

(1998) 12 KAR CK 0034

In the Karnataka High Court

Case No : Civil Revision Petition No. 762 of 1996

T.T. Paul and Another

APPELLANT

Vs

M/s. Little Flower Kuries and Enterprises Limited, Bangalore

RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Limitation Act, 1963 — Section 37

Citation : (1999) ILR (Kar) 2378 : (1999) 6 KarLJ 465

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri M.A. Sebastian, for the Appellant;

Judgement

1. The petitioners are the defendants. The petitioners being aggrieved by the judgment and decree of the Trial Court in S.C. No. 1925 of 1994 directing the petitioner to pay a sum of Rs. 3,750/- have preferred this revision petition.

2. The respondent-plaintiff filed a suit for recovery of a sum of Rs. 6,190/- arising out of a chit transaction. It was stated in the plaint that the defendant became a member and subscriber of the Chit bearing Ticket No. B-24. The chit was auctioned by the 1st petitioner on 18-8-1989 and the 1st petitioner agreed to pay a sum of Rs. 250/- per month from 18-10-1989. The 1st petitioner had paid 93 instalments and then defaulted in paying the instalments. The respondent claimed a sum of Rs. 4,500/- towards principal and Rs. 1,690/- towards interest on the basis of the default. The plaintiff also stated that the petitioner defaulted in paying the instalments payable on 18-12-1990 and the suit was filed on 2-2-1994.

3. If the period of 18-12-1990 is taken into account, it was submitted by the learned Counsel for the petitioner that the suit is barred by limitation.

4. The Trial Court took the view that the suit is not barred by limitation as subsequent defaults were made and the cause of action arose from each of the subsequent defaults and if that is taken into account, then the suit is in time

barring three instalments. In other words, the Trial Court took the view that if the three instalments that are barred by limitation is left out, the other defaults allegedly committed by the petitioner would be within the period of limitation.

5. The learned Counsel for the petitioner relied on a judgment in Krishnan v Narayanan. The Kerala High Court took the view that the cause of action arise in terms of Article 37. So the limitation from the date of the first default has to be taken into account unless the plaintiff specifically excludes that period which is barred by limitation. Waiver in being an abandonment of a right, it must be intentional and the intention must be express, implied or inferable from the conduct. The plaintiffs intention to waive his right must be manifest from his pleadings. Relying on this judgment, the learned Counsel for the petitioner submitted that there was no specific waiver with respect to the 3 instalments which admittedly is barred by limitation and submitted that once there is no specific waiver, the entire amount will have to be treated as a consolidated amount and time must be reckoned from the first date of default. The plaintiff must state in his plaint to waive the right with regard to those periods which on the basis of the record is barred by limitation. Only then the cause of action would arise with regard to the subsequent defaults which is within the period of limitation.

6. However, this question need not be gone into in this revision petition since the petitioner had come to some kind of arrangement in settling the amount due to the respondent.

7. In that view of the matter no interference is called for in the judgment and decree of the Trial Court. If and when the decree-holder executes the decree, the petitioners will be at liberty to seek for instalment of payments. If such an application is made, after hearing both the parties, the Executing Court shall dispose of the execution petition in accordance with law.

The Civil Revision Petition is disposed of accordingly.