

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 147/2001

Date of Decision – 10th January, 2008

SHAKUNTALA DEVI Appellant
Through: Mr. M.N. Dutt, Adv.

versus

N.S.MOHAN CHIT FUND & FINANCE CO. (PVT.) LTD
..... Respondent

Through: None

% CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? No
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

MUKUL MUDGAL, J. (Oral)

There is no appearance on behalf of the respondent.

2. This appeal challenges the judgment dated 12th January, 2001 rendered by the Learned Additional District Judge in Suit No. 55/1997 filed by the appellant/plaintiff which was dismissed on the following grounds:-

- (a) The suit was beyond limitation; and
- (b) The suit was not filed by an authorized person; and
- (c) The power of attorney of the appellant namely Shri R.L.

Aggarwal, husband of the appellant did not have locus standi to file the present suit.

3. The relevant facts of the case are as follows:-

4. The appellant being a member of the chit fund was paid a sum of Rs. 1,90,000/- by the respondent/defendant by issuing a cheque dated 2.10.93 drawn on Bank of Baroda. The cheque was revalidated on 4.10.1994 as the defendant, according to the appellant/plaintiff, had pleaded that it should not be presented till then as there was shortage of funds. On 4.10.1994, the said cheque was revalidated and the suit for recovery of the amount was filed on 3.10.1997.

5. The issues framed by the trial court are as follows:-

- “(i)Whether the suit is barred by limitation?
- (ii)Whether the plaintiff has locus standi to file the present suit?
- (iii)Whether the plaintiff has no cause of action?OPD
- (iv)Whether the plaintiff is entitled for the suit amount? OPP
- (v)Whether the plaintiff is entitled for interest, if so at what rate?OPP
- vi)Relief.”

6. On the question of limitation (issue no. 1), the Learned Additional District Judge has recorded the following findings:-

“9.The acknowledgment has been defined in Section 18 of “The Limitation Act”, 1963. The relevant portion of it is reproduced for convenience which reads as follows:

“Where, before the expiration of the

prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed."

10. The cause of action having arisen to the plaintiff in Sept, 1992 and the suit having been filed on 3.10.97 was barred by limitation.

Issue, thus, is decided against the plaintiff and in favour of the defendant."

7. In our view, the Learned Additional District Judge has completely misread the explanation given in Section 18 of the Limitation Act, 1963. The above Section stipulates that an acknowledgment of a liability renews the cause of action. In our view, a revalidation of a cheque is nothing except an acknowledgment of the liability which renewed the cause of action as on the date of revalidation i.e. 4.10.1994. In fact, the evidence of the defendant shows that in fact he admitted that the date of the cheque was changed.

8. The finding of the Learned Additional District Judge is particularly unsustainable in view of the defendant's evidence to the following effect:-

“.....The cheque for Rs.1,90,000/- was signed on 02.10.1993 and thereafter the date of cheque was changed at 04.10.1994. The cheque in question was issued as a security because the Co. had no funds. The cheque was re-validated on 04.10.1994 by me because we had no funds. After revalidating the cheque, we requested the Co.M/s. Indian Transfers Products not to present the cheque for encashment because we have no funds in our account.....”
(emphasis supplied)

9. In the above testimony, the defendant has clearly admitted that the cheque's date was changed to 4.10.1994. This clearly shows that the cheque was in fact revalidated on 4.10.1994 as the company did not have sufficient funds prior to that date. In view of the above evidence, we are surprised that how the Learned Additional District Judge could have arrived at the finding that the suit was not within limitation. In our view, both on facts of the present case and the law applicable, the suit was within limitation.

10. On the question of locus standi, it has been held by the Learned Additional District Judge that the appellant was not a competent person to file the suit as no power of attorney or any other document was filed to show that she was the proprietor of M/s. Indian Transfer Products in whose name the cheque was issued.

11. Learned counsel for the appellant has brought to our

notice the plea of counsel for the defendant before the Learned Additional District Judge who noted the same as under:-

“As contended by Shri Daulat Ram Gupta, the Ld. Counsel for the deft, number of documents like account books, income tax return, income tax Assessment, sales tax record, bank account etc. could have been produced on record to prove that the plaintiff was proprietor of M/s. Indian Transfers Products. On the other hand, Shri S.K. Sharma, the Ld. Counsel for the plaintiff submitted that to disprove the contention of the plaintiff, the deft should have brought on record the documents of chit.”

12. Learned counsel for the appellant has submitted that indeed such documents were available on record but they were ignored by the Learned Additional District Judge. He has pointed out for instance the intimation given under Section 143 (1) (A) of the Income Tax Act, 1961 by the Income Tax Department to the appellant wherein she was described as the proprietor of M/s. Indian Transfer Products. We have perused the said document. This document also appears to have escaped the attention of the Learned Trial Judge. Even on the defendant's counsel's own plea, it is apparent that the finding of the Learned Additional District Judge could not stand as the appellant had clearly filed contemporaneous documents evidencing the proprietorship of M/s. Indian Transfer Products by the appellant. Besides the above, the appellant had also filed

a bank certificate to the same effect. During the course of evidence, a special power of attorney dated 18.12.1999 was filed authorizing Shri Ram Lal Aggarwal to represent the appellant/plaintiff in the suit and do all acts in this behalf and it also ratified all actions taken in the suit. We cannot lose sight of the fact that Sh. Ram Lal Aggarwal was the husband of the appellant/plaintiff and, therefore, in any case, defects, if any, were fully ratified by the subsequent special power of attorney. Consequently, we are unable to uphold the judgment of the Learned Additional District Judge dated 12th January, 2001 and the same is reversed and set aside.

13. We have already decided issues No. 1 and 2 in favour of the plaintiff/appellant. In so far as issue No. 3 is concerned, the defendant's own evidence demonstrates that cheque was issued to the plaintiff on 2nd October, 1993. In so far as issue No. 4 is concerned, the defendant has admitted the issuance of the cheque and in fact admitted the date of the cheque was changed to 4th October, 1994. Thus the appellant/plaintiff has proved that he has a cause of action. The respondent himself in the evidence admitted that the cheque had been revalidated for 4th October, 1994 because the respondent did not have funds prior to that date. There is no denial in the evidence of the respondent/defendant that the

money was not payable to the appellant/plaintiff. Thus based on the above reasoning, we are satisfied that the plaintiff is entitled to the suit amount and the issue Nos. 4 and 5 deserve to be decided in favour of the appellant/plaintiff.

14. Accordingly, the Registry is directed to draw up a decree for Rs. 1,90,000/- in favour of the appellant/plaintiff along with interest at the rate of 6 per cent per annum from the date of filing of the suit till realisation.

15. The appeal along with the pending applications stands disposed of in the above terms.

MUKUL MUDGAL, J

JANUARY 10, 2008
NG

S.L. BHAYANA, J