THE HON'BLE SRI JUSTICE M.LAXMAN

CCCA.No.242 OF 1999

JUDGMENT:

1. The present appeal is filed against the judgment passed in O.S.No.227 of 1990, dated 29.09.1997, on the file of III additional Judge, City Civil Court, Secunderabad, whereby, the trial Court decreed the suit filed by the respondent herein for recovery of an amount of Rs.2,09,356.55, from the petitioners herein/defendants with interest at the rate of 18% per annum from the date of suit till date of realization.

2. The respondent herein is the plaintiff and the appellants herein are the defendants in the said suit. For the sake of convenience, the parties hereinafter are referred to as they are arrayed in the suit.

3. The sum and substance of the case of the plaintiff is that the defendant No.1 is a partnership firm and the defendant Nos.2 and 3 are the partners and they availed overdraft facility for a sum of Rs.3,00,000/- on 27.12.1985, agreeing to pay interest at the rate of 16.5% per annum and in the event of default on the due

amount, they also agreed to pay interest at 18.5% per annum. After availing the overdraft facility, the defendants stopped the transactions in the account and subsequently, they have executed acknowledgements dated 05.12.1988, 17.11.1988 (Exs.A13 and A14). When the amounts were not paid, legal notice was issued by the plaintiff to the defendants, but no response from them. Hence, the present suit.

4. The defendants admit the availment of overdraft facility of Rs.3,00,000/- from the plaintiff bank on 27.12.1985 and also admitted the execution of 12 documents. According to them, validity of those documents expired on 27.12.1986. Further, documents under Exs.A13 & A14 do not operate as acknowledgment of debt and they say that the suit is barred by limitation.

5. On the basis of the above pleadings, the Trial Court had framed the following issues:

> *(i). Whether the documents 1 to 12 of para 3 of the plaint are expired by 27.12.1986, if so, whether they are binding on the defendants?*

(ii).Whether the plaintiff is entitled to claim interest after 26.12.1986?
(iii).whether the documents 13 and 14 of the plaint extended the limitation period?
(iv).Whether the statement of account is true, correct and binding on the defendants?
(v).Whether the suit is barred by limitation?
(vi).Whether the plaintiff is entitled for the suit claim as prayed for?
(vii) To what relief?

6. The plaintiff, to support their case, examined PW1 and relied upon Exs.A1 to A9. The defendants, to support their case, examined DW1 and relied upon Ex.B1.

7. The primary Court after appreciating the evidence on record decreed the suit as to the terms indicated herein before. Hence the present appeal, at the instance of the defendants.

8. Heard the learned counsel on either side and perused the materials placed on record.

9. The following points emerge for consideration in this appeal:

(1) Whether the claim of the plaintiff for suit amount is barred by limitation?

(2) Whether acknowledgements under Ex.A13 and Ex.A14 constitute valid acknowledgement, so as to give fresh limitation for institution of suit?

(3) Whether the plaintiff is entitle to recover the suit amount?

10. The facts which are not in dispute are that the defendants availed overdraft facility of Rs.3,00,000/- on 27.12.1985 and Exs.A13 & A14 were executed by them; Exs.A13 & A14 are the acknowledgements of debt so as to extend the time. Exs.A13 & A14 were executed independently by partners representing the partnership firm.

11. Now the question is, whether those acknowledgements are valid or not so as to extend the limitation. In this regard it is relevant to refer to Section 18 to 23 of the Partnership Act, which reads as under:

Section18: ***Partner to be agent of the firm.-*** *Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.*

Section19: ***Implied authority of partner as agent of the firm.-*** *(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.*

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to -

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(g) transfer immovable property belonging to the firm, or

(h) enter into partnership on behalf of the firm.

Section20: ***Extension and restriction of partner's implied authority.-*** *The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.*

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Section21: ***Partner's authority in an emergency.-*** *A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.*

Section22: ***Mode of doing act to bind firm.-*** *In order to bind a firm, an act or instrument done or executed by a partner or other*

person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Section23: ***Effect of admission by a partner.-*** *An admission or representation made by a partner*

> *concerning the affairs of the firm is evidence against the firm, it is made in the ordinary course of business.*

12. A reading of the above provisions would clearly show that the partner is an agent of the firm, for the purpose of carrying on the business of firm and every partner has an implied authority to carry on the business in a usual way and such acts of the partners binds the firm on the principle of implied authority. There are restrictions on the implied authority under section 19(2) of the Partnership Act and the provisions also made it clear that the implied authorities restricted under section 19(2) can be widened or narrowed down by making separate contract. In spite of such a special contract to restrict the implied authority, the firm is liable for the acts done in the usual course by the partners if the other party is not aware of such special contract in order to bind the firm, for the acts of the partner. The partner must represent the firm not in the individual capacity. Any admission or representation made by the partner concerning the affairs of the firm is the evidence against the firm, if such an admission or representation is made in the course of business.

13. Looking at the response under Ex.A13 and Ex.A14, both the partners have independently executed separate acknowledgements, admitting the liability of the partnership firm that while making such an acknowledgement of liability, they have been representing the partnership firm not in their individual capacity, which meets the requirement of Partnership Act.

14. Section 18 of the Limitation Act deals with the acknowledgement and in order to be a valid acknowledgement of debts, such acknowledgement must be made in writing and it should be made before the expiry of original limitation.

15. In the present case, the overdraft facility was availed on 25.12.1985; the first acknowledgement was made on 17.11.1988 and the second acknowledgement was made on 05.12.1988. Both the acknowledgements are within three years from the date of availment of overdraft facility. Though, such acknowledgements were made by the individual partners representing the partnership firm, which are valid acknowledgements in terms of the Partnership Act. The suit is filed in the year 1990. Therefore,

this Court finds that there is valid acknowledgement and the suit is within limitation. I do not find any merit in this appeal.

16. There is no dispute regarding availment of overdraft facility and interest and default interest agreed between the plaintiff and defendant. Consequently, the suit has to be decreed.

17. In the result, this appeal is dismissed confirming the judgment and decree passed in O.S.No.227 of 1990, dated 29.09.1997, on the file of III additional Judge, City Civil Court, Secunderabad. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE M.LAXMAN

14.10.2022
Dua/Gms

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