IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.455 of 1989(O&M)
Date of Order: 20.09.2017

Punjab and Sind Bank and others

...Appellants

Versus

Managing Committee, Guru Nanak College and others

...Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

Present: Mr. J.C.Batra, Advocate,
for the appellants.

Mr. Sandeep Jain, Advocate,
for the respondents.

ANIL KSHETARPAL, J (Oral)

Defendant-bank is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

In the year 2013, learned counsel for the appellant has proposed the following questions of law:-

> "1. *If the notice is not required by the law, then whether the period of the notice can be excluded while computing the limitation under Section 15(2) of the Limitation Act for filing the suit?*
>
> 2. *Whether the limitation under Schedule 22 of Limitation Act starts from the date of demand or from any other date, while filing the suit against the bank."*

During the course of arguments, I consider it to be appropriate to frame another question of law:-

3. "*Whether the suit filed by the plaintiff could be decreed only against the bank leaving aside defendants no.3 to 8 in the facts and circumstances of the case.*"

DISCUSSION

QUESTION NO.3

"***Whether the suit filed by the plaintiff could be decreed only against the bank leaving aside defendants no.3 to 8 in the facts and circumstances of the case.***"

It is not in dispute that through the Managing Committee, plaintiffs are running the Guru Nanak College for Women. It is also not in dispute that there was dispute amongst the members of the Managing Committee. Plaintiffs had an account with defendant-appellant bank. It is the allegation of the plaintiffs that without proper resolution, defendant nos.6 to 8, have been permitted to withdraw the amount of Rs.42,668/-.

On the other hand, the stand of the bank is that they had received a resolution dated 27.07.1980, authorizing the President, Principal and a member of the Managing Committee to operate the account by any two of the three members. This document is Ex.P14 on the record. The resolution is reproduced in the letter, which was duly signed by 5 office bearers of the Managing Committee. Therefore, the cheque received bearing signatures of two authorized persons was encashed.

Both the Courts below have held that the bank was negligent in encashing the cheques as defendant no.6 the Principal had been placed under suspension. The Courts have further found that defendant no.6 was in fact the wife of Manager of the Bank.

It is not in dispute that bank had made payment to remaining defendants. It is further not in dispute that the Managing Committee had also lodged criminal prosecution against the bank, which was dismissed.

No reason is forthcoming as to why private defendants were left out, although, the payment was made by the bank on the cheque issued to the private defendants. In fact, it is the private defendants who were beneficiaries and had withdrawn the amount. The bank had not retained the amount with itself. The bank was supplied a copy of resolution dated 27.07.1980 authorizing the private defendants to operate the accounts. It is further not in dispute that at that time dispute between various members of the Managing Committee was pending.

In view of the discussion made above, the Courts below committed a serious error in decreeing the suit only against the bank. In my considered opinion, the suit ought to have been decreed against defendants no.6 to 8 who were signatory of the cheque and the amount was withdrawn by them.

QUESTION NO.1:-

> ***If the notice is not required by the law, then whether the period of the notice can be excluded while computing the limitation under Section 15 (2) of the Limitation Act for filing the suit?***

The Courts below have held that the notice period is to be excluded while calculating the limitation. The notice was not a statutory notice. The Managing Committee had issued notice on 15.10.1980. The suit was filed on 20.10.1983, therefore, the suit was held to be within time. However, the Courts have wrongly excluded the time of notice.

Language of Section 15(2) of the Limitation Act is clear that the period of such notice can only be excluded, if the notice is in accordance with the requirements of any law for the time being in force. In the absence of any statutory requirement, the notice period cannot be excluded while calculating the limitation. Section 15 of the Limitation Act is extracted as under:-

> "***15. Exclusion of time in certain other cases.---***
>
> ***(1)*** *application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.*
>
> *(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.*
>
> ***Explanation****.—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.*
>
> *(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months*

from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded."

It is clear from sub-section (2) of Section 15 of the Limitation Act, 1963, that while calculating the period of limitation, the period spent on notice is to be excluded when the notice is the requirement of any law for the time being in force.

In the present case, learned counsel for the respondent failed to point out that the notice was issued as per the requirement of the law, therefore, second question of law is also answered in favour of the appellant.

<u>QUESTION NO.2.</u>

Whether the limitation under Schedule 22 of Limitation Act starts from the date of demand or from any other date, while filing the suit against the bank."

Article 22 of the Schedule attached to the Limitation Act, 1963, reads as under:-

*"**22.** For money deposited under an agreement that it shall be payable on demand including money of a customer in the hands of his banker*	*Three years*	*When the demand is made*

so payable."

It is clear from the reading of Article 22 of the Schedule that in respect of money deposited by a customer with his bank, the period of limitation starts from the date when a demand is made.

In the present case, it is an admitted fact that the plaintiff made a demand vide notice dated 05.10.1980. Although, a copy of the notice has not been produced, however, plaintiff has itself pleaded that they served a notice on the defendants on 05.10.1980. The limitation period started from the date the demand was made. The suit was instituted on 20.10.1983. The period of limitation as per Article 22 of the Schedule is three years from the date when the demand is made, therefore, the suit filed by the plaintiffs is found to be barred by time.

In view of the discussion made above, the question no.3 is also answered in favour of the appellants.

In view of what has been recorded hereinabove, the judgments and decrees passed by the Courts below are set aside and the appeal is allowed.

September 20, 2017 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO