Omprakash Vs. Krishnalal

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Court : Madhya Pradesh

Decided On : May-07-2009

Reported in : 2009(5)MPHT106

Judge : Shantanu Kemkar, J.

Appellant : Omprakash

Respondent : Krishnalal

Judgement :
ORDER

Shantanu Kemkar, J.

1. This revision has been filed by the plaintiff under Section 115 of the Code of Civil Procedure challenging the judgment and decree dated 5-12-2008 passed by First Additional District Judge, Khargone in Regular Civil Appeal No. 7-B/2008 setting aside the judgment and decree dated 9-5-2008 passed by Civil Judge Class II in Civil Suit No. 2-B/06.

2. On 6-1-2006 the applicant/plaintiff filed a suit against the non-applicant/defendant for recovery of Rs. 20,000/- with interest on the basis of Kararnama' dated 10-12-2002 (Exh. P-1) executed between the plaintiff and the defendant.

3. As per the plaint averments and the condition of the Kararnama (Exh. P-1) amount of Rs. 20,000/- was lent by the plaintiff to the defendant for his personal needs for a period of one year and the amount was to be repaid with interest @ 24% per annum by the defendant within one year. However, as the amount was not repaid by the defendant in spite of demand, the suit as aforesaid was filed.

4. The suit was contested by the defendant. The Trial Court framed issues and after appreciation of the evidence led by the parties decreed the plaintiffs suit with interest at the rate of 12% per annum from the date of filing of the suit till judgment, with further interest at the rate of 6% per annum from the date of judgment and decree till payment.

5. The aforesaid judgment and decree passed by the Trial Court was challenged by the defendant in Regular Civil Appeal No. 7-B/08. The Appellate Court though affirmed the findings recorded by the Trial Court on merits with modification in regard to the rate of interest awarded by the Trial Court, but allowed the defendant's appeal and dismissed the plaintiff's suit on the ground of limitation holding that the suit was barred by limitation. The Appellate Court held that in view of the Article 19 of the Limitation Act, 1963 the suit was required to be filed within 3 years from 10-12-2002 on which date the 'Kararnama' (Exh. P-1) was executed. The Appellate Court held that the suit could have been filed upto 10-12-2005 and the same having been filed on 6-1-2006 is barred by limitation.

6. Aggrieved by the aforesaid judgment and decree passed by the First Appellate Court the plaintiff has filed this revision as the subject-matter of the original suit is for recovery of money not exceeding Twenty five thousand rupees and Section 102 of the Civil Procedure Code puts bar of filing second appeal in the matter.

7. Shri G.M. Agrawal, learned Counsel appearing for the applicant/plaintiff has argued that the First Appellate Court has acted with material irregularity and committed jurisdictional error in applying Article 19 of the Limitation Act, 1963. According to him in view of the Kararnama dated 10-12-2002 (Exh. P-l) in which it was specifically mentioned that the loan is taken for a period of one year, no suit could have been filed by the plaintiff prior to expiry of the period of one year from 10-12-2002. He argued that the cause of action to file the suit accrued to the

plaintiff only after the expiry of one year from the date of execution of document (Exh. P-1) in the circumstances the suit which was filed on 6-1-2006 was within limitation in view of Article 28 of the Limitation Act, 1963 which applies to the facts of the case.

8. Shri Lokesh Mehta, learned Counsel appearing for the non-applicant on the other hand supported the impugned and decree passed by the First Appellate Court and submitted that the First Appellate Court has rightly allowed the defendant's appeal and has rightly dismissed the plaintiffs suit holding it to be barred by limitation in view of Article 19 of the Limitation Act.

9. In order to appreciate the rival contentions it would be appropriate to consider Article 19 and Article 28 of the Limitation Act which reads thus:

Description of suit Period of Time from which periodlimitation begins to runFor money payable for Three years When the loan is made.money lentOn a single bond, where Three years The day so specifiedis specified for payment

10. In the case of Bhagwantrao Deorao Patil v. Mohammad Khan Asgar Khan 1977 MPLJ 290, in Paras 7 and 8 it has been held by this Court as under:

7. On a careful examination of the contents of bond (Exh. P-1), I find that the right to recover the whole amount of the bond accrued to the plaintiff only upon default of payment of all the installments and he could not have brought the suit for the recovery of the whole amount before the expiry of ten months from the date of the bond. The present is not a suit for recovery of installments having fallen due and, therefore, time could not run from the date on which each installment fell due. It would not be reasonable to hold from the terms of the bond that the creditor after having acquired the right to recover the whole amount waited till the date of the last installment nor it is a case of there being an option to the creditor to bring the suit for the whole amount of default of payment of any one or more installments.

8. The principle laid down in AIR 1959 Mad. 82 relied upon by the learned Counsel for the non-petitioner has no application to the fact and circumstances of the present case as there is no provision in the suit document in the nature of

extension of the period of contract. On the other hand, in my opinion, the plaintiff had no right to bring the suit for the whole amount or a part of it before the expiry of ten months from the date of demand. In this view of the matter the cause of action accrued to the plaintiff after the expiry of ten months from 18-9-1966 that is on 18-7-1967 and the suit has been brought within limitation on 17th July, 1970.

11. In the case of Gannu v. Ramcharan 1967 MPLJ 48, this Court considering Article 66 of the Limitation Act, 1908 corresponding to Article 28 of the Limitation Act, 1963 has held that it applies to a suit on a single bond where the date is specified. It has been observed that the expression 'date is specified' cannot be too strictly construed. The Article applies where a period is fixed or when repayment of the loan is to be made on the happening of an event which was in the contemplation of both the parties when the bond was executed. In a case where it was quite clear that the loan was to be repaid in the next harvesting season Article 66 would be applicable.

12. On going through the pleadings and evidence on record it is revealed that the execution of Kararnama dated 10-12-2002 (Exh. P-1) is not in dispute. It is clear from the said document (Exh. P-1) that the loan was taken by the defendant for one year and it was to be repaid within one year. In the circumstances when the period of one year was fixed to repay the loan amount, the plaintiff could not have filed the suit before the expiry of one year from the date of execution of the said document (Exh. P-1). Having regard to the aforesaid, the First Appellate Court has wrongly applied Article 19. When the amount was lent for one year and was to be repaid with interest within one year Article 28 would have application to the suit filed by the plaintiff and not Article 19. The period for which the loan was advanced vide 'Kararnama' dated 10-12-2002 (Exh. P-1) expired on 10-12-2003 in the circumstances the suit could have been filed on or before 10-12-2006. Therefore, the plaintiffs suit filed on 6-1 -2006 cannot be held to be barred by limitation. The cause of action to file suit accrued in favour of the plaintiff accrued on 10-12-2003 after expiry of one year from 10-12-2002, therefore, the plaintiffs suit filed on 6-1-2006 was well within limitation.

13. In view of the aforesaid in my considered view the judgment and decree passed by the Appellate Court holding the plaintiffs suit to be barred by limitation cannot be sustained. The finding recorded by the Appellate Court so far as it relates to interest part is also not sustainable. The Trial Court while decreeing the plaintiffs suit has rightly awarded interest at the rate of 12% from the date of suit to the date of decree holding the same to be reasonable and has rightly awarded interest at the rate of 6% per annum from the date of decree to the date of payment having regard to Section 34 of the Code of Civil Procedure.

14. Accordingly, the revision is allowed. The judgment and decree passed by the First Appellate Court is set aside and the Trial Court is maintained. The plaintiff's suit is decreed with costs. Counsel fees as per Schedule if certified.