P. Mohan Vs. Basavaraju

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Court : Karnataka

Decided On : Jan-09-2003

Reported in : AIR2003Kant213; II(2003)BC237; 2003(3)KarLJ138

Judge : K. Sreedhar Rao, J.

Acts : Limitation Act, 1963 - Sections 19 - Schedule - Article 19; Negotiable Instruments Act, 1881 - Sections 80

Appeal No. : Regular First Appeal No. 524 of 2002

Appellant : P. Mohan

Respondent : Basavaraju

Advocate for Def. : R. Vijayakumar, Adv. for Caveator

Advocate for Pet/Ap. : Subba Rao and Company

Disposition : Appeal dismissed

Judgement :

K. Sreedhar Rao, J.

1. This is defendant's appeal against the judgment and decree passed in O.S. No. 7338 of 1994 on the file of XXX Additional City Civil Judge, Bangalore.

2. The appeal although is at admission stage at the request of parties, taken up for final hearing. The necessary certified copy of depositions and documents are furnished by the plaintiff and the defendant for the benefit of perusal.

3. The respondent in appeal as a plaintiff filed the suit for recovery of a sum of Rs. 1,73,275/- with costs and interest. It is the case of the plaintiff that during the period 1-8-1990 to 5-3-1991 a sum of Rs. 1,19,500/- was paid. On several occasions it was paid by cash and one occasion by cheque for a sum of Rs. 40,000/- towards hand loan. When the hand loans were given there was no liability on the part of the defendant-appellant to pay interest. On 15-12-1991 it is said that the appellant acknowledged the liability in a sum of Rs. 1,19,500/- marked at Ex. P. 1 and also issued three cheques on 15-12-1991 for a sum of Rs. 45,000/-, on 30-5-1992 for a sum of Rs. 40,000/- and on 10-6-1992 for a sum of Rs. 34,5007-. The cheques came to be dishonoured, proceedings were instituted under Section 138 of the Negotiable Instruments Act in CC Nos. 4835 to 4837 of 1992 on the file of II Additional Chief Metropolitan Magistrate, Bangalore. In the criminal cases, the appellant/defendant was acquitted by the order of this Court. However, it was observed that the observations made in the judgment would not affect the rights of the plaintiff to pursue his remedies before a Civil Court where the present civil suit was pending and the Civil Court was given liberty to decide the matter based on the material adduced independently without being influenced by the observations made in the criminal appeal. The plaintiff has claimed interest at the rate of 18% from the date of dishonour of cheque till the date of filing of the suit and also claim interest at the same rate from the date of suit till realisation.

4. The appellant in the written statement has taken up a stand of total denial and in evidence explained that the cheque is issued by the plaintiff towards the material supplied. Ex. P. 1, the acknowledgment is denied. The Bank Manager is summoned. The specimen signatures of the defendant are produced at Exs. P. 6 and P. 7 for comparison with the signatures in Ex. P. 1 and Exs. P. 2 to P, 4, the signatures on the dishonoured cheques.

5. The Trial Court on the consideration of oral and documentary evidence, upheld the claim of the plaintiff and also held that the acknowledgment, Ex. P. 1, is in the

handwriting of the defendant so also the cheques are also held to be issued by the defendant. In view of the dishonour and the proof of liability, decreed the suit, granting interest at the rate of 18% p.a. as claimed till the date of suit and subsequently 6% interest is granted from the date of suit till realisation. Aggrieved by the judgment and decree, the present appeal is filed.

6. The appellant in this appeal raised the following two questions to challenge the judgment and decree. Firstly, contends that admittedly prior to issuance of cheque, there was a transaction of a hand loan which constitutes one and only cause of action. The cheque issued does not confer any independent cause of action on its own to institute the suit. Cheques issued also do not constitute an acknowledgment under Section 19 of the Limitation Act. The claim of the plaintiff from the date of cause of action i.e., between the periods 1-8-1990 to 5-3-1991, is barred by limitation as the suit is filed on 13-12-1994.

7. Secondly, contends that the plaint averments explicitly indicate that there was no contract to pay interest. Therefore, the provisions of Section 80 of the Negotiable Instruments Act can have no application to the facts of the case and that plaintiff is not entitled to any interest from the date of original cause of action till the date of notice i.e., 18-10-1991 and granting interest for the said period by the Trial Court is illegal.

8. In support of the contentions, the Counsel for the petitioner relied on the ruling of the Division Bench, Bombay High Court in Chintaman Dhundiraj v. Sadguru Narayan Maharaj Datta Sansthan : AIR1956 Bom553 it is held thus:

'5. Mr. Banaji on behalf of the plaintiff contends that the learned Trial Judge was in error in holding that the claim was barred by the law of limitation. Mr. Banaji says that the amount having been borrowed by Sri Narayan Maharaj on 12-7-1939 on his agreeing to repay it in October 1939, by acknowledgments and part-payments made by cheques dated 25-9-1942 and 10-11-1944, the suit filed on 8-11-1947 must be regarded as within limitation.

We are unable to accept that contention. There is in our view no acknowledgement of liability merely by giving a cheque which is dishonoured, and

a cheque which is dishonoured cannot be regarded as part-payment within the meaning of Section 20, Limitation Act. Reliance was sought to be placed upon judgment of the Calcutta High Court in Kedar Nath v. 'Dinobandhu Saha, AIR 1916 Cal. 580.

In that case, Sir Lawrence Jenkins, Chief Justice, delivering the judgment of Court held that if a cheque is delivered to a payee by way of payment and is received as such, it operates as a payment subject to a condition subsequent that if upon due presentation the cheque is not paid, the original debt revives. It was further held that where such a cheque is signed by the debtor and paid in part-payment of the principal of a debt, the cheque being subsequently honoured, the proviso to Section 20 of the Limitation Act has been complied with.

It is evident from the judgment in 'Kedar Nath's case (A) that a cheque was given in part-payment, it was received in part-payment and the cheque was honoured and the Court held in that case that the requirement of the proviso to Section 20, Limitation Act was complied with. In the present case the cheque was dishonoured and when it was dishonoured, the amount of the cheque cannot be regarded as part-payment of the principal.

It is true that when a cheque is delivered to a payee in whole or part satisfaction of a liability and it is accepted the delivery of the cheque and acceptance thereof would be regarded normally as conditional satisfaction of the liability, and if the cheque is dishonoured, the original debt which was conditionally satisfied would be deemed to be revived.

By the delivery of the cheque dated 25-9-1942 it may be that the debt due by Narayan Maharaj was conditionally satisfied. But when the cheque was dishonoured, there was a revival of the debt and the suit had to be filed within the normal period of limitation. In our view, the learned Trial Judge was right, in holding that the claim for the amount of Rs. 35,000 on the original debt was barred by the law of limitation'.

9. The ruling of the Punjab and Haryana High Court in Northern India Finance Corporation (Private) Limited v. R.L. Soni . The relevant portion of para 5 it is held

thus:

'5. I have no doubt in my mind that if the cheque had been encashed and if the cheque could be treated to be of the respondent, this would have amounted to part-payment within the meaning of Section 19 of the Limitation Act, and would have saved the suit from getting barred by time. If, however, the cheque is not honoured, it cannot be said that the amount represented by the cheque has been 'paid' by the drawer to the payee. Section 19 starts with the words 'where payment on account of a debt or of interest' is made before the expiration of the prescribed period 'by the person liable to pay the debt' or by his agent duly authorised in this behalf. As already stated, I will assume that G.S. Bakhshi was the duly authorised agent of the respondent for making the payment on behalf of the respondent to the company. But the cheque having, however, been dishonoured, it cannot be said that any payment at all was made by anybody to the company by that cheque'.

In the light of the ratio laid down in the decisions, it is contended that the issuance of a dishonoured cheque cannot be construed as a part-payment to save the limitation under Section 19 or 20 of the Limitation Act. Besides the plaintiff has to base his claim on the original cause of action for recovery of the debt i.e., the date of hand loan and that remedy should have been pursued within the period of limitation, the issuance of cheques can at the best offer as a piece of evidence to corroborate the original cause of action and does not constitute a cause of action by itself to institute a suit.

10. Per contra, the Counsel for the respondent relied on the ruling of this Court in Surendra v. Smt. Padma and Others, 2000(1) Kar. L.J. Sh. N. 63 : 1LR 2000 Kar. 579. In para 8, it is held thus:

'8. Here in this case, the Court below not examined the plaint properly and ignored from considering the material allegations. Plaintiffs case is that defendant borrowed the money, no doubt in 1991. His further case is that defendant gave the cheque in payment of that amount, thereafter he changed the dates and, later on when the cheques were presented to the Bank for payment on 8th September and 9th of September, 1992, the Bank dishonoured the cheques on 8th September with endorsement to the effect, insufficient funds in the account and the other on

9th of September that, the account-holder is dead. So this cheque and the cause of action for the suit and valuation of claim in the suit have also been given on the basis of amount of cheque which defendant had given and which Bank had dishonoured. It appears to be that this is a cheque for recovery of amount which is the subject-matter of cheque and which cheque has been dishonoured. Past history of the transaction may be different, but here the cause of action which is alleged to have been accrued on 8th and 9th September,1992, is, really on the basis and on the ground that the amount of the cheque has been not paid by the Bank. In this view of the matter, in my opinion this is a suit for recovery of amount, on the basis of the cheque given by the defendant which have been refused by the Bank and, such a suit is not covered by any of the Articles given in the Schedule. To the present case, Article 19 will not be applicable to this case and Article 19 having not been applicable and, as no other Article has been pointed out to be applicable, in my opinion the suit which is governed by Article 113 of Schedule to Limitation Act which provides that in suit, for which no limitation is provided elsewhere in the Schedule, 3 years period from the date when the right to sue accrues and right to sue in such a case, will arise only after the cheque is dishonoured and will accrue only after the date the cheque is dishonoured by the Bank. That calculating limitation from 8th or 9th of September, 1992, suit was filed on 29-5-1995, has been well-within time from the date of cheque being dishonoured'.

The ruling of the Supreme Court in Commissioner of Income-tax, Bombay South, Bombay v. Messrs Ogale Glass Works Limited, Ogalewadi : [1954]25ITR259(SC) may be usefully referred. In the said decision, the subtle distinction is made between a cheque (negotiable instrument) towards the payment of a past liability if accepted unconditionally as a full discharge of the liability, then the negotiable instruments itself would serve as a cause of action for basing a further action. Otherwise if the cheque issued is accepted conditionally that on realisation of the cheque a discharge of the liability is agreed upon, the claim to maintain an action on the basis of the original cause of action is not affected. In the case on hand, the pleadings and the evidence point out that the cheques were issued and accepted towards discharge of the liability. Therefore, subsequent dishonour would serve as a cause of action for the plaintiff to maintain the suit. That apart, the ruling of this

Court in Surendra's case, supra, squarely applies to the facts on hand. Therefore, both from the stand point of the date of dishonour of cheques the suit filed is within time.

11. The contention that Ex. P. 1 cannot constitute acknowledgement is an untenable argument. Ex. P. 1 is in the form of an account extract. The heading of the account extract is described as plaintiffs account, later on the account particulars are given. The total amounts received on different occasions are noted. An entry of Rs. 18,000/- is accounted towards one Kalamani and according to plaintiff, the said amount has been recovered. Therefore, the said sum is not included in the suit claim. The Trial Court has found that Ex. P. 1, the acknowledgement, is in the hand of the defendant. By comparison with his subsequent signatures, I do not find any error in the said finding. I find that Ex. P. 1 serves as a valid acknowledgement to save limitation. Even otherwise on the basis of dishonoured cheques, the plaintiff is entitled to maintain the suit. Hence, the question of limitation would not arise.

12. On the question of interest, although the plaint averments disclose that no interest was agreed to be charged but nonetheless in view of the provisions of Section 80 of the Negotiable Instruments Act the defendant-appellant would be liable to pay interest. The agreement between the parties not to pay interest may be valid until the dishonour of the cheque. However, after the dishonour, it cannot be inferred that the agreement continues to bind the parties. The Division Bench of this Court in I. Armugam v. Channagiri N. Govindaraj Shetty : AIR1992 Kant347 has interpreted the provisions of Sections 79 and 80 of the Negotiable Instruments Act. In para 17(1) it is held as follows:

'17.1. Unlike Section 79, Section 80 of the Act provides for the case where no rate of interest is mentioned in the instrument.

This section governs a case where, in a negotiable instrument, payment of interest is mentioned but no rate is stipulated and also a case where there is no interest mentioned at all in the instrument. Any agreement between the parties contemporaneous with, or subsequent to the date of negotiable instrument, as to interest will not have any effect and such agreement will not be enforceable

because the section specifically states that 'notwithstanding any agreement relating to interest between any parties to the instrument', interest shall be calculated at the rate of six per cent per annum (of course from 30-12-1988 onwards eighteen per cent per annum). The non obstante clause contained in the section supersedes or sets aside such agreement if any between the parties to the instrument. The section further provides 'interest on the amount due thereon shall..... be calculated at the rate of six per cent per annum from the date at which the same ought to have been paid by the party charged until tender or realisation of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs'. Thus the rate of interest on the amount due under the instrument attracting Section 80 of the Act as it stood prior to 30-12-1988 will have to be calculated at the rate of 6% per annum from the date the amount ought to have been paid and until it is tendered or realised. The amendment effected by Act No. 66 of 1988 which came into force on 30-12-1988 does not apply to the transactions effected prior to 30-12- 1988. The amendment applies to the transactions effected on and from 30-12-1988'.

(emphasis supplied)

13. In view of the ratio laid down in the decision, it would not lie in the mouth of the defendant to contend that he is not liable to pay interest as envisaged under Section 80 of the Negotiable Instruments Act. In that view, I find no merit in the appeal. Accordingly, the appeal is dismissed with costs.