NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 14-03-2019

Judgment delivered on 11-04-2019

FIRST APPEAL No. 202 of 2003

- Smt. Gomty Raghwan W/o V.S.R. Sharma Aged About 42 Years R/o Quarter No. F-2, Dharampura, No. 1, Jagdalpur District Baster Chhattisgarh (Defendant No. 1)

---- Appellant

Versus

1. UCO Bank Branch Kusumkata, Tehsil - Baloud, District Durg Chhattisgarh. (Plaintiff).
2. Sardar Paramjeet Singh S/o Gurmukh Singh Aged About 52 Years R/o Teen Darshan Mandir, G.E. Road, Bhilai, District Durg Chhattisgarh. Presently R/o Village Badgada, (Kesala), Tahsil Khairagarh, District Rajnandgaon Chhattisgarh.

---- Respondents

For appellant	:	Mr. Ravindra Agrawal, Advocate
For respondent No.1	:	Mr. Vedant Bhelonde,Advocate appears on behalf of Mr. PR Patankar,Advocate.
For respondent No.2	:	None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 31-7-2003 passed by the Additional District Judge, Balod (CG) in Civil Suit No.3-B/1999 wherein the said court decreed the suit fled by the respondent No.1 to the tune of Rs.2,07,263.65.

2) As per the plaint averment filed by the respondent No.1 /plaintiff, on 6-10-1981 respondent No.1 Bank had given term loan of amount Rs.1,38,000/- to the appellant for purchasing Hindustan Diesel Truck for which the appellant has to pay 48 monthly equal instalments of Rs.2,875/- from 31-12-1982 @ interest 12.50% per annum to be paid quarterly, in case of default of payment, penalty was to be paid @ 2% interest on the amount. Respondent No.2 stood as guarantor for the said term loan. For non-payment of loan amount, respondent No.1 Bank issued legal notice to the appellant, but the amount was not repaid that is why suit was filed before the trial court. After hearing the parties, the trial Court decreed the suit as mentioned above.

3) Learned counsel for the appellants would submit as under:

i) Document dated 12-2-1981 (Ex.P/18) and acknowledgement (Ex.P/19) is not revival letter therefore, suit is time barred under Section 18 of the Limitation Act, 1963 and as per Article 19 of the Limitation Act.

ii) There is no pleading regarding revival, therefore, finding of the trial Court is not sustainable.

iii) As the agreement between the appellant and respondent No.1 was entered on 6-10-1981, therefore, it is valid upto 5-10-1984.

iv) The appellant has already handed over the vehicle to respondent No.1, therefore, finding of the trial Court is liable to be set aside.

Reliance has been placed in the matter of **Union Bank of India vs. M/s. Suman Enterprises and another, 2004 (3) MPHT 231, Bhartiya State Bank vs. Bhanjan Singh and another 2014(4) CGLJ 218, Bank of Baroda vs. Krishna Gopal Kakani, 2001 (4) Civil LJ 343, MP High Court, Ramashre Chandrakar vs. Dena Bank and another, 1994 MPLJ 610 and Vimla Pradhan and others vs. United Commercial Bank, Calcultta and others, 1990 MPLJ 819.**

4) On the other hand, learned counsel for the respondent No.1 would submit that finding of the trial court is based on proper mashaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) Admittedly, loan was sanctioned to appellant on 6-101981 to the tune of Rs.1,38,000/- by respondent No.1 Bank for purchasing Hindustan Diesel Truck. The said term loan was repayable to the Bank by the borrower by 48 equal monthly instalments of Rs.2875/- each commencing from December, 1981 together with interest @ 12.50% per annum or such other rates as may be revised from time

to time as per direction of Reserve Bank of India with quarterly rests on the outstanding amount. As per documents Ex.P/11 and P/12, appellant agreed to addition of interest calculated in every quarter to the sum due. Rs.1,23,000/- was disbursed to the appellant on 6-10-1981 and Rs.15,000/- was again disbursed to him on 19-12-1981. Appellant repaid the amount from 9-1-1982 to 8-7-1983 and thereafter he stopped making payment to the Bank. Notice was served to appellant, but he failed to comply with the demand made through said notice.

7) From the evidence it is clear that the appellant was paying the instalments upto 8-7-1983 and thereafter he acknowledged the loan amount as per document Ex.P/18 dated 12-2-1985.. Again she acknowledged the debt on 6-7-1986 as per Ex,.P/19. When the appellant repaid the instalments upto 8-7-1983 and acknowledged the same, the loan was recoverable upto 8-7-1986 and it was acknowledged on 12-2-1985 and 6-7-1986 for subsisting the loan. The period of limitation extends from the date of acknowledgement and in the present case, the loan was subsisting on the date of acknowledgement because instalment is paid upto 8-7-1983.

8. Looking to the oral and documentary evidence adduced by both sides, it cannot be said that the loan amount was not subsisting on 12-2-1985 when it is acknowledged, therefore, argument advanced on behalf of the appellant is not sustainable.

The case laws cited by the appellant do not help to him as the same are distinguishable from the facts of the present case.

9. The trial court awarded interest from 26-9-1987 to 10-2-1988 @ interest 14.50%, but from the record it appears that agreed interest was 12.50% per annum, therefore, interest should have been awarded @ 12.50% per annum. The interest amount of Rs.10,761.65 is liable to be deducted from the decretal amount. Accordingly, for rest of the amount the appeal is liable to be dismissed.

10) Accordingly, decree is liable to be modified for interest amount of Rs.10,761.65. Decree is passed in favour of respondent No.1 and against the appellant as under:

(i) The appeal is partly allowed. Appellant and respondent No.2 to pay Rs.1,93,500/- to respondent No.1. The interest amount of Rs.10,761.65 shall be deducted from the decretal amount. Appellant and respondent No.2 are liable to pay interest @ 12.50% calculated every quarter to the sum due.

(ii) Appellant and respondent No.2 to bear the cost of the litigation through out.

(iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

(iv) A decree be drawn up accordingly.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju