(1965) 04 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1564 of 1959

The Chawla Bank Ltd. — APPELLANT

Vs

Madan Lal and Others — RESPONDENT

Date of Decision : 02-04-1965

Acts Referred:
Limitation Act, 1908 — Section 14

Citation : (1965) 04 P&H CK 0013

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : Y.P. Gandhi, for the Appellant; A.S. Sarhadi with Mr. S.S. Dhingra, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Sharma, J.—This regular second appeal has arisen out of a suit instituted by the Chawla Bank Limited, plaintiff, initially in the Court of the Munsiff, Dehra Dun, for the recovery of Rs. 3,192/12/11 against Hari Ram Huja, defendant. The allegations that the defendant opened a cash credit account with the plaintiff Bank on 3rd of September 1946 at Kohat (now forming part of West Pakistan) and that the limit of the cash credit was to the extent of Rs. 10,000/ and the defendant agreed to pay interest at the rate of Rs. 9/- per cent per annum. The parties after partition of the country migrated to India and the plaintiff started functioning at Dehra Dun. The defendant is said to have acknowledged his liability to pay Rs. 4,828/1/3 on 1st of July 1947. He is given out to have paid off and on certain sums between 1st of July, 1947 and 31st of December, 1949, so that on the last mentioned date Rs. 3;077/4/11 were due from him. Rs. 115/8/- have been added to this amount as interest at 9 per cent per annum to the date of the filing of the suit. The defendant, amongst other things, urged that the civil Court at Dehra Dun had no jurisdiction to entertain the cause. His plea found favour with the trial Court, but on appeal the District Court held otherwise and the suit was remanded to the trial Court for disposal on merits. The defendant filed a revision petition in the High Court, Allahabad, which was accepted on 16th of January, 1957. It may be stated here that Hari Ram Huja defendant, died during the pendency of the revision petition in the High Court, Allahabad, when, on the application of the plaintiff, his sons Madan Lal, Mohan Lal. Chaman Lal and Gulshan Lal were impleaded as his legal representatives. The trial Court actually returned the plaint to the plaintiff on 18th of February, 1958. Thereafter the plaintiff put in the plaint in the Court of the Subordinate Judge 1st Class, Jullundur, on the following day, 19th of February, 1958. An application u/s 14 of the Indian Limitation Act was also filed along with it to exclude the period spent by the plaintiff in prosecuting the suit in the Uttar Pradesh Courts. It locks that the name of Hari Ram Huja continued to be shown as defendant in the plaint with the result that summonses were issued in his name by the Subordinate Judge 1st Class, Jullundur. On a report being received that Hari Ram Huja had died, the plaintiff again applied under Order 22 rule 4, Civil Procedure Code, for impleading his sons and widow as his legal representatives. The guardian of Gulshan Lal minor legal representative of the deceased defendant pleaded inter alia that the suit was filed against a dead person and as such was a nullity in law. In the circumstances the question of impleading his legal representatives as parties to the litigation did not arise. He also urged that Chaman Lal was the eldest son of Hari Kam and was a major. Madan Lal and Mohan Lal did not put in any written statement. The plaintiff then realised that legal representatives of the deceased defendant had already been impleaded as parties when their revision petition was pending in the High Court Allahabad.

2. The trial Judge on 17th of June, 1958 framed the following preliminary issues:

1. Whether Chaman Lal is a minor ?

2. Whether Order 22 rule 4 or Order 1 rule 10 applies and the application under it is maintainable ?

3. Whether the legal representative-respondents were already on record; if so, how and to what effect ?

3. Subsequently the plaintiff conceded that Chaman Lal was a major. His service was duly effected, but he failed to turn up. In the meantime Smt. Ram Piari widow and Madan Lal and Mohan Lal sons of the deceased also filed their written statements. They resisted the plaintiff''s claim.

4. On the pleadings of the parties following issues were framed on two different dotes on merits:

On 13th November, 1958.

1 Whether the suit is within time ?

2. Has Mr. L.D. Kapoor locus standi to sign and verify the plaint ? If not its effect ?

3. Whether the plaintiff is a registered banking company registered under the Indian Companies Act ? If so, is the suit not competent ?

4. What amount, if any is due to the plaintiff and from whom ?

5. Are the defendants entitled to special costs ?

6. Relief.

On 24th November, 1958.

3-A, Whether the suit was instituted in this Court against a dead person and is a nullity ?

5. The trial Judge decided issue No. 3-A on merits against the defendants. As regards preliminary issues Nos. 2 and 3, he observed that Smt. Ram Piari, the widow of the deceased defendant, had not been previously impleded as a legal representative and, therefore the prayer to implead her now as a legal representative was not entertainable and further that Madan Lal Mohan Lal and Chaman Lal, majors, and Gulshan Lal, minor, sons of Hari Ram, had already been made parties to the litigation between the parties and so their names be now deemed to have been substituted for the deceased defendant Hari Ram.

Issues Nos. 1, 2 and 3 on merits were found in favour of the plaintiff.

A sum of Rs. 3,192/1/11, principal and interest, was found due from the deceased defendant to the plaintiff. In the result, the plaintiff was granted a decree for the said amount with costs against the estate of the deceased defendant in the possession of his four sons. The latter felt aggrieved from the above judgment and decree of the trial Court and preferred an appeal in the Court of the learned District Judge, Jullundur, which came up for disposal before the Additional District Judge. Two points only were agitated before him, namely, that the suit was a nullity as it had been instituted in the Court at Jullundur against a dead person and that the suit was time-barred. The learned Additional District Judge overruled the first contention, but found substance in the second and held that the suit was barred by time when it was lodged in the Court at Jullundur Consequently the appeal was allowed and the plaintiff''s suit was dismissed with costs throughout.

The plaintiff has come up in second appeal to this Court.

6. The only point agitated before me was whether the suit was in time or not. The learned Additional District Judge after carefully analysing the statements of Sarvshri Jit Ram lawyer and L. D. Kapoor, Managing Director of the plaintiff-Bank, came to the conclusion that the Dehra Dun civil Court or its officials did not require much time for completing the necessary endorsement on the plaint under Order 7 rule 10 (2) of the CPC and that the delay of thirteen months took place because the plaintiff-Bank was sleeping over the matter and did not take any diligent steps earlier to secure return of the plaint. He also observed on the basis of the rule laid down in Babanna Gurusangappa Vs. Channappa Chanmallappa and Others, that the plaintiff was not absolved of his duly to show that during this period of thirteen months it had been diligently prosecuting the proceedings.

He, therefore did not condone the delay of thirteen months and held that the suit was not filed within time in the Courts at Jullundur. It is common ground that the suit when filed in the Court of the Munsiff, Dehra Dun, was in time. It is equally true that if the period pent by the plaintiff in prosecuting the case in the Uttar Pradesh Court right up to 18th of February 1958, when the plaint was physically returned to the plaintiff, is excluded, the suit was within the period of limitation prescribed by law when lodged in the Court of the Subordinate Judge, Jullundur. The learned counsel for the appellant contended that the Court below had erred in going into the question whether the plaintiff was diligent or not in getting the plaint back after the Allahabad High Court had directed its return on loth of January, 1957. According to him, he should have excluded the entire period spent in pursuing the remedy in the Uttar Pradesh Courts up to 18th of February, 1958. In this connection he relied on the cases Muhammad Din v. Gurbakhsh Singh AIR LAL. 611 (1) : (1932) 24 P.L.R. 624, AIR 1939 47 (Lahore) Firm Pursottam Das Ganpati Rai v. Gulab Khan AIR 1963 Pat 497, Sinna Karuppan and Others Vs. R.M.P.S. Muthiah Chettiar and Others, Subbu Naidu v. Vatadarajulu Naidu AIR 1918 Mad. 26, Jafaruddin v. Debt Prasad AIR 1949 All. 590 and Basavanappa v. Krishnadas Goverdhandas Madiwala AIR 1921 Bom. 379, These authorities tend to lay down that when a plaint is returned under Order 7 rule 10 of the Code of Civil Procedure, the time to be excluded u/s 14 of the Limitation Act is the period from the date of presentation until the date of return of the plaint. A careful persual of the facts of all these reported cases will show that in none of them the question whether the plaintiff had been pursuing his suit with due diligence from the date the order of the return of his plaint was made up to the time it was actually returned to him had been raised and decided. This question was gone into in the cases Babanna Gurusangappa v. Channappa Chanmallappa AIR 1947 Bom. 110. Ram Lakhan v. Mst. Tulsha AIR 1954 All. 59 and Ramchandra v. Union of India AIR 1964 Raj 169 and it was laid down that in majority of cases the period right up to the date of the actual return of the plaint should be excluded, but it cannot held as a hard and fast rule, applicable to all cases, that exclusion should extend up to the date of actual return of the plaint. The period shall vary according to the circumstances of each case. In other words it is only for the period which is required by the Court for returning the plaint after an order has been passed in that behalf that the plaintiff could claim exclusion. Therefore, the appellate Judge cannot be said to have committed any error in going into the question whether the plaintiff took any diligent steps earlier to got back the plaint. He examined the evidence led by the parties in this behalf and unhesitatingly came to the conclusion that no such diligent steps had been taken earlier by the plaintiff and so declined to condone the delay of thirteen months. This is a finding of fact which cannot be set aside by me in second appeal. My view finds support from the decision in the case Maya Singh v. Udham Singh AIR 19(sic)8 Lah. 704 = (1948) 40 P.L.R. 631 which, amongst other things, also laid down that the question whether a party acted in good faith within the meaning of section 14, Limitation Act, is a mixed question of law and fact and can be questioned in second appeal, provided that the lower Court''s findings of fact are not interfered with. The other two cases, Narendra Nath Roy and Others Vs. Abani Kumar Roy and Others, and Firm Ramnath Ramchander Vs. Firm Bhagatram and Co., , go a little further. In the former case it was laid down, ''''Whether the plaintiff is entitled to the deduction of period during which the suit remained pending in the trial Court, depends on the question whether the suit was prosecuted in good faith, which is a question of fact, and if the lower appellate Court decided it in favour of the plaintiff after adverting to the evidence hearing on it, the question cannot be allowed to be raised in second appeal. Keeping in view the above statement of law and the firm finding of fact arrived at by the Court below, I do not find even the remotest justification for interfering in the conclusion arrived at by the Court below.

7. For the above reasons, the appeal fails and is dismissed with costs.

Appeal dismissed.