

Champalal Vs. Saligram

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Court : Rajasthan

Decided On : Mar-17-1961

Reported in : AIR1961Raj235

Judge : I.N. Modi and; L.N. Chhangani, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 21; Limitation Act, 1908 - Sections 19; [Stamp Act, 1899](#) - Sections 35

Appeal No. : First Appeal No. 58 of 1955

Appellant : Champalal

Respondent : Saligram

Advocate for Def. : Chandmal,; Kishore Singh and; U.L. Gupta, Adv.

Advocate for Pet/Ap. : Sumerchand, Adv.

Disposition : Appeal dismissed

Judgement :

Modi, J.

1. This is a civil regular first appeal by the defendant Champalal from a judgment and decree of the Senior Civil Judge, Merta, dated the 30th April, 1955, in a suit for money.

2. The plaintiff's case briefly put, was that. on the 25th January, 1947, the defendant had borrowed a sum of Rs. 10,000/- from the former and had executed a receipt Ex. 1 for it on the same date and that he had also executed a promissory note on that very date in favour of the plaintiff. It was also alleged that the defendant had agreed to pay interest at the rate of six per cent per annum on the principal sum aforesaid. It was further alleged that the defendant had paid a sum of Rs. 2750/- as interest for the period from the 25th January 1947 to the 25th August 1951, which fact had been acknowledged by him in his letter dated the 20th September, 1951, Ex. 7.

The case of the plaintiff further was that in the meantime he had many a time pressed the defendant to repay the loan as a result of which the latter sent the plaintiff a number of letters, which are Exs. 2 to 6, and are respectively dated as the 13th January, 1948, 19th October, 1949, 5th December, 1949, 30th January, 1950, and 16th September, 1950, wherein he begged for extension of time to repay the loan owing to straightened circumstances.

Eventually, the plaintiff instituted the present suit on the 15th March, 1954. in the court of the Senior Civil Judge, Merta, for the recovery of Rs. 10,000/- as principal and Rs. 1550/- as interest upto the date of suit, the total being Rs. 11,550/-The plaintiff claimed that the suit was within limitation on account of the acknowledgments of the debt contained in the various letters referred to above.

3. The defendant resisted the suit. He flatly denied that he had ever borrowed the sum of Rs. 10,000/- from the plaintiff or had executed a receipt for it or had executed a promissory note in lieu of that. No question, therefore, arose of agreeing to pay any interest. He further contended that the promissory note was inadmissible in evidence, being improperly stamped. Pleas of limitation and jurisdiction were also raised, and it was suggested that the plaintiff had manufactured this false claim against the defendant as there was bad blood between them on account of some election, the particulars of which were not mentioned in the written statement.

4. The trial court held that the promissory note was short stamped, and, therefore, was not admissible in evidence, and no suit could be based on it. Even so, it found

that the plaintiff's version that the defendant had borrowed a sum of Rs. 10,000/- from the former and had executed a receipt for the same was fully established. It also found that the payment by the defendant of the sum of Rs. 2750/- as interest for the period extending from the 25th January, 1947 to the 25th August, 1951, was established.

Its findings on the questions of limitation and jurisdiction were in favour of the plaintiff, and as a result of these findings it decreed the plaintiff's suit for Rs. 11550/- principal and interest together with pendente lite and future interest at the rate of six per cent, per annum from the date of the suit until realisation. Aggrieved by this judgment, the plaintiff has come up in appeal to this Court,

5. We shall deal with the various contentions raised by learned counsel for the defendant in the order in which they were raised before us.

6. In the first place, it was contended that the trial court's finding that it had jurisdiction to try the suit because the defendant resided within its territorial jurisdiction and that the cause of action arose in Ladnun, a town within the jurisdiction of that court was entirely erroneous because there was no evidence whatsoever on the record to that effect. In support of this contention, we were taken by learned Counsel for the defendant into the entire evidence led by the plaintiff, and his criticism appears to us to be correct so far as it goes.

In reply, learned counsel for the plaintiff drew our attention to a Vakalatnama filed on behalf of the defendant in the trial court on the 24th May, 1954, and an affidavit filed by him in the same court on the 3rd March, 1955. In both these documents, the defendant described himself as a resident of the town of Ladnun which is undoubtedly within the jurisdiction of the trial court. It was also brought to our notice in this connection that the summonses in the suit were served on the defendant at Ladnun.

It is unnecessary, however, for us to determine whether on this material, we should be prepared to hold that the defendant was proved to be living within the jurisdiction of the trial court at the relevant time because, in our opinion, Section 21 of the Code of Civil Procedure is a complete answer to the defendant's objection

on the ground of the want of territorial jurisdiction of the trial court.

That section clearly provides that no objection as to the place of suing shall be allowed by any appellate or revisional court unless (1) such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and (2) there has been a consequent failure of justice.

There is no doubt that the objection as to the want of jurisdiction of the trial court was raised on behalf of the defendant at the earliest possible opportunity; but that by itself would not be enough to uphold this objection, and there must be proof of the further requirement that the trial has been attended with a consequent failure of justice. As to this latter requirement, we are clearly of opinion that there has been no failure of justice in this case.

What was pressed for our consideration in this connection was that the defendant was Prevented from leading his evidence and entering the witness-box in the Ladnun court, and, therefore, there was a failure of justice. On a Careful consideration of the entire circumstances of the case, we hold that this grievance is altogether without any substance. The defendant was represented by counsel in the court at Ladnun throughout the trial.

All his witnesses which he wished to summon in the trial court belonged to Ladnun. He was given ample opportunity to produce them. Likewise he had the fullest opportunity to examine himself in evidence on his own side which he failed to do for reasons which we are entirely unable to understand. In these circumstances, we have no hesitation in holding that the defendant has miserably failed to prove that any failure of justice had been occasioned to him on account of the suit having been tried by the court at Ladnun. We consequently over-rule this objection,

7. It was next argued that the suit was barred by time. As already stated the loan was taken by the defendant on the 25th January, 1947, and the present suit was brought on the 15th March, 1954. The plaintiff sought in his plaint to overcome the bar of limitation by the acknowledgments contained in Exs. 2 to 7. It has been held

by the trial court that all these letters proceeded from the defendant and bore his signature, and this finding has not been questioned before us.

Strong reliance was however placed in support of this contention on the circumstance that these letters did not contain any specific reference to the debt in suit. We see no force in this contention in the circumstances of the case. We may mention straightway that it was not the contention of learned counsel for the defendant that these letters pertained to any other transaction of loan between the parties.

We may also take the opportunity of mentioning here that the finding of fact of the trial court that the defendant had borrowed a sum of Rs. 10,000/- from the plaintiff and had executed the receipt Ex. 1 on the 23th January, 1947, was not questioned before us nor indeed it could be. At this stage, we would refer to the contents of some of the letters on the strength of which the plaintiff seeks to surmount the bar of limitation. Ex. 3 is dated 19-10-1949. We would quote the following extract from it:

'I gave you a word to send you but after my coming here I found that ail the markets or Bazars were closed owing to Pujah holidays.....I am trying my level best to fulfil mywordI might be late in sending you.My time is going very bad now. Anyhow I am trying my level best to send you.'

Thereafter the defendant sent Ex. 4 to the plaintiff which is dated the 5th December, 1949, The following extract from this letter deserves to be quoted:

I have just received your letter, I wrote to you to send in December last week so I will try my level best to send you. About the interest you wrote me to send. So I would bs sending you the interest at an early date.'

Apparently, the defendant' was not able to fulfil his promise and so the plaintiff wrote to him again and then the defendant sent Ex, 5 in reply on the 30th January, 1950 :

'I am very sorry to have not kept my word. Kindly excuse me Any way I wouldnot be able to square up fully at a time, but gradually I would give you. I am

intending to go to Ladnun within a fortnight and then I would give you at least the interest.'

This brings us to Ex. 6 which is another letter of the defendant and was received by the Plaintiff on the 21st September, 1950. Inter alia the defendant wrote as follows:

'Very possibly I would clear your account upto December. So this my humble request to you for the last time, which you will kindly consider. In the meantime I would be sending you gradually.'

Then comes the last Letter Ex. 7 dated the 20th September, 1951, in which the defendant wrote to the plaintiff as follows;

'.....hearing from you about the money I owe you against the promotes given, I am trying my best to clear. I shall be sending you some thing about one thousand monthly. The interest incurred has already been given to you and in future interest will be sent duly which please note and oblige.'

The main criticism of learned counsel for the defendant as to these letters is that they do not make any specific reference to the debt in suit, and, therefore, they should not be treated as acknowledgments of liability in respect of the suit debt within the meaning of Section 19 of the Limitation Act so as to save the bar of limitation,

8. Now it is true that these letters do not specifically refer to the suit debt nor do they specify any precise sum of money as due. We are also fully conscious of the general principle that in order to constitute an acknowledgment within the meaning of Section 19 of the Limitation Act, a document which contains an admission of liability, must be indicative of the liability in suit beyond all doubt and with a reasonable certainty.

We are, however, unable to accept that the letter or letters on which, reliance may be placed by way of acknowledgments should be self-contained in the sense that the court should be enabled to hold entirely on the basis of such writing that the right acknowledged and the right sued are one and same, and it would be enough

if mutual connection between these is capable of being established by external evidence.

Thus, where at the date of acknowledgment it is shown that there was no other debt due from the defendant to the plaintiff, and certain letters are proved to have been written by the former to the latter in which his liability to pay has been acknowledged, then the courts would be perfectly justified in holding that the right acknowledged was the right in suit and no other. See *Beti Maharani v. The Collector of Etawah*. ILR 17 All 198 (PC). *Arunachellam Chettiar v. Subramanya Aiyar*, 3 Ind Cas 407 (Mad), *Jageshar Singh v. Bir Ram*, AIR 1920 Oudh 236 and *Gumani Shah v. Hukam Chand*. AIR 1937 Lab 827.

9. Applying this principle to the case before us, we have no hesitation in holding that the letters dated the 5th December, 1949, and the 30th January 1950, and the undated letter which was received by the plaintiff on the 21st September, 1950, (which was in all probability written a few days before the date of receipt) and the last letter dated the 20th September, 1951, are clear acknowledgments of the suit debt, there being no other debt outstanding between the parties, and are perfectly good and sufficient to save the present suit from the bar of limitation. We therefore concur in the finding of the trial court that the suit is within time.

10. It was next contended that even if our findings on the points referred to above were in favour of the plaintiff, the present suit was not maintainable inasmuch as it was based on a promissory note which has been held to be inadmissible in evidence for want of proper stamp by the trial court, and, therefore, we should throw out the plaintiff's suit on this ground alone. We may point out at the very outset that this aspect of the case does not seem to have been argued before the trial court, for that court, having tried the issue as to the inadmissibility of the promissory note and the non-maintainability of the suit on the basis thereof, as a preliminary issue, proceeded to try the remaining issues in the suit, and no objection whatsoever was raised on behalf of the defendant to the further trial of the suit.

This explains why the judgment of trial court does not deal with this branch of the defendant's case at all as it is now sought to be presented to us. At this date,

however, we have a bench decision of our own Court, governing the point, in *Ganga Ram v. Keshava Deo*, ILR (1958) 8 Raj 1085 : (AIR 1960 Raj 10). The facts of that case were that the plaintiff K instituted a suit against the defendants B and G for the recovery of certain money as principal and interest on the allegation that the defendant B had borrowed some money from the plaintiff and had executed a pro-note for the same.

Later, the plaintiff filed an application for permission to amend his plaint so as to convert his suit as on the original Cause of action, namely, the loan. The trial court dismissed the application as well as the suit on the ground that the pro-note being inadmissible, the plaintiff could not be permitted to prove the loan. On appeal, the Additional District Judge, Jaipur, allowed the same and remanded the case after permitting the amendment of the plaint as on the loan. The defendant then preferred an appeal to this Court. After a review of the decisions of the various High. Courts, the Bench came to the following conclusion :

A review of the authorities lends support to the well-established Principle that every loan carries with it a contract to repay, and if a hand-note or promissory note, which forms the evidence of the transaction, cannot be accepted in evidence for some reason or other there is nothing in law to prevent the plaintiff from giving other evidence as regards the loan, and if he can satisfy the court as regards the truth of his version, there is no reason why he should not be able to obtain a decree in his favour.'

Learned counsel for the defendant strenuously contended before us that the matter required further and fuller consideration and that if deemed proper, we might send this case to a larger Bench, We were referred to a large number of decisions in this connection to which we consider it fruitless to refer in detail and we would prefer to rest content by pointing out that the question is not free from a certain amount of difficulty, and if we may say so without disrespect, from confusion, where the loan is contemporaneous with the pro-note; for, as to the other class of cases, that is. where the pro-note is executed in respect of A pre-existing claim, there is a consensus of opinion that even though a promissory-note may not be admissible in evidence, the plaintiff can be permitted to fall back on the

original cause of action.

As to that class of cases, however, where a pro-note has been executed simultaneously with a loan, we find a very large preponderance of opinion in favour of the liberal view that in such cases also 'where the promissory note fails for want of proper stamp as the basis for the suit, a suit on the footing of the independent cause of action constituted by the loan would still lie except in those cases where the promissory-note was given in absolute discharge of the loan.

The reasons for arriving at this conclusion as gathered from a mass of case-law to which we have addressed ourselves but to which we consider it unnecessary to refer specifically, in view of the Bench decision of our own court, with all respect, seem to us to be not uniform and at times even conflicting, and must remain in a more or less fluid state until the law is settled by their Lordships of the Supreme Court in an appropriate case.

Speaking for ourselves, it seems to us too late in the day to take a stricter view of Section 35 of the Stamp Act read with Section 91 of the Evidence Act than that adopted by a large majority of the High Courts in our country, and we are not prepared to hold that a suit in a case like the present on a cause of action furnished by the loan will not lie at this date because the promissory note which was executed contemporaneously with it was bad for want of stamp and could not serve as a cause of action for the suit.

As a result of our study of the various decisions placed before us in this connection, we think it right to point out with all respect that the ratio for this view may be best stated to be that where the promissory note is not proved to have been given in absolute discharge of the debt contemporaneous with it, the promissory-note fails for want of stamp and the suit can still be founded on the original or the independent cause of action of the loan on the ground that the promissory-note was really in the nature of a conditional payment or a collateral security, and, therefore, where such payment failed or the security collapsed, the plaintiff could and should be allowed to fall back on the cause of action of the loan. This being our conclusion on this much vexed aspect of the case, we see no reason to dismiss the suit on this ground nor do we feel that there is any warrant

for us to take the case to a larger Bench. Consequently, we overrule this contention also.

11. This brings us to the last point which was powerfully pressed for our consideration by learned counsel for the defendant and that relates to the question of interest upto the date of suit. The contention of learned counsel is that even if we hold that despite the inadmissibility of the promissory-note the present suit would be sustainable on the cause of action furnished by the loan, we should set aside the lower court's decree in so far as it relates to the award of interest on the loan upto the date of the suit.

The main reason for this submission is said to be that the stipulation as to interest was undoubtedly a term of the contract and that term could not be allowed to be proved except in conformity with Section 91 of the Evidence Act. In other words where a contract has been reduced to writing, the writing alone can be the exclusive proof of this term and no other proof can be allowed. Our attention has been invited in this connection to certain observations of the learned members of the Division Bench in ILR (1958) 8 Raj 1085 : (AIR 1960 Raj 10) (supra). These observations are as follows :

'A word of caution may be entered here. The plaintiff can no doubt claim the original loan in respect whereof the promissory note was obtained. But if there are certain other terms which are only contained in the Promissory note, and the promissory note is inadmissible, these terms cannot be proved by oral evidence. As for example, the promissory note may contain a stipulation, as to interest or as to date of its maturity. The plaintiff can no doubt prove his loan by oral evidence but any evidence as to the rate of interest or the date when the loan was to be repaid cannot be proved by virtue of Section 91 of the Evidence Act as also Section 35 of the Stamp Act. 'This, however, would not exclude any other evidence which the plaintiff may have got in this respect.' The terms which were contained in the pro-note may not be proved by oral evidence.'

(The underlining (here into ' ') is ours.)

Both sides have sought to draw support for their respective standpoints from the extract cited above. If we may say so, with profound respect, we have experienced some difficulty in finding out the precise meaning of the sentence this, however, would not exclude any other evidence which the plaintiff may have got in this respect' in the context in which this occurs. It has been strenuously contended before Us on behalf of the defendant that this merely refers to the evidence in so far as it relates to the loan.

With equal force on the other side, it has been submitted to us that this observation relates to the provability of the rate of interest or the date when the loan was to be repaid. Having given our careful consideration to the controversy raised before us, we think that it would be permissible for us to say that the observations made by their Lordships in this connection were obiter; for the question before them was whether the trial court having dismissed the plaintiff's suit as the promissory-note had been found inadmissible in evidence for want of stamp and no other evidence according to it could be allowed to prove the loan, the court of first appeal was justified in permitting the amendment of the suit on the original or independent cause of action furnished by the loan and the only question which was necessary, therefore, for decision was whether suit was sustainable on the cause of action furnished by the loan.

We are, therefore disposed to think that whether the suit could be decreed or not and if so in what circumstances, did not strictly arise before the Bench at the particular stage; and if we are right in this view, as we think we are, the expression of opinion to whatever effect it might be in the extract quoted above does not seem to be binding on us. Having thus cleared the ground, we now address ourselves to the precise question which is raised for our decision in this case in the matter of interest.

12. Before we refer to the decisions of the other High Courts, we think it right to re-emphasize what we have adverted to above namely that the principal basis for permitting a suit on a cause of action independently of the promissory note can only be that there is another independent cause of action. By whatever name one may call it, that is, whether original or independent, hardly matters. Put in plain

language, the position boils down to this.

When the cause of action as founded on the promissory note fails, then there is another cause of action and that is allowed to be pressed into service. The question then arises, what is that cause of action? or, stated in slightly different language, what was this other agreement between the parties? If this agreement also covered certain other terms, or conditions, then we see no reason in principle why the plaintiff should be debarred from proving them.

It should be another matter if the plaintiff is altogether stopped from founding his suit on this alternative cause of action and in that case he can neither prove the principal nor its interest. But if the preponderance of opinion is as we have shown above that the plaintiff can be allowed to found his suit otherwise, then accepting that he can be so allowed to prove the loan which after all is said and done is one term of the contract, we see no rational justification why he cannot be allowed to prove any other terms covered by the agreement such as the rate of interest or the date of the repayment of the loan.

The whole thing would thus depend upon the exact content of the agreement and not upon any other considerations. If the agreement of loan covered the rate of interest as well, the plaintiff, in our opinion, need not be debarred from Proving it and where he so proves it, he is entitled to a decree in respect of interest also. Where, however, the agreement did not contain any such term, his claim for interest must undoubtedly fail.

For in that case, he could only prove interest with reference to the promissory note and the same must be held to be inadmissible. The conclusion at which we have arrived above is supported by the Full Bench decision of the Allahabad High Court in Sheo Nath Prasad v. Sarjoo Nonia, AIR 1943 All 220 (FB). Dar J. in summing up the law at page 227 of the report expressed himself as follows :

'When a promissory note was given in consideration of a sum of money it is a question of fact in each case whether the sum of money was given as a loan or not as a loan; in the absence of all evidence the presumption is that it was given by way of a loan; and there is a further presumption that the promissory note was

given in conditional payment of the loan. If by reason of the defect of stamp the promissory note is held inadmissible in evidence, 'it is open to the plaintiff to prove the loan and all its terms' and to recover the loan irrespective and independently of the promissory note by giving other evidence including that furnished by a contemporaneous receipt, if there be any.' The underlined (here in ' ') is ours.) In a later Full Bench decision of the Allahabad High Court in *Major Mistri v. Binda Debi*, AIR 1946 All 126, the plaintiff brought a suit for the principal sum with interest on the basis of the loan although the defendant had executed a promissory note simultaneously in favour of the plaintiff which the plaintiff did not exhibit. The Munsiff decreed the suit both for principal and interest. It may be pointed out that the rate of interest was proved by the defendant's own evidence in the witness-box in this case.

The learned Judges held that the transaction of loan was proved quite independently of the promissory note and thus dismissed the appeal. The point to note is that the suit was decreed not only with regard to the principal amount but also interest. We may add that the mere fact that the defendant had admitted the rate of interest makes no difference to the question of principle involved in the determination of the question before us, that question being whether any other evidence relating to interest apart from the promissory note can be admitted or not. An admission is only one specie of such evidence.

13. We may here refer to another Full Bench case of the Rangoon High Court in *Maung Chit v. Roshan Kareem Omer*, AIR, 1934 Rang 389, in which the promissory note not having been duly stamped, a decree was passed in favour of the plaintiff on the alternative claim for the amount of the loan with interest and this decree was upheld right up to the High Court.

14. We may now refer to a few cases which are on the other side of the line. In *Balbhadra Singh v. Bhagwat Pande*, AIR 1933 Pat 584 (1) a learned Single Judge of the Patna High Court held that evidence as regards the rate of interest could not be given independently of the hand-note. In coming to this conclusion, the learned Judge relied on a bench decision of that Court in *Pattinson v. Bindhya Debi*, AIR 1933 Pat 196. With all respect, it seems to us that the question which arose and

was decided in the last-mentioned case was whether interest could be allowed as damages for detention of money and it was held that it could not be and this case has no relevance to the point arising before us.'

15. The next case to which we were referred on behalf of the defendant in this connection was Babu Lal v. Durga Prasad, AIR 1940 Oudh 308. The question which was again mooted there, was whether interest in this class of cases could be awarded as damages under Section 73 of the Contract Act or Under Section 80 of the Negotiable Instruments Act or under the Interest Act on equitable grounds, and it was held that this could not be done.

15-a. The point we wish to make is that interest was not claimed in these cases as an integral part of the alternative cause of action furnished by the loan but was instead claimed either as damages under Section 73 of the Contract Act or under Section 80 of the Negotiable Instruments Act or on general equitable principles under the Interest Act, and we have no doubt that where the transaction of loan itself did not embody any stipulation as to charging of interest as a matter of agreement between the parties, independently of the promissory note, no interest Prior to the date of suit can be possibly allowed.

16. The position which emerges from the discussion made above is that where the promissory-note for the loan becomes inadmissible for want of stamp, and, a suit on the alternative cause of action furnished by the loan itself is or can be permitted to be brought, then a decree for the Principal amount of the loan can certainly be passed where such loan is proved as a matter of fact; and as to the further question, namely, whether a decree for interest prior to the date of the suit can as well be passed or not. that must depend upon whether the alternative, agreement sued upon contained any agreement as to interest Or not, and that where the plaintiff succeeds in proving such an agreement, there can be no valid objection to the award of interest also in such a case.

17. Now let us see how the principle which we have enunciated above applies to the facts and circumstances of the present case. It was stated by the plaintiff in paragraph one of his Plaint that the defendant. had agreed to pay interest on the sum of Rs. 10,000/- at six per cent Per annum. When the plaintiff Came into the

witness-box, he reinforced this position.

The opening sentence of his deposition is that the defendant borrowed Rs. 10,000/- from the plaintiff and agreed to pay interest at the rate of eight annas per cent per mensem and that he had executed a receipt for the same. Thereafter he goes on to mention that he had pressed the defendant to pay back the loan and that in reply the latter sent him the letters Exs. 2 to 7 to which we have already referred above.

The plaintiff thereafter proceeded to mention that the defendant had paid a sum of Rs. 2750/- as interest in all and thereafter did not pay anything more. A reference to Ex. 4 dated the 5th December, 1949, and to Ex. 5 dated the 30th January 1950, and Ex. 7 dated the 20th September, 1951, would show that there is no valid reason whatsoever to doubt the statement of the plaintiff in this connection.

We are, therefore, fully satisfied that the plaintiff has been successful in proving that there was an alternative and independent agreement by the defendant to pay the former interest on the amount of the loan at six per cent per annum, and, therefore, he is entitled to the same.

18. It only remains for us to point out in this connection that the ground on which the learned trial Judge allowed interest under the Interest Act cannot be sustained and we do not consider it necessary to deal with the point as learned counsel for the plaintiff has plainly expressed the inability to support the judgment of the learned trial Judge on that basis.

19. For the reasons mentioned above, we find no force in this appeal and hereby dismiss it with costs.