
(1996) 10 KAR CK 0020

In the Karnataka High Court

Case No : Civil Revision Petition No. 3324 of 1993

State Bank of Mysore, Devanahalli Branch, Bangalore

APPELLANT

Vs

M. Narayanappa

RESPONDENT

Date of Decision : 07-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation Act, 1963 — Section 3

Citation : (1997) 5 KarLJ 538

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. Heard petitioners, learned Advocate and respondent's learned Advocate.
2. The short question that has arisen in this case is as to whether the petitioner-bank should be permitted to carry out an amendment at the stage when the suit has virtually come up for hearing. The amendment sought to be carried out is in relation to the earlier of the two loans which was advanced to the respondents in the year 1985. According to the petitioner-bank, the respondent had taken two loans of Rs. 10,000/- each, one in the year 1985 and the second in the year 1986. Since he has defaulted with regard to the clearance of the amounts due from him, the bank had filed a suit for recovery of the aggregate amount due. The defendant had denied his liability and at the stage when the plaintiff-bank was preparing for the evidence, it was obviously noticed that the first loan which was advanced in the year 1985 was time barred in 1990 when the suit was filed. In order to get over this difficulty, an amendment application was filed whereby the bank contended that the defendant has acknowledged in writing the earlier loan along with interest while confirming the balance due from him as on 18-12-1987. By virtue of this acknowledgment, in effect, the bank is seeking to plead that the cause of action vis-a-vis the first debt was not time barred when the suit was filed. The defendant had resisted the amendment on the ground that it is an attempt to revive a time barred debt. The learned trial Judge upheld the objection and dismissed the amendment application. The Trial Court relied on a decision of the Supreme Court in the case of Pirgonda Hongonda Patil v Kalgonda

Shidgonda Patil and Others, AIR 1957 SC 363. It is against this order that the present Civil Revision Petition has been preferred. The petitioners learned Advocate submitted that the non-mention of the acknowledgment was due to oversight and that therefore, the Trial Court ought to have condoned it. The entire case made out is that the bank is a financial institution and that the acknowledgment was in the file maintained by the bank, that the officer of the bank produced it only at the stage when the evidence was being prepared and that therefore, it is nothing more than a procedural lapse. The argument proceeds on the footing that by virtue of this acknowledgment, the earlier debt was still very much alive on the date when the suit was filed and that consequently, there was no bar of limitation. The learned Advocate submits that if at all there was a lapse on the part of the bank in not having mentioned the acknowledgment when the plaint was drafted, that the Trial Court could have put the bank on terms, but that the application for amendment ought not to have been refused as the respondent will thereby get away with not having paid the amount that is lawfully due from him. The learned Advocate also sought to add that the error is inadvertent and that the same should be condoned.

3. The respondent's learned Advocate submitted that even looking at the acknowledgement which has been produced by the petitioner-bank, that several disputed questions arise right up to the question of its genuineness and he submits, that the amendment should not be permitted as it is very clear that this document was not in existence when the suit was filed and therefore, that the suit would have to confine itself only to the second loan transaction. His further submission is that belated amendments of this type should not be permitted as has been held by the Supreme Court in the decision referred to by him earlier.

4. There are certain factors in this case which the Court cannot lose sight of, the first of them being that the petitioners are a financial institution and secondly, that the respondent is a person who is alleged to have borrowed money from the institution and has defaulted in repaying it. Under these circumstances, even if some procedural lapses are demonstrated on the part of the institution, it should not confer any undue benefit to the party who has taken public funds and not repaid them. The facts of the case relied upon by the Trial Court are entirely different and are distinguishable from the facts of the present case and the decision in question would have no application to the present proceeding. If the acknowledgment in question was in existence when the suit was filed and if it can be established that the acknowledgment passes the test of scrutiny and can be relied upon, then the question of limitation would not come in. If however, that document is assailable and if it comes to be rejected by the Trial Court while the evidence is assessed, then obviously the suit would have to be confined to the second transaction alone. It is premature at this stage to conclusively adjudicate on the evidentiary acceptability of the acknowledgment at this point of time.

5. This Court has had an occasion however, to observe in a series of cases

relating to banks that the complaints are carelessly drafted and that indiscriminate applications for amendment and such corrective action are taken out subsequently. This case is no exception despite the fact that I have been told that the fault lay on the part of the bank officers who did not produce the acknowledgment. It is difficult for me to accept this statement because, the relevant dates themselves stare one in the face in so far as when the suit was being filed in the year 1990, two distinct loan transactions were the subject matter of that suit and it was as clear as day light that the first of them related to the year 1985. Had the aspect of limitation been looked into, the so-called error would not have arisen. The second aspect of the matter is that the document has been produced for the first time in the year 1993 and therefore, it will have to be carefully examined in evidence to ascertain whether it was in fact executed in 1987 or at some further point of time or whether, the signature was obtained on it and the remaining details subsequently filled in. These are all matters of evidence which the Trial Court should look into.

6. The fact however, remains that all these unnecessary processes have arisen because of the fact that the acknowledgment in question was not mentioned in the plaint originally. If the bank was in possession of a valid acknowledgement when the suit was filed, there is no ground on which the same could not have been mentioned in the plaint. It is in this background, that even though the amendment is being permitted, it will be subject to certain rigorous conditions. The first of them is that the veracity of the document in question will be looked into by the Trial Court when the evidence is recorded. Secondly, in view of the fact that this is a belated amendment and is only permitted in the overall interests of justice, it is directed that the petitioners shall be liable to pay costs quantified at Rs. 1,000/- for the lapses that have taken place. These costs shall be adjusted when the proceeding is finally decided. Also, in view of the fact that there has been an unnecessary hold up of the proceeding because of the so called oversight or lapse, it is directed that in the event of the suit being decreed against the respondent, that while computing the interest due from the respondent, the entire period of time from the date on which the amendment was applied for until 7-10-1996 which is the date on which this civil revision petition has been decided, shall be excluded.

7. The civil revision petition is accordingly allowed along with costs as quantified. The interim order is vacated. The parties are directed to appear before the Trial Court for further orders on 18-11-1996.