

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2017
PRONOUNCED ON : 12.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.694 of 2001

1. V.Gopalan (Deceased)
2. G.Saraswathi (Deceased)
3. G.Venkataraman
4. G.Sridhar (Deceased)
5. S.Savithri
6. N.Girija
7. S.Saradha
8. S.Vijaya ... Appellants/Plaintiff/
LRs of Plaintiff

(Appellants 2 to 8 are brought on record as LRs of the deceased sole appellant vide order of the Court dated 15.12.2003 made in C.M.P.No.17862/2003)

(Appellants 3 & 5 to 8 are recorded as LRs of Deceased appellants 2 & 4 vide order of Court dated 08.10.2015 in memo U.S.SR.No.8144 dated 07.10.2015)

Vs.

R. Narayanan ...Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the VIII Additional City Civil Court, Chennai made in A.S.No.54/1996 dated 09.10.1996 setting aside the decree and judgment in favour of the Appellant (Plaintiff) made in O.S.No.5132/1988 dated 09.03.1994 on the file of the XI Assistant City Civil Court, Madras.

For Appellants : Ms. N.Priyadharshini

For Respondent : Mr.J.Kamaraj

JUDGMENT

This second appeal is directed against the judgment and decree dated 09.10.1996 passed in A.S.No.54/1996, on the file of the VIII Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 09.03.1994 passed in

O.S.No.5132/1988, on the file of the XI Assistant Judge, City Civil Court, Chennai.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money.

4. The case of the plaintiff, in brief, is that he is carrying on business as an Engineering contractor in the matter of construction of buildings and accordingly, as per the understanding entered into between the plaintiff and the defendant, the plaintiff constructed a house for the defendant and completed the construction in the year 1981 and accordingly, submitted the bill with reference to the same on 07.03.1981 amounting to Rs.52,305 /-, after deducting the payment made by the defendant for a sum of Rs.30,000/- as on 12.11.1981, a sum of Rs.22,205/- was due from the defendant and thereafter, the defendant paid a sum of Rs.5,000/- on various occasions and subsequently paid another sum of Rs.2,000/- by way of a cheque on 06.09.1984, leaving the balance of Rs.15205/-. Inasmuch as the defendant had failed to pay the above said amount, despite several demands made by the plaintiff, according to the plaintiff, he had issued a legal notice dated 03.09.1986, calling upon the defendant to pay the said sum with interest and to the same, the defendant sent a reply containing false allegations, as if, no sum is due to be paid to the plaintiff by the defendant, with reference to the construction of the house, built up by the plaintiff. It is false to state that it is only the defendant, who had supplied all the materials for the purpose of construction. The plaintiff had submitted the estimate and bills duly to the defendant and therefore, it is false to state that the defendant had not been supplied with any bills by the plaintiff. Though the work was completed as early as October 1981, inasmuch as the defendant had made payment for a sum of Rs.2000/- admitted his liability on 06.09.1984, the suit is in time and not barred by limitation and hence, the suit for recovery of money.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts and the suit is hopelessly barred by limitation. It is false to state that the plaintiff gave an estimate for Rs.53,000/- to the defendant and the same had been accepted by the defendant. It is false to state that out of a total sum of Rs. 52,305/- towards the value of the construction put up by the plaintiff, after the sum paid by the defendant, the defendant is still due to pay a sum of Rs.15205/- to the plaintiff. To the notice issued by the plaintiff, with reference to the same, the defendant had sent a reply containing true facts and the defendant had supplied all the materials for the purpose of construction and accordingly, the defendant had made the total payment amounting to Rs.37,000/- to the plaintiff, which is over and above the amount payable by the defendant and therefore, it is false to state that the defendant still owes sum to be paid to the plaintiff.

The defendant denies that the estimate and the bills were submitted to him by the plaintiff and the defendant is not liable to pay the suit sum and interest, as claimed in the suit. There is no cause of action for the suit and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 and 2 were examined and Exs.A1 and A9 were marked and on the side of the defendant, DW1 was examined and Ex.B1 has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. On appeal, the first appellate Court was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Assailing the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Whether the first appellate Court is right in holding that the payment of Rs.2,000/- made on 06.09.1984 within the period of limitation, cannot be taken advantage of by the plaintiff under Section.19 of Limitation Act as one saving limitation, by reason of the fact that the defendant had not sent any letter accepting liability in respect of the claim made by the plaintiff under his letter dated 12.11.1981?

2. Whether the payment made within the limitation period towards liability, could be relied on under Section 19 of Limitation Act only when the defendant accepts the entirety of the claim made by the plaintiff?

9. From the materials placed, it is found that the plaintiff has put up a construction for the defendant and according to the plaintiff, with reference to the said construction, the defendant is liable to pay a sum of Rs.15205/- after deducting the amount paid by the defendant and inasmuch as the defendant had failed to pay the sum, despite several demands and even after the issuance of the legal notice, according to the plaintiff, he has been necessitated to lay the suit for the recovery of the same.

10. According to the defendant, he has paid the amount due to the plaintiff, with reference to the construction put up by the plaintiff and no amount is due from him and further, according to the defendant, the suit is hopelessly barred by limitation and hence, the suit has to fail.

11. Admittedly, it is found that the construction had been completed even in the year 1981. Accordingly, it is found that if any sum is due from the defendant to the plaintiff, by way of putting up the construction, it is seen that the plaintiff would have made necessary demand in time from the defendant, with reference to the same. Now according to the plaintiff, the defendant paid a sum of Rs.2,000/- by way of a cheque dated 06.09.1984. Therefore, according to the plaintiff, the above said payment made by the defendant accepting his liability would save the suit from the point of limitation. This is how the plaintiff has pleaded that his suit is not barred by time.

12. Materials placed discloses that the defendant has made the above said cheque payment of Rs.2,000/- as pleaded by the plaintiff. However, it is found that as per the case of the defendant, the same is not an acknowledgement of his liability to pay the suit sum and therefore, it is contended by the defendant that mere payment of Rs.2,000/- on 06.09.1984 would not amount to the acknowledgement of any liability on the part of the defendant towards the suit amount and therefore, it is contended that the suit laid by the plaintiff is clearly barred by limitation.

13. In this connection, in order to bring his suit within the time limited by law, the plaintiff mainly relies upon Section 19 of the Limitation Act and for the said purpose, he relies upon the payment made by the defendant, by way of a cheque dated 06.09.1984. However, as rightly determined by the first appellate Court, when there is no material placed on the part of the plaintiff that the estimate prepared by him has been duly served upon the defendant and equally, when there is no acceptable and reliable material placed on the part of the plaintiff that the bill raised by him for the construction had been duly served on the defendant, it is found that the payment of Rs.2,000/- by way of cheque dated 06.09.1984, by itself could not be construed as an acknowledgement of liability, on the part of the defendant to pay the suit sum.

14. Section 19 of the Limitation Act 1963 reads as follows:

Effect of payment on account of debt or of interest on legacy:- Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation-- For the purpose of this section,--

(a) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a Court.

15. As rightly argued by the defendant's counsel, to attract the above provisions, the two conditions are required to be followed. With reference to the above the point of law, the defendant's counsel placed reliance upon the decision of the Apex Court reported in AIR 1951 (SC) 477 (Sant Lal Mahton Vs. Kamala Prasad and others) which has been subsequently followed by our High Court in the decision reported in 2010 (2) MWN (Civil) 661 (Transchem Limited Vs. Chouraria Wire Netting Industries)

16. On the other hand, in support of his contention that the payment of Rs.2,000/- by the defendant by way of a cheque would amount to acknowledgement of the liability, the plaintiff's counsel relied upon the decisions reported in 1938 SCC Online Cal 151 (Prafulla Chandra Nag Vs. Jatindra Nath Kar), 1958 SCC Online Mad 287 (M/s. Wazir Sultan and sons Vs. P.Satchithananda Rao and others), 2007 (6) Mh.L.J (Vijay Ganesh Gondhlekhar Vs. Indranil Jairaj Damale), (2002) 4 RCR (Civil) 127 (Gurbachan Singh Vs. Inder Singh), (2000) 9 SCC 722 (State of Kerala Vs. T.M.Chacko) and 1990 SCC Online Kar 84 (Kudremukh Iron Ore Co. Ltd. Vs. Kooky Roadways Private Ltd.)

17. Considering the materials placed, when it is found that the plaintiff has not placed any proof so as to show that the estimate and bills prepared by him, with reference to the construction, had been duly served on the defendant and the when the defendant has impugned the demand made by the plaintiff by way of the legal notice, by sending a reply as depicted in the litigation, it is found that the payment of Rs.2,000/- by way of cheque on 06.09.1984, by itself could not be construed that the defendant has acknowledged the liability to pay the suit sum. When it has been pointed out by the Apex Court in the above said decision reported in AIR 1951 (SC) 477 (Sant Lal Mahton Vs. Kamala Prasad and others) that the mere payment within the period of limitation by itself would not be sufficient to attract the ingredients of Section 19 of the Limitation Act and on the other hand, it is seen that the payment should not only be made within the period of limitation but should also be acknowledged by the party concerned in writing and the

performance of one act alone without the other act will not save the limitation. In so far this case is concerned, when there is no acknowledgement on the part of the defendant in any manner to the suit claim, it is found that the mere payment by itself would not save the limitation for the plaintiff's litigation. As rightly determined by the first appellate Court, unless there is an acknowledgement in the requisite form, the payment by itself is of no avail and in such view of the matter, when it is found that the plaintiff's suit is not established to have been laid within the time as per the conditions stipulated under Section 19 of the Limitation Act, the mere issuance of a cheque by the defendant on 06.09.1984 for a sum of Rs.2,000/- could not be treated as an acknowledgement of liability, it is seen that the first appellate Court has rightly held that the suit claim of the plaintiff is barred by time. The contention put forth by the plaintiff's counsel that the execution of the cheque by the defendant in his own handwriting would amount to an acknowledgement of the liability as contemplated under Section 19 of the Limitation Act, as such, cannot be accepted, as the issuance of the cheque can only be taken as payment made by the defendant without any acknowledgement of liability and when the said payment has to be subsequently acknowledged by the defendant as adumbrated by the Apex Court, in the above said decision, in the required form, it is seen that as rightly found by the first appellate Court, the suit claim is not in time.

18. In the light of the above discussions, the plaintiff cannot be allowed to take advantage of the payment made by the defendant on 06.09.1984, for a sum of Rs.2,000/- by way of a cheque, as by way of the said document, the defendant has not acknowledged his liability to pay the suit claim, particularly, when it is noted that prior to the said payment or subsequent thereto, the defendant has not in any manner acknowledged his liability to pay any sum to the plaintiff and inasmuch as the defendant has made the payment in toto to the plaintiff, for the construction completed in the year 1981, it is found that thereafter the plaintiff has not evinced any interest to demand any sum from the defendant and accordingly unable to place any material to hold that he has made such a demand prior to the legal notice. In such view of the matter, the substantial questions of law formulated in this second appeal are answered against the plaintiff and in favour of the defendant.

19. In view of the above reasons, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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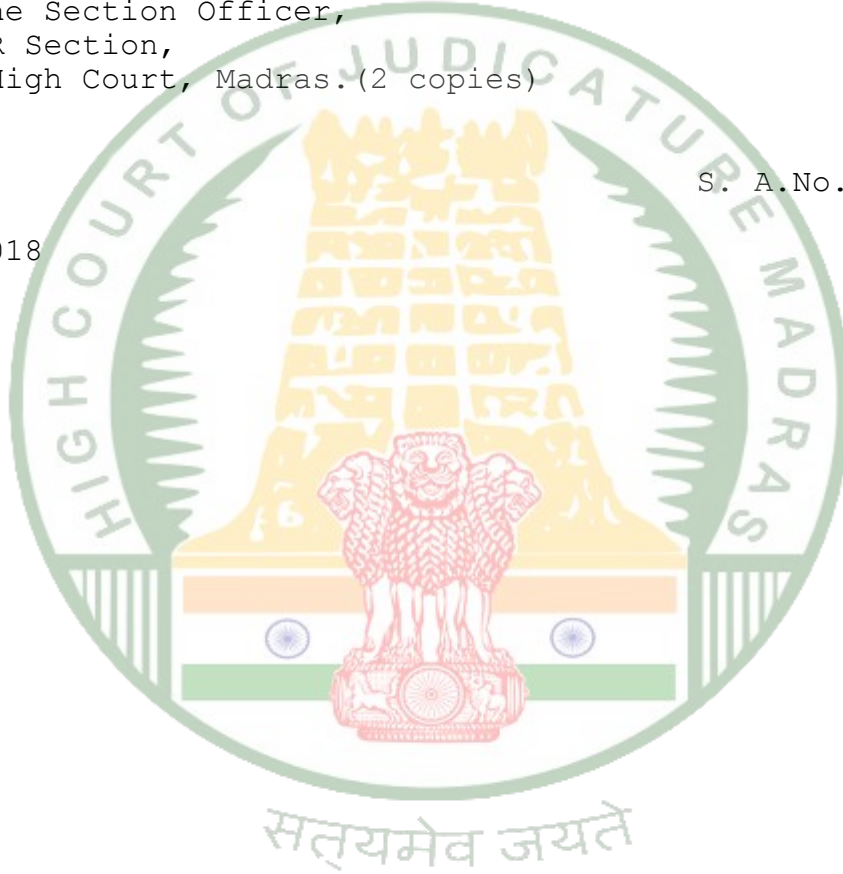
1. The VIII Additional Judge,
VIII Additional City Civil Court, Chennai
2. The XI Assistant Judge,
The XI Assistant City Civil Court, Chennai.

+1cc to M/s.J.Kamaraj, Advocate SR.No.2661/18
+1cc to Mr.Srinath, Advoate Sr.No.3211/18

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High Court, Madras. (2 copies)

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