

Jailebdeen Vs. Mohammed Basheer

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Court : Kerala

Decided On : Feb-08-1991

Reported in : AIR1992Ker31

Judge : T.V. Ramakrishnan, J.

Acts : [Limitation Act, 1963](#) - Schedule - Articles 19 and 55

Appeal No. : A.S. No. 341 of 1988

Appellant : Jailebdeen

Respondent : Mohammed Basheer

Advocate for Pet/Ap. : C.S. Anant Hakrishna Iyer and; A.T. James, Advs.

Disposition : Appeal allowed

Judgement :

1. The plaintiff in O. S. No. 276 of 1985 on the file of the Sub-Court, Palghat is the appellant.
2. The defendant availed of a loan from the State Bank of India, Agricultural Development branch at Palghat for agricultural purposes. On his failure to repay the amount, the bank filed a suit against him as O.S. No. 15 of 1981 before the Sub-Court, Palghat for realisation of the amount. That suit was decreed. Pursuant to the decree revenue recovery proceedings were initiated against the defendant.

Notice was issued to him. The defendant applied for payment of the amount in instalments and accordingly, he was allowed to discharge his liability under the decree in 12 instalments at the rate of Rs. 6,000/-. Even after the said order, defendant failed to comply with the order which resulted in the revival of revenue recovery proceedings against the defendant. Again on the request of the defendant, he was permitted to remit the amount due for six instalments as a condition for deferring revenue recovery proceedings. While so, the defendant approached the plaintiff herein and requested him to remit the amount for six instalments and the plaintiff agreed to make the payments due for the six instalments on the distinct agreement that the defendant would repay the amount to the plaintiff soon after the payment of the sixth instalment with reasonable interest on demand. On the basis of the agreement the plaintiff paid to the concerned Village Officer an amount of Rs. 18,000.50 on 30-7-1982 and Rs. 6,000/- each on 20-10-1982, 20-11-1982 and 20-12-1982. Thus altogether, the plaintiff paid Rs. 36,000.50 for and on behalf of the defendant and obtained receipts from the Village Officer, Muthalamada produced as Exts. A1 to A3. Receipt for Rs. 6,000/- paid on 20-10-1982 was, however, lost and was thus not produced. On payment of the entire amount of Rs. 36,000.50, the plaintiff demanded repayment with 12% interest per annum. The defendant failed to repay the amount which led to the filing of the suit.

3. Defendant filed a written statement denying all the material allegations in the plaint. The defendant specifically denied the agreement set up in the plaint regarding repayment of the amount. Further, the defendant raised the contention that the suit is barred by limitation. It was also contended that the payments alleged to have been made by the plaintiff was made by utilising the funds supplied by him and that the plaintiff was not having sufficient funds to make the payments alleged in the plaint.

4. On a consideration of the pleadings and evidence in the case, the trial Court came to the conclusion that the defendant had no money with him during the relevant period to discharge the decree debt. The Court also found that the plaintiff had sufficient funds at his command to remit the amount of Rs. 36,000.50 towards the instalment payments agreed to be remitted by him. It was found by the Court

that the amount remitted by the plaintiff was for and on behalf of the defendant and that too on the basis of the agreement pleaded in the plaint regarding repayability of the amount by the defendant. After entering the above findings, the learned Judge found that except the payment of Rs. 6,000/- effected on 20-12-1982, the rest of the payments are beyond three years from the date of the suit, and as such the suit in regard to such payments is barred by limitation and a decree was granted only for the recovery of an amount of Rs. 6,000/- with 12% interest per annum. Aggrieved by the dismissal of the suit in part, the plaintiff has preferred this appeal.

5. Challenging the decree passed in favour of the plaintiff, the defendant has filed a memorandum of cross-objection. Even at this stage, I may point out that the memorandum of cross-objection filed by the defendant-respondent cannot be sustained in law in view of the dismissal of an independent appeal filed earlier by the respondent himself as A.S. No. 315 of 1988. By the dismissal of A.S. No. 315 of 1988, the judgment of the Court below to the extent challenged in the said appeal has become final and conclusive against the respondent-appellant therein. Respondent cannot once again challenge the decree against him by filing a cross-objection. In the light of the dismissal of A.S. No. 315 of 1988, the cross-objection is only to be dismissed as not maintainable.

6. In the appeal, as already indicated the only question raised is one of limitation. Though a ground challenging the correctness of the rate of future interest granted by the trial Court was also taken in the memorandum, no serious contention was advanced by the learned counsel based on that ground while arguing the appeal and according to me rightly too as the loan in this case cannot be considered as a commercial one. However, learned counsel for the respondent has tried to canvass the correctness of certain findings which are against him in an attempt to sustain the dismissal of the suit on grounds other than the bar of limitation on which the learned Judge has dismissed the suit in part. Thus it was contended that the finding that defendant has availed of a loan on the basis of an agreement to repay as set up in the plaint cannot be sustained in law in the light of the evidence in the case.

7. Before going into the question of limitation, I may briefly consider whether there is any error or illegality in the finding entered by the trial Court regarding the oral loan and the alleged agreement to repay set up in the plaint. Plaintiff has specifically averred in paragraph 5 of the plaint that the defendant approached him with a request to pay on his behalf the amounts due for six instalments as per the orders issued by the Revenue Authorities on the specific agreement that defendant would repay the entire amount paid by the plaintiff with reasonable interest after the payment of the amount due for the sixth instalment, on demand. Plaintiff has also averred that this agreement was made in the presence of one Damodaran and Gangadharan. As P.W. 1 plaintiff has given evidence in terms of the plaint allegations. He has also examined P.W. 4 Gangadharan, one of the persons in whose presence the alleged request and the agreement to repay were made. The plaintiff has also produced the original orders issued by the revenue recovery authorities served on the defendant and three receipts for payment of amounts due for 5 instalments to probabalise his case that defendant had approached him with a request to pay the instalment amounts and that he has paid the same as promise by him on obtaining receipts for such payments. The learned Judge on an appreciation of the evidence of P.Ws. 1 and 4 has come to the conclusion that there is nothing to disbelieve their evidence. The learned Judge has also considered in detail the evidence of defendant examined as D.W. 1 and found that his evidence is neither reliable nor sufficient to prove the case set up by him. It is in these circumstances that the learned Judge has found that the plaintiff has remitted on behalf of the defendant the amounts due for six instalments payable by the defendant under the decree obtained against him by the State Bank of India and that the agreement regarding repayment pleaded by the plaintiff is true. I do not find any reason to interfere with the said finding entered by the learned Judge in favour of the plaintiff.

8. Admittedly the plaintiff has paid the amount of Rs. 36,000.50 only in instalments. In fact even as per the plaint allegations the request by the defendant was also to pay the amounts due for 6 instalments. In this view, but for the agreement regarding repayment specifically pleaded by the plaintiff in the plaint the payments are liable to be treated as loans made on different dates and as such repayable on the respective dates on which each loan was made. Treated as

independent loans made on different dates and repayable on the respective dates on which the loan was made, Article 19 of the Limitation Act, (for short 'the Act') should be held to be the article applicable to the suit. In fact it is Article 19 which was applied by the learned Judge while holding that all payments made prior to 3 years before the date of suit is barred by limitation. If Article 19 is the correct article to be applied the decree passed by the learned Judge is perfectly justifiable.

9. Learned counsel for the appellant has, however, argued that the learned Judge has committed a serious error in treating the payments as independent loans without taking note of the fact that the loan requested for and agreed to be made was on the basis of a specific agreement regarding repayment, namely, that the entire amount paid by the plaintiff for the six instalments will be repaid only after the payment of the amount due for the sixth instalment and on demand. Learned counsel has contented that as the loan is one based upon an agreement stipulation time for repayment, it is Article 55 that would apply and not Article 19 as found by the learned Judge or Article 21 as contended by the learned counsel for the respondent. It is this contention which requires to be considered in the appeal.

10. Articles 19, 21 and 55 are in the following terms:

'Description of suitPeriod of limitationTime from which period begins to run.

Art. 19 For money payable for money lentThree yearsWhen the loan is made.Art. 21 For money lent under an agreement that it shall be payable on demand.Three yearsWhen the loan is made.Art. 55 For compensation for the breach of any contract, express or implied not herein specially provided for.ThreeyearsWhen the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when It ceases.'

11. Interpreting Article 19 of the Act, it has been held uniformly that the said Article applies only to suits based upon ordinary loans where no special agreement is made as to the time when the amount shall be repayable. It is applicable only when the suit is based upon a loan pure and simple and repayable forthwith. Where the loan is made on the basis of an agreement fixing a certain date for

repayment Article 19 may not have any application. In this case the plaintiff has set up and proved a specific agreement stipulating a time for payment as the basis on which the loan is made. Hence Article 19 may not be the proper article applicable in this case. In this view, the learned Judge was obviously in error in applying Article 19 and holding that the claim of the plaintiff for the five instalments paid more than 3 years prior to the institution of the suit is barred by limitation.

12. Article 21 also, in my view, may not have any application to the facts of this case. Article will have application only 'for money lent under an agreement that it shall be payable on demand'. The agreement pleaded and proved in this case as the basis of the loan is not that the amount shall be repayable 'on demand'. But the agreement is to the specific effect that the entire amount paid for six instalments shall be repayable only after the payment of amount for the sixth instalment and on demand. Thus it is clear that the agreement in this case has specifically stipulated a time regarding repayment of the loan by indicating that the amount paid shall be repaid only after the amount due for the sixth instalment is paid. In the circumstances, in my view, Article 21 may not also apply to the instant suit since it is not a suit based on a loan granted on the basis of an agreement that it shall be payable on 'demand'.

13. In this connection, it is interesting to note that the term 'on demand' has been used in this Article in its legal sense, namely, 'forthwith and without demand', understanding the term 'on demand' in Article 21 in that sense Articles 19 and 21 would overlap and Article 21 is really superfluous which has been found so as early as in *A.M.K.K. Chetty v. Palaniappa* (1920) 57 IC 908.

14. According to the learned Counsel for the appellant the only other Article which will have application to the suit, is Article 55. It is one of the residuary Articles in the schedule and it applies to suits for 'compensation for breach of any contract express or implied'. The learned counsel for the respondent has contended that this Article also will not be applicable to the suit in question since the suit is not 'for compensation for breach of contract'. The suit in the form in which it is brought can be considered only as a suit for a 'debt' alleged to be due from the defendant on the basis of an alleged oral loan. The word 'compensation' would suggest that the

suit coming within the purview of the said article must be one for damages or unliquidated damages. At the first blush, the argument appeared to be attractive and forceful. But on a close scrutiny, it is clear that the argument cannot be sustained in law.

15. The wording of Article 55 of the present Act and that of Article 115 of the old Act are identical. The basis of the above argument of the learned counsel for the respondent is that the word 'compensation' may not comprehend the concept of debt and as such a suit for a debt based upon a breach of contract as in this case may not come within the purview of Article 55 of the Act (Article 115 of the old Act). Dealing with the term compensation used in Article 115, Mookerjee, J. has made the following observations in the decision reported in *Md. Mozaharal Ahmad v. Md. Azimaddin*, AIR 1923 Cal 507 at page 511:

'.....the term used in Article 115 and Article 116 is not damages but compensation, which also occurs in Section 73 of the Indian Contract Act. As Lord Esher observed in *Dixon v. Calcraft* (1892) 1 QB 458 the expression compensation is not ordinarily used as an equivalent to damages, although as remarked by Fry, L.J. in *Skinner's Co. v. Knight* (1891) 2 QB 542 compensation may often have to be measured by the same rule as damages in an action for the breach. The term compensation as pointed out in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. Damages, on the other hand; constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained; the value estimated in money, of something lost or withheld. The term compensation etymologically suggest the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent.....'

It has been held in *Rameshwar Mandal v. Ram Chand Roy*, (1884) ILR 10 Cal 1033 that a suit on a verbal agreement to repay on a specified date is governed by Article 115 of the old Act. It was also held in that decision that neither Article 57 nor Article 59 of the old Act (corresponding to Articles 19 and 21 of the new Act) would apply in such cases. It is interesting to note that Beverley, J. expressed in so many words his doubt as to whether the suit in that case is properly one for

compensation and found himself convinced that it was so on the basis of the meaning given to the word compensation in *Nobocoomar Mookhopadhaya v. Siru Mullick* (1881) ILR 6 Cal 94 which was quoted with approval in that decision. In series of decisions reported in *Maneklal v. Suryapur Mills Co.*, AIR 1928 Bombay 252; *Ram Rachhya Singh v. Raghunath Prasad*, AIR 1930 Patna 46; *Ram Raghubir v. United Refineries Ltd.*, AIR 1931 Rangoon 139; *Fate Chand v. Nagendra*, AIR 1931 Cal 790 and *Ajitkumar v. Dacca Municipality*, AIR 1932 Cal 85, it has been held that even suit for debts would be governed by this Article (Article 115 of the old Act) and the word compensation would comprehend a money claim made on the basis of a breach of contract. The discussion contained in the decisions dealing with Article 115 of the old Act and Article 55 of the new Act would clearly show that the word 'compensation for breach of contract' would comprehend also a claim for money due under a contract alleging breach of contract. In this view, it is clear that Article 55 may properly be considered as the Article which would apply to the suit in question as the loan in this case was made on the basis of an agreement specifying a fixed time for its repayment. As per the agreement proved in this case, the entire amount became repayable only on the payment of the amount due for the sixth instalment. The cause of action for the suit also could arise only on the payment of the sixth instalment. On such payment the entire amount paid so far becomes forthwith payable since the agreement was to pay 'on demand' thereafter. In this view no portion of the suit claim would be barred by limitation on the date of filing of the suit and the dismissal of the suit in part is illegal and unsustainable in law. In the circumstances, I set aside the decree of the trial Court to the extent it has dismissed the suit and pass a decree for an amount of Rs. 30,000/- with 12% interest from 20-12-1982 to the date of filing of the suit (12-12-1985) and thereafter at the rate of 6% per annum till realisation. It is made clear that the decree passed hereby will be over and above the decree passed by the trial Court in favour of the plaintiff.

The appeal is thus allowed. But in the circumstances of the case without costs.