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Tulsi Ram Vs. Same Singh

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Court : Delhi

Decided On : Nov-13-1980

Reported in : AIR1981Delhi165; 19(1981)DLT378

Judge : Sultan Singh, J.

Acts : Indian Contract Act, 1872 - Sections 25(3)

Appeal No. : Regular Second Appeal No. 42 of 1972

Appellant : Tulsi Ram

Respondent : Same Singh

Advocate for Pet/Ap. : S.P. Pandey and; Ramesh Chandra, Advs

Judgement :

Sultan Singh, J.

(1) This is second appeal under Section 100 of the Code of Civil Procedure as it stood prior to its amendment by the Code of Civil Procedure (Amendment) Act, 1976. The solitary, question for decision is whether the suit filed by the plaintiff-respondent is within time. The appellant executed a pronote for Rs. 1300.00 on 5th January 1963 in favor of the respondent and promised to pay the amount with interest at 15 per Mensem on demand. The amount was not paid. The plaintiff also did not file the suit within three years from the date of the pronote. On 10th July,

1966 the defendant made the following endorsement on the back of the pronote itself:

'ISpronote ko main manzoor karta hoota ki yeh agle teen saal ke liye theek hai'

ITStranslation would read as under : 'I accept this pronote and it is valid for the next three years.'

The plaintiff's contention is that this endorsement is not a mere acknowledgment but a .promise to pay in writing within the meaning of Clause (3) of Section 25 of the Indian Contract Act, 1972 (hereinafter called 'the Act') and thereforee he is entitled to recover the same on the basis of the said endorsement. It is not dispute that the present suit was filed on 2nd March, 1968. The suit would be within time if it is held that the said endorsement is a promise to pay within the meaning of Clause (3) of Section 25.

(2) Section 25 of the Act is as under

'S. 25 : An agreement made without consideration is void unless : (1) Agreement without consideration void unless it is writing and registered 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)or is a promise to compensate for something done 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)or is a promise to pay a debt, barred by limitation law : it is a promise made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised 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. Explanationn I-Nothing in this section shall affect the validity, as between the donor and donee, of any gift

actually made. Explanationn 2-An agreement to which the consent of the promisor is freely given is not void merely because the consideration in 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.'

(3) The plaintiff claims that his case is covered by Clause (3) of Section 25 of the Act. This clause requires that there should be promise in writing, that it should be signed by the debtor or his agent and that this promise should be to pay wholly or in part a debt barred by time. If these conditions are fulfillled an agreement made without consideration amounts to a contract.

SECTION 9 of the Act reads as under : 'S. 9 : Promises; express and implied-In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.'

(4) The contracts that are made in words are known as express contracts and if they are made otherwise than in words, such contracts are known as implied contracts. Clause 3 of Section 25 of the Act uses the words 'promise made in writing to pay'. Thus it seems to me that there should be an express promise to pay a barred debt to constitute a contract which may be the basis of the suit. Various authorities have been cited before me on behalf of the appellant contending that if no express promise to pay is spelt by the writing, such writing cannot be the basis of a suit His contention is that reading of the endorsement must make it definite that there is a promise to pay and if promise to pay cannot be spelt, the suit on the basis of such a writing would not be maintainable. On behalf of the respondent-plaintiff it is contended that if there is a mere acknowledgment in writing the same may not be the basis of a suit within the meaning of Clause (3) of Section 25 of the Act, but if there is something more than mere acknowledgment and promise to pay can be spelt out from such a writing the suit would be covered by the said clause. Reading of Section 9 and Clause (3) of Section 25 of the Act it makes clear that though the word 'express' is not used in Clause (3) of Section 25, it is essential that the promise to pay must be clear and express. It also appears'to me that otherwise there will be no promise to pay in writing as required under this

clause. In other words, an implied promise is not sufficient to satisfy the condition of Claujse (3) of Section 25 of the Act.What is required is a clear promise. The language of the document is to be studied to find out if there is a clear and fresh promise. The question thus is whether the writing in suit amounts to an acknowledgment or a promise to pay. If it is only an acknowledgment, it cannot be the basis of the suit. But if it is a promise to pay, the suit would be maintainable. The Privy Council in Maniram. Seth v. Seth Rupchaind, 2nd 33 Calcutta 1047 observed that an unconditional acknowledgment implies a promise to pay. In that case the acknowledgment was made before the expiry of the period of limitation. Such an acknowledgment was held to be a sufficient acknowledgment within the meaning of Section 19 of the Limitation Act. Learned counsel for the appellant refers to the various observations in this judgment but I do not get any assistance to interpret Clause (3) of Section 25 of the Act. In Gobind Das and others v. Sarju Das, 2nd 30 Allahabad 268 it was held, under Section 25 Sub-section 3 of the Indian Contract Act a promise made in writing and signed by the person to be charged therewith to pay a barred debt is a good consideration, but there must be a distinct promise and not a mere acknowledgment'. Again in Maganlal Barjtbhai and another v. Amichand Gulubji ami others, 2nd 52 Bom 521 it was held that an implied promise to pay, inferred from an acknowledgment which contains no express promise to pay a time-barred debt, cannot bemade the basis of a suit under Section 25(3) of the Indian Contract Act. In Ganesh Prasad s/o Dau Laxmanarayan Bania and others v. Mr. Bombati Bai w/o Gajanand and others, Air 1942 Nagpur 92, a receipt by the debtor was executed after understanding he account. It stated that a certain amount was justify due from the debtor. It was held that although the words meant an implied promise to pay, certainly they did not amount to an express promise in writing such as Section 25(3) of Contract Act required. In Basheshar Nath Goela, Official Receiver v. Baij Nath and others Air 1938 Lah 264 it was observed that mere acknowledgment of liability without any express promise to pay or without any inference to the future liability to pay does not fall within the mention of Section 25 of the Act The writing was in the following form

'THEbahi account having been checked and understood, the sum of Rs. 6459-1-6 was found due from me and my minor sons whose lawful guardian I am, to the firm

Gobind Parshad Shibban Lal and I admit the amount to be due from me'.

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Prabhu,

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Air 1938 Lah 757

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1929 Lah 591 (1)

Achhaibur Prasad Shahi & Others,

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Badkulal & others,

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