was provided with a loan facility by the first respondent/plaintiff Bank to the tune of Rs. 8,400/- for the purpose of

purchasing a colour television set. As per terms of the agreement, the said amount has to be repaid in 36 monthly instalments of Rs. 350/- which

includes interest at the rate of 16.5% per annum. The appellant/first defendant executed a promissory note for the loan amount and an agreement

for the repayment of the said loan amount in instalments. The second respondent herein/second defendant stood as a guarantor and executed the

guarantee deed. All the above said documents were executed by the borrower as well as the guarantor on 14.10.1988. Subsequently, the

appellant/first defendant committed default in payment of the instalments as agreed. Under these circumstances, the first respondent/plaintiff Bank

filed the above said suit against the appellant and the second respondent for the recovery of a sum of Rs. 12,293/- representing the principal and

interest due upto the date of suit with cost and subsequent interest. Contending that the appellant and the second respondent executed revival

letters on 19.08.1991 and the appellant/first defendant made a last payment on 13.09.1992 and thereafter chose not to pay any amount towards

the repayment of the loan, the first respondent/plaintiff Bank filed the above said suit for the recovery of the amount as indicated above.

3. The second defendant did not file any written statement and chose to remain exparte before the trial Court. The suit was contested by the

appellant/first defendant admitting the borrowal of the amount for the purchase of colour television set and the terms of the agreement for the

repayment of the said loan in monthly instalments at the rate of Rs. 350/- and payment of instalments upto November 1990, but denying the plaint

averments that the appellant and the second respondent/defendants 1 and 2 executed revival letters on 19.08.1991 and made a payment of Rs.

200/- on 23.09.1992 and praying for the dismissal of the suit with cost.

4. Based on the plea raised on either side, as many as four issues were framed by the trial Court and in the trial that followed, P.W. 1 was

examined and Exs. A-1 to A-13 were marked on the side of the plaintiff, whereas the first defendant was examined as D.W. 1, the sole witness on

the side of the defendants and no document was marked. The learned Principal District Munsif, Nagercoil, on an appreciation of evidence, held

that the revival letters pleaded by the plaintiff were not genuine and were created; that there was no payment made on 23.09.1992 as alleged in the

plaint and that hence the suit was barred by limitation. Based on the said finding, the learned Principal District Munsif, Nagercoil dismissed the suit

with cost.

5. As against the judgment and decree passed by the learned Principal District Munsif, Nagercoil, the first respondent herein preferred an appeal

on the file of the Sub Court, Nagercoil in A.S. No. 8 of 1996. The learned Subordinate Judge, after hearing both sides, reversed the judgment of

the trial Court, set aside the decree passed by the trial Court and decreed the suit as prayed for.

6. Aggrieved by and challenging the said judgment of the learned Subordinate Judge (appellate Court), the appellant herein/first defendant has

brought forth this second appeal before this Court.

7. This Court heard the arguments advanced by Mr. T.R. Rajaraman, learned senior counsel appearing for the appellant and also by Mr. K.M.

Vijayakumar, learned Counsel appearing on behalf of the respondents. This Court also perused the materials available on record, including the

judgments of the lower Courts and paid its anxious considerations to the same.

8. It is an admitted case of both parties that the appellant herein/the first defendant in the suit availed a loan of Rs. 8,400/- for the purchase of a

colour television set and the loan was sanctioned by the first respondent/plaintiff Bank on the basis of a promissory note and a hypothecation

agreement containing the terms of repayment. It is also not in dispute that the loan was not discharged, as the appellant/first defendant committed

default in payment of instalments as agreed to between the parties. The relief claimed by the first respondent/plaintiff Bank is resisted by the

appellant/first defendant on the sole ground that the suit is barred by limitation.

9. It is the case of the plaintiff that the suit is not barred by limitation, as the borrower and the guarantor executed revival letters on 19.08.1991 and

the principal borrower made a payment of Rs. 200/- on 23.09.1992 and hence the limitation started running afresh from 19.08.1991, the date of

revival letter and then again from 23.09.1992, the date of last payment made by the appellant/first defendant. The execution of the revival letters

and the alleged payment made on 23.09.1992 are denied by the appellant/first defendant. According to the appellant/first defendant, signatures

were obtained in blank revival letters at the time of advancing loan itself and the revival letters were created subsequently using the said blank forms

containing the signatures of the principal borrower and guarantor.

10. It is the contention of the appellant/first defendant that no revival letter was given by him or the guarantor on 19.08.1991 and he never

acknowledged his liability to pay any amount to the bank and that the revival letters dated 19.08.1991 is a created document in order to save

limitation. It is the further contention of the appellant/first defendant that he did not make any payment on 23.09.1992 and that the officers of the

bank have created a document as if such payment was made on 23.09.1992 in order to show that the suit is not barred by limitation. The loan

application, demand promissory note, delivery letter, letter of hypothecation given by the appellant/first defendant and the letter of guarantee given

by the second defendant were executed on one and the same date, namely 14.10.1988. They are Exs. A-1 and A-3 to A-6. The suit was filed on

21.02.1994.

11. A perusal of the above said records and the oral evidence adduced in this case will go to show that the trial Court, on a proper appreciation of

evidence adduced on either side in this regard, came to a correct conclusion that the revival letters relied on by the plaintiff bank dated 19.08.1991

marked as Exs. A-7 and A-8 could not have been executed on the above said date and that the said documents were created by the plaintiff Bank

with the help of the signatures of the first and second defendants obtained at the time of advancing loan. The learned trial Judge also gave a clear

finding on an appreciation of fact that the first defendant did not make the alleged payment of Rs. 200/- on 23.09.1992 and that the challan

produced and marked as Ex.A-9 on the side of the plaintiff was also a created one for the purpose of avoiding the bar of limitation. So far as the

documents marked as Exs. A-7 and A-8 are concerned, on the face of the said documents itself, it is obvious that the same were created with the

help of the signatures obtained at the time of advancing loan. Ex. A-7 contains the signature of Krishnasamy, the first defendant. But it has been

prepared as if the document was executed by Krishnamoorthy, the second defendant. Likewise, Ex. A-8 contains the signature of

Krishnamoorthy, the second defendant. But the same has been prepared as if one executed by Krishnasamy, the first defendant. That itself is

enough to come to a definite conclusion that the signature were obtained in blank revival letters at the time of advancing loan and they were filled

up subsequently by the bank officials for the purpose of limitation. The learned trial Judge has correctly given a finding that the revival letters

marked as Exs. A-7 and A-8 are not genuine and that the said documents were prepared by the officials of the plaintiff for the purpose of limitation

with the help of signatures obtained on the date of advancing loan.

12. Likewise, a scrutiny of Ex. A-9 challan in the light of the pre-suit notice issued on behalf of the plaintiff, a copy of which has been marked as

Ex. A-10 will make it abundantly clear that the said challan was also prepared by the officials of the bank for the purpose of saving limitation. Ex.

A-9 - Challan is prepared as if a payment of Rs. 200/- was made on 23.09.1992. On the other hand, in the notice issued on 01.11.1993 the date

of last payment made by the first defendant is shown as 13.09.1992 as seen from Ex. A-10. Even in the plaint paragraph-13 the date of last

payment allegedly made by the first defendant is shown as 13.09.1992. The above said discrepancy found in the documents produced on the side

of the plaintiff and the pleading will make it clear that Ex. A-9 was also created with the help of the signatures obtained at the time of advancing

loan for the purpose of saving limitation and that no payment, as alleged by the plaintiff, on 23.09.1992 was made. These aspects have been

clearly dealt with by the learned trial Judge and the trial Judge gave a clear finding that the above said documents Exs. A-7 to A-9 were not

genuine and they were created for the purpose of saving limitation and that hence the date of Exs. A-7 and A-8 or the date of Ex. A-9 cannot be

taken as the starting point of limitation afresh.

13. The above said well considered finding of the trial Judge should not have been interfered with by the learned lower appellate Judge. The

reasons assigned by the lower appellate Judge for reversing the said finding of the trial Court are not sound enough. In fact, there is no material to

hold that the finding of the trial Court in this regard was in any way infirm or discrepant. On the other hand, the said finding of the lower appellate

Court seems to be perverse as the creation of the above said documents, namely Exs. A-7 to A-9 are obvious on the face of the said records and

no reasonable man would have come to such a conclusion as made by the learned lower appellate Judge in the light of the apparent discrepancies

pointed out in the evidence adduced on the side of the plaintiff. Therefore, though the same is a question of fact, this Court is inclined to interfere

with the said finding of the lower appellate Judge, as the said finding being perverse, has assumed the status of a substantial question of law. Hence

this Court comes to the conclusion that the revival letters marked as Exs. A-7 and A-8 and the challan produced on the side of the plaintiff and

marked as Ex. A-9 for proving that a payment of Rs. 200/- was made by the first defendant on 23.09.1992 have to be rejected as documents created for the purpose of saving limitation.

14. As pointed out supra, documents Exs. A-7 to A-9 are not helpful to the first respondent/plaintiff to sustain the plaintiff''s contention that

limitation started to run afresh from the date of Ex. A-7 and Ex. A-8 at the first instance and then from 23.09.1992 the date of Ex. A-9 for the

second time. Therefore, limitation which had started running from the original cause of action alone should be taken into account for deciding

whether the suit has been laid within the period of limitation. In this regard, this Court wants to point out that though the trial Court has correctly

found that the revival letters and the challan evidencing payment on 23.09.1992 are not genuine, it has come to a wrong conclusion that the suit in

its entirety was barred by limitation without applying its mind to the relevant article of the Limitation Act. The said mistake seems to have been

committed by the learned trial Judge, as it had proceeded on the assumption that the suit has been simply laid on the promissory note and

limitations started running from the date of execution of the promissory note. The further arrangement made between the parties by virtue of Ex. A-

5 - hypothecation agreement for repayment of the loan in 36 equal monthly instalments has not been taken into account by the learned trial Judge.

The same has resulted in coming to the conclusion that the suit in its entirety was not maintainable.

15. Admittedly, the loan arrangement made between the parties to the suit is that the loan amount with interest should be paid in 36 monthly

instalments of Rs. 350/-. The monthly instalment was fixed in such a way that the instalment would comprise a portion of the principal as well as the

interest. The loan was advanced on 14.10.1988. The first instalment was payable on 14.11.1988 and the last instalment was payable on

14.10.1991. Admittedly, the first defendant promptly paid the monthly instalments upto November 1990. Thereafter, he did not pay. So the

instalments for the month of December 1990 to October 1991 were outstanding dues. As per Article 36 of the Limitation Act, limitation starts

running from the date of expiration of the term for the payment of the particular instalment, so far as that instalment is concerned. The suit was filed

on 21.02.1994. Therefore, the suit claim for the instalments that fell due upto 14.02.1991 shall be affected by the bar of limitation. So far as the instalments that fell due from 14.03.1991 till the end of the agreed period of repayment, namely 14.10.1991, the claim of the plaintiff is not barred

by limitation because the claim is made within three years from the date on which they fell due. The total amount payable for eight instalments from

March 1991 to October 1991 at the rate of Rs. 350/- per instalment comes to Rs. 2,800/-. The claim of the plaintiff to the above said extent alone

stands unaffected by the bar of limitation. So far as the rest of the claim is concerned, it clearly stands barred by limitation. Therefore, this Court

comes to a conclusion that the claim of the plaintiff to an extent of Rs. 2,800/- alone shall be sustained and that the prayer of the plaintiff in respect

of the remaining portion of the claim has got to be disallowed as the same is barred by limitation.

16. The plaintiff shall also be entitled to the interest for the defaulted instalments from the date of default. The rate of interest agreed seems to be

16.5% per annum. If the interest for the above said instalments from March 1991 to October 1991 is calculated at the rate of 16.5%, the same

will come to Rs. 134.75 p. A further interest may be allowed for the above said amount of Rs. 2,800/- from 14.10.1991 to the date of suit, i.e.

21.02.1994 which comes to Rs. 1,356.36 p. Thus, the plaintiff shall be entitled to get a decree for the above said amount alone together with

future interest. The calculation is as under:

(i) Total amount of instalments not

barred by limitation ï¿½ 8 x 350/- = Rs.2,800.00

(ii)Interest for the defaulted

instalment (not barred by

limitation) upto 14.10.1991 at

the rate of 16.5% per annum = Rs. 134-76

(iii) Subsequent interest at the

same rate from 14.01.1991 to

21.02.1994 (the date of suit) = Rs.1,356.36

(iv) Total amount due as on the ---------------

date of suit = Rs.4,291.12

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17. The principal should be taken only as Rs. 2,800/-. In the light of the peculiar facts and circumstances of the case, including one that the officials

of the plaintiff Bank have gone to the extent of creating documents, this Court feels the interest of justice requires in this case to restrict the post suit

and post decree interest to 6% per annum though law permits allowing post suit interest at the contractual rate.

18. For all the reasons stated above, the appeal has got to be allowed in part and the judgment and decree passed by the lower appellate Court

shall be modified to the extent indicated above. Taking into account the facts and circumstances of the case, there shall be no order as to costs.

19. In the result, this Second Appeal is allowed in part and the judgment and decree of the lower appellate Court is modified as follows:

The suit is decreed in part and the plaintiff shall be granted a decree directing the defendants 1 and 2 to pay a sum of Rs. 4,291.12 p. (out of which

Rs. 2,800/- shall be the principal component and the balance interest component) with future interest for the principal amount from the date of

plaint till realisation at the rate of 6% per annum.

20. There shall be no order as to costs.