

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2445 of 2003(O&M)

Date of decision: 22.04.2015

Maruti Udyog Limited

... Petitioner

versus

Charu Basil

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Harsh Aggarwal, Advocate for the petitioner.

Mr. Nitin Kant Setia, Advocate for the respondent.

K.Kannan, J.

This order will be treated as continuance of the order passed on 25.3.2015. I will not reproduce the formulation of question of law made on that date and will proceed only to consider whether the payments by cheques made by the ex-employee within the period of three years towards the sum of the amounts claimed by the employer availed in favour of the plaintiff as constituting payment in writing within the meaning of Section 19 of the Limitation Act and save the suit from the bar of limitation. The suit claim comprised of 7 heads which are reproduced as under:

1. 91 days shortfall in notice period – 15398/-.
2. Medical - 40/-.
3. 16 days excess salary paid - 3,500/-.
4. Round off amount - .81.
5. 11.5 excess leave availed - 2515.00/-.
6. Canteen - 40/-.
7. Bond money against bond - 50,000/-.

The employee breached the promise to serve for the number of years stipulated in the bond but voluntarily submitted her resignation

on 23.01.1996. The right of enforcement of the bond arose *eo instanti*. The extracted portion above would reveal that it formed a substantial portion. Another large head of claim were the damages for the shortfall in notice period of over ₹ 15,000/- on 25.02.1998. The suit has been filed taking the payment through 3 cheques issued for ₹ 3,500, ₹0.80/- and ₹ 2,515/- as extending the limitation for the aggregate amount.

Learned counsel appearing on behalf of the respondent would take that these three cheques were to be appropriated only for head Nos. 3, 4 and 5 respectively and the rest of the claims shall be treated as barred by limitation. I will reject this contention because, unless the payments had been made demanding the appropriation for a particular sum of liability, the creditor is entitled to normally appropriate it in whatever manner that he chooses to do.

The point still cannot be taken as fully answered unless we examine whether this payment could be treated as payment on account of debt as expressed in Section 19 of the Limitation Act:

19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:"

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—For the purposes of this section-

[\(a\)](#) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

[\(b\)](#) "debt" does not include money payable under a decree or order of a court.

The counsel appearing on behalf of the respondent cites before me a judgment of Hon'ble the Supreme Court in Union of India Vs. Raman Iron Foundry, AIR 1974 SC 1265 that considered the issue of an acknowledgment for the purpose under Section 18. The liability was on a contract that was breached and invoking the clause under standard form of contract that allowed for a person who suffered by such a breach of claim, a certain sum of money. Considering the issue of whether, the liability acknowledged by the contractor within a period of three years could be used in an action for recovery of damages from the time when the initial cause of action took place namely, the date of breach to the date of proceedings brought before the Arbitrator, the court held that the damage be either liquidated and unliquidated could make no difference. It requires little emphasis to note that Section 18 of the Limitation Act contemplates an acknowledgment of liability of a debt while Section 19 of the Limitation Act, contemplates a payment in writing for a debt. The common thread running in both the Sections is either by way of acknowledgment or by payment, it ought to be with reference to the liability under the debt. The Supreme Court was holding that:

“It, therefore makes no difference in the present case that the claim of the appellant is for liquidated damages. It stands on the same footing as a claim for unliquidated damages. Now the law is well settled that a claim for unliquidated damages does not give a rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a court or other adjudicatory authority. When there is a breach of contract, the party who commits the breach does not *eo instanti* incur any pecuniary obligation, nor does the party complaining of the breach become party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages.”

Elsewhere in the same judgment referring to a decision of the Bombay High Court, the Court extracted the following passage:

“In my opinion it would not be true to say that a person who commits a breach of the contract incurs any pecuniary liability, nor would it be true to say that the other party to the contract who complains of the breach has any amount due to him from the other party.

As already stated, the only right which he has is the right to go to a Court of law and recover damages. Now, damages are the compensation which a Court of law gives to a party for the injury which has sustained. But, and this is most important to note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The Court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination there is no liability at all upon the defendant.”

The Supreme Court observations were in the context of enforcement by a purchaser of sum amounts which were recoverable under Clause 18 of the Contract. The consideration was in the context of the following which is reproduced as under:

“Recovery of sums due:

Whenever any claim for the payment of a sum of money arises out of or under the contract against the contractor, the purchaser shall be entitled to recover such sum by

appropriating in whole or in part, the security, if any, deposited by the securities forming the whole or part of any such security deposit. In the event of the security being insufficient, the balance and if no security has been taken from the contractor, the entire sum recoverable shall be recovered by appropriating any sum then due or which at any time thereafter may become due to the contractor under the contract or any other contract with the purchaser or the Government or any person, contracting through the Secretary, if such sum even be not sufficient to cover the full amount recoverable, the contractor shall on demand pay to the purchaser the balance remaining due.”

The Supreme Court, therefore, said that liquidated and unliquidated damages will not become the amount recoverable *eo instanti* but such liability will be taken only from the time when the Court determines the amount as payable. Nowhere in the judgment was the Court considered the issue of whether the payment made was towards the liability or not. What was unnecessary for consideration before the Supreme Court for eliciting whether the difference between liquidated and unliquidated damage would make any impact on recovery of sum will have no meaning in the context of Section 19 of the Limitation Act. All that is necessary for the application under Section 19 is that when a payment on account of the debt was being made before the expiry of their prescribed period, a fresh period of limitation shall be computed. I have already observed that the payments made within the period of limitation in this case was not accompanied with any letter or request by the employee/debtor that they were to be appropriated only against certain heads of liability. If there was no such specific demand for appropriation, then the amount paid will be taken as only the amount paid on account of debt. It is not the same thing as what the Supreme Court was considering for enforcement of a particular liability and they were considering that it was breach of

contract and was not for the sum “presently due and payable”. I cannot import an expression of what was brought is a contract between the parties to be applied in a statute that employs different language. I cannot take the same “presently due and payable” as synonymous with the payment on account of a debt as used under Section 19, however, attractive such an argument would be. A contract will spells out a particular sum as payable on breach must be taken as giving rising to a debt and the suit on its face was surly within a period of limitation and could not have been thrown at the threshold by applying Order 7 Rule 11 CPC. The order passed by the Court below cannot be sustained and the Court will take a decision in the light of the evidence adduced by the parties in accordance with law.

I have made some observations about the payments made through cheques as could not taken to be appropriated only to certain heads of liability. This has been done for the purpose for disposing this application. When the parties have not given any oral evidence of the manner of how the cheques have been issued and whether there existed any stipulation for appropriation in a particular manner. Those observations, will not govern the rights of the parties finally when an adjudication is taken by the trial Court by appropriate evidence.

The order impugned is set aside and the civil revision petition is allowed. The matter shall be taken up by the trial Court within the period of four week from the date of the receipt of records and shall conclude the case within a further period of 8 weeks and report to this Court of the progress and conclusion of the suit after trial. There shall be no direction as to costs.

(K.KANNAN)
JUDGE

22.04.2015

kv