IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4560 of 2017 (O&M)
Date of Decision: May 09, 2019

M/s Steel Town Special Steels & others

...Appellants

Versus

M/s Trade Extension Services, Loha Bazar, Mandi Gobindgarh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Parteek Gupta, Advocate,
for the appellant.

Gitish Bhardwaj, Advocate,
for the caveators.

*****

AMIT RAWAL, J. (Oral)

Notice of motion.

Mr. Gitish Bhardwaj, Advocate, who is on the caveat, accepts notice on behalf of the respondents.

The present Regular Second Appeal is directed against the concurrent findings of fact, whereby the suit of the respondent-plaintiffs for recovery of ₹ 6,91,999/-, i.e., ₹ 3,40,000/- as principal and ₹ 3,51,999/- as interest calculated @ 18% per annum till 28.02.2005 in a suit for recovery filed on 23.03.2005, has been decreed for recovery of ₹ 3,40,000/- along with interest @ 9% per annum from 17.10.2000 till the date of decree and future interest @ 6% per annum from the date of decree till realization on the premise that on account of the personal relationship, an amount of ₹3,40,000/-, vide cheques dated 17.10.2000 and 10.08.2001, was given to the appellant- defendants on interest @ 24% per annum. Appellant-defendants did not pay the amount, though confirmed the balance from time to time in the account books regularly maintained.

Defendants opposed the suit and raised the objections of maintainability, limitation and denied the alleged signatures on the account statement.

Both the parties led evidence in support of their pleadings. The plaintiffs examined six witnesses and brought on record documents Ex.P1 to Ex.P11, i.e., audit report, cheques, ledger, income tax returns including Ex.P7, whereby the defendants alleged to have acknowledged the amount due to the plaintiff for the assessment year 01.04.2001 to 31.3.2002. On the other hand, the defendants examined one witness but did not produce any documents.

Mr. Parteek Gupta, learned counsel representing the appellant-defendants submitted that the suit was filed on 23.03.2005, whereas the cheques are of 17.10.2000 and 10.08.2001. As per the provisions of Section 18 of the Limitation Act, there was no personal acknowledgment to the respondent-plaintiffs extending the period of limitation giving cause to file the suit in 2005. All the documents were income tax returns. It was an unilateral act of the department and not of the parties. Courts below have misinterpreted the aforementioned provisions, thus, the suit is liable to be dismissed being barred by law of limitation. In support of the aforementioned contentions, relied upon the following case law:-

"1. ***M/s. R.K.Chemicals Versus M/s. Kohinoor Paints Faridabad Pvt. Ltd. (P) Ltd. & Anr., 2004(115) DLT 529;***

2. ***Shapoor Fredoom Mazda Versus Durga Prosad Chamaria and others, 1961 AIR (SC) 1236;***

3. ***Tilak Ram and others Versus Nathu and others, 1967 AIR (SC) 935; and***

4. ***Food Corporation of India Versus Assam State Cooperative Marketing & Consumer Federation Ltd. and others, (2004) 12 Supreme Court Cases 360*** to contend that the period for computation of the limitation would be non-payment of debt, but the acknowledgment was not of a particular date and of an assessment year, cannot be construed to be falling under the provisions of the aforementioned Act.

Mr. Gitish Bhardwaj, learned counsel for the respondent-plaintiffs submitted that the concurrent findings of fact arrived by the courts below are based upon appreciation of the evidence, particularly Ex.P7, whereby appellant-defendants had appended their signatures, which has been proved on record through the testimony of the expert acknowledging the liability of ₹ 3,40,000/- in the financial year 01.04.2001 to 31.03.2002, whereas the suit was filed on 23.03.2005 approximately nine days before the expiry of the limitation. The judgments relied upon by Mr.Gupta would not be applicable as each and every case has to be examined on the touchstone of the oral and documentary evidence nor there is involvement of any Substantial Question of Law.

In rebuttal, Mr.Gupta submitted that awarding of interest @ 9% and future interest @ 6% is too onerous and the appellants had already deposited ₹ 3,40,000/- in order to prevent the perpetual incurring of the interest post decree.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendants that the suit was expressly barred by limitation. It would be apt to reproduce Section 18 of the Limitation Act. The same read thus:-

> 18. Effect of acknowledgment in writing.—
>
> (1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.
>
> (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.—For the purposes of this section,—
>
> (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;
>
> (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and
>
> (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

On plain and simple reading of the same, acknowledgment is to be of the period with regard to the right, property etc. **R.K.Chemicals**

(supra), was a case where in a winding up petition filed under Section 433 (e) of erstwhile Companies Act, 1956 , debt alleged to have been acknowledged on 17.04.1996 and the claim was filed on 26.11.1999. Delhi High Court, after noticing all the facts, much less balance sheet found the acknowledgment only upto 31.03.1996 and discarded the audit report dated 27.11.1996 to bring the case within the limitation, for, it was balance as on 31.03.1996 and the cut off date was taken as 31.03.1996.

Shapoor Fredoom Mazda (supra) was a case of admission of jural relationship of debtor and creditor and even Section 18 of the Limitation Act could be pressed into service on the basis of the implication. **Tilak Ram (supra)** pertained to a case where the claim of the parties regarding the expression jural relationship between the parties denied the acknowledgment of debt. Similar is the view in **Food Corporation of India's case (supra).**

Ex.P7 has gone un-rebutted in view of the report of the expert, whereby the appellant-defendants being partners of M/s. Steel Town Special Steels acknowledged the liability of ₹ 3,40,000/- in the assessment year 01.04.2001 to 31.03.2002, thus, the findings of fact and law based upon the appreciation of evidence do not call for any interference.

Concededly, the relationship between the parties is of brother and sister. Appellant Anil Suraj is the brother, whereas respondent No.2-plaintiff Vijay Varmani is the elder sister. In order to strike the equity and to maintain the sanctity of the relationship based upon the DNA, I reduce the rate of interest from 9% to 6% per annum from 17.10.2000 till date of decree as ordered by the courts below. Liberty is granted to the respondents for withdrawal of the amount and also to the appellant-defendants to deposit the amount with calculation @ 6% in order to prevent further incurring of interest.

In view of the aforementioned observations, appeal stands disposed of.

Records of the courts below be sent back immediately.

May 09, 2019 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**
Whether Reportable: **Yes/No**