(2014) 10 MAD CK 0283

In the Madras High Court

Case No : Second Appeal (MD) No. 596 of 2009

Selvagurunathan APPELLANT

Vs

The State Bank of India RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2014) 5 LW 763 : (2014) 8 MLJ 226

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Judgement

P. Devadass, J.—The defendants in O.S. No. 52 of 2004(O.S. No. 127 of 1999, Sub Court, Kumbakonam) on the file of the Principal District Munsif Court, Valangaiman at Kumbakonam, as against whom money decree was passed which has been upheld by the First Appellate Court/Additional Sub Court, Kumbakonam, in A.S. No. 144 of 2007 has directed this Second Appeal.

2. The first appellant/first defendant sought for Sugar Cane Loan from the respondent/plaintiff namely, State Bank of India, Thiruvidaimarudur Branch. On 7.11.1995, the loan was advanced on certain terms and conditions. The wife/the second defendant guaranteed his repayment of the loan by her husband/first defendant. Since the loan amount was not paid as agreed, the overdue amount became a big amount. After notice, the respondent has instituted the suit. The respondent pleaded that by the execution of revival letters the suit is within time.

3. The suit has been resisted by the appellants by filing a faint written statement raising several contentions. One of them is that at the time of sanctioning the loan several signatures of the defendants have been obtained in several blank forms, they might have been used to create revival letters to show that the suit is time and thus the suit is barred by time.

4. The trial court, negatived the defendant''s plea of limitation on a strange reasoning. The trial court has evolved a new law of limitation with regard to financial institutions, banks vis-?-vis private parties.

5. The said patent illegality has been noticed by the First Appellate Court. However it also fell into errors and on different grounds upheld the decree and judgment of the trial court.

6. Aggrieved, the defendants have directed this appeal.

7. In the Second Appeal, the following substantial question of law has been framed:

"Whether Ex. A.4 and Ex. A.5 unfilled document will extend the period of Limitation in favour of the plaintiff?"

8. According to the learned counsel for the appellants/defendants Exs. A4 and A5 which have been pressed into service by the bank in the trial court to protect this suit from being caught by the vice of limitation are completely blank. Except the signature and date, nothing is available and thus, it shows that they were obtained from the debtor at the time of sanctioning of the loan who was then very pathetic in getting financial assistance from the bank they cannot be valid revival letters. A plea by a borrower, who has borrowed the money, if accepted, is in the nature of resulting in loss of money to the creditor. If such plea is allowed to be taken in law, a litigant is always entitled to take such legal plea.

9. On the other hand, the learned counsel for the respondent/bank would submit that the appellants have fully enjoyed the money of the bank. Apart from the present loan, the debtor did not avail any other loan from the bank. Therefore, he has signed in the EX. A4 and A5 only after three years well before bar of period of limitation. Now the appellants seeks escape through some loopholes. In such circumstances, both the courts have rightly sealed the attempt of the appellants from his escapade paying.

10. The principle behind the statute of limitation is that a certainty/finality should be given to any claim or liability. Otherwise, there will be no end for matters. One may get benefited by the inaction of another. For example, prescription of title by any adverse possession, one may became the owner of the another man''s land by the benefit of bar of limitation. The owner will loose his property. It may be unjust enrichment. But when he allow a person to have such a benefit, he cannot be blamed because he is right as per law. Law and moral are different. They are not analogues and not interchangeable. But under the limitation limit, a period of three years has been prescribed for a money claim. Beyond that the claim is barred by time. However, it can be revived well before the expiry of time or it may be by acknowledgment of a time barred debt.

11. But the revival of the limitation period must be clear, unambiguous, clear cut by the borrower, his willingness to extend the period of time must be clear. It takes the mode of writing in the form of a document. Such revival of limitation cannot be a matter of assumption and presumption. It is the money matter. It must be expressed in clear cut terms. These are certain fundamental postulates relating to extension of period of limitation by act of parties. Banks, Financial

Institutions, money lenders in this regard uses a separate format. They are called ''revival letters''. Yet, must exhibit a clear cut manifestation of the intention of the borrower willingly agrees to extend the period of time. It may be some times by part payment and it would give a fresh period of limitation.

12. Now in this case, the respondent has instituted the suit based on the dues calculated on the ledger accounts. Admittedly, the said suit was instituted beyond three years. However, it is the duty of the plaintiff to explain to the court how the claim is in time. The Bank says that the period is extended by the issuance of Ex. A4 and A5 revival letters by their debtor/first defendant.

13. The major plank of attack of the defendants is to Exs. A4 and A5 revival letters. We have read Exs. A4 and A5. Except the signature of the first defendant and date, there is no details, nothing, it is in blank form. It is an unfilled form. It appears to be signed on dotted line.

14. Of course, the first defendant did not deny his availing of loan from the bank. But the debtor would say it has gone because of the expiry of the period of limitation.

15. The bar of limitation if it is established, it will go to the benefit of the defendants. The defendants can take advantage of it. If the limitation period is over right to sue itself is over.

16. As already stated, in this case, Ex. A4 and A5 are completely vague. It cannot be stated that it contains an unambiguous, clear cut willingness of the first defendant to revive the loan for the purpose of limitation Act.

17. From the above discussion, it is clear that the suit claim is barred by time. The substantial question of law is answered accordingly in favour of the appellants.

18. In the result, this Second Appeal succeeds. The decree and judgment of the trial court as well as the First Appellate Court are set aside. The suit is dismissed. Their respective costs throughout shall be borne by the parties.