
(1991) 08 PAT CK 0042

In the Patna High Court

Case No : Appeal From Original Decree No. 61 of 1985

Sudhir Kumar Pandey

APPELLANT

Vs

Bank of India and. Ors.

RESPONDENT

Date of Decision : 02-08-1991

Acts Referred:

Citation : (1991) 08 PAT CK 0042

Final Decision : Allowed

Judgement

Bhuvaneshwar Prasad, J.—This appeal by defendant No. 1 is directed against the judgment dated 14.3.1985 and decree signed on 21.3.1985 by Shri S.K. Murari, 2nd Additional Subordinate Judge, Jamshedpur, in Money Suit No. 50/17 of 1981/84. Respondent No. 1 was the plaintiff and respondent Nos. 2 to 4 were defendant in the suit.

2. It appears that during February, 1976 Defendant No. 1 approached the plaintiff bank and applied for a loan to purchase a chassis for Mini bus and for its body building. At the relevant time the total cost involved was Rs. 1,30,000/- out of which, the plaintiff bank sanctioned a sum of Rs. 97,500/- by way of loan repayable on demand together with interests thereon at the rate of 4-1/2% over the Reserve Bank of India rate and minimum at the rate of 13-1/2% per annum with quarterly rests for value received. Defendant No. 1 executed.

1. A demand promissory note on 5.3.1976 for Rs. 97,500/-.

2. A letter of lien and set off dated 5.3.1976.

3. An agreement of hypothecation dated 5.3.1976 of the vehicle to be purchased.

4. A letter of continuing guarantee by defendant Nos. 2 to 4, and

5. An agreement to pay loan with interest thereunder by equal monthly instalments of Rs. 3,250/- only commencing from April, 1976.

All these documents were executed on 5.3.1976. Accordingly the loan was

advanced and the mini bus in question was purchased and taken delivery of after its body was constructed. Thus a sum of Rs. 1,50,700.22 paise became due from the defendants inclusive of interest calculated upto 3.5.1981. The defendants signed a letter of acknowledgement of indebtedness dated 20.9.1978 admitting that they were liable to pay the plaintiff bank a sum of Rs. 1,06,606.19 paise. The defendants, however, failed to pay the dues to the plaintiff bank in spite of repeated demand and lawyer's notice was served. Accordingly, the suit was filed for decree for the above mentioned amount.

3. The defendants filed a written statement in which they contended that defendant No. 1 being unemployed had approached the plaintiff bank for a loan to purchase mini bus. The plaintiff Bank assured him that the interest charged on the loan would only be a nominal one and the other terms and conditions would also be very easy. On such assurances and representations that defendant No. 1 was made to put his signatures on several forms. On the assurance that the same would be filled up in due course in the lines represented to defendant No. 1. There was no talk between the parties for the payment of interest at the exorbitant rate claimed in the plaint. The allegations made in para 6 of the plaint with respect to a promissory note, a letter of lien, an agreement of hypothecation, a letter of continuing guarantee are all incorrect. Further it was denied in para 11 of the written * statement that it is not correct to say that the defendants admitted by a letter of acknowledgement of indebtedness dated 20.9.1978 signed by the defendants making themselves liable to pay a sum of Rupees 1,06,606.19 paise. On these grounds, it was contended that the suit be dismissed.

4. The learned court below framed a number of issues in the suit. Issue No. 3, ran as follows:

3. Is the suit barred by law of limitation?

5. This issue was taken up for consideration in para 5 of the judgment of the learned court below. Its relevant portion runs as follows:

5. Ext.8 is the letter of the acknowledgement by which all the three defendants acknowledged their liability for a sum of Rs. 1,06,606.19 paise on 20.9.78. The defendants have not denied their signatures on Est.8. The present suit has been filed on 6.5.1981 i.e., within three years from the date of acknowledgement. On the basis of the above discussions, I find and hold that the present suit is not barred by law of limitation. Accordingly, this issue is decided in favour of the plaintiff.

6. The learned Counsel appearing on behalf of the appellant has seriously challenged this observation made in the judgment of the learned court below. It has been submitted that this is a mis-statement in the judgment and is an error of record. In this connection, my attention has been drawn to para 11 of the written statement filed on behalf of the defendants in which it has clearly been stated that it is not correct to say that the defendants admitted the dues by a

letter of acknowledgement of indebtedness dated 20.9.1978 signed by the defendants. It was further stated that the defendants were not liable to pay a sum of Rs. 1,06,606.19 paise on 20.9.1978 and there was no question of acknowledging the same. Thus clearly the defendants challenged their so-called acknowledgement and signatures on this letter (Ext.8).

7. PW1 is Shri Aprub Ranjan Sarkar an officer of the plaintiff Bank. In para 14 of his evidence it was suggested to him that the plaintiff Bank had obtained the signatures of the defendants on the blank-sheet of acknowledgement (Ext.8) which he has denied. It was also suggested to him in para 13 of his evidence that the plaintiff Bank had obtained the signatures of the defendants on blank-sheets of other papers which also he has denied. So far as DW1 (defendant No. 1) is concerned, he has stated that his signature on the blank sheets of various forms were obtained by the plaintiff Bank. Those forms were not filled up and subsequently shown to him. From all these it becomes clear that there is a mis-statement of facts and error of record in Para 5 of the judgment of the learned court below as has been noticed above. In this background it cannot be said that the defendants had not denied the signatures on Ext.8. Hence, clearly this appears to be a mis-statement of facts in para 5 of the judgment of the learned court below.

8. The other documents are said to have been executed by the defendants on 5.3.1976 and the suit was filed on 6.5.1981. Thus clearly it was filed more than three years of taking of the loan. It appears that as per the plaint a sum of Rs. 39,000/- was paid to M/s. Bhalotia Engineering Works on behalf of the present appellant on 19.3.1976. Hence, even if the period of limitation will start running from 19.3.1976, 18.3.1979 should have been the last date for filing the suit. The suit, however, was filed on 6.5.1981 much beyond this period. So far as the letter of acknowledgement (Ext.8) dated 29.9.1978 is concerned, as noticed above, there is a mis-statement in its regard in para 5 of the judgment of the learned court below. In Ext.8 is excluded from consideration clearly, the suit is barred by law of limitation. So far as Ext.8 is concerned, it is the specific case of the defendants that their signatures were obtained on blank-sheets of papers as suggested in the cross-examination of PW1. In paras 13 and 14 of his evidence. My attention has been drawn to the fact that on Exts. 1, 2, 3, 4, 5, 6 and 8 the signature of the present appellant, Sudhir Kumar Pandey are said to be appearing. It is however surprising to note that in none of his signatures he has put any date. It is well known that in financial transactions between a bank and private individual the date should be put below signatures of the person who is taking the loan. For example, Ext. 1 is the promissory note and it is well known that the period of limitation will start running from the date of its execution and advancing of money. Even on such an important document, the appellant was not asked to put the date below his signature. The same is the case with the other signature of the appellant on the documents mentioned above. On behalf of the appellant, it has been submitted that he was asked to sign the blank sheets of papers and was assured that they would be filled up and will be shown

to him. However, they were never shown to him. The fact that no date appears below in any of the signatures of the appellant -clearly goes to lend support to this contention of the appellant that he was compelled to sign on the blank sheets of papers. Another important thing to be noted in this connection is that Ext.8 is the letter of acknowledgement said to have been signed by the defendants. Defendant No. 3 is Kaleshwar Prasad Pandey. But the revenue stamp opposite his name appears to be blank showing that he had not put his signature on Ext.S. This also shows the casual manner in which if at all Ext.8 was got executed by the defendants.

9. In this connection, my attention has been drawn to Order VII Rule 6 of the CPC (in short the "Code") which runs as follows:

Rule 6 Grounds of exemption from limitation law. Where the suit is instituted after the expiration of the period prescribed by the law of limitation the plaintiff shall show the ground upon which exemption from such law is claimed:

Provided that the court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.

From this proviso, which was inserted in this Rule by the Amending Act 104 of 1976 it would appear that if certain grounds are set out in the plaint for exemption from the law of limitation some other grounds not so stated in the plaint may also be taken by the plaintiff if they are not inconsistent with the ground already taken.

10. In the present case, however, it appears that the plaintiff bank has not taken any specific ground for condoning the delay in filing the plaint. Obviously, as per the statements made in the plaint the promissory note as also other documents were got executed on 5.3.1976 and even the loan of Rs. 39,000/- was paid on 19.3.1976. Thus, clearly the suit, which was brought on 6.5.1981, was beyond the period of limitation of three years. In the whole of the plaint the ground for setting aside the limitation has not specifically been stated. In this connection, para 13 of the plaint may be reproduced as follows:

13. That the cause of action for this suit arose against the defendants within the jurisdiction of this Court on and from 5.3.1976 when the loan was advanced by the defendant and on subsequent dates.

As to what are those subsequent dates have not been disclosed and the plaint is blissfully vague on this point, as noticed above Rule 6 of Order VII clearly goes to show that the grounds of exemption from the law of limitation, if the suit is instituted after the expiration of the period prescribed by the law should be stated in the plaint. In the present case no such ground appears to have been stated in the plaint.

11. As against it, the learned Counsel appearing on behalf of the plaintiff bank has drawn my attention to para 8 of the plaint in whose sub-para (ii) it has been

stated that by letter of acknowledgement of indebtedness dated 20.9.1978 signed by the defendants in favour of the plaintiff they admitted and acknowledged that they were liable to pay to the plaintiff Bank a sum of Rs. 1,06,606.19 paise. Shri Roy, the learned Counsel for the plaintiff Bank, has heavily relied on this part of the plaint to show that clearly from this statement it would appear that suit was within time and, therefore, the provisions of Order VII Rule 6 of the Code were not attracted. This however, does not appear to me to be the correct position in law. Admittedly, the promissory note and other relevant documents were executed on 5.3.1976 and calculated from this date the suit filed on 6.5.1981 was clearly time barred. In such a situation, if the plaintiff bank wanted to claim exemption from the law of limitation it should have specifically stated the ground on which this exemption was being claimed. This has not been done.

12. Shri Roy, the learned Counsel appearing on behalf of the plaintiff Bank, has however, placed reliance on the case of Kidar Lall Seal and Another Vs. Hari Lall Seal, . In particular he has drawn my attention to para 51 of this judgment in which the following observations appear to have been made by Bose, J.:

51. It would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however, clumsily or inartistically the plaint may be worded. In any event, it is always open to a court to give a plaintiff such general or other relief as it deems just to the same extent as it has been asked for, provided that it occasions no prejudice to the other side beyond what can be compensated for the costs.

This observation, however, appears to have been made with respect to the construction of the pleadings under Order VI Rule 2 of the Code. This rule provides that the pleadings are to state material facts and not evidence. In the present case, however, there appears to be the non-compliance with the mandatory provisions of Rule 6, Order VII of the Code. Hence this decision does not appear to be of any help to the plaintiff-appellant.

13. Shri P.C. Roy, the learned Counsel appearing on behalf of the Plaintiff Bank, has also placed reliance in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . In this decision it has been observed that the court should adopt liberal approach for condoning the delay u/s 5 of the Limitation Act and treatment similar to any other litigant ought to be accorded to the State Government also. Step-motherly treatment to the State Government in such matter is not warranted. This decision, however, is not of much help to the learned Counsel appearing on behalf of the plaintiff Bank.

14. As against it the learned Counsel appearing on behalf of the appellant has placed reliance on the case of Shiv Shiv Tewari Vs. Ganesh Prasad Misra and Others, , This is a single Bench decision of Lucknow Bench of Allahabad High Court. In this decision it has been held that the provisions of Order III Rule 6 of

the code are mandatory in nature. Also in this decision a reference has been made to the case of Sant Lal Mahton Vs. Kamala Prasad, in which the Hon''ble Supreme Court had pointed out that the legislature has expressly declared in Section 3 of the Limitation Act that whether the defence of limitation be pleaded or not the court is bound to dismiss a suit which is brought after the period provided therefore in the First Schedule to the Limitation Act. If the plaintiff's right of action is apparently barred under the statute of Limitation, Order VII Rule 6 of the Code makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act upon which he relies to exclude its operation and if the plaintiff has got to allege in the plaint the facts which entitle him to exclude its operation these facts obviously must be in existence at or before the time when the plaint is filed. The provisions of Rule 6 of Order VII of the Code are mandatory in nature and whenever a plaintiff wants to seek exemption from the operation of law of limitation he must expressly state in the plaint the grounds on which exemption is sought for. Since in the present case no specific ground has been stated in the plaint for claiming exemption under the relevant law of limitation it appears that the suit is bad on this account and it could not have been decreed. So far as Exts.A and Al are concerned they will not make any difference Ext.A is a petition filed by the plaintiff in the suit on 29.1.1985 showing certain payments made on and after 6.5.1981, the date on which the suit was instituted. Ext.Al is another such petition dated 31.1.1985 by the plaintiff showing further payment by the defendant. They will not amount to any acknowledgement of the dues by the defendant. Moreover, as per the decision of the Supreme Court in the case of Sant Lai Mahton (supra) the facts disclosing the grounds entitling the plaintiff for exemption allowed by Limitation Act must be in existence at or before the time when the plaint was filed.

15. On behalf of the appellant my attention has been drawn to the provisions of Order VII Rule 14 of the Code. It has been submitted that though the claim of the plaintiff Bank depended on the relevant entries in the books of account the same have not been filed along with the plaint. In this connection, my attention has been drawn to Rule 14 of Order VII of the Code which runs as follows:

Rule 14: Production of document on which plaintiffs sues - (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

(2) List of other documents - Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added to annexed to the plaint.

16. Also my attention has been drawn to Rule 17 of Order VII of the Code which relates to the production of shop book or other account books. It provides that -if the claim of the plaintiff is based on an entry in the shop book or other account book in his possession or power he could produce the same at the time of filing the plaint, together with a copy of the entry on which he relies. The officer

appointed by the court is required to examine and compare the copy with the original and if he finds them correct he would certify the copy to be the true copy and would return the book to the plaintiff after which the copy would be filed along with the plaint. In the present case no such thing has been done. No doubt u/s 4 of the Banker's Books Evidence Act, 1891, a certified copy of any entry in the Banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted in evidence of the matters as transactions and accounts recorded therein. In the present case this Bank account has been produced at a later stage of the case and has been marked as Ext.7. However, such document was required to be filed along with the plaint which has not been done leading to adverse inference.

17. In this connection a reference may be made to the case of Sulaiman v. Biyaththumma AIR 1916 PC 217. This was a case under the CPC 1882 whose Section 59 corresponds to Order VII Rule 14 of the Code. The judicial Committee of the Privy Council held in the above mentioned case that a document relied on as creating rights sought to be enforced in a suit must be produced in court when the plaint was presented or a copy thereof must be filed with the plaint, and a document not so produced but treated in the trial Court as a piece of evidence, could not later be put forward as creating rights.

18. In this connection, a reference may also be made to Rule 18(1) of Order VII of the Code which runs as follows:

18(1) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

This rule clearly provides that a document which ought to have been produced in the Court by the plaintiff when the plaint was presented, or which ought to have been entered in the list of documents to be annexed to the plaint, and if the same were not produced or annexed they shall not without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(Emphasis supplied)

19. In the present case, as noticed above, no document or any list of the documents was filed along with the plaint. The various documents (Exts.1 to 7) were not filed in the court along with the plaint or entered in any list annexed to the plaint but were produced in the Court on 29.1.1985 on the date when PW1 was examined. No doubt, these documents were admitted into evidence by the learned court below but it appears that the mandatory provisions of Rule 18 of Order VII, as noticed above, were not complied with. There is nothing in the order sheet or in any part of the record to show that leave of the court was obtained before those documents were received in the evidence on behalf of the plaintiff Bank. This also appears to be clearly a flaw in the case of the plaintiff bank.

20. Shri P.C. Roy, the learned Counsel appearing on behalf of the plaintiff-Bank (Respondent No. 1, has also placed reliance in the case of Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, . In this case it was held that the amendment of plaint should not be refused on technical grounds. It was further held that in a case where the suit was originally instituted misdescribing the plaintiff and the plaint was amended substituting the real plaintiff, the question of limitation would not arise and the plaint must be deemed to have been instituted in the name of the real plaintiff, on the date on which it was originally instituted. This decision is not of much help to the learned Counsel for the respondents. Shri Roy has, however, contended that even when the learned trial Court has committed an error of record with respect to Ext.8 this Court in appeal may proceed to dispose of the whole matter by virtue of the provisions as contained in Order XLI Rule 24 of the Code. This appears to be the correct position of law and, accordingly, I am disposing of this appeal by re-apprising the evidence and by drawing correct conclusions on the basis of the material available on record. Since I do not think that any useful purpose will be served by remanding back the case to learned trial Court.

21. Before concluding, however, I would like to mention that as held in the earlier part of the judgment, the claim of the respondent appears to be time-barred for the reasons stated in it. I have also held that the learned trial court as committed an error on record with respect to Ext.8 on the basis of which it held that the claim was within time. Further it appears that the suit is bad for non-compliance of the mandatory provisions of Rules 6, 14 and 17 of Order VII of the Code. Under these circumstances, there is no alternative but to allow this appeal and to dismiss the suit.

22. In the result, the appeal is allowed on contest, but under the circumstances of this case there would be no order for cost. The judgment and decree passed by the learned Court below in M.S. No. 50/17 of 1981-84 are hereby set aside.