
(1966) 12 MAD CK 0040

In the Madras High Court

Case No : Appeal No. 184 of 1962, against decree of Sub. J., Devakottai, in O.S. No. 53 of 1960

S. Ramachandra Iyer

APPELLANT

Vs

R.M.M.A. Annamalai Chettiar and Others

RESPONDENT

Date of Decision : 12-12-1966

Acts Referred:

Limitation Act, 1908 — Section 10, 11, 12, 13, 14

Citation : AIR 1968 Mad 103 : (1968) ILR (Mad) 351 : (1967) 80 LW 260

Hon'ble Judges : Veeraswami, J;Krishnaswami Reddy, J

Bench : Division Bench

Judgement

Veeraswami, J.—The appellant brought the suit, out of which this appeal arises, for recovery of Rs. 13,118-75 due on a promissory note, inclusive of interest, to AL. VR. ST. Estates, Devakottai. The appellant was appointed Receiver by this court on 30-9-1959, pending disposal of A. S. 223 of 1959. The promissory note was admittedly executed by the first respondent on 5-7-1946 for a sum of Rs. 10,000, borrowed from the Estate at its Madurai Branch. On 1-7-1949, there was a payment of Rs. 250. On 14-6-1952, there was a further payment of Rs. 2000 by bank draft sent by the first respondent from Ipoh with a covering letter. The suit was instituted on 3-9-1960. By an amendment of the plaint, another payment of Rs. 1000, by a similar draft from the first respondent from Ipoh dated 21-6-1955 was set up. It was specifically asserted in the plaint that this sum was received in part payment of the debt. The first respondent filed a counter-affidavit opposing the amendment. But, there he merely mentioned that he did not admit the allegation that such a payment was made. The additional written statement filled by the first respondent was in no better terms. But, in the evidence, it was put in issue as to whether the sum of Rs. 1000 paid was on account of the suit promissory note or some other transaction. The court below found that this payment was not towards the promissory note and held that the suit was barred by limitation.

(2) Before us the factum of payment of Rs. 1000 by draft is not disputed. What is in controversy however, is, whether the payment was towards the suit promissory note. If it was, the further question would be whether that would, in any case, save limitation. In our opinion, the last payment was clearly towards the suit promissory note, and we cannot accept the finding of the court below to the contrary.

(3) The bank draft was issued by the Chartered Bank of India, Australia and China and bore No. 54/258 dated 21-6-1955, and was in favour of AL. V. R. S. T. Veerappa Chettiar. The draft was addressed to the Indian Overseas Bank Ltd., Devakottai, but cashed through the Indian Bank Ltd. on 4-7-1955. There was an entry for the receipt in the family day-book Ex. A. 21, on same day. The recital of this was that it was credited towards the promissory note. Ex. A. 21 was a family account. The bank passbook Ex. A. 22 which also pertains to the family, contains an entry relating to the receipt of this sum. It appears that along with the draft was sent a covering letter, which is not produced. There is, however, a reference to the sum of Rs. 1000 in Ex. A. 5, dated 6-1-1956, which was written by the first respondent to Veerappa Chettiar. In this letter, while referring to the earlier payment on Ani 7th of Rs. 1000 by bank draft, the first respondent said that the amount might be credited in the Thanathu account. The letter further stated that the balance will be paid to the addressee and the debt cleared and it need not be mixed up with what was in common. This documentary evidence unmistakably shows that the sum of Rs. 1000 was credited towards the promissory note. The court below, however, considered that the reference in Ex. A. 5 to "thanathu" account and certain mistakes crept into the entry in Ex. A. 21, relating to the receipt of Rs. 1000 by draft, showed that the amount was not earmarked towards the promissory note but it was a payment on some other transaction. We are unable to agree with this reasoning. The mistakes in the entry in the account book seem to be by inadvertence and are inconsequential. We are satisfied that the entry related only to the draft in question. There is no reason to doubt the genuineness of the account and the particular entry. No doubt Ex. A. 5 shows that the sum may be credited towards the "Thannathu" account. We are inclined to think that there must have been some kind of understanding between the first respondent and the addressee in regard to the promissory note debt and the addressee was particular that the amount should be paid into his hand. Nevertheless, the addressee, when the amount was received, credited it in the family account and towards the promissory note. There is no reason to think that this entry was made with a view to create evidence. We are aware that the receiver was not initially in possession of the fact relating to the last payment towards the promissory note. On 24-10-1959, or so, Veerappa Chettiar handed over to the Receiver the records relating to the family. By then, Veerappa Chettiar and his brothers were in litigation and the dispute was in appeal pending in this court. It is possible that particular care was not taken in handing over to the receiver all the papers or fully posting him with complete information. Having regard to the facts and circumstances we have mentioned, we place no reliance

on the evidence of the first respondent that the sum of Rs. 1,000 was paid towards some other account. He never set up that case at the earliest opportunity. If his case was true, there is no explanation why he could not have mentioned it in the counter affidavit in the application for amendment of the plaint, or at least in the additional written statement. Except his assertion, there is nothing to show that the sum was paid towards a transaction other than the promissory note. We reverse the finding of the court below and hold that the last payment of Rs. 1,000, was also towards the suit promissory note.

(4) If that be the case, as we hold, the question then is, whether the suit was within time. The court below finds that between 14-6-1952 and 3-9-1960, the first respondent was away in Ipoh. It is common ground that if the plaintiff could have the advantage of S. 13 of the Limitation Act 1908 for the purpose of S. 19, the suit would be within time. Mr. V.V. Raghavan, for the first respondent, contends that any part payment or acknowledgment made during the period extended in effect under S. 13, will not avail for start of a fresh period of limitation under S. 19. He says that the exclusion permitted by S. 13 is only for the purpose of institution of a suit and cannot extend to part payment or acknowledgment of liability. To put it differently, his argument is that S. 19 is not a computation section and that this provision merely says that if there is an acknowledgment of liability before the expiration of the period prescribed for a suit, a fresh period of limitation shall be available from such date. In our view, this contention cannot be accepted.

(5) Section 3 of the Limitation Act 1908, says that subject to the provisions in Ss. 4 to 25, a suit instituted after the period of limitation prescribed therefore by the First Schedule shall be dismissed. Sections 14 to 18 provide for either addition or exclusion of time in the computation of the period of limitation. If limitation expires during court holidays, S. 4 permits a suit or appeal or application to be instituted on the day the court reopens. This is not a case of addition to the period of limitation. This section has nothing to do with the computation of the period of limitation and it does not extend the time prescribed. All that the section does is to extend a concession, namely, that notwithstanding the expiry of the period of limitation during the holidays, the suit, appeal or application may be filed on the day the court reopens. It follows, therefore, that where the limitation expires during the holidays, after that event and before the court reopens, there is no question of making any acknowledgment so as to give a fresh start of limitation. This is because an acknowledgment has to be made before expiry of the period prescribed for institution of a suit and the period of limitation having expired during the holidays, thereafter there can be no acknowledgment of the debt merely because S. 4 says that the suit may be filed on the day the court reopens. But the case is different, as we think, under S. 14. That relates to computation of time and allows exclusion of time in certain circumstances. The fact is that to the extent exclusion is allowed, there is in effect a pro tanto extension of the period of limitation, unlike under S. 4. On account of such exclusion, during the resulting

extended period of limitation so to speak, there can well be an acknowledgment under S. 19. This, we think, is clear from the opening words of sub-section (1) of S. 19, namely, "before the expiration of the period prescribed for a suit or application". It is true the period of limitation prescribed is always the same. But when the law directs that in computing such prescribed period, exclusion of time should be allowed in certain circumstances, the period prescribed falls over a longer period than the time prescribed without exclusion. If, therefore, an acknowledgment is within the period of limitation prescribed, but as computed after exclusion, we do not see why it is not within the ambit of S. 19. On that view, we think that the suit is within time.

(6) The view we have taken receives support from Nagarpur Sambayya Vs. Nagarpur Pedda Subbayya, and Shanmugavel Goundan and Others Vs. Venkitaswami Asari, . These two cases no doubt, relate to exclusion of time under different enactments, but, in our opinion the principle is the same. AIR 1935 85 (Privy Council) and S.N. Jayarama Aiyar and Others Vs. S. Rajagopalan, to which Mr. Raghavan made reference, do not assist him, as they were concerned with the applicability of S. 4.

(7) The appeal is allowed. The decree and judgment of the court below are set aside and the suit is decreed with costs here and the Court below.

VGW/D.V.C.

(8) Appeal allowed.