(1999) 10 AP CK 0033

In the Andhra Pradesh High Court

Case No : A. No. 1924 of 1987

Ramgopal Commercial Corporation APPELLANT

Vs

Gandubilli Venkata Ramana Murthy and others RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Limitation Act, 1963 — Article 113, 37, 75

Citation : (2000) 1 ALD 615 : (2000) 1 ALT 769

Hon'ble Judges : I. Venkata Narayana, J

Bench : Single Bench

Advocate : M/s. M.s. Ramachandra Rao and M. Krishna Mohana Rao, for the Appellant; Mr. K. Ravindra Babu, for the Respondent

Judgement

1. The unsuccessful plaintiff is the appellant. The suit OS No.30 of 1984 on the file of the Principal Subordinate Judge, Kakinada, has been filed by the plaintiff-M/s. Ramgopal Commercial Corporation for recovery of a sum of Rs.15,148-32 from the defendants.

2. For the sake of convenience the parties to this appeal would be referred to as per their status in the suit.

3. The averments in the plaint, in brief, are as follows : The plaintiff is a registered firm carrying on business in chit fund transaction. The 1st defendant has joined in one such chit fund transaction for Rs. 10,000-00. The 1st defendant participated in the auction held on 10-6-1980 and was declared as the highest bidder. In view of his successful bidding he signed all the necessary documents and books of the plaintiff and also executed an agreement undertaking to pay future instalments @ Rs.200-00 p.m. The 1st defendant also executed a promissory note in favour of the plaintiff along with defendants 2 and 3, who stood as guarantors for the 1st defendant, on 22-10-1980 for Rs.8,640-00. It is the case of the plaintiff that the 1st defendant paid a sum of Rs.300-00 upto 1-3-1981 and subsequently defaulted in payment of the balance amount due and did not pay the balance inspite of registered notice sent to him. Hence the

plaintiff filed the present suit.

4. Defendants 1 and 2 resisted the suit and field a joint written statement. They admit that the 1st defendant joined the chit fund transaction run by the plaintiff but contended that he received only Rs.5,500-00 by way of a cheque from the plaintiff towards consideration under the suit promissory note but not Rs.8,640-00 as alleged in the plaint. To the actual money covered by the said cheque the plaintiff has added excess amount of Rs.3,140-00 and obtained the suit promissory note for Rs.8,640-00 and hence the suit promissory note is devoid of consideration to the tune of Rs.3,140-00. The 1st defendant also denied payment of Rs.300-00 on 1-3-1981. The defendants also contended that the suit is barred by limitation as the 1st defendant did not endorse the alleged payment on the suit promissory note and did not acknowledge the debt.

5. The 3rd defendant filed a memo adopting the joint written statement filed by defendants 1 and 2.

6. Based on the above pleadings, the trial Court has addressed itself to the following issues, viz.,

(1) Whether the suit pronote is devoid of consideration to a tune of Rs.3,140-00?

(2) Whether the endorsement of payment dated 1-3-1981 is true and whether the suit is within time?

(3) Whether the 1st defendant made a payment of Rs.2000-00 on 10-6-1980?

The parties were put to trial and based on the oral and documentary evidence, the trial Court held that Ex.A1 is fully supported by cash consideration but on the question of limitation the trial Court has held that the suit is barred by limitation and so holding dismissed the suit. Hence the present appeal.

7. Sri M. S. Ramachandra Rao, the learned Counsel for the appellant has contended that the suit transaction is not based on the suit pronote and Ex.A1 is he outcome of chit fund transaction. It is his contention that with each and every instalment limitation starts separately. He further contended that the right of the plaintiff to sue starts after the third default. In this connection the learned Counsel has drawn my attention to Article 37 of the Limitation Act (Act 36 of 1963).

8. For proper appreciation of the issue involved in the appeal it is appropriate to refer to Article 37 of the Limitation Act, 1963, which reads as follows:

Description of suits Period of Imitation Time from which period begins to run

37.

On a promissory note or bond payable by instal ments which provides that if default be made in payment of one or more instalments the whole shall be due.

Three years

When the default is made unless where the payee or obligee waives the benefit of the provision and then when fresh default is made in respect of which there is no such waiver.

9. Thus, from a reading of Article 37, as extracted above, it is clear that the limitation commences "when the default is made unless where the payee or obligee waives the benefit of the provision and then when fresh default is made in respect of which there is no such waiver." The learned Counsel for the appellant Sri M.S. Ramachandra Rao has also placed strong reliance on the judgment of the Kerala High Court reported in Thanuvan Velayudhan Vs. Velayudhan Mudaliar Appavu Mudaliar and Another, . In that case the Court had an occasion to consider two questions, viz., (1) whether the foreman of chit fund can claim a period of limitation of six years in a suit against a prized subscriber for arrears of defaulted subscription on the ground that the variola of the chit is registered? and (2) whether Article 75 of the Limitation Act (old Limitation Act of 1908) applies to the case? The Court has referred to the earlier decisions and held on the question of limitation as follows:

"A bond or a promissory note payable by instalments coming within Article 75 of the Limitation Act is different from a bond executed by a prized subscriber to secure the payment of the future instalments. In the former the amount covered by the bond or promissory note is immediately payable, but for the instalment clause. In the latter case the prized subscriber''s liability is only to pay the future instalments as and when they fall due. But the foreman is given the right by the default clause to claim all the future subscriptions in a lump. By the mere default of one or more of the future instalments the entire amount does not immediately and automatically falls due. As the default of the subscriber gives the foreman merely a right to claim the entire future subscriptions in a lump, until he exercises that right it does not become due and therefore limitation cannot run against him from the date of the default. Article 75 of the Limitation Act does not, therefore, apply to a suit for the recovery of entire amount due in a lump."

10. In another judgment reported in Nanoo Suklumaran v. P. Sankaran AIR 1978 Ker 28, A Division Bench of the Kerala High Court had an occasion to deal with a similar proposition. The Division Bench held that the suit instituted after the expiry of three years of the first default would not be barred by limitation in view of the payment of future instalments. The Court has held that Article 113 of the Limitation Act (Act 36 of 1963) applies and not Article 37. The Court has further held that only instalments falling within a period of three years before the institution of the suit are recoverable and beyond that are barred by limitation.

11. In view of the afore-mentioned settled legal position, I hold that the plaintiff will be entitled to all the instalments accrued due within three years immediately prior to the filing of the suit. The trial Court appears to have not considered the question in the light of the above settled proposition.

12. The appeal is, therefore, allowed and the judgment and decree of the trial

Court are set aside and the suit is remanded to the trial Court with a direction to fix the exact amount payable by the defendants to the plaintiff and pass appropriate decree after giving an opportunity of hearing to both parties on this limited question of fixing the amount. The suit being of the year 1984 and the matter is being remanded only on the limited question; the trial Court is directed to complete this exercise within three months from the date of receipt of a copy of this judgment. There will be no order as to payment of costs in this appeal.

