

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 4714 of 2015 (O&M)

Date of Decision: 18.02.2020

Smt. Suvai Bai (now deceased) represented through L.Rs
... Appellant(s)

Versus

M/s R.S.Kundan Lal Parmanand Ahuja and Others
... Respondent(s)

2. Regular Second Appeal No. 4041 of 2015 (O&M)

Lekh Raj
... Appellant(s)

Versus

M/s R.S.Kundan Lal Parmanand Ahuja and Others
... Respondent(s)

3. Regular Second Appeal No. 4070 of 2015 (O&M)

Lachhman Dass
... Appellant(s)

Versus

M/s R.S.Kundan Lal Parmanand Ahuja and Others
... Respondent(s)

4. Regular Second Appeal No. 4076 of 2015 (O&M)

Smt. Malawi Bai
... Appellant(s)

Versus

M/s R.S.Kundan Lal Parmanand Ahuja and Others
... Respondent(s)

**Regular Second Appeal No. 4714 of 2015 (O&M) And
Five Other Connected Appeals**

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5. Regular Second Appeal No. 4713 of 2015 (O&M)

Kashmir Lal

... Appellant(s)

Versus

M/s R.S.Kundan Lal Parmanand Ahuja and Others

... Respondent(s)

AND

6. Regular Second Appeal No. 4953 of 2015 (O&M)

Smt. Sheela Rani alias Sheela Devi

... Appellant(s)

Versus

M/s R.S.Kundan Lal Parmanand Ahuja and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. J.S.Grewal, Advocate
for the appellants.

Mr. Gaurav Chopra, Advocate
for the respondents.

Anil Kshetarpal, J.

These six regular second appeals i.e RSA-4714-2015, RSA-4041-2015, RSA-4070-2015, RSA-4076-2015, RSA-4713-2015 and RSA-4953-2015, arising from six separate judgements passed by the learned first Appellate Court, shall stand disposed of.

In all these appeals, the respondent/defendants are common and the facts of all the cases are similar. Learned counsel for the parties are also common and they also admit that identical issue requires determination.

The issue, which this Court is called upon to answer in these six appeals is whether unsigned acknowledgement by the party against whom such right is claimed or an agent duly authorized in this behalf, can be permitted to be used to extend the limitation for filing the suit.

These six plaintiff/appellants filed six different suits for recovery of various amounts compiled in tabulated form, which is as under:

S.No.	Civil Suit Number	Title of Suit	Amount of Recovery	Principal Amount
1.	325-1 of 02.01.2007	Smt. Suvai Bai now deceased represented through L.Rs. V. M/s R.S.Kundan Lal Parmanand Ahuja and Others	4,05,570/-	3,11,977/-
2.	61-1 of 15.02.2007	Lekh Raj V. M/s R.S.Kundan Lal Parmanand Ahuja and Others	6,02,098/-	4,63,153/-
3.	1-1 of 02.01.2007	Lachhman Dass V. M/s R.S.Kundan Lal Parmanand Ahuja and Others	4,03,273/-	3,10,210/-
4.	2-1 of 02.01.2007	Smt.Malawi Bai V. M/s R.S.Kundan Lal Parmanand Ahuja and Others	4,03,824/-	3,10,624/-
5.	326-1 of 02.01.2007	Kashmir Lalj V. M/s R.S.Kundan Lal Parmanand Ahuja and Others	4,43,262/-	3,40,971/-
6.	324-1 of 02.01.2007	Smt. Sheela Rani V. M/s R.S.Kundan Lal Parmanand Ahuja and Others	4,25,738/-	3,27,491/-

The plaintiffs impleaded eight defendants. The first seven defendants are partners of the firm. They were proceeded against *ex parte* before the trial Court. In three suits, defendant No. 8, the accountant of

defendant No.1-firm appeared and filed written statement. He also deposed

in the Court. Learned trial Court decreed all six suits. However, six first appeals, filed by the defendants, have been allowed by the learned Additional District Judge vide judgements dated 24.02.2015.

This Court has heard the learned counsel for the parties at length and with their able assistance, gone through the judgements passed by the Courts below.

All these six suits were filed by the respective plaintiffs on the basis of acknowledgement/writing dated 31.03.2005. All the suits were filed in the months of January and February, 2007. The learned first Appellate Court has found that the suits filed by the plaintiffs are beyond the prescribed period i.e. three years. The learned first Appellate Court has refused to take into consideration the writings dated 31.03.2005 on two grounds -- (1) since the writing dated 31.03.2005 is not signed by any of the defendants, therefore, it does not fall within the meaning of the word “acknowledgement” as provided under Section 18 read with Section 20 of the Limitation Act, 1963 and (2) the aforesaid writing has not been proved. The plaintiffs have failed to prove the documents to establish their right of recovery.

At this stage, it would be appropriate to extract hereunder Sections 18 and 20 of the Limitation Act, 1963 and Section 25 of the Contract Act, 1872:-

18. Effect of acknowledgement in writing.—(1) *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement 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 acknowledgement was so signed.

(2) Where the writing containing the acknowledgement 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 acknowledgement 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”.

XXXX XXXX XXXX XXXX XXXX

20. Effect of acknowledgement or payment by another person.

(1) *The expression “agent duly authorised in this behalf” in sections 18 and 19 shall, in the case of a person under disability, include his lawful guardian, committee or manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgement or make the payment.*

(2) *Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgement signed by, or of a payment made by, or by the agent of, any other or others of them.*

(3) *For the purposes of the said sections,—*

(a) *an acknowledgement signed or a payment made in respect of any liability by, or by the duly authorised agent of, any limited owner of property who is governed by Hindu law, shall be a valid acknowledgement or payment, as the case may be, against a reversioner succeeding to such liability; and*

(b) *where a liability has been incurred by, or on behalf of a Hindu undivided family as such, an acknowledgement or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family”.*

Section 25 of the Contract Act, 1872:-

“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) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless;

(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.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the

consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given”.

On careful perusal of Section 18 of the Limitation Act, it becomes clear that unless the acknowledgement is before the expiration of the prescribed period for a suit or an application and it is 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, it would not extend the period of limitation. In other words, the party cannot take benefit of Section 18, unless necessary ingredients of Section 18 are fulfilled. Section 20 deals with acknowledgement or payment by an agent duly authorized on its behalf.

Sub Section (3) of Section 25 of the Contract Act provides another window to the creditor to recover the amount if such document is in writing and is signed by the party even if it is made after the expiry of law for the limitation of the suit. Sub Section (3) of Section 25 also requires that such an agreement has to be made in writing and signed by the person, therefore, there are twin requirements i.e. (i) it must be in writing and (ii) signed by the person to be charged therewith. As noticed above, in the present case, neither it is established that the accountant of the firm was duly authorized on its behalf nor the writing dated 31.03.2005 is signed by any of the defendants including defendant No.8.

Learned counsel for the appellants, while drawing attention of the Court to the statement of DW.1 (defendant No.8) in three appeals has

contended that defendant No.8 had admitted his liability even while

appearing in the Court, hence, he submitted that once the liability is admitted the first Appellate Court has committed an error while accepting the appeals.

This Court has considered the submission, however, find no substance therein. On first impression, the arguments appear to be attractive, however, on deeper critical analysis, found to be without substance. The statement of DW.1 (defendant No.8) can neither be treated as acknowledgement of the debt within the prescribed time because he is not proved to be an agent authorized on behalf of the firm nor it falls within the definition of the contract/agreement covered by Sub Section (3) of Section 25 of the Contract Act because Sub Section (3) of Section 25 is applicable only if it is signed by an agent generally or specifically authorized in that behalf. The plaintiffs had not led sufficient evidence to prove that DW.1 was generally or specially authorized on that behalf.

Keeping in view the aforesaid facts, this Court finds no ground to interfere with the judgements passed by the learned first Appellate Court. Hence, all the appeals are dismissed.

The miscellaneous application(s), if any, shall also stand disposed of.

**(Anil Kshetarpal)
Judge**

February 18, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No