(2004) 10 MP CK 0003

In the Madhya Pradesh High Court

Case No : F.A. No. 25 of 1994

State Bank of India — APPELLANT

Vs

Dwarika Prasad and Others — RESPONDENT

Date of Decision : 25-10-2004

Acts Referred:
Limitation Act, 1963 — Section 18, 19

Citation : (2005) 1 MPJR 179

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : K.N. Agarwal, for the Appellant; G.K. Soni, for the Respondent

Final Decision : Allowed

Judgement

N.K. Mody, J.

Being aggrieved by the judgment and decree dated 7.9.1993 passed in original Civil Suit no. 11B of 1986, the plaintiff appellant has filed the present appeal.

The short facts of the case are that appellant filed a suit for the realization of Rs. 56,623/- on 11.7.1986 alleging that upon the request of respondent nos. 1 to 3 a loan of Rs. 41,400/- was given for purchase of a Tractor on 18.10.1975 and a loan of Rs. 4000/- was given on 11.3.1976 for purchase of a cultivator. Further, the case of the appellant is that the amount was payable in installments and respondent no. 4 stood as a surety for the loan amount and executed a deed of mortgage and hypothecation on 11.3.1976. In the plaint, it is alleged that the amount was repayable in yearly installments along with interest but the loan amount was not paid as per schedule. However, respondents 1 to 3 confirmed the balances on 3.7.1980 and as on 31.12.1983 and 31.12.1984 wherein the liability to pay was accepted and fresh documents were also executed on 6.1.1984 and 6.2.1985.

It is alleged that since the amount was not paid, hence the suit was filed for Rs. 56,623/- along with interest at the rate of 12 1/2% per annum. The respondents submitted written statement wherein the claim of the appellant was disputed. Respondent no.4 disputed the claim also on account limitation. The learned trial court framed the issues and recorded the evidence. Vide judgment and decree dated 7.9.1993, the learned trial court found that the respondents are indebted to pay Rs. 56,623/- but dismissed the suit holding that the claim of the appellant is barred by limitation.

The learned counsel for the appellant submits that initially the loan was given on 18.10.1975 and 11.3.1976 and the loan was payable in yearly installments which was re-payable upto 31.5.1980 along with interest. The learned counsel for the appellant submits that the balances were confirmed on 3.7.1980 and as on 31.12.1983 and 31.12.1984. It is further submitted by the learned counsel for the appellant that on 6.1.1984 and 6.1.1985 fresh documents were also executed. Hence, the suit was not barred by limitation as the suit was filed on 11.7.1986. It was submitted that from perusal of the statement of loan account, Ex. P6, it is evident that part of the amount was deposited by the respondents on 3.7.1980, 19.7.1981, 21.5.1982 and 26.7.1984. Hence, in view of Section 18 and 19 of the Limitation Act, the suit was within time.

I have perused the record and also the judgment passed by the learned court below. The learned trial court has come to the conclusion that the plaintiff is not entitled to take the benefit of Article 62 of the Limitation Act because the plaintiff/ appellant has not prayed for a decree for realization of the suit amount through mortgage properties. The learned Court has further held that under Article 37 of the Limitation Act, the appellant is bound to file the suit within three years form the date when it becomes due. On the basis of aforesaid premises the learned Trial Court held that since the suit has been filed after the expiry of three years, hence the suit is barred by limitation. My attention is drawn by Shri K.N. Agarwal, learned counsel for the appellant, to Section 18 and 19 of the Limitation Act. For the convenience the relevant part of it reads as under:

18. Effect of acknowledgment in writing.- (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 in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

Effect of payment on account of debt or of interest on legacy-

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1s'' day of January 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

From perusal of the record it is evident that the documents were executed in the year 1975 and the loan was repayable in installments upto 31.5.1980. Therefore, the suit could have been filed safely upto 31.5.1983. Since the balances were confirmed for the period on 3.7.1980 and as on 31.12.1983 and 31.12.1984, vide Annexures P7 to P10 and part of the amount due was paid on 19.7.1981,21.5.1982 and 26.7.1984, therefore, with the aid of Sections 18th and 19th suit is within time. In a case Syndicate Bank Vs. R. Veeranna and Others, , the Honourable Apex Court has held that the unqualified acknowledgment of liability as in the present case by a party not only saves the period of limitation but also gives a cause of action to the plaintiff to base its claim.

Since the transaction of loan is agriculture, therefore, appellant is not entitled for interest more than 6% per annum.

In view of the above the appeal is allowed. The judgment and decree dated 7.9.1993 passed in Original Civil Suit No. ll-B/1986 by the First Additional Sessions Judge, Murwara, Katni, is set aside holding that the appellant is entitled for a sum of Rs. 56,623/- along with interest at the rate of 6% per annum from the date filing of the suit till realization along with costs through out.