
(2003) 05 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3089 of 1991

Today Stationers and Gift Centres and Others	APPELLANT
Vs	
Allahabad Bank	RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Limitation Act, 1963 — Article 1

Citation : AIR 2004 P&H 56 : (2004) 1 BC 273 : (2003) 135 PLR 394

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Kanwaljit Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity, "the Code"), is directed against the order dated June 7, 1991 passed by the Sub Judge 1st Class, Chandigarh, holding that the suit filed by the plaintiff-respondent against the defendant-petitioners is within the period of limitation after treating the issue with regard to limitation as a preliminary issue.

2. The facts of the case in brief are that the plaintiff-respondent filed a Civil Suit No. 409 of August 10, 1990 seeking recovery of Rs.32,399-30 as principal sum including interest calculated up to February 28, 1989. The plaintiff-respondent alleged that the defendant-petitioners obtained facility of over-draft by pledging FDR worth Rs.20,000/-and on January 4, 1984 a loan of Rs.15,000/- was given to the defendant-petitioners by the plaintiff-respondent, Defendant-petitioners became irregular in making repayment of over-draft amount. The plaintiff-respondent issued several notices duly acknowledged by the defendant-petitioners. They continued making payment of over draft amount from time to time, but thereafter, the defendant-petitioners failed to liquidate their over-draft loan amount. A legal notice was issued on April 26, 1988 but the defendant-petitioners did not make payment of the balance amount of over-draft.

3. The suit was contested by the defendant-petitioners by raising inter-alia an objection that the suit was barred by limitation and it was alleged that the plaintiff-respondent was unnecessarily blocking the FDR payment to the defendant-petitioners. The Civil Judge treated the issue of limitation as preliminary issue and held the same in favour of the plaintiff-respondent. Operative part of the order passed by the learned Sub Judge, Chandigarh reads as under:-

"In order to establish this plea, learned Counsel for the defendant was supposed to bring the factual and legal date but no evidence has been led on his behalf and his argument is that as per case of the plaintiff-bank, the overdraft limitation was sanctioned on 4.1.1984 and legal notice was issued on 25.4.1988 and Limitation Act, 1963 (Act No. 36 of 1963) on the other hand, the contention of Sh. V.K.Vashisht learned counsel for the plaintiff-bank is that it is not a case of ordinary money suit falling within the ambit of Article 19 but the intention of the parties in this suit, is that overdraft facilities was allowed to the defendants who pledged FDR and money was payable with interest upon money and as per statement of Account Ex.PX, the limitation will start from 31.3.1987 when the balance was struck and in such circumstances, the Article 25 of the limitation Act applicable which reads as under; -

25.

For money payable for interest upon money due from the defendant to the plaintiff.

Three Years

When the interest becomes due"

The comparative assessment of the contentions advanced from both sides is clear from the fact brought into light by Statement of Account Ex.PX that amount on Rs.300-00 is shown towards credit in the year 1987. So the amount was being prepaid by the defendants upto 1987 and limitation is to be computed from the conclusion of the Financial Year of 1987 i.e. 31.3.1987 as the intention of the parties in this case is that the money is payable for interest upon money due from the defendant to the plaintiff and Article 25 reproduced above is found applicable in this and interest become due on 31.3.1987 on which the principle is dependent. So the limitation is to be computed from 31.3.1987.

Even otherwise, the careful perusal of the transaction of overdraft facilities in this goes to show that defendant pledged FDR worth Rs.20,000. This pledging amounts to mortgaging a valuable security and in case of such a mortgage, the limitation is even more than three years which runs upto 12 years, which is so in case of mortgage property and in this case the pledging appears to be best mortgage. So the law of limitation is to be interpreted accordingly within this factual material and the facts shown in statement of Account Ex.PX are found not controverted as no evidence to rebut the same has been led by the learned

counsel for the defendant vide his separate statement in writing. As a result of above discussion, the suit is not found barred by law of limitation."

4. I have heard Mr. Kanwaljit Singh, the learned counsel for the defendant-petitioners, who submitted that under Articles 19 and 25 of the Limitation Act, 1963 (for brevity, the Act), the period for filing the suit for recovery of money lent permitted is three years. According to the learned counsel, amount of Rs.15,000/- was advanced to the defendant-petitioners on January 4, 1984 and the suit had been filed on August 10, 1990. According to the learned counsel, the suit is hopelessly time barred. Learned counsel has further submitted that the view taken by the learned Civil Judge by granting 12 years period of limitation holding that it was a mortgage because the loan advanced to the defendant-petitioners was after pledging their FDR worth Rs.20,000/-, is absolutely incorrect because the mortgage is always in respect of some immovable property. The principles laid down in Articles 62 to 65 of Schedule to the Act, concerning mortgage by no stretch of imagination would apply to movable property or bank accounts and, therefore, period of limitation of 12 years could not govern the filing of the suit which is barred by limitation.

5. I have thoughtfully considered the submissions made by the learned counsel. I have also minutely examined the record especially the statement of account Ex.PX and am of the view that this petition deserves to be allowed. It appears that period of three years as provided by Article 1 would apply to a suit concerning the accounts of this nature. The provisions of Article 1 read as under:-

Description of suit

Period of Limitation

Time from which period begins to run

"For the balance due on a mutual, open and current account, there have been reciprocal demand between the parties.

Three Years.

The close of the year in which the last item admitted or proved is entered in the account: such year to be computed in the account".

6. Article 85 of the Limitation Act, 1908 which is equivalent to Article 1 of the Act came up for consideration before a Constitution Bench of the Supreme Court in Keshri Chand v. Shilong Banking Corporation AIR 1965 S.C. 711. It was held that there has to be mutual dealing between the parties on each side creating independent obligation and not merely transactions which create obligations on one side, only such a transaction would attract the application of Article 1. It is further required to be shown that the suit has been filed within three years of the close of the year of the last such transaction. The observations of their Lordships read as under:-

"(9) The next point in issue is whether the proceedings are governed by Act. 85

of the Indian Limitation Act, 1908, and if so, whether the suit is barred by limitation. The argument before us proceeded on the footing that an application u/s 45(D) of the Banking Companies Act is governed by the Indian Limitation Act and we must decide this case on that footing. But we express no opinion one way or the other on the question of the applicability of the Indian Limitation Act to an application under Section 45(D). Now, Article 85 of the Indian Limitation Act, 1908 provides that the period of limitation for the balance due on a mutual open and current account, where there have been reciprocal demands between the parties is three years from the close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. It is not disputed that the account between the parties was at all times an open and current one. The dispute is whether it was mutual during the relevant period.

10. Now, in the leading case of *Hirada Basappa v. Muddappa* 6 M.H.C. 142 at p. 144, Holloway, Acting C.J., observed:

"To be mutual there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side those on the other being merely complete or partial discharges of such obligations."

These observations were followed and applied in *The Tea Financing Syndicate Ltd. Vs. Chandra Kamal Bez Barua*, and *Monotosh K. Chatterjee v. Central Calcutta Bank Ltd.* 91 C.L.J. 16 and the first mentioned Calcutta case was approved by this Court in *The Hindustan Forest Company Vs. Lal Chand and Others*, Holloway, Acting C.J., laid down the test of mutuality on a construction of Section 8 of Act XIV of 1859, though that Section did not contain the words "where there have been reciprocal demands between the parties". The addition of those words in the corresponding Article 87 of Act IX of 1871, Article, 85 of Act XV and Article 85 of the Act of 1908 adopts and emphasises the test of mutuality laid down in the Madras case."

7. Apart from the fact that there have to be reciprocal demand between the parties and mutual transaction as con-terminus for computing the period of limitation as laid down by the Supreme Court in the case of *Keshri Chand* (supra), there is further principle that the entries concerning interest are not to be entertained as a mutual transaction creating obligations. The aforementioned principles have been laid down in the judgment of the Supreme Court in the case of *Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd.*, . In this regard, the observations of their Lordships can be quoted with advantage which reads as under:

"Then we come to the question of limitation. The suit is clearly within time in so far as the liability for sale under the mortgage deed is concerned as it was filed within 12 years of the execution of the mortgagee (see Article 132 of the Limitation Act of 1908) As to the personal liability under this deed, that is beyond time as the suit was filed more than six years after the execution of the

mortgage (see Article 116 *ibid*). Nor does the entry of payment of Rs.10 in the accounts help the bank in this behalf. That entry is no value u/s 19 or Section 20 of the Limitation Act for neither a writing signed by the appellants nor an acknowledgement of payment in the hand writing of the appellants or in a writing signed by them has been proved. Nor does Article 85 of the Limitation Act of 1908 help the bank. Assuming this is a case of an open current and mutual account, the last payment was made in November, 1949, Article 85 gives limitation of three years from the close of the year in which the last item admitted or proved is entered in the accounts, (such year to be computed as in the account). The account in this case shows that the year was calendar year. The mutuality in this case came to an end in 1949 for we find from the account that thereafter there are only entries of interest due to the bank upto October 31, 1952. So the bank would get three years from the end of 1949 under Article 85 and as the suit was filed on April 9, 1953, this entry will be of no help to the bank. We are, therefore, of opinion that the bank cannot get a decree fixing personal liability on the appellants and all that it is entitled to a decree for sale of the mortgaged property."

8. When the principles laid down in the judgments of the Supreme Court in the cases of Keshri Chand as well as Chanderdhar (*supra*) read with the provisions of Article of the Schedule to the Act are applied to the facts of the present case it transpires that the last entry of Rs. 300/- has been made before 31.3.1987. This fact is evident from the photostat copy Ex.PX on record and has also been noticed by the learned Civil Judge. Therefore, last entry in the financial year 1987 would provide a clue to count the limitation from that point. Accordingly, the limitation would start from 1.4.1987. The suit in the present case has been filed on 10.8.1987. Therefore, the suit is hopelessly time barred.

9. Reliance of the learned Civil Judge on Article 25 of the Schedule would not be attracted to the facts of the present case because mere entry of interest as observed by the Supreme Court in Chander Dhar's case (*supra*) would not stop the time from running because such entries are not based on mutual transactions and are result of unilateral action of the plaintiff-respondent. The Civil Judge also committed another legal error by computing the period of limitation as 12 years by relying on the principles concerning recovery of possession of mortgage immovable property as envisaged by Article 62 to 65 of Schedule of the Act. These principles do not apply to the moveable property like the bank accounts.

Therefore, the impugned order passed by the Civil Judge does not deserve to be accepted and the same is liable to be set aside.

10. For the reasons recorded above, this petition succeeds. The impugned order dated June 7, 1991 passed by the learned Sub Judge 1st Class, Chandigarh is set aside. It is held that the suit of the plaintiff-respondent is barred by limitation and the same is liable to be dismissed on that account.