

(1962) 10 MAD CK 0010

In the Madras High Court

Case No : Letters Patent Appeal No. 91 of 1961

Sivakasi Match Exporting Co.

APPELLANT

Vs

Ramanlal Mohanlal Bros., firm

RESPONDENT

Date of Decision : 18-10-1962

Acts Referred:

Limitation Act, 1908 — Section 19

Citation : AIR 1963 Mad 403 : (1964) ILR (Mad) 1204 : (1963) 76 LW 247 : (1963) 1 MLJ 382

Hon'ble Judges : S. Ramachandra Iyer, C.J.;Anantanarayanan, J

Bench : Division Bench

Advocate : K.C. Jacob, S.K.L. Ratan and J. Satyanarayana, for the Appellant; R. Gopalaswami Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ramachandra Iyer, C.J.—This appeal, which arises on a certificate granted by Jagadisan, J. under Clause (15) of the Letters Patent,

raises a question of limitation with respect to a claim by a disappointed buyer for return of the advance amount paid by him on the contract of sale

being repudiated by the seller. The suit giving rise to this appeal was originally instituted by the respondent in the civil Court at Surat on 15-6-1954;

but, later on, on that Court declining to entertain the suit on a finding as to its jurisdiction, the plaint was presented to the District Munsif's Court,

Sattur, in August 1955. It is not now disputed that the respondent would be entitled to the benefit of Section 14 of the Limitation Act with respect

to the period covered by the presentation of the plaint in the civil Court at Surat and in the District Munsif's Court at Sattur. We have to consider

in effect therefore whether the suit was barred on 15-6-1954, when it was

presented to the Court at Surat.

2. A few facts have to be stated for the purpose of appreciating the real point now in controversy. Some time towards the end of March 1951 the

appellant (a manufacturer of fire matches) entered into a contract with the respondent to sell a number of bundles of match boxes. At the time of

entering into the contract, and in consideration thereof, the respondent paid the appellant a sum of Rs. 1001 as advance towards the price. In April

1951 the appellant sent certain packages of goods to the respondent in purported performance of the contract. The latter declined to accept the

goods as not conforming to the specifications contained in the contract. But the appellant would not agree. It can now be taken as proved--and,

indeed, there is no controversy on that point--that the appellant did not deliver the proper goods in accordance with the terms of the contract, but

on the other hand he persisted in his refusal to perform the contract otherwise than in the way he did. He was thus guilty of breach. He would

therefore be bound to return the advance paid by the respondent towards the contract. The principle underlying this obligation on the part of the

seller has been expressed by Benjamin in his book on Sale of Goods, 8th Edn. at page 413 thus :

The buyer who has paid money under a contract of sale may recover it back when the consideration on which it was paid has failed, for, in that

event, it is unconscionable for the seller to retain it without consideration, and the money is, in consequence, in the eye of the law, received by the

seller to the use of the buyer (Royal Bank of Canada v. Rex, 1913 AC 283).

3. The respondent's claim has been principally contested on the ground of limitation. It has therefore to be considered when the cause of action to

recover back the advance paid accrued to him, and, secondly, the proper article of the Limitation Act that would govern the case. On the former

question, there can be no doubt, on the correspondence between the parties, that the appellant unequivocally repudiated his obligation on 3-5-

1951, to supply the goods according to the terms of the contract. On the latter question, ie., as to the relevant Article of the Limitation Act which

would apply to the case, the Courts below have expressed divergent views. The trial Court, which dismissed the respondent's claim, applied

Article 62, while the lower appellate Court, which reversed that judgment, held

that Article 120 would apply. Jagadisan, J. in second appeal, held that Article 97 would be the appropriate article. But the learned Judge did not accept the position that the consideration failed immediately on the breach of contract as he held that the consideration should be held to have failed only when the respondent accepted the breach and made the demand for return of the advance amount. That demand was made on 18-7-1951. The suit was therefore held to be in time. It is doubtful whether the date of failure of consideration for the purpose of Article 97 can be fixed with reference to the date when the buyer chooses to demand the return of money. We find that it is unnecessary to consider the correctness of the view taken by the learned Judge for the purpose of this appeal.

Assuming that Article 97 would apply to the present case and that the date when the advance amount became payable will be on the date of breach, i.e., 3-5-1951, we have come to the conclusion that there has been sufficient acknowledgment of the suit claim within Section 19 of the Limitation Act, to (keep it alive on 15-6-1954, when the suit was filed.

In order to appreciate this point, it is necessary to refer to two letters sent by the advocate acting on behalf of the appellant to the respondent. The first is dated 3-6-1951. In that letter, the appellant acknowledges the receipt of a sum of Rs. 1001 by way of advance under the contract. The appellant then states that the respondent was guilty of rejecting the goods which were sent in due performance of the contract, and that, on account of the default on behalf of the respondent, the appellant who took back the goods resold the same, and, in that process, sustained a loss. He then referred to the net amount of loss which he mentioned as Rs. 880-9-2, and proceeded to state:

On the whole, you are liable to pay in the shape of damages for breach of contract made by you in not taking delivery of the goods despatched to you as described in invoice No. 4/10 dated 23-4-1951, a sum of Rs. 880-9-2. My clients have appropriated from out of the advance payment of the sum of Rs. 1001 a sum of Rs. 880-9-2 towards the said damage sustained by my clients. There is thus a small balance of Rs. 120-6-10 standing to your credit. My clients are ready to remit the sum to you at your cost on receipt of your consent to have it done so.

In reply to this letter, the respondent sent another, protesting that he was ever

guilty of breach of contract and reiterating his claim in respect of the advance amount paid. The appellant's advocate then wrote to the respondent on 30-7-1951 a letter, which, as he stated, ""was in continuation of my letter dated 3-6-1951"". It is clear from this that the letter dated 3-6-1951 was treated as a part of the letter dated 30-7-1951. It will therefore follow that if the letter dated 3-6-1951 were to be regarded as containing an acknowledgment of the obligation to pay back the sum of Rs. 1001 the advance paid, the acknowledgment can be treated as having been made on 30-7-1951 as well as the second letter expressly says that it was in continuation of the former, thereby impliedly adopting the same.

4. It must be remembered that the sum of Rs. 1001 was paid for the performance of the contract, and not as a security against breach of contract

by the respondent. In the letters aforesaid, the appellant expressly acknowledges the fact of the payment of advance and of the failure of

performance of the contract, and also impliedly acknowledges his liability to refund that amount; but he only says that he has adjusted it as against

the claim for damages for the breach of contract, which breach according to him, was to be laid at the door of the respondent. To put it in a

different way, there is, in effect, sufficient admission of facts, from which one can infer an admission of liability. At the same time, there is a refusal

to pay, as the appellant, claims a right to adjust that amount against the loss which, according to him, he sustained in the transaction. It is therefore

necessary to consider whether such a statement can constitute an acknowledgment within the meaning of Section 19 of the Limitation Act. An

acknowledgment, need not contain a promise to pay either in express terms or even in an implied way; what is necessary is that there should be an

admission of the subsisting liability. Even if such admission is accompanied by a refusal to pay, its character as an acknowledgment will not be

altered. But such a case has got to be distinguished from a case of repudiation of a liability. For example an acknowledgment of a past liability with

a plea of discharge (though false) will not amount to an acknowledgment of liability for the obvious reason that there is no acknowledgment of a

subsisting liability. Such was the case in *Karamadai Naicken Vs. R. Raju Pillai and Another*, , which recognised the distinction between a statement

that a debt was due and one where it was said that it was once due but

subsequently discharged. In that case the very plea of discharge implied a repudiation of a liability rather than an acknowledgment.

In *Kuppuswami Aiyar and Others Vs. Sabapathy Pathan and Others*, , the mortgagor wrote to the mortgagee, stating that, as he had usufructually mortgaged to a third person directing the latter to discharge the mortgage claim, the latter would not be justified in claiming the money from him.

This was held to be a sufficient acknowledgment, although there was a refusal to pay. Again, in *Ramasami Mestriar Vs. Velayuthan Pillai and*

Others, , the acknowledgment relied on to keep alive a mortgage was a recital in a subsequent sale deed, which was to the effect that more than

Rs. 850 was due to the mortgagee and that the mortgagor was attempting to discharge the debt to the extent of Rs. 850 and that he had already

provided for the discharge of the balance by executing other documents. *Varadachariar, J.* held that this amounted to a sufficient acknowledgment. In

so holding, the learned Judge observed:

In the present case, it is not the statement in Ex. A that the mortgagor's liability has ceased prior thereto; on the other hand, he accepted the

liability as a subsisting liability on that day and took steps to discharge the same. If in law that discharge had proved effective, there would have

been no further question. But it happened in this case that, prior to the date of Ex. A., the mortgagee had sub-mortgaged his interest in favour of

the present plaintiff's assignor and the sale under Ex. A did not therefore operate in law to discharge the mortgage. But it is not on that account

reasonable to construe the statement in Ex. A, as not amounting to an admission of liability, which, but for the intended sale, would have been a

subsisting liability.

Again, at page 452 (of Mad LJ): (at pp. 496-497 of AIR), he observes :

""The position was that the mortgagor and the mortgagee thought that the sale under Ex. A sufficed to determine the pre-existing relationship of

debtor and creditor, but there, they were in error... The present case is governed by the line of authority which holds that an admission of liability

coupled with a declaration as regards the arrangement proposed for its satisfaction is a sufficient acknowledgment.

In all such cases, the test is whether there is, on the terms of the acknowledgment, either an express or implied statement indicating an intention

to

continue the pre-existing jural relationship until that is lawfully determined.

5. In our opinion, on a reading of the letter which we have extracted above, what the appellant said comes to something like this: ""I am

undoubtedly liable to refund the advance amount. I have, however, a certain claim against you which is independent of my obligation. I would like

to adjust one against the other; indeed, I have done so, and I am willing to pay the balance."" In other words, the appellant thought that his claim for

damages was sufficient to wipe out his liability. But now, it has been found that his claim for damages was unfounded. He should certainly have

been aware of the fact that he it was that committed the breach of the contract. Therefore he should also have been aware of or at least have had

the consciousness that he was not entitled to recover anything from the respondent by way of damages. The result of it is that, while the appellant

impliedly acknowledges his obligation to pay, he couples it with a refusal to pay by setting up a false claim. This will on the authorities which we

have cited above, amount to an acknowledgement. We see no difference in principle between this case and the one decided by the Bombay High

Court in *Shrinivas Krishna v. Narhar Khando*, ILR 32 Bom 296. In that case, the debtor pleaded that he had deposited sufficient moneys with a

third person and stated that it was the duty of the creditor to take that money from him. It was held that this amounted to an acknowledgment of

liability coupled with a refusal to pay, and there fore an acknowledgment within the meaning of Section 19 of the Limitation Act. We are of opinion

that the first of the two letters aforesaid will be sufficient to operate as an acknowledgment of the liability of the appellant to refund the advance

amount, and that, even regarding 3-5-1951 as the starting point of limitation, as the obligation has been sufficiently acknowledged on 30-7-1951,

the respondent's suit filed on 15-6-1954 must be held to be in time. On this ground, we affirm the conclusion arrived at by Jagadisan, J. and

dismiss this appeal with costs.