

* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

+ Writ Petition No.20044 of 2006

% 22.12.2016

The General Manager,
The Karimnagar District Cooperative Central Bank Limited,
Karimnagar and another

...Petitioners

Vs.

\$ The A.P. Cooperative Tribunal,
at Warangal, rep. by its Secretary and others.

... Respondents

!Counsel for the Petitioners : Sri P. Srinivas

^ Counsel for the Respondents : GP for Cooperation
Sri V. Hariharan

< Gist :

> Head Note :

? Cases referred

1. AIR 1979 SC 102
2. AIR 2006 SC 1874



IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No.20044 of 2006

Between:

The General Manager,
The Karimnagar District Cooperative Central Bank Limited,
Karimnagar and another

...Petitioners

And

The A.P. Cooperative Tribunal,
at Warangal, rep. by its Secretary and others.

...Respondents

JUDGMENT PRONOUNCED ON : 22.12.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : YES
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : YES

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 20044 of 2006

Order:

Heard learned Counsel for the Petitioner and the counsel for 2nd respondent.

The Karimnagar District Cooperative Central Bank Limited, Karimnagar granted a cash credit facility to the tune of Rs.3.00 lakhs on 20.05.1993 to the second respondent herein. They operated the account till 31.03.1994. Thereafter, they did not operate the account. At the time of availing cash credit facility, a promissory note was executed along with a letter of continuity, letter of acceptance, deed of hypothecation and an agreement. Since the second respondent failed to repay the outstanding amount, the first petitioner issued a notice on 01.11.1999 to the second respondent calling upon them to clear the outstanding amount. In spite of the said notice when the second respondent did not repay the amount, nor submitted any reply, proceedings were initiated before the second petitioner on 06.11.1999. The second petitioner passed an award in Rc.No.2 of 1999 on 05.01.2000 for an amount of Rs.5,94,187/-. Challenging the same, the second respondent filed C.T.A.No.44 of 2000 and the same was allowed on 12.03.2003 remanding the matter to the second petitioner/Arbitrator for fresh disposal. After remand, the second petitioner passed an award on 22.09.2003 in Rc.No.21/2003/1360/L for an amount of Rs.8,49,843.33 ps., with interest at 22% p.a., from 01.04.2003. Challenging the same, the second respondent filed CTA No.101 of 2003 before the A.P. Cooperative Tribunal, which set aside the award dated 22.09.2003 by its order dated 20.12.2005 on the ground that the claim of the first petitioner was barred by limitation and the debt

cannot be recovered from the second respondent. Challenging the said order of the Tribunal, the present Writ Petition was filed.

The Writ Petition against the respondents 4 and 5 was dismissed for default by an order dated 23.06.2011. No counter affidavit is filed by the respondents 2 and 3.

The facts in the above case are not disputed. Learned counsel for the petitioners submits that Article 115 of the Limitation Act, 1908 on which reliance was placed by the Tribunal has no application to the case and the period of limitation runs from the date of refusal by the debtor. He submits that since a notice was issued on 01.11.1999 and reference was made immediately on 06.11.1999, the proceedings were initiated within the period of limitation and hence the award is valid. He relied on the decisions of the Hon'ble Supreme Court in *Mrs. Margaret Lalita Samuel v. The Indo Commercial Bank Limited*¹ and *Syndicate Bank v. Channaveerappa Beleri*².

In view of the above facts and contentions, the only point that arises for consideration in the present case is whether Article 115 of the Limitation Act, 1908 is applicable to the facts of the case and whether the order of the Tribunal is valid in law?

It is an admitted case that the second respondent who availed the cash credit facility operated the account till 31.03.1994 and thereafter did not operate the account. While sanctioning the said facility, the second respondent issued a demand promissory note dated 20.05.1993, letter of continuity and letter of acceptance followed by a deed of hypothecation dated 20.05.1993. An agreement was executed by the respondents 3 to 5 guaranteeing the payment of amount in the event of default committed by

¹ AIR 1979 SC 102

² AIR 2006 SC 1874

the second respondent. Thus, the first document is a document of demand promissory note and the second document is a letter of continuity. The letter of continuity states that the promissory note continues to stand as security so long as the amount was due. The letter of acceptance states that the cash credit facility was sanctioned till 31.03.1994 and the conditions stipulated in the letter of sanction are acceptable to them. The deed of hypothecation undertakes to submit on 5th of every month, a statement of the goods hypothecated and the goods so hypothecated shall be held as the exclusive property of the first petitioner Bank. The schedule to the agreement did not contain any list of goods. As already stated, a personal guarantee was also executed. All the documents were executed on 20.05.1993. It is an admitted case that after 01.04.1994, the second respondent did not continue to avail the facility. A notice was issued on 01.11.1999 stating that the second respondent availed the limit and defaulted to the Bank on 01.04.1994. and failed to pay the same in spite of Bank's request. As on the date of issuance of said notice an amount of Rs.2,90,519.33 ps., was outstanding as principal amount and interest of an amount of Rs.3,03,668/- was due as on 31.03.1999. A claim was made before the second petitioner for recovery of the said amount and after passing of an award on 05.01.2000 and when it was challenged before the Tribunal, the Tribunal remanded the matter to the second petitioner for consideration of the case afresh. The order of remand dated 12.03.2003 was passed by the Tribunal and directed the second petitioner to conduct a fresh enquiry under Rule 49 of the A.P. Cooperative Societies Rules and find out whether the reference was within the period of limitation as provided by Article 55 of the Limitation Act, 1963 and the law laid down by the Hon'ble Apex Court in

Mrs. Margaret Lalita Samuel's case (supra). After remand, the second petitioner issued notices to the respondents 2 to 5 herein and it was noticed that the respondents 4 and 5 expired by that time. The second petitioner passed an award on 22.09.2003 holding that the contention raised by the second respondent that the claim was barred by limitation as provided under Article 55 of the Limitation Act, 1963 and also as per the law laid down by the Hon'ble Supreme Court in Mrs. Margaret Lalita Samuel's case (supra) was not correct. In order to come to the said conclusion the second petitioner stated that in view of letter of continuity executed on 20.05.1993 which contained no period of limitation, the period of limitation starts running from the date of receipt of notice issued on 01.11.1999 as per Article 115 of the Limitation Act, 1908. It was also stated that the second respondent acknowledged the audit report for the year 2000-01 issued by the District Cooperative Audit Officer, Karimnagar and it operates as an acknowledgment. It was further held that the judgment in Mrs. Margaret Lalita Samuel's case (supra) supports the case of the first petitioner herein. Accordingly, he passed an award for an amount of Rs.8,49,843.33 ps., with further interest at 22% p.a., from 01.04.2003 till realisation. In the appeal before the Cooperative Tribunal challenging the said award in CTA No.101 of 2003, the Tribunal held that the reasoning given by the second petitioner that the period of limitation starts from the date of receipt of notice under Article 115 of the Limitation Act was wrong. The Tribunal noticed that there were no transactions from 01.04.1994 till the date of issuance of legal notice. The Tribunal opined that the acknowledgment of audit report for the year 2000-01 showing a debt owed to the Bank by the second respondent herein does not give rise to any right to the first petitioner. The Tribunal held that

since no action was taken within the period of three years from the date of cause of action, the claim for recovery of the amount under the award was already barred. Accordingly, it set aside the award.

Article 55 of the Limitation Act, 1963 reads as follows.

55. For compensation for the breach of any contract, express or implied not specifically provided for.	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.
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The reference to Article 115 by the second petitioner was a reference to Article 115 of the Limitation Act 1908 which is Article 55 of the present Act.

In Mrs. Margaret Lalita Samuel's case (supra) the respondent before the Hon'ble Supreme Court was a Bank which filed the claim against the petitioner before the Supreme Court. In the said case the plaintiff was maintaining the overdraft account granted in favour of the defendant. The defendant executed a promissory note for Rs.10.00 lakhs and a guarantee bond was also executed guaranteeing the repayment of amount. The guarantee was a continuing guarantee to the extent of limit of the overdraft account. The overdraft account was operated till 30.06.1946. The husband of the defendant died on 27.04.1951 and she executed a letter of acknowledgment acknowledging her personal guarantee to repay the outstanding amount as on 31.12.1951 by letter dated 02.02.1952. The suit was filed on 08.11.1954 to enforce the guarantee bond against the defendant. The defendant took a plea of limitation stating that the letter dated 02.02.1952 was obtained from her by fraud. The trial Court held that the letter dated 02.02.1952 was not obtained by fraud, but held that the suit was barred by limitation. When an appeal was filed before the High Court of Bombay, the suit was held to

be not barred by limitation. Since there was a dispute with regard to the amount payable, the matter was remanded to the trial Court. After remand, the trial Court held that the letter of acknowledgment was binding on the defendant and the suit was decreed. The defendant preferred an appeal before the High Court of Bombay. The High Court of Bombay affirmed the decree passed by the trial Court. The defendant went before the Hon'ble Supreme Court and the plea of limitation was raised. It was contended before the Hon'ble Supreme Court that every item of an overdraft account was an independent loan, the limitation for recovery of which was determined by Article 57 of the Schedule to the Limitation Act, 1908. The Hon'ble Supreme Court held that the said point does not arise since the suit filed was to enforce the guarantee bond executed by the defendant. The Supreme Court agreed with the view expressed by the Bombay High Court that the letter of guarantee undertook to pay any amount which may be due by the company and the suit to enforce the liability is governed by Article 115 of the Limitation Act, 1908. The cause of action arises from the date of breaking the contract of continuing guarantee and so long as the account remained as live account and there was no refusal on the part of the defendant to carry out her obligation, the period of limitation did not commence to run. The Hon'ble Supreme Court held that the account continued to be a 'live' account even after the company ceased its business on 30.06.1946. However, with regard to amount decreed, the Supreme Court interfered with the quantum on the basis of entries available in evidence.

In Syndicate Bank's case (supra) the Hon'ble Supreme Court was considering a case of the appellant Bank filing a suit against respondents 1 to 7 for recovery of amount on the basis of credit facilities extended to

the respondents. The respondent No.1 was Managing Director of Gadag Forge Fits (India) Private Limited and respondents 2 to 7 were its Directors. They executed guarantee bonds in favour of the Bank personally agreeing and undertaking to pay and satisfy the Bank on demand all sums which may be due on account of credit facilities granted to the company subject to the limits mentioned therein. The operations of the company stopped in the middle of 1986. The Bank issued a letter on 12.10.1987 to the company and its seven directors informing them of the amounts outstanding in the accounts as on 30.09.1987 and calling upon them to pay the said amount. The respondents sent a reply on 31.10.1987 stating that the company sustained losses in view of the failure to advance further funds and they reserved their right to file a suit for damages for an amount which would be more than the amount claimed by the Bank. The Bank again issued a notice on 17.12.1987 demanding payment and reply was issued on 30.12.1987 denying the demand. The Bank initiated proceedings for winding up of the company on 11.10.1988 and the High Court ordered winding up of the company on 17.03.1989. Thereafter, the suit was filed by the Bank on 16.03.1990 only against the guarantors for recovery of the amount demanded in the notice dated 12.10.1987. The trial Court framed 16 issues including the issue relating to limitation, but answering all issues except the issue regarding the limitation in favour of the Bank, however, on the point of limitation it held that the suit was barred by time and consequently dismissed the suit. The appeal preferred by the Bank was also dismissed by the High Court. The matter was taken to the Hon'ble Supreme Court. On the point of limitation, the Supreme Court considered Sections 126, 128, 129 and 130 of the Contract Act, 1872 relating to the guarantee and

sureties liability. The Supreme Court also considered Articles 55, 113, 19 and 21 of the Limitation Act, 1908. Before the Supreme Court, Mrs. Margaret Lalita Samuel's case (supra) was relied on by both the parties. The Supreme Court distinguished Mrs. Margaret Lalita Samuel's case (supra). The Supreme Court held that the time began to run not when the operations ceased in the accounts in the middle of 1986, but on the expiry of 15 days from 12.10.1987 when the demand was made by the Bank and refusal by the guarantors. The suit filed within three years therefrom was within time. The Supreme Court refused to consider the meaning of the words "live account" used and referred in Mrs. Margaret Lalita Samuel's case (supra). However, the Supreme Court made the following observations which require to be noticed.

"14. We have to, however, enter a caveat here. When the demand is made by the creditor on the guarantor, under a guarantee which requires a demand, as a condition precedent for the liability of the guarantor, such demand should be for payment of a sum which is legally due and recoverable from the principal debtor. If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time-barred. To clarify the above, the following illustration may be useful:

"Let us say that a creditor makes some advances to a borrower between 10.4.1991 and 1.6.1991 and the repayment thereof is guaranteed by the guarantor undertaking to pay on demand by the creditor, under a continuing guarantee dated 1.4.1991. Let us further say a demand is made by the creditor against the guarantor for payment on 1.3.1993. Though the limitation against the principal debtor may expire on 1.6.1994, as the demand was made on 1.3.1993 when the claim was 'live' against the principal debtor, the limitation as against the guarantor would be 3 years from 1.3.1993. On the other hand, if the creditor does not make a demand at all against the guarantor

till 1.6.1994 when the claims against the principal debtor get time-barred, any demand against the guarantor made thereafter say on 15.9.1994 would not be valid or enforceable.

.....

18. Some arguments were addressed about the Article of limitation that would apply in respect of a suit against the guarantors. Samuel (supra) held that in the case of refusal of a guarantor to pay the amount, the matter would be governed by Article 115 of the Schedule to the Limitation Act, 1908, which corresponds to Article 55 of the Limitation Act, 1963. One of the submissions made before us was that the term 'compensation for breach of contract' in Article 55 indicates to a claim for unliquidated damages and not to a claim for payment of sum certain (as to what is the difference between a claim for unliquidated damages and a claim for a sum certain or a sum presently due, reference can advantageously be made to the classic statement of Law by Chagla, C.J., in IRON AND HARDWARE (INDIA) LTD. v. FIRM SHAMLAL & BROS - AIR 1954 Bom. 423). If Article 55 does not apply, then a claim against a Guarantor in such a situation may fall under the residuary Article 113 of the Limitation Act, 1963 corresponding to Article 120 of the old Act. The controversy about the appropriate Article applicable, when the claim is found to be not exactly for 'compensation' but ascertained sum due has been referred to as long back as 1916 in Tricomdas Cooverji Bhoja v. Gopinath Jin Thakur (AIR 1916 PC 183). Under the old Limitation Act (Act of 1908), the periods prescribed were different under Article 115 and 116. The periods prescribed were also different under Article 115 and 120. But under the 1963 Act, the period of limitation is the same (three years) both under Article 55 and 113. Having regard to the fact that the period of limitation is 3 years both under Article 55 and Article 113, and having regard to the binding decision in Samuel (supra), we do not propose to examine the controversy as to whether the appropriate Article is 55 or 113. Suffice it to note that even if the Article applicable is Article 113, the Bank's suit is in time."

Accordingly, the appeal was allowed.

In the case before us, the claim was made before the second petitioner under Section 62(4) of A.P. Cooperative Societies Act read with Rule 49 of the Rules made thereunder. The notice demanded payment of overdue cash credit amount as on 31.03.1999. The notice was issued on 01.11.1999, after five years of cessation of operation of accounts of the first petitioner. The demand was not for enforcement of the guarantee and in fact a copy of the notice was not sent to the guarantors at all. The claim made before the second petitioner was also not for enforcement of

guarantee though the guarantors were referred to in the claim. Even otherwise also there was no demand to the guarantors as could be seen from the following notice issued on 01.11.1999.

“THE KARIMNAGAR DIST.CO-OP CENTRAL BANK LTD.,
KARIMNAGAR.

Ref: No.1950/A1b1

Date: 01.11.1999

NOTICE by Regd. post & Ack.due

Sub: Repayment of overdue cash credit amount to the Bank – Notice issued – Regarding.

Please take notice that the Kothapalli coop. Consumer Stores Ltd., Kothapalli had been sanctioned cash credit limit of Rs.3.00 lakhs (Rupees Three Lakhs only) by the Bank for the purpose to deal in consumer goods under working capital. The stores has availed the limit and became default to the Bank on 01.04.1994. The stores has failed to pay the same in spite of Bank request.

The overdue amount of Rs.2,90,519.33 under principal and Rs.3,03,668/-under interest due as on 31.03.1999 to the Bank by the said stores and the same overdue is continuing and further interest thereon.

Therefore you are informed to repay the principal amount of Rs.2,90,519.33 ps., towards principal and interest accrued Rs.3,03,668/- up to 31.03.1999 and further interest @ 22% and 3% from 01.04.1999 to the date of clearance to the Bank within (7) days from the receipt of this notice, otherwise the Bank will initiate legal action for recovery of overdue amount including of legal action and other expenses.

Sd/- xxxx
General Manager

To
The President, The Kothapalli Coop. Consumer Stores, Ltd.,
Kothapalli.
Copy to the Br.Manager Town Br.Karimnagar with a request to send the true copy of cash credit account of the stores induplicate immediately with upto date interest.”

Hence, the case before the second petitioner is only a case for recovery of money based on promissory note. In Syndicate Bank's case (supra) the Hon'ble Supreme Court observed that the words “on demand” would be having different meanings when applied with reference to “money lent” and “money deposited”. In the context of Article 21, the meaning and effect of those words is “always payable” or payable from the moment when the loan is made. Whereas in the context of Article 22, the meaning

is “payable when actually a demand for payment is made”. Section 61 of the A.P. Cooperative Societies Act provides for a dispute including a claim by society for any debt or other amount due to it. If it is held that the dispute before the second petitioner was not a claim against the guarantors, what remains to be decided is whether a claim against the second respondent is within limitation on the basis of a demand promissory note. The cases in Mrs. Margaret Lalita Samuel (supra) and Syndicate Bank (supra) relate to the cases of enforcing guarantee and in the absence of any notice in the instant case demanding money from the guarantors, the case before the second petitioner cannot be construed as a case of enforcement of guarantee and the decisions as cited above are not applicable. This distinction was lost sight of by the second petitioner as well as the first respondent herein. However, the second petitioner came to the conclusion that since the notice was issued on 01.11.1999 and the claim was made on 06.11.1999 it was held to be within limitation. The Tribunal should have adverted to the nature of the dispute between the second respondent and the application of period of limitation to such dispute since the point of limitation is a mixed question of fact and law. The Tribunal held that the claim was already barred as no claim was made within the prescribed period of three (3) years. But no reasons were given for such a finding and as stated above, the nature of dispute was not considered.

Since this Court held that the claim before the second petitioner was not a claim for enforcing the guarantee, but a claim for recovery of money on demand promissory note, whether the period of limitation starts running from the date of issuance of a notice or from the date of cessation of operations of the cash credit facility is a relevant point that

has to be considered. Since no arguments were advanced before this Court on the said point and the said point was not considered by the Tribunal, this Court feels that it is an appropriate case for remand of the matter to the first respondent for considering the application of relevant period of limitation to a claim made by the first petitioner against the second respondent for recovery of money on demand promissory note executed on 20.05.1993 in the facts and circumstances of the case.

The Writ Petition is, accordingly, allowed by setting aside the order of the A.P. Cooperative Tribunal, Warangal in CTA No.101 of 2003 dated 20.12.2005 and the matter is remanded to the first respondent for consideration of the case afresh in accordance with law and pass appropriate orders within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

Date: 22nd December, 2016
Nsr

A. RAMALINGESWARA RAO, J