

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RSA 248/2015**

Reserved on: 26.04.2016

Date of decision: 02.05.2016

STATE BANK OF INDIA

Through

..... Appellant

Mr.Sanjeev Kakra & Mr.Bheem

Sais Jais, Advs.

versus

KANAHIYA LAL & ANR

Through

..... Respondents

Mr.Manish Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. The appellant, State Bank of India, a body corporate constituted under the State Bank of India Act, 1955, having its corporate centre at Mumbai local Head Offices at 11, Parliament Street, New Delhi and having one of its branches at the Stressed Assets Resolution Centre, 23, Najafgarh Road, New Delhi-110015 filed a suit for recovery of Rs.2,42,199.37 from the defendants/respondents.

2. The suit was decreed and the appellant/plaintiff was declared to be entitled to the amount claimed along with interest @10% p.a. from the date of filing of the suit till its realization against defendants/respondents No.1 and 2. The Trial Court awarded the cost of suit also to the appellant/plaintiff.

3. The First Appellate Court vide its judgment dated 23.03.2015 passed in RCA No.81/41/11 reversed the judgment of the Trial Court and dismissed the suit as being barred by law of limitation.

4. The present second appeal is directed against the aforesaid judgment of the First Appellate Court. The substantial question of law on which the present second appeal has been admitted is as to what would be the effect of the two letters written by the defendant/respondents dated 18.11.2006 and 20.11.2006 (Ex.PW2/2 and Ex.PW2/3) and whether the aforesaid letters would constitute a promise by the respondent/defendants to pay in whole or in part, the debt, of which the appellant Bank might have enforced the payment but for the law of limitation.

5. Necessary facts are as hereunder:

6. Respondent No.1, the sole proprietor of M/s Aggarwal Store, a kirana shop, dealing in grocery and items of daily need, applied for loan before the appellant Bank. The appellant Bank granted a cash credit limit of Rs.1 lakh to respondent/defendant No.1. Respondent No.2 stood as a guarantor to the loan and the guarantee documents were executed on 27.11.2001.

7. The aforesaid cash credit limit was availed of by respondent/defendant No.1 but the repayments were very irregular. The appellant Bank sent reminders to the respondents No.1 and 2 for returning loan amount. It was in this context that the two letters dated 18.11.2006 and 20.11.2006 were written by the defendants/respondents. The letters are reproduced as hereunder:

*“With reference to my/our cash credit Account with you secured by a Demand Promissory Note dated, the 27.11.2001 for Rs.1,00,000/- with interest made by me/us in favour of SBI, Pushpa Bhawan and endorsed by the payees to you I/we **acknowledge for the purpose of Section 18 of the Limitation Act, 1963 and any like limitation law in order to preclude any question of limitation law that I am/we are liable to you for payment of the said Promissory Note** with interest in respect of all present and future indebtedness and liabilities secured which Promissory Note is to remain in force with all relative securities, agreements and obligations.”*

*“With reference to my/our Cash Credit Account of M/s Agarwal Store with you secured by a Demand Promissory Note dated, the 27.11.2001 for Rs. One Lac only with interest made by _____ in favour of myself/ourselves and endorsed by me/us to you I/we **acknowledge for the purpose of Section 18 of the India Limitation Act, 1963 and any like limitation law in order to preclude any question of limitation law that I am/we are liable to you for payment of the said Promissory Note** with interest in respect of all present and future indebtedness and liabilities secured thereby which Promissory Note is to remain in force with all relative securities, agreements and obligations.”*

8. The respondents/defendants contested the suit and raised preliminary objections regarding the appellant not coming to the court with clean hands. The respondents/defendant No.2 denied to have executed any guarantee agreement as he had separate business terms with the Bank and his signature was stated to have been obtained maliciously. The respondents/defendants also alleged that they were not noticed by the Bank.

9. On the basis of the pleadings of the parties, the Trial Court framed the sole issue as to whether the appellant Bank is entitled to recover the amount of Rs.2,42,199.37 along with the interest from the defendants.

10. Harish Mehta (PW1), Branch Manager and Principal Officer of the Bank averred before the court below that the respondents/defendants had signed and executed the loan documents in his presence.

11. Rajesh Choudhary (PW2), Branch Manager and Principal Officer of the appellant Bank for some time, has also testified to the fact that the respondents/defendant No.1 availed of the cash credit limit of Rs.1 lakh but defaulted in repayment of the same. He has also testified to the fact vide letter dated 31.10.1996 (Ex.PW2/1). Respondents/defendants have confirmed the correctness of the outstanding amount payable to the Bank and thus there is an acknowledgement of the liability of the respondents/defendants.

12. S.C. Rana (PW3), Chief Manager, Stressed Assets Resolution Centre, admitted of the default by the respondents/defendants in repaying the loan amount.

13. Despite opportunity to the respondents/defendants, no evidence was led on their behalf. As such, the Trial Court, in the absence of any rebuttal of the deposition of the prosecution witnesses, decreed the suit and declared the appellant Bank to be entitled to the decree of a sum of Rs.2,42,199.37 along with interest @10% p.a. from the date of filing of the suit till its realization along with the costs.

14. The respondents/defendants challenged the aforesaid judgment of the Trial Court before the First Appellate Court primarily on the ground of limitation. It was urged that Section 3 of the Limitation Act, 1963 provides that if a suit is barred by limitation, the same is liable to be dismissed even in absence of any defence. It was further contended that the last payments towards the credit facility were made on 02.09.2002 by the Bank and a suit for recovery of the balance amount could have been lodged only within three years after 02.09.2002. The respondents/defendants, though had written two letters on 18.11.2006 and 20.11.2006 respectively (quoted above) and the balance confirmation was signed by them on 31.10.2006, but the aforesaid documents which are being claimed as revival letters by the Bank, were actually written/obtained after a lapse of three years to be counted from 02.09.2002. It was thus contended by the respondents/defendants that the period of limitation could not have been extended by virtue of the aforesaid two revival letters (Ex.PW2/2 and Ex.PW2/3) as they were written after three years, which is the period for limitation for preferring a suit for recovery in the instant case.

15. Section 18 of the Limitation Act, 1963 reads as hereunder:

“18. Effect of acknowledgment in writing.—

(1) 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.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

16. A bare perusal of the aforesaid provision would indicate that the period of limitation is extended in the event of an acknowledgement of liability made before the expiration of the period of limitation for any suit. It was argued by the respondent/defendant that since the aforesaid two letters were obtained/written after the period of limitation expired for preferring the suit, and therefore those letters could not have been treated as validating letters.

17. The aforesaid contention of the defendants/respondents was sought to be repelled on the premise that the aforesaid two letters were not merely acknowledgments of the liability to pay but were in the nature of a promise to pay a debt notwithstanding the recovery of the same being barred by limitation. A reference was made to the provisions of Section 25(3) of the Indian Contract Act.

18. Section 25 of the Indian Contract Act reads as hereunder:

“25. Section 25 in The Indian Contract Act, 1872:

Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of 1[documents], and is made on

account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.

(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.”

19. It was thus urged by the appellant Bank that the suit was predicated on the agreement/promise of the respondents to pay the amount of loan which had been received by them while enjoying and availing of the cash credit limit.

20. The First Appellate Court, on a perusal of the two revival letters (Ex.PW2/2 and Ex.PW2/3) did not consider it to be a promise to pay or restitute the Bank under Section 25(3) of the Indian Contract Act, 1872 but merely an acknowledgment of liability for the purposes of law of limitation. The suit, therefore, was dismissed as being time-barred.

21. From a bare reading of the aforesaid two letters (Ex.PW2/2 and Ex.PW2/3), it would appear that the respondents have clearly admitted their liability of the outstanding dues towards the Bank, only for the purposes of restituting the Bank. The contents of the aforesaid two letters are nothing short of an acknowledgment of the dues as also an implied promise to pay. The promise to pay as required under Section

25(3) of the Indian Contract Act need not be express and can be implied or inferred as well. Any acknowledgment of liability is necessarily an admission of the fact that the maker owes money to the creditor. The only corollary of such an acknowledgment is that the same is payable and that the person making the acknowledgement would pay such amount or else there would be no requirement of making any such acknowledgment.

22. If the letters (Ex.PW-2/2 & Ex.PW-2/3), clearly disclose the relationship between the parties of a debtor and a creditor, then it is difficult to dispute that there is an implied promise to pay.

23. In *Adivelu (dead by LRs) vs. Narainachari* AIR 2005 Karnataka 236, the Hon'ble Single Judge while dealing with the issue of effect of acknowledgment in writing of a pro-note, held that for judging the nature and quality of the acknowledgment as to whether it is a promise in future, the whole of the acknowledgment and the surrounding circumstances have to be taken into consideration. A liberal construction rather than a literal one, was suggested by the Hon'ble Single Judge.

24. No doubt, there is a distinction between an acknowledgement under Section 18 of the Limitation Act and a promise under Section 25 (3) of the Indian Contract Act inasmuch as though both have the effect of giving a fresh lease of life to the creditor to sue the debtor, but, for an acknowledgement under Section 18 of the Limitation Act to be applicable, the same must be made on or before the date of expiry of the period of limitation whereas such a condition is non-existent so far as the promise under Section 25 (3) of the Indian

Contract Act is concerned. A promise under Clause 3 of Section 25 of the Indian Contract Act, even made after the expiry of the period of limitation would be applicable and would cause revival of the claim, notwithstanding the limitation. Under Section 25(3) of the Indian Contract Act, a promise in writing to pay in whole or in part, a time barred debt is not void.

25. For ascertaining whether the nature of the aforesaid letters (Ex.PW-2/2 & Ex.PW-2/3) are of a “promise to pay”, it would be necessary to examine the definition of the word ‘promise’ under Section 2(b) of the Indian Contract Act.

26. Section 2(b) of the Indian Contract Act reads as hereunder:

“(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;”

27. Section 9 of the Indian Contract Act provides that if the proposal of acceptance is made in words, the promise is said to be express but under other circumstances it remains an implied promise.

*“9. **Promises, express and implied.**—In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. ”*

28. Thus implied promise is not unknown under the Indian Contract Act.

29. Aforesaid letters (Ex.PW-2/2 & Ex.PW-2/3) indicate the categorical endorsement of the liability to make the payments, and

thus, it could be treated as an implied promise to pay. The circumstances under which such an acknowledgement was made, viz. after the reminders by the Bank for repayment of the loan amount, further lends support to the hypothesis that the aforesaid letters are in the nature of a promise to pay. Prior to the aforesaid acknowledgements, there was a confirmation of the balance amount by the respondent/defendant. Any written acknowledgment after the confirmation of the balance amount can safely be treated as a promise to pay and not mere acknowledgement.

30. Thus the First Appellate Court was not justified in dismissing the suit of the appellant on the ground of the same being time barred.

31. The letters are in the nature of a promise and therefore there was no requirement of the same having been obtained/written within a period of three years to be counted from 02.09.2002.

32. The impugned judgment is, therefore, set aside and the judgment by the Trial Court is restored.

33. The appeal stands allowed.

ASHUTOSH KUMAR, J

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