

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 207 OF 2016
WITH
CIVIL APPLICATION NO. 384 OF 2016

Terkheda Chemicals Pvt. Ltd.
through its Directors
Barkatbhai Y. Patanwala & Ors. .. Appellants
vs.
Meenabai Shantilal Tated & Anr. .. Respondents

Ms Seema Sarnaik for Appellants.
Mr. R. S. Apte – Senior Advocate i/b. Mr. A. M. Kulkarni for
Respondents.

CORAM : M. S. SONAK, J.
DATE: 23 FEBRUARY 2018

P.C :

1] Heard Ms Sarnaik, the learned counsel for the appellants and Mr. Apte, the learned Senior Advocate along with Mr. Kulkarni for the respondents.

2] Ms. Sarnaik, the learned counsel for the appellants submits that the following substantial questions of law arise in this appeal:

(a) That the plaintiff had not proved the payment of Rs.29,000/- on 1.10.1991 and Rs.50,000/- on 1.8.1992 and that the document dated 11.3.1994 shows the alleged payment of Rs.1,29,000/- by cheque dt. 11.3.1994 drawn on Bank of Maharashtra, Terkheda Branch, bearing No. 1783573 whereas the case of plaintiff was total payment of Rs.1,29,000/- was as under:

1.10.1991	Rs.29,000/-	Cheque	Bank of Maharashtra, Terkheda Branch
11.4.1993	Rs.50,000/-	Cash	
1.8.1993	Rs,50,000/-	Cash	

(b) Whether the Hon'ble Court had territorial jurisdiction to try and entertain the suit as the entire cause of action was at Terkheda the alleged cheques were issued at Terkheda both by the plaintiff dated 1.10.91 of Rs.29,000/-, Bank of Maharashtra, Terkheda Branch and by the defendant of Rs.1,29,000/-, dated 31.12.94 Bank of Maharashtra, Terkheda Branch?

(c) Whether the Hon'ble Court has jurisdiction to try and entertain the suit which was beyond the period of limitation?

(d) Whether the Constituent Attorney Raichand Bhagchand Lodha was the Competent person to pursue the suit?

3] Ms Sarnaik submits that in the receipt dated 11th March 1994 there is reference to also payment of Rs.1,29,000/- made by cheque. However, in the pleadings, the respondents – plaintiffs have stated that only an amount of Rs.29,000/- was paid by cheque and the balance amount of Rs.1,00,000/- was paid by cash on two different dates i.e. Rs.50,000/- on 11th April 1993 and Rs.50,000/- on 1st August 1993. She submits that there is clear variation between the pleadings and the documents produced on record in an alleged support of such pleadings.

4] Ms Sarnaik submits that no part of the cause of action in the present case, had arisen in Pune and therefore, the Courts in Pune

lacked territorial jurisdiction to entertain this suit. She submits that the alleged cause of action has arisen in Terkheda and two Courts were not at all justified in overruling the objection based on territorial jurisdiction.

5] Ms Sarnaik submits that the defendant no. 4 whose signature appear on the cheque dated 31st December 1994 has filed written statement denying that the cheque was issued in discharge of any legal liability. She submits that the alleged transactions are said to have taken place in the year 1991 and 1993. Since, the pleadings as regards the issuance of the cheque of the year 1994 have been denied, the suit, which was instituted on 9th January 1996 is barred by limitation. In any case, Ms Sarnaik submits that the defendant nos. 2 to 5 were impleaded in the suit only on 21st August 2004 and therefore, the suit at least as against these defendants was clearly barred by limitation.

6] Finally, Ms Sarnaik submits that the deposition of the Attorney Raichand Lodha was required to be rejected by applying the law laid down by the Hon'ble Supreme Court in the case of **Janki Vashdeo Bhojwani & Anr. vs. Industrial Bank Ltd. & Ors.**¹ She submits that the power of attorney in favour of Raichand Lodha was executed only on 28th April 1993. Therefore, his attorney, can never have any personal knowledge as regards the transaction of 1st October 1991 and 11th April 1993. Since, the two courts have relied upon this deposition, there is clear error in not following the law laid down by the Hon'ble Supreme Court in the case of *Janki Bhojwani* (supra).

7] Mr. Apte, the learned Senior Advocate for the respondents

1 AIR 2005 SC 439

submits that in the present case, though written statements were filed on behalf of the appellants, none of the appellants bothered to lead any evidence to make good their defence. He points out that the cheque was issued by the appellants and there are certain presumptions which go with the issuance of negotiable instruments like cheques. He submits that none of these presumptions, have been rebutted by the appellants. He submits that the attorney was nothing but the father of the plaintiff and therefore had personal knowledge of the transactions. He submits that in addition to the deposition by the attorney, witnesses have been examined in relation to dishonour of the cheque. He submits that part of cause of action has clearly arisen in Pune because it is at Pune that the cheque came to be dishonoured. He submits that there is no variation between pleadings and proof. He submits that no substantial question of law is involved in this appeal which may be dismissed with costs.

8] Upon due consideration of the rival contentions as also the material on record, in this matter, it cannot be said that any substantial question of law is involved. The matter has basically been decided by the two courts on appreciation of evidence on record and there is no perversity as such pointed out in the record of the findings of fact. Therefore, it is not possible to entertain this second appeal.

9] The pleadings, in the present case, are quite clear. The pleadings makes specific reference to payment of an amount of Rs.29,000/- by cheque and the balance by cash. No doubt, the receipt indicates that entire payment was made by cheque. However, this is not very significant particularly since the appellants issued a cheque towards repayment of the entire amount, which

cheque however, was dishonoured forcing the plaintiffs to institute the suit for recovery of the amount.

10] Though, defendant no. 4, has taken up a plea that the cheque was not issued towards discharge of any legal liability, there is no specific denial that the cheque was signed by the defendant no. 4. Further, after taking such a defence, none of the defendants chose to lead any evidence in the matter to make good their defence. There are certain presumptions which arise out of the issuance of the negotiable instrument like cheques. One of the presumptions is that the cheque was issued for valid consideration. Therefore, it was for the appellants to rebut such presumptions and since they have failed to do so, the two Courts have rightly held against them.

11] On the issue of territorial jurisdiction again, there is no doubt that at least a part of the cause of action has arisen in Pune. Therefore, there is no infirmity in the view taken by the two Courts on the issue of territorial jurisdiction.

12] There is also no merit in the contention based on limitation. Since the cheque was issued in the year 1994 and was dishonoured in the year 1995, the suit instituted in the year 1996 was well within the prescribed period of limitation. In 2004, the directors were impleaded as defendants. Such amendment obviously relates back to the institution of the suit. Accordingly, it cannot be said that the suit was barred by limitation.

13] In this case, apart from the constituted attorney other witnesses have also been examined. This is a matter which is based on documentary evidence and not merely on oral evidence. In *Janki Bhojwani* (supra) the Hon'ble Supreme Court has held that

an attorney can depose only as regards the aspects of which he / she has personal knowledge. In this case, the attorney was none other than the father of the plaintiff. He has deposed that he was handling the transactions of the plaintiff. Taking this aspect into consideration, it cannot be said that the two Courts have failed to follow the dictum in *Janki Bhojwani* (supra).

14] Upon cumulative consideration of the aforesaid, there is no case made out to entertain the present appeal. This appeal is therefore dismissed. There shall be no order as to costs. The interim order, if any, is hereby vacated.

15] At this stage, the learned counsel for the appellants seeks for continuation of interim relief for a period of six weeks. Accordingly, the interim order is continued for a period of six weeks from today.

(M. S. SONAK, J.)