HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.22 OF 2006

JUDGMENT:

Aggrieved over the judgment and decree, dated 14-12-2001, in O.S. No.14 of 1994 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad, for not granting the entire suit claim of Rs.2,34,356.32ps., but partly decreeing it for Rs.69,812.27ps. with interest at 21% per annum from 24-08-1993 till the date of suit; *pendente lite* interest at 12% per annum and , thereafter, at 6% from the date of decree till realization, the plaintiff preferred the present appeal.

2. The appellant herein is the plaintiff, while respondent is the defendant in the above suit before the trial Court.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in the suit.

4. The plaintiff and the defendant had dealings in business on Yarn, Dyes and Chemicals. The defendant's business is located at Karimnagar, and used to purchase the material from the plaintiff and, thus, a running account was being maintained for the purchases made.

i) The plaintiff claims that the defendant became irregular in making payments and the cheques issued by the defendant on 20-10-1990, 28-01-1991 and 20-03-1991, were bounced when presented for encashment. But, even thereafter, when the defendant approached the plaintiff, an amount of Rs.1,30,000/- was lent as hand loan on 03-06-1992, but, to its surprise, the defendant got issued a legal notice, dated 24-08-1993, mentioning that only an amount of Rs.94,812.27ps. was due denying the hand loan and the mortgage; and enclosed a draft for Rs.25,000/-.

ii) The plaintiff, claiming that a sum of Rs.2,34,356.32ps. was still due, laid the suit, requesting to grant interest at 24% per annum.

5. The defendant filed written statement denying the amount specified by the plaintiff as outstanding to be paid by it, however, the business transactions between them were not denied. The defendant also denied approaching the plaintiff on 03-06-1992 and obtaining a hand loan of Rs.1,30,000/-. The defendant's case is, that whenever the yarn was supplied, the plaintiff used to collect money and only a sum of Rs.94,812.27ps. became due.

i) The defendant also took the stand that the employee of the plaintiff approached him at his place and brought him to the place of plaintiff itself, confined him and obtained documents stamping as if he became due is a sum of Rs.1,75,000/- and also a mortgage deed, and that constrained him to get the notice, dated 24-08-1993, issued to the plaintiff stating the true facts. Ultimately, he claimed that only a sum of Rs.69,812.27ps. was due, as he sent a draft for Rs.25,000/- along with the notice. The defendant also took the stand that the suit was not maintainable as a partner cannot maintain a suit, and sought to dismiss the suit.

6. The Court below framed the following three issues.

" i) Whether the plaintiff is entitled to the suit claim and interest as prayed for?

ii) Whether the suit is bad for mis-joinder and non-joinder of parties?

iii) To what relief? "

7. To substantiate their stand taken by the parties, on behalf of the plaintiff, PW.1 was examined and Exs.A-1 to A-24 were marked, whereas, on behalf of the defendant, DW.1 was examined and Exs.B-1 to B-6 were marked.

8. The trial Court, initially, held that a partner can maintain the suit, as the plaintiff's firm is a registered partnership firm and the defendant did not dispute the competency of the person, who signed the plaint and, as such, recorded a finding in favour of the plaintiff.

9. On issue No.2, since no argument at all was advanced and the plea taken by the defendant stood unsubstantiated and the defendant being a proprietary concern, held it against the defendant.

10. On issue No.1, the trial Court having discussed the documentary evidence, so far as Rs.1,30,000/- amount is concerned, held that it does not constitute part of the suit claim for the reason that it is established from the evidence that the plaintiff laid a suit in O.S. No.28 of 1995, on the file of the Senior Civil Judge, Karimnagar,

in respect of the suit amount due under mortgage and Exs.B-1 and B-2 would establish the same, thus, excluded Rs.1,30,000/-, which, of course, also not in dispute in the present appeal.

11. Concerning the suit claim, the trial Court having observed that the transactions that took place between the parties relate to the period prior to 21-06-1990; the statement of account marked as Ex.A-24 shows the payment of Rs.10,000/- on 25-10-1990; that Rs.25,000/- was paid on 23-08-1993 through a draft sent along with the notice, and holding that the dishonoured cheques under Exs.A-1 to A-3, A-9 and A-10 for Rs.6,000/-; Rs.10,000/-; Rs.20,000/-; Rs.15,000/- and Rs.15,000/-, respectively and other documentary evidence do not give rise to either part payments or acknowledgments, recorded a finding as such, but basing on admission made by the defendant in Ex.A-7, dated 24-08-1993, that he was due a sum of Rs.94,812.27ps. and after deducting Rs.25,000/- sent through the draft, held that only a sum of Rs.69,812.27ps. was due. In making such an observation and recording such a finding, the trial Court justifies by expressing thus:

> "According to me, this amounts to novation of the contract and an admission made by the defendant in clear language and in explicit unequivocal terms. Therefore, I hold that the plaintiff is only entitled to this claim of Rs.69,812-27ps. from 24.8.1993
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> Therefore, I hold that the plaintiff is only entitled to the claim of Rs.69,812.27ps. from 24-08-1993."

12. The trial Court, thus, proceeded in the suit and then awarded pre *pendente lite* interest at 21% per annum; *pendente lite* at 12% per annum and for the post-decree period at 6% till the payment is made.

13. Aggrieved over the rejection of that part of the suit claim, the present appeal is preferred by the plaintiff, contending in the grounds that though, no plea of limitation was taken by the defendant, no issue was settled for trial thereon, but the Court below went wrong in holding that suit claim was barred by limitation.

i) Second main ground agitated is, that the cheques ought to have been treated as part payments or acknowledgments of the debt, but the Court below went wrong in not treating them as such.

ii) Third ground relates to the rate of interest; stating that the Court below went wrong in arriving at that the suit claim was based on running account, as evidenced by Ex.A-24, and ought to have awarded the rate of interest at 21% per annum, even on the admitted amount from the date of suit till the date of decree, and more so, the transaction between the parties was a commercial transaction.

iii) Thus, they attacked on the judgment of the trial Court was mainly on the aforesaid three grounds.

14. Heard Sri K. Mohan, learned counsel for the appellant - plaintiff, and Sri Pratap Narayan Sanghi, learned counsel for the respondent - defendant.

15. The dealings between the plaintiff and the defendant are not in dispute. The issue of cheques under Exs.A-1 to A-3, A-9 and A-10 for Rs.6,000/-; Rs.10,000/-; Rs.20,000/-; Rs.15,000/- and Rs.15,000/-, respectively, in connection with the amounts due and dishonouring of these cheques is also not in dispute. The constant exchange of communication and correspondence between the plaintiff and the defendant is also not in dispute. The only disputed question is,

> Whether the factum of issue of cheques under Exs.A-1 to A-3, A-9 and A-10 by itself would constitute an acknowledgment of liability under the Limitation Act, 1963, even when they were dishonoured?

16. The learned counsel for the appellant - plaintiff would submit that the very issue of cheques irrespective of the fact whether they were satisfied on their presentation or dishonoured, is sufficient to construe that they would constitute acknowledgment of liability on the part of the defendant. To fortify his submission, he placed reliance on the ruling of a learned Single Judge of Madras High Court in **A.R. Krishnaswami Iyer v. M.N. Ramakrishna Iyer**[1], and

[1]. AIR (32) 1945 Madras 515

another ruling of the Single Judge of Patna High Court in **Rajpati Prasad v. Kaushalya Kuer**[2].

17. The learned counsel for the respondent - defendant has not raised any quarrel with regard to the legal position.

18. In **A.R. Krishnaswami Iyer's Case** (Supra 1), the question was, whether payment of cheques saves limitation under Section 20 of the Old Act (Limitation Act 1908), it was held that the payment by cheque by a debtor in favour of the creditor is a payment, which satisfies the condition of Section 20 and saves the limitation. In the present context, where the cheques were dishonoured, the ruling in **Mackenzie v. Thiruvengadathan**[3], referred to, is apt to be extracted. While answering the question whether the payment by cheque was a payment evidenced by writing, what was stated by Sir Lawrence Jenkins in 41 Cal.1043 was extracted thus:

> "It seems to me clear that if a cheque be delivered to a payee by way of payment and is received as such by him, it operates as payment and is an extinguishment to that extent of the debt, though this is no doubt subject to a condition subsequent that if upon due presentation the cheque is not paid, the original debt revives."

19. There is more clarity in the second decision as it has direct bearing on the controversy herein. In **Rajpati Prasad's Case** (Supra 2), a learned Single Judge of Patna High Court in answering the question where post-dated cheques in satisfaction of bills, amounts

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[2]. AIR 1981 Patna 187

to an acknowledgment of liability, irrespective of fact whether cheque was subsequently dishonoured, dissenting from the decision of the Bombay High Court in **Chintaman v. Sadguru**[4], held in the affirmative. What has been stated in paragraph Nos.12 to 14 is apt for the present purpose and the same is extracted, which is thus:

> " 12. Now what is an acknowledgment of liability to pay a debt? In the context of the English Law of Limitation the question was thus answered by Fry LJ in (1884) 26 Ch. D. 474:-
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> > "In my view an acknowledgment is an admission by the writer that there is a debt owing by him either to the receiver of the later or to some other person on whose behalf the letter is received. It is not enough that he refers to a debt as being due from somebody. In order to take the case out of the statute, there must upon the fair construction of the letter, read by the light of the surrounding circumstances, be an admission that the writer owes the debt.........."
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> Quoting this statement in Shapoor Fredoon Mazda V/s. Durga Prasad Chamaria (AIR 1961 SC 1236) Gajendragadkar, J., as he then was, speaking for the Supreme Court in that case, observed:
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> > "With respect, it may be added, that this statement succinctly and tersely gives the substance of the provision contained in Sec.19 of the Limitation Act". (now sec. 18 of the new Act). Therefore, in order to amount to an acknowledgment in writing the statement must be in writing and it must contain an admission by the writer that there is a debt owing by him either to the receiver of the document or to some other person on whose behalf the document is received. Now when a cheque is drawn by a person in settlement of the price of goods demanded from him by the person who had supplied the goods and was making the demand for payment of the price, at least in a case in which the cheque is honoured there can be no doubt that it amounts to and is an admission by the writer of the cheque that there is a debt owed by him

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3. ('86) 9 Mad. 271
4. AIR 1956 Bom.553

> to the person in whose favour the cheque has been drawn. Issuing a cheque, as pointed out by Subba Rao, C.J., as he then was. In Subrahmanyam V/s. Venkataratnam (AIR 1956 Andhra 105) "has now become the usual mode of payment". When a person pays a sum of money which is demanded as the price of goods supplied, he certainly admits that there is a debt owing by him to the person to whom he makes the payment or on whose behalf the payment is received. As pointed out by S.K. Ghosh, J., delivering the judgment of the Bench of the Calcutta High Court in Prafulla Chandra V/s. Jatindra Nath (AIR 1938 Cal 538) "although the fact of payment may be different from the acknowledgment if the cheque itself is evidence of the fact of payment it is also evidence of acknowledgment"

13. Now, can it be said that merely because the cheque is subsequently dishonoured, there is no admission of the liability of the debt in satisfaction of which the cheque purports to have been issued? In my opinion, it is impossible to accept the proposition that in no circumstance, issuing of a cheque which is subsequently dishonoured in settlement of certain debt can amount to an admission or acknowledgment of that debt. Whether there is an admission of the debt has to be determined with reference to the point of time at which the purported admission was made, that is to say, when the cheque was issued. An admission does not cease to be an admission merely because it is subsequently retracted. It may well be presumed that by issuing the post dated cheque which was subsequently dishonoured towards the payment of a debt, the drawer intended to make that payment and on account of certain supervening circumstances, the cheque was dishonoured. It may be that the drawer had not the necessary balance in the account even though at the time of issuing the cheque he had expected that he would have the necessary balance at the time the cheque would be presented for encashment. Or it may be that though he initially admitted the liability and intended to discharge that liability by making the payment by means of the

cheque in the drawer subsequently decided not to make the payment and as in this case stopped payment of the cheque.

At least, in those cases where he did not have at the time of issuing the cheque an intention to deceive the person in whose favour the cheque was issued the issue of a cheque towards the payment of a debt opertaes as admission of the liability to pay that debt even though the cheque is dishonoured subsequently. The case in which even at the time of issuing the cheque, the drawer had no intention to make the payment presents more difficulty. In such a case it may be argued that by issuing the cheque he was not making an admission of liability to pay the debt but was resorting to a subterfuge to get rid of an inconvenient creditor. But even in such a case, by issuing the cheque which he had no intention should be honoured, the drawer represented to the person to whom the cheque was issued that the cheque would be honoured on presentation and thus, intimated to him his admission of his liability to pay the debt in satisfaction of which the cheque was issued. That a person who was issuing the cheque in satisfaction of a debt was admitting his liability to pay the cheque is a reasonable, indeed the necessary inference to be drawn from the issue of the cheque. An admission according to Sec.17 Evidence Act is a "statement, oral or documentary, which suggests any inference as to any fact in issue a relevant fact." Whether a statement constitutes an admission has, therefore, to be determined with reference to the inference to be drawn from the statement and not with reference to the mental processes underlying or accompanying that statement. And, therefore, it may well be said even in such a case that the drawer of the cheque acknowledged or admitted his liability to pay the debt in satisfaction or part satisfaction of which he had issued the

> cheque. Such a conclusion is in accord with justice and equity.
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> By issuing a cheque which is dishonoured subsequently to the words of Krishnan, J., in Gori Lal V/s. Ramjeelal (AIR 1961 Madh Pra 346) the debtor has intended, and at all events represented to the creditor that the negotiable instrument is good, and thereby the creditor has for his part, been given a feeling of security with a fresh term of limitation. If one looks to the equity side of it a payment which the debtor means as a sheer pretence, but the creditor accepts as genuine, cannot certainly deprive the latter of what Sec.18 has already given him (Sec.18 of the Act has been substituted for Sec.20). At any rate, it cannot be held that in no event a cheque which has been subsequently dishonoured may amount to an acknowledgment of a liability within the meaning of the expression as used in S.18 of the Act.
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> 14. The conclusion that even a cheque which has been dishonoured may operate as acknowledgment of the debt to satisfy which it was issued finds support from the following passage in Banning on the Limitation of Actions, Edn. 3 P. 51:
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> > "When a debtor gave a bill on account of the debt and the bill proved ultimately worthless, the bill (being a conditional payment) operated as an acknowledgment of the debt." (quoted with approval by S.K. Ghose in Prafulla Chandra V/s. Jatindra Nath (AIR 1938 Cal 538) (supra) at Pp. 539-540 of the report)."

20. There is no other controversy except the claim being barred by limitation and, therefore, there is no need to enter into arena of fact-situation.

21. However, certainly, the observation made by the trial Court which was extracted in the above, is worth mentioning. The trial Court having arrived at that the transactions were ended by 21-06-1990 and the only payment subsequently made was Rs.25,000/- on 23-08-1993 and, thus, the payment of Rs.25,000/- was made more than a lapse of three years and meanwhile there was no acknowledgment or part payment made by the defendant, and since the cheques were dishonoured, they cannot be treated as part payment, but, somehow, taken the view that since defendant itself made a clear admission in Ex.A-7, dated 24-08-1993, that it was due a sum of Rs.94,812.27ps., treated it as an acknowledgment of liability and deducted Rs.25,000/-, referred to in the above, and granted decree for the balance amount of Rs.69,812.27ps. When once the trial Court takes the view, that the claim was barred by limitation, the payment that was made subsequent to the expiry of three years period, and any acknowledgment of liability made cannot be construed in strict sense as legal liability or a liability that can be enforced and at the most, it may be construed as a moral obligation. Thus, the trial Court went wrong in even making the defendant liable for Rs.69,812.27ps. However, the cheques under Exs.A-1 to A-3, A-9 and A-10 and last of the cheques i.e. under Ex.A-10 was dated 25-05-1991. The plaint was presented on 21-01-1994. Therefore, nothing more is required to hold that the suit claim is within three (03) years and, thus, within the period of limitation, attracting acknowledgment of liability under Section 18 of the present Act.

22. Therefore, unhesitatingly it can be said that the trial Court went wrong in dismissing the suit claim in part. Consequently, the present appeal is allowed, granting a decree for Rs.2,34,356-32ps.

23. One more aspect which requires adjudication is, the rate of interest that requires to be awarded *pendente lite* proceedings. The trial Court has granted 12% interest on the part of the claim though, on wrong assumption, but the conditions that governed the parties stipulates interest at 21% per annum as could be seen from the credit bills. Therefore, the plaintiff is entitled to *pendente lite* interest at 21% per annum. Thus, by virtue of the said stipulation, the defendant is liable to pay interest at 21% per annum from the date of suit till passing of the decree by the trial Court. The interest awarded by the Court below at 6% per annum from the date of decree till realization is maintained.

24. The appeal is therefore, allowed with costs.

As a sequel thereto, miscellaneous applications, if any pending in the appeal, stand closed.

A. SHANKAR NARAYANA, J

October 28, 2016.
Mgr