IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBA No.1 Of 2019
(Through hybrid mode)

Bhaiji Air Cooler Works .... ***Appellant***

Mr. S. Routray, Advocate

-versus-

G.M., D.I.C. and another .... ***Respondents***

Mr. P.P. Mohanty, AGA

CORAM: JUSTICE ARINDAM SINHA

Order No.	**ORDER** **15.02.2022**
4.	**1.** Mr. Routray, learned advocate appears on behalf of appellant and submits, the learned District Judge did not appreciate challenge of his client against award dated 28th June, 2016. Though his client supplied between 3rd July, 1998 to 8th July, 1998, respondent partly paid Rs.30,000/- on 8th March, 2004. His client filed the claim before the council on 1st July, 2004. The claim consisted of unpaid principal and interest. Subsequent to filing the claim, respondent, on 8th January, 2005, paid balance principal of Rs.4,820/- but thereafter did not pay on the interest claim. There is patent illegality in the award for dismissing his client's claim as barred by limitation.

2. He submits, in event the payment made on 8th March, 2004 does not qualify as payment on account of a debt before expiry of the prescribed period, such payment comes within sub-section (3) in section 25 of Contract Act, 1872 for his client to have thereafter enforced its claim on reliance thereon, regardless of the law for the limitation of suits.

3. He relies on following judgments.

(i) Judgment of the Supreme Court in **Khan Bahadur Shapoor Fredoom Mazda v. Durga Prosad Chamaria** reported in **AIR 1961 SC 1236**, paragraph-6 (Manupatra print). The paragraph is reproduced below.

> *" It is thus clear that acknowledgment as prescribed by s. 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledge judgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the*

intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly s. excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly G. without intending to admit the existence of jural relationship such intention could' be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in s. 19, and there is really no substantial difference between the parties as to the true legal position in this matter."

(ii) Views of a Division Bench of the High Court of Bombay in **South Eastern Roadways v. U.P. State Agro Industrial**

Corporation Ltd. reported in **AIR 1993 Bom 300**, paragraph-4 (Manupatra print), in which, inter alia, following was said.

> **"***If Ex.35 does not amount to an acknowledgment within the meaning of that expression appearing in S.18 of the Limitation Act, the same certainly attracts sub-sec. (3) of S.25 of the Indian Contract Act. Therefore, however looked at, the claim was within limitation and we so hold."*

(iii) Views of a learned Judge of the High Court of Karnataka in **Adivelu v. Narayanachari** reported in **AIR 2005 Kant 236**, paragraphs 5, 6, 8, 12, 13 and 16.

(iv) Views of a learned Judge in the High Court of Delhi by **judgment dated 22nd August, 2012** in **I.As. no. 85618562/2011 in CS (OS) 389/2009 (Suresh Kumar Joon v. Mool Chand Motors and others)**, paragraph-5 (Manupatra print).

4. Mr. Mohanty, learned advocate, Additional Government Advocate appears on behalf of respondent and submits, the claim is barred by limitation as correctly found by the Tribunal. There is no patent illegality in the award. The appeal should be dismissed.

5. In **Durga Prosad Chamaria** (supra), relied upon paragraph-6 was where the Apex Court discussed nature and character of an admission, for it to be acknowledgment as prescribed by section 19 in Limitation Act, 1963. The Court said the acknowledgement renews the debt and it need not be accompanied by a promise to pay either expressly or even by implication. As such, the decision is of no help to appellant.

6. In **South Eastern Roadways, Bombay** (supra), the Division Bench was dealing with whether Ext.35 in the suit could be said to be an acknowledgment. Text of Ext.35, as appearing from the judgment, is reproduced below.

> *"Please refer to your notice dated 15th May, 1978 given by you on behalf of your client (plaintiff) .... In this regard it is to inform you that matter will be settled between our General Manager, Shri S.N. Khanna, who is on tour to Bombay......"*

It is clear that the views expressed were in respect of the writing (Ext.5), relied upon by appellant therein. Said Court found that the writing (Ext.5) was an acknowledgment, if not under section 18 in Limitation Act, 1963, an acknowledgment under sub-section (3) in section 25, Contract Act, 1872. Said provision in the Contract Act talks about a promise made, to become an agreement without consideration, to pay wholly or in part, a debt, which the creditor might have enforced payment but for the law for the limitation of suits. This decision is distinguishable on facts. Sub-section (3) in section 25 requires an agreement by a promise, to make an agreement without consideration, valid. Where a person owes money but the creditor cannot enforce the debt because it is barred by limitation, the debtor can always subsequently promise to pay such a debt. That agreement will not be void as being an agreement without consideration. Appellant says respondent made a payment beyond the prescribed period. Fresh period commenced, within which the reference. The record does not disclose any term accompanying in the payment. Court has ascertained that the payment was made of part of balance claim of appellant. The payment simpliciter cannot be interpreted to be a promise to pay further. The terms are not available. Whether by making the payment respondent agreed to pay further cannot be inferred from the act of payment, for it to be a promise under sub-section (3) of section 25. As aforesaid, in **Durga Prosad Chamaria** (supra), the Supreme Court referred to there being no need for a promise accompanying the acknowledgement under section 19 in the Limitation Act.

7. In **Suresh Kumar Joon** (supra) a learned Judge of the High Court of Delhi said in paragraph-5 (Manupatra print) as reproduced below.

> **"***6. The next contention of learned counsel for the plaintiff was that Section 25(3) of The Indian Contract Act expressly saves the agreement which 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. Illustration (e) states that if A owes B Rs. 1, 000, but the debt is barred by the Limitation Act and A signs a written promise to pay B Rs. 500 on account of the debt, this is a contract. Therefore, if defendants have made an agreement in writing, promising to pay either whole or part of the amount which the plaintiff claims to have lent to them, such an agreement would be perfectly legal and enforceable in law.*

Above view does not equate an acknowledgment prescribed under section 19 (Limitation Act) with a promise under section 25(3) (Contract Act), as contended by appellant. Illustration under the provision in the Contract Act makes clear that after a debt has become unenforceable, a person can promise to pay it. Once such promise is made, it is an agreement without consideration, valid and enforceable on a fresh period of limitation commencing from the date of the promise.

8. Section 19 in Limitation Act, 1963 provides for effect of payment on account of, inter alia, debt. It says that a fresh period of limitation can start on payment made before expiry of the period of limitation. Facts are that the supply was complete on 8th July, 1998. Part payment of Rs.30,000/- was made on 8th March, 2004, beyond prescribed period of limitation.

9. There is no reason to interfere in the appeal. It is dismissed.

(Arindam Sinha)
Judge

Sks