

(1974) 11 RAJ CK 0010
In the Rajasthan High Court
Case No : Second Appeal No. 134 of 1967

The Mahila Shiksha Sadan, Gandhi Ashram Hatundi	APPELLANT
Vs	
Jainarayan Mittal	RESPONDENT

Date of Decision : 21-11-1974

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : AIR 1975 Raj 161 : (1975) RLW 24 : (1974) 7 WLN 996

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Advocate : S.N. Bhargava, for the Appellant; S.K. Jindal, for the Respondent

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—In this appeal by the defendant, the only question raised is, whether the plaintiff's suit is within limitation?

The question arises in these circumstances :

2. The plaintiff-respondent was given a contract by the defendant-appellant on 4-5-1958 to make certain constructions and the plaintiff carried out the same. The total construction carried out by the plaintiff was admittedly for Rs. 60,073.72, out of which the appellant had received Rs. 55,907/-. After giving allowance for two items of Rs. 188/- and Rs. 30/- the plaintiff filed the present suit for Rs. 3,927.72 as principal and Rs. 707.00 as interest; total Rs. 4634.72. In order to bring the suit within limitation, the plaintiff relied upon letter Ex. 1 dated 21st May, 1961, wherein, according to the plaintiff, the defendant is alleged to have acknowledged the plaintiff's claim. The decision of this case, in fact, centres round the interpretation of this document. The learned District Judge, Ajmer has construed this letter as an acknowledgment of liability.

3. Learned counsel for the appellant has, however, urged that the letter Ex. 1 does not contain any conscious admission by the defendant of his liability to pay the plaintiff's amount. It is contended that it is clearly mentioned in the account

written below the letter that only Rs. 68/- were admitted to be due from the defendant to the plaintiff. In support of his contention the learned counsel has relied upon *Jogeshwar Roy v. Raj Narain Mitter* ILR (1904) Cal 195; *Andiappa Chetty v. Devarajuru Naidu* ILR (1913) Mad 68 ; *Sha Manmall Misrimall Vs. K. Radhakrishnan*, AIR 1943 425 (Oudh) *Union of India (UOI) Vs. Seyadu Beedi Co. and Another*, *Ghourinissa v. S. J. Kirmani* AIR 1974 Mad 191 and *Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd.*, .

4. On the other hand, the learned counsel for the respondent has argued that there is an express acknowledgment of the defendant's liability, and that it is not the requirement of law that there should be an express promise to pay the specified amount. He has argued that in the matter of limitation, any acknowledgment pleaded by a party must be liberally construed. In support of his argument, the learned counsel has relied upon *Khan Bahadur Shapoor Freedom Mazda Vs. Durga Prosad Chamarla and Others*, *Raghubar Dayal Vs. Banwari Lal Sarangdhar Singh and Another Vs. Lakshmi Narayan Wahi*, *Rasant Kumar v. Roshan-lal* AIR 1954 Nag 300 ; *Rasammal Vs. K. Subbaroya Goundar and Others*, and lastly *Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd.*,

5. So far as the broad principles governing interpretation of Section 18 of the Limitation Act, 1963 (equivalent to Section 19 of the old Act of 1908), are concerned, there is no dispute. In my opinion the question of an acknowledgment saying limitation must be treated on its own merits in each case. From the language used, and the circumstances under which the acknowledgement is made, it must be decided whether it amounts to an acknowledgment, express or implied, of the liability under consideration. Judged, from this standpoint, I shall now proceed to examine the contents of letter Ex. 1.

6. The letter Ex. 1 has been addressed by the defendant to the plaintiff in reply to the plaintiff's letter dated 30th May, 1971. There is a clear admission in this letter that final settlement of account has not been done between the parties; and for that the defendant has laid the blame on the plaintiff for his non-co-operative attitude. The defendant has further asked the plaintiff to settle the account, and has also detailed the account on the reverse of the letter, and she has also asked the plaintiff to look into that account, and let her know whether he agrees to it or not and if he does not agree, then to state with respect to which item. She has further referred to some talk having taken place on 2nd April 1960 between the parties, wherein, according to her, it was settled that no further amount would be paid tentatively unless the accounts were finally settled. She, therefore, refused to pay anything before the settlement of accounts, and has said that according to her accounts, the plaintiff is entitled to get Rs. 68/- only.

7. Thus a perusal of the account detailed on the reverse of the letter clearly shows that the total amount recoverable by the plaintiff on account of cost of

construction was Rs. 60,073.72, and towards this amount the defendant had paid Rs. 25,360/-, and was further entitled to get a set off for certain items mentioned in the account.

8. Explanation to Section 18 reads thus ;

"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."

It is undoubtedly true that the defendant has nowhere admitted that the amount claimed by the plaintiff in the suit is due from him; but that does not appear to me to be the requirement of law. She has nevertheless admitted that the final accounts have to be settled. She has also admitted that the total amount to which the plaintiff is entitled on account of the contract is Rs. 60,073.72 out of which Rs. 50,360/- have been paid. Thus, there is an acknowledgement of liability in respect of the amount which may be due to the plaintiff from the defendant on account of the building contract, though it is coupled with a claim to set off certain items mentioned on one side of the account under the heading "Nave", that is debit side. Under these circumstances, when the debtor has admitted the existence of account, it must be deemed to be an acknowledgement of liability for whatever amount is found due from her on the settlement of the said account. A debtor may, while admitting the existence of the account, say, that on account of set off, which he claims nothing will be found due to the creditor, or may say that a far lesser amount than what is claimed by the plaintiff may be found due. In this view of the matter, the mere fact that the defendant has stated that on the account being gone into, according to her, only Rs. 68/- would be recoverable by the plaintiff from the defendant, would not in any way, detract from the endorsement being an acknowledgement.

9. In ILR (1913) Mad 66 the language of the letter relied upon by the plaintiff did not contain any acknowledgement of liability. Only a request was made to the plaintiff to be so good as to furnish a copy of the statement of accounts. In the second letter also, the defendant only mentioned that he wished to examine the accounts, as his account does not show such an amount as mentioned in the plaintiff's letter. He, therefore, made a request to the counsel for the defendant to forward the copy of the account, or to instruct his client to send his Gumasta with the account books, Thus, the facts of this case are completely distinguishable.

10. In Sha Manmall Misrimall Vs. K. Radhakrishnan, also letters were written by the defendant to the plaintiff merely calling for the statement of accounts; and, I have no doubt in my mind, that such a request cannot amount to an acknowledgement of liability.

11. The acknowledgement relied upon in ILR (1904) Cal 195 was contained in a

letter, wherein it was mentioned by the defendant that the bill had been received; but it was incorrect and contained many errors, and further that the work was not finished. He also expressed a desire to look at the estimate and have the work examined, and then would see if anything is due. Of course, from this language, it cannot be said that this is an acknowledgement of liability that anything is due. The case on hand is one in which the liability is acknowledged, but it is coupled with a claim to set off, and hence Section 18 applies. I, therefore, agree with the learned District; Judge that the letter Ex. 1 clearly amounted to acknowledgement of the defendant's liability, and the suit is within limitation,

12. In the result, I dismiss the appeal with costs.

13. Learned counsel for the appellant prays for certifying the case to be a fit one for appeal u/s 18 (2) of the Rajasthan High Court Ordinance. The prayer is refused.