(2007) 06 UK CK 0010

In the Uttarakhand High Court

State Bank of India APPELLANT

Vs

Bhuwan Chandra Bhatt, Heera Ballabh Joshi and Kailash Chandra Joshi RESPONDENT

Date of Decision : 04-06-2007

Acts Referred:
Limitation Act, 1963 — Section 18

Citation : (2007) 06 UK CK 0010

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri D.S. Patni counsel for the appellant and Sri M.C. Kandpal, Sr. Advocate assisted by Sri S.S. Chaudhari & Sri Kurban Ali, counsel for the respondents.

2. Present appeal has been preferred against the judgment and decree dated 31.5.2005 passed by the District Judge, Bageshwar in Civil Suit No. 19 of 2004 State Bank of India v. Bhola Dutt Pandey and Ors.

3. Briefly stated the plaintiff State Bank of India has filed a suit against the respondent-defendant for the recovery of Rs. 1,28,352/-. According to the plaintiff defendant Bhuwan Chandra Bhatt borrowed a loan of Rs. 1,80,000/- from Garur Branch of State Bank of India but he failed to repay the loan within time prescribed, therefore, the Bank has no option but to file a suit against the borrower Sri Bhuwan Chandra and his sureties Sri Heera Ballabh and Kailash Chandra Joshi.

4. Defendant Sri Bhuwan Chandra Bhatt has filed the written statement and has admitted the fact of borrowing loan from the Bank but he has submitted that due to policy decision of the State Government on Leesa his industry has come to an end, therefore, he could not return the loan amount in time.

5. The plaintiff has examined P.W.1 Sri Upendra Chand Bhatt and also adduced

documentary evidence in support of his claim. The defendants have not examined any oral evidence nor adduced any documentary evidence.

6. On the pleadings of the parties the trial Court has framed the following issues:

1. Whether the plaintiff is entitled to recover Rs. 1,28,352/- along with 14% interest from the defendants, as alleged?

2. Whether this Court has no jurisdiction to entertain the suit?

3. Whether the suit is barred by limitation, as alleged by the defendants in paragraph 11 of the W.S.?

4. Whether the suit is bad for non-joinder of necessary parties, as alleged in paragraph 13 of the W.S.?

5. To what relief, if any, is the plaintiff entitled?

7. On the basis of the evidence on record the trial court has decided issue No. 1 in favour of the plaintiff and has g42 concluded that the plaintiff Bank is entitled to recover Rs. 1,28,352/- from the defendants along with interest @ 14% per annum.

8. The trial Court has held that the Court has jurisdiction to entertain the suit. The suit is not bad for non-joinder of necessary party. However, the trial Court has decided issue No. 3 in affirmative and has held that the suit is barred by limitation and as such dismissed the suit on this technical ground.

9. Feeling aggrieved the plaintiff has filed the present appeal.

10. The court below has taken into consideration the period of limitation from the date when the loan was actually granted to the defendant on 21.8.1997 and thus according to Article 19 of the Limitation Act, the last date of filing of the suit is 20.8.2000. Article 19 of the Limitation Act reads as under:

-- S.No Description of Period of Time from which period begins Suit limitation to run -- For money payable for money Three years When the loan is made lent.

11. The plaintiff has filed revival letter dated 1.9.1998, 18.10.2000 and 13.11.2002. Thus on the basis of revival letters and acknowledgement the suit of the plaintiff is within time.

12. The trial Court has not accepted the revival letter dated 1.9.1998 on the ground that the date the limitation was not likely to expire and as such there was no occasion to acknowledge the loan on 1.9.1998. The revival letter dated 1.9.1998 reads as under:

The Branch Manager State Bank of India Branch... Dear Sir,

With reference to the Instalent Credit loan/Medium Term Loan borrowed by me/

us Sir/Messrs Bhuwan Chandra Bhatt the first amongst the undersigned from you secured by the (hypothecation-cum-guarantee)/ (mortgage-cum garantees)/ (mortgage/hypothecation under the deed dated 12.9.1997 and garanteed by me us Sir/Messrs Heera Ballabh Joshi and Kailash Chandra Joshi the second amongst the undersigned).

I/We acknowledge for the purpose of Section 18 of the Indian Limitation Act 1963 and limitation Law in order to preclude any question of limitation, that I am/ We are liable to you for payment of the said loan/or the outstanding instalments there under the interest thereon and that the all relative securities agreements and obligation including the abovesaid hypothecation/mortgage (guarantee) shall remain in force till the said loan is fully adjusted and repaid by me/us to your Bank.

(Signature) (Signature) Borrower Borrower

GUARANTOR GUARANTOR

13. The plaintiff may have liberty to get acknowledgement of loan from the borrower on any date after granting loan. The acknowledgement-dated 11.8.1998 is admittedly signed by the defendants and merely there was deficiency in stamp paper, the same cannot be rejected. Hence dismissing the suit of the plaintiff on the ground of limitation was not justified. Section 18 of the Indian Limitation Act, reads as under:

18. Effect of acknowledgement in writing.-

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, all acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he drives his title or liability, afresh period of limitation shall be computed from the time when the acknowledgement was so signed.

(2) Where the writing containing the acknowledgement is initiated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be receive

Explanation.-For the purposes of this section,-

(a) An acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) The word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) All application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

14. The loan was granted to the defendant No. 1 on 21.8.1997 and thereafter acknowledgement was made by the borrower on 1.9.1998 and second acknowledgement was made by the borrower on 18.10.2000 and the last acknowledgement was made on 13.11.2002. Thus the first acknowledgement was made within three years from borrowing loan, thereafter second and third acknowledgement was also made for less than three years period. The suit was filed on 19.11.2004 and thus the suit has been filed well within limitation.

15. In the case Sampuran Singh and Others Vs. Smt. Niranjan Kaur and Others, , the Apex Court has held as under:

In his endeavour, learned Counsel for the appellants referred to Section 18 of the Limitation Act, 1963 to hold that the acknowledgment by the original mortgagees to the respondents, through the said registered document dated 11-1-1960, the period of limitation is revived which would only start from the date of acknowledgment hence the suit filed in the year 1980 would be within limitation. The said submission is without any force. Section 18 Sub-section (1) itself starts with the words:

18. (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made...

16. In the present case acknowledgement has been made for revival of the loan well before the expiration of the prescribed period for a suit u/s 18(1) of the Limitation Act, and thus the suit has been filed within limitation.

17. The trial Court has already held that the plaintiff is entitled to recover Rs. 1,28,352/- along with pendente lite and future interest at the rate of 14% per annum after 1.3.2004 till actual realization. Thus the suit of the plaintiff is liable to be decreed.

18. Accordingly, the judgment and decree dated 31.5.2005 passed by the District Judge, Bageshwar is set aside. The suit of the plaintiff-appellant is decreed for the recovery of Rs. 1,28,352/- along with pendente lite and future interest @ 14% per annum against the defendants jointly and severally.

19. However, liberty is given to the defendants to pay the decreetal amount in six equal quarterly instalments. The first instalment shall be payable by 15th July 2007.

20. Consequently, the appeal is allowed with costs.

