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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2019

PRONOUNCED ON : 21.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.146 of 2016

Sree Karthick Traders
Rep. by Partner S.Senkuttuvan
S/o. Soundarrajan
14, Raja Rao Street,
Tirupur.

..
Vs.

Appellant/Plaintiff

1.M/s.Adhithya Textiles Process
Rep.by its Partner N.Balasubramanian

2.N.Balasubramanian
S/o.Nachimuthu Gounder
Partner M/s Adhithya Textiles Process

3.B.Chitradevi
W/o.Balasubramanian

.. Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 26.06.2015 passed in A.S.No.35 of 2013 on the file of the I Additional District Court, Tirupur, reversing the Judgment and Decree dated 12.10.2012 passed in O.S.No.247 of 2007 on the file of the Subordinate Court, Tirupur.

For Appellant : Mr.T.Murugamanickam
Senior Counsel
for Ms.Zeenath Begam

For Respondents : Ms.R.Hemalatha
for Mr.C.Prakasam

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 26.06.2015 passed in A.S.No.35 of 2013 on the file of the I Additional District Court, Tirupur, reversing the



Judgment and Decree dated 12.10.2012 passed in O.S.No.247 of 2007 on the file of the Subordinate Court, Tirupur.

2.The second appeal has been admitted on the following substantial questions of law:

"(i).Whether the suit was barred by limitation?

(ii).Whether the judgment of the lower Appellate Court is vitiated in holding that the suit is barred by limitation even on the face of the clear and conscious acknowledgement of liability under Ex.A5 and consequential part-payment under Ex.A4?"

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

5.Suffice to state that the suit has been laid by the plaintiff against the defendants for recovery of money based on the accounts.

6.According to the plaintiff, the defendants had been engaged in credit dealings with the plaintiff for the purchase of Dyes and Chemicals and accordingly, it is contended that as per the books of accounts maintained in the regular course of business by the plaintiff, the defendants are liable to pay a sum of Rs.2,50,000/- as per the statement of account marked as Ex.A2 and after the payment of Rs.1,00,000/-by the defendants by way of a pay order dated 01.09.2005, the defendants are liable to pay the suit amount with interest and inasmuch as the defendants had failed to pay the suit amount, despite the demands, according to the plaintiff, it has been necessitated to lay the suit against the defendants for appropriate reliefs.

7.The defendants, as such, had not disputed the business transaction, they had with the plaintiff qua the purchase of Dyes and Chemicals and from the defence version put forth by the defendants in the written statement and the evidence tendered by them, it has been admitted by the defendants that they had business transaction with the plaintiff. However, they would claim that the business transaction lasted only till 15.09.2001 and thereafter, there had been no business transaction between the parties.



8. According to the plaintiff, the defendants had accepted their liability by way of an acknowledgement dated 01.04.2005 and it is also stated by the plaintiff that the second defendant had issued a cheque dated 15.02.2005 for a sum of Rs.1,00,000/- payable to the plaintiff and as the cheque got bounced, the plaintiff had issued a notice for initiating auction against the defendants under the Negotiable Instruments Act and after the receipt of the said notice, the defendants by way of a reply notice dated 01.09.2005 had acknowledged their liability and in fact, they have also paid a sum of Rs.1,00,000/- by way of a pay order and hence, according to the plaintiff, the defendants are liable to pay the suit sum.

9. According to the defendants, inasmuch as the transaction, which they had with the plaintiff lasted only till 15.09.2001 and thereafter, they had not entered into any transaction with the plaintiff, as such, it is stated that the acknowledgement of the liability on the part of the defendants on 01.04.2005 is not true and further, it is also pleaded by the defendants that the suit laid by the plaintiff is barred by limitation as any acknowledgement of liability beyond the period of three years from 15.09.2001 would not save the suit from the point of limitation and accordingly, prayed for the dismissal of the plaintiff's suit.

10. Considering the defence version projected in the matter, it is found that the defendants had been mainly resisting the plaintiff's suit only on the point of limitation. The trial Court had accepted the plaintiff's case and granted the decree in favour of the plaintiff, however, the first appellate Court, though it had found that the defendants are liable to pay the suit amount and also acknowledged the liability by way of the issuance of the cheque dated 01.09.2005 towards the payment of the debt due to the plaintiff, according to the first appellate Court, as the transaction between the plaintiff and the defendants ended on 15.09.2001, the cheque issued by the defendants on 01.09.2005 beyond the period of three years after the expiry of limitation period as contemplated under Section 18 of the Limitation Act and therefore, according to the first appellate Court, the payment made by the defendants on 01.09.2005, as such, would not save the limitation for the plaintiff to institute the suit and accordingly, determined that the plaintiff's suit is hit by the law of limitation.

11. It is the definite finding of the Courts below, even the first appellate Court, that the defendants had issued the cheque dated 01.09.2005 towards the payment of the debt. Furthermore, as could be seen from the letter dated 26.01.2005 issued by the defendants reveals that the defendants are liable to pay a sum of Rs.2,50,000/- to the plaintiff and thereafter, they had



issued a cheque dated 15.02.2005 for a sum of Rs.1,00,000/- and therefore, it is evident that the defendants had acknowledged their liability to pay a sum of Rs.2,50,000/-. The same has also been determined by the first appellate Court in favour of the plaintiff and against the defendants. However, according to the first appellate Court, as the abovesaid acknowledgement of debt by the defendants dated 01.09.2005 vide Ex.A4 notice by way of the issuance of cheque dated 01.09.2005 in lieu of the cheque dated 15.02.2005, as they had been made after the period of three years from 15.09.2001, according to the first appellate Court, the suit is barred by limitation.

12.The counsel for the plaintiff contended that the plaintiff has laid the suit on the original cause of action viz., the business dealings made by the defendants with the plaintiff for the purchase of dyes and chemicals and according to him, even if the determination of the first appellate Court that the transaction had lasted till 15.09.2001 is correct, when it is borne out by the materials that the defendants had acknowledged their liability on 01.09.2005, in such view of the matter, according to him, by way of the same, the defendants having agreed their liability to pay the amount to the plaintiff in respect of the business dealings, which they had with the plaintiff, according to him, such acknowledgement, as per Section 25(3) of the Indian Contract Act, is not barred by limitation and on the basis of the same, the plaintiff would acquire a fresh cause of action and entitled to maintain the suit and therefore, according to him, the first appellate Court had erred in holding that the suit is barred by limitation.

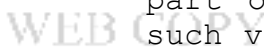
13.Section 25(3) of the Indian Contract Act reads as follows:

"25.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).

(2).

(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.



14. By way of the acknowledgement of the liability on the part of the defendants on 01.09.2005 towards the suit debt, in such view of the matter, as rightly contended by the plaintiff's counsel, the defendants by way of the said acknowledgement had promised to pay the part of the debt, which the plaintiff would have enforced payment but for the law for the limitation of the suit, in such view of the matter, it is found that such a promise would amount to a contract and accordingly, it is seen that by way of the abovesaid acknowledgement, the suit laid by the plaintiff would not be hit by the law of limitation. In this connection, the plaintiff's counsel placed reliance upon the decision reported in (1997) 2 MLJ 608 (A.C.A. Ganapathi Mudaliar and others Vs. Aruinugathammal (died) and another), wherein, it has been held that "Under Sec.25(3) of the Contract Act, even a barred debt is a good consideration. Merely because the right to enforce through a Court of law is barred, that does not follow that the debt itself has been extinguished."

"Indian Contract Act, 1872, Section 25, illustration (e) - Limitation Act, 1963 - Time barred claim - Acknowledgement of liability of debt after expiry of period of limitation - Letter promising to pay time barred debt would amount to contract - Creditor is entitled to file suit based on such letter."

"Contract Act (1872), Section 25 (3)
- Limitation Act (1963), Section 18 -
Acknowledgement under Section 18
Limitation Act and promise under Section
25(3) Contract Act - Difference between.



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The distinction between an acknowledgement under Section 18 of the Limitation Act 1963 and a promise within the meaning of Section 25(3) of the Contract Act is of great importance. Both have the effect of creating a fresh starting point of limitation, if they are in writing signed by the party or his authorised agent. But while an acknowledgement under the Limitation Act in order to be valid, must be made before the expiry of the period of limitation, a promise under Section 25, sub-section (3) of the Contract Act, to pay a debt may be made after the debt has become barred by limitation."

17.The plaintiff's counsel also contended that even though the suit had been laid by the plaintiff based on the original business transaction which it had with the defendants, the plaintiff is also entitled to maintain the suit based on the acknowledgement of liability on the part of the defendants on 01.09.2005 by invoking Section 25(3) of the Indian Contract Act and in this connection, placed reliance upon the decision reported in Volume 88 LW 797 (S.S.Srinivasa Raghavan V. R.Jayaraman and another) reads as follows:

" The only other question that remains to be considered is whether the suit should have been filed on the promise contained in Ex.A10 as forming a fresh cause of action, or whether the suit should be based on the original debt."

" Be that as it may, I am of the view that, if there is a statement of fact of the promise to pay contained in the letter, and that is shown as part of the cause of action, there could be no objection for considering the claim under S.25(3) of the Contract Act, even if the suit is prima facie based on the original debt itself."

18.In the light of the principles of law outlined as regards the applicability of Section 25(3) of the Indian Contract Act to the time barred debts and when the Courts below had concurrently held that the defendants had acknowledged their liability towards the debt due to the plaintiff on 01.09.2005 and when by way of the same, the defendants has made a promise to pay the amount due to the plaintiff in part towards the debt owed by



them to the plaintiff, in such view of the matter, in the light of the provisions of law outlined in Section 25(3) of the Indian Contract Act and the principles of law adumbrated by the various authorities above referred to qua the same, it is found that the suit laid by the plaintiff is not barred by limitation and the first appellate Court has erred in determining that the suit is barred by limitation by failing to consider the acknowledgement of liability on the part of the defendants by making partial payment under Ex.A4 and the applicability of Section 25(3) of the Indian Contract Act and to the same, the substantial questions of law are accordingly answered in favour of the plaintiff and against the defendants.

For the reasons aforesaid, the Judgement and Decree dated 26.06.2015 passed in A.S.No.35 of 2013 on the file of the I Additional District Court, Tirupur are set aside and the Judgment and Decree dated 12.10.2012 passed in O.S.No.247 of 2007 on the file of the Subordinate Court, Tirupur, are confirmed. Accordingly, the second appeal is allowed with costs. Consequentially, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms

To

1.The I Additional District Court, Tirupur.

2.The Subordinate Judge,
Subordinate Court, Tirupur.

Copy to:

The Section Officer, V.R.Section, High Court, Madras.

+1cc to Ms.Zeenath Begam, Advocate sr.51596

S.A.No.146 of 2016

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