K.Jeyaraman vs M/S.Sundaram Industries Ltd on 4 April, 2008

Equivalent citations: AIR 2008 (NOC) 2532 (MAD.)

Author: K.K.Sasidharan

Bench: K.K.Sasidharan

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:04/04/2008

CORAM
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

S.A.(MD)No.330 of 2007
and
M.P.(MD).No.1 of 2007

K.Jeyaraman ... Appellant

Vs.

M/s.Sundaram Industries Ltd.,
through its Special Officer,
211, South Veli Street,
Madurai-1. ... Respondent

PRAYER

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 23.03.2006 made in A.S.No.46 of 2005 on the file of Principal District and Sessions Judge, Madurai, partly allowing the judgment and decree dated 21.06.2005 made in O.S.No.151 of 2003 on the file of Second Additional Subordinate Judge, Madurai.

!For Appellant ... Mr.R.Surianarayanan

^For Respondent ... Mr.V.Ramakrishnan

:JUDGMENT

The appellant calls in question the legality and correctness of the judgment and decree dated 23.03.2006 in A.S.No.46 of 2005 on the file of Principal District and Sessions Judge, Madurai.

2. The respondent had preferred a suit in O.S.No.151 of 2003 before the Second Additional Subordinate Judge, Madurai for a judgment and decree directing the appellant to pay a sum of Rs.1,15,000/- together with interest thereon at the rate of 18% per annum from 27.01.2003 till the date of payment and for other incidental reliefs.

3. In the plaint in O.S.No.151 of 2003, it was the case of the respondent that the appellant was an employee of the respondent industry and during the year 1996, the appellant had suffered from major cardiac arrest which required him to undergo a major by-pass surgery and to meet the medical expenses for such a major operation, the appellant and his wife, who was working in the Tamil Nadu Electricity Board, pleaded with the management of the respondent to extend possible help. Accordingly, the respondent provided a loan to the appellant to the tune of Rs.1,30,000/- in two installments, one on 19.08.1996 and another on 21.08.1996. Subsequently, the appellant had repaid a sum of Rs.30,000/- on 12.09.1996 and with regard to the balance, the appellant had made assurances to make the payment within a period of one year. Since the appellant failed to pay the amount, the respondent as per letter dated 24.09.1999 wanted the appellant to pay the amount within three months and called upon the appellant to sign and send back the communication as a token of acceptance of the arrangement for repayment, and the same was signed and returned by the appellant. Subsequently, the respondent, as per notice dated 04.02.2000, claimed payment and in response to the said letter, the appellant, as per his reply letter dated 18.02.2000 acknowledged the liability, but pleaded for time on the ground that the medical reimbursement would be sanctioned to his wife by the first week of April 2000. Since the appellant was evading payment, the respondent again issued a letter dated 28.04.2000 reminding the appellant of his liability to pay the amount. Subsequently, another letter was sent to the appellant on 04.10.2001 and the said letter was replied by the appellant on 17.10.2001 expressing his gratitude, but seeking one month time to consult his lawyer for the purpose of sending a reply. This prompted the respondent to send a registered lawyer notice on 27.02.2002 calling upon the appellant to pay the amount and the same was replied by the appellant through his lawyer with all sorts of false and incorrect allegations, which made the respondent to file the suit.

4. The suit was resisted by the appellant and in the written statement filed by the appellant, it was his contention that he was an employee of the respondent and during the period of his employment, he had a very good relationship with the management and as a result, even after the retirement in the year 1995, the appellant was given an extension of service till September 1999. During the year 1996, he had undergone a by-pass surgery and at that time, only on account of compassionate ground and as a reward for his excellent service, the management of the respondent Industry offered to meet the expenditure required for the surgery. Since the appellant had spent only a sum of Rs.1,00,000/-, the balance of Rs.30,000/- was returned to the respondent. The appellant had denied the claim of loan as set up by the respondent. The appellant had also contested the suit on the ground that the very suit is barred by limitation and according to him, there was no acknowledgment of liability by the appellant so as to enable the respondent to claim the amount in spite of the fact that the suit claim is barred by limitation.

5. The trial Court, on the basis of the pleadings, framed necessary issues and answered those issues in favour of the appellant and dismissed the suit.

6. The judgment and decree dated 21.06.2005 in O.S.No.151 of 2003 was taken up in appeal by the respondent before the Principal District Judge, Madurai.

7. The learned first appellate Judge had framed necessary points for determination and ultimately, allowed the appeal as per judgment and decree dated 23.03.2006, whereby the suit filed by the respondent was decreed for a sum of Rs.1,00,000/- with direction to pay the interest at 6% from 18.03.2002 till realization.

8. The judgment and decree dated 23.03.2006 in A.S.No.46 of 2005 on the file of Principal District Judge, Madurai is the subject matter of the present appeal.

9. The Second Appeal was admitted by this Court on 18.04.2007 on the following two substantial questions of law:

> (i) Whether the finding of the lower Appellate Court that Exs.A.1 and A.3 are an acknowledgement of debt as under Section 25(3) of Indian Contract Act is correct under law, as the said provision is only applicable to the debt arisen from the business transaction that too there is a contract between the parties; and
>
> (ii) Whether Exs.A.1 and A.3 are not an acknowledgment of liability as it is time barred and hit by Section 18 of the Limitation Act."

10. In the above factual matrix, I have heard Mr.R.Surianarayanan, learned counsel appearing for the appellant and Mr.V.Ramakrishnan, learned counsel appearing for the respondent.

11. The learned counsel appearing for the appellant vehemently contended that the first appellate Court erred in decreeing the suit on the basis of Ex.A.3, and there was no unconditional acknowledgment in the said document and promise to pay the amount by the appellant. The learned counsel further contended that the suit is hopelessly barred by limitation and as such, the first appellate Court grievously erred in granting the relief in favour of the respondent.

12. Per contra, the learned counsel appearing for the respondent supported the findings of the Court below and contended that there was a valid acknowledgment as per Ex.A.3 and as such, the first appellate Court was perfectly correct in decreeing the suit.

13. The only issue involved in the present appeal pertains to the acknowledgment of debt as evident by Exs.A.1 and A.3 and in case Ex.A.3 is found to be an unconditional promise within the meaning of Section 25(3) of the Indian Contract Act, the suit is clearly maintainable.

14. It is not in dispute that the amount was paid by the respondent to the appellant on 19.08.1996 as well as on 21.08.1996. It is also not in dispute that the appellant had returned a sum of Rs.30,000/-

to the respondent on 12.09.1996. Since the appellant did not pay the balance amount of Rs.1,00,000/- in spite of the request of the respondent, a letter in Ex.A.1 dated 24.09.1999 was sent by the respondent to the appellant calling upon him to pay the amount and the said letter was acknowledged by the appellant on 24.09.1999 itself. Subsequently, there were series of letters sent by the respondent to the appellant and in response to the letter dated 04.02.2000 marked as Ex.A.2, the appellant had sent a reply dated 18.02.2000 which was marked as Ex.A.3 and the said communication is relied on by the respondent as an unconditional promise by the appellant so as to save the suit from the bar as contained in the Limitation Act.

15. The first appellate Court considered Exs.A.1 and A.3 for the purpose of decreeing the suit, inasmuch as according to the first appellate Court, there is a clear promise to pay the amount as found in Exs.A.1 and A.3 and, therefore, the said promise had the effect of giving a fresh period of limitation.

16. As per the document in Ex.A.1 dated 24.09.1999, the respondent wanted the appellant to pay the amount within a period of three months and in token of acceptance of the said arrangement for repayment of the loan amount of Rs.1,00,000/-, the appellant was asked to sign the letter and the same was accordingly acknowledged by the appellant. Subsequently, in pursuance to the letter dated 04.02.2000, the appellant had given an undertaking agreeing to pay the amount after receiving the same from the Tamil Nadu Electricity Board, where the wife of the appellant was employed. The said letter marked as Ex.A.3 has also been relied on by the first appellate Court to decree the suit, as according to the first appellate Court, the said letter could be construed as a promise within the meaning of Section 25(3) of the Indian Contract Act.

17. The learned counsel for the appellant, by placing reliance on the judgment of this Court in Shanmugam, S.A. v. P.V.S.Balusamy Chettiar reported in 2001(2) LW 686, contended that any acknowledgment should be made within the expiry of the prescribed period for instituting the suit and since acknowledgment was not given within three years from the date on which the amount was advanced by the respondent, the present suit is clearly barred by limitation.

18. Section 18 of the Limitation Act provides that where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. A plain reading of Section 18 of the Limitation Act shows that the acknowledgment of liability should be made before the expiry of the prescribed period for instituting a suit on the basis of the original cause of action. It is seen from Ex.A.1 that the acknowledgment was given by the appellant on 24.09.1999 and the said acknowledgment was well within three years from the date of the loan granted by the respondent. Therefore, it cannot be said that the acknowledgment given by the appellant will not have the effect of an extension of the period prescribed for instituting a suit to recover the money.

19. The first appellate Court had also referred to Section 25(3) of the Indian Contract Act. The document in Ex.A.3 dated 18.02.2000 submitted by the appellant to the respondent was treated as a promise within the meaning of Section 25(3) of the Indian Contract Act and the same was also taken as a relevant factor for the purpose of decreeing the suit.

20. Section 25 of the Indian Contract Act provides that an agreement made without consideration is void, unless it comes within the purview of the exceptions mentioned in the said provision.

21. Sub Clause (3) of Section 25 is an exception to Section 25. The said provisions implies that a promise to pay a time barred debt would be valid and enforceable, provided the same is made in unequivocal terms, made in writing and signed by the person or his agent duly authorised to pay the debt in whole or in part of which the other party might have enforced payment, but for the law of limitation. The Section contemplates an express 'promise' on the part of the promisee and the promise should be unconditional.

22. In the present case, in Ex.A.3 the appellant had made a promise to pay the amount only after receiving the amount from the Tamil Nadu Electricity Board. A plain reading of the document containing the said promise shows that it is nothing, but a conditional promise and even as per the said promise, the cause of action for filing the suit arises only after receiving the amount from the Electricity Board. It is not clear from the documents or evidence as to whether the wife of the appellant had received the amount from her employer, the Tamil Nadu Electricity Board. Therefore, it cannot be said that the document in Ex.A.3 is an unconditional promise covered by Sub-Section 3 of Section 25 of the Indian Contract Act.

23. In N.Ethirajulu Naidu vs. K.R.Chinnikrishnan Chettiar reported in 1975(1) MLJ 11, Division Bench of our High Court had an occasion to consider the scope of Section 25(3) and S.Maharajan, J, speaking for the Bench observed thus:

> "9.....
>
> What the section requires is an express promise made in writing and signed by the person to be charged therewith. Nothing short of an express promise, therefore, will provide a fresh period of limitation. It is settled law that an implied promise is not sufficient. In fact, in Govindan Nair v. Achuthan Nair, this Court held as follows:
>
> "The promise referred to in section 25, sub-section (3), Contract Act, must be an express one and cannot be held to be sufficient if the intention to pay is unexpressed and has to be gathered from a number of circumstances. In other words, there must be a distinct promise to pay before the document could be said to fall within the provisions of this section See Ramaswami Pillai v. Kuppuswami Pillai, Govind Das v. Sarju Das, Maniram Seth v. Seth Rup Chand and Mukhi Lal v. Gul Muhammad."

10. The distinction between an acknowledgment under section 18 of the Limitation Act, 1963, and a promise within the meaning of Section 25(3) of the Contract Act is of great importance. Both have

the effect of creating a fresh starting point of limitation, if they are in writing signed by the party or his authorized agent. But while an acknowledgment under the Limitation Act, in order to be valid, must be made before the expiry of the period of limitation, a promise under section 25, sub-section (3) of the Contract Act, to pay a debt may be made after the debt has become barred by limitation. Exhibit A-1, which purports to be an account stated, may conceivably amount to an acknowledgment, but it is of no avail to the plaintiff because it is an acknowledgment of a time-barred debt. As it contains no express words promising to pay a time-barred debt, it will not avail the plaintiff either. In Jethi Bai v. Putlibai, an account stated has been held to be a mere acknowledgment, as distinguished from a promise to pay under section 25(3) of the Indian Contract Act."

24. A careful consideration of Ex.A.3 shows that what was conveyed was only a conditional promise, whereby the appellant had agreed to pay the amount in case he receive the amount from the Tamil Nadu Electricity Board. The relevant portion of Ex.A.3 pertaining to the promise is extracted below:

> "I shall be able to repay the amount only after receiving the amount from TNEB, Madras to my wife. I also understand that the amount is likely to be sanctioned in the first of April 2000."

25. The averments in Ex.A.3 clearly shows that the promise was on condition of getting the amount from the Tamil Nadu Electricity Board and such being the case, it cannot be said that the document in Ex.A.3 is a promise within the meaning of Section 25(3) of the Indian Contract Act. Therefore, the substantial question of law with respect to Ex.A.3 is answered against the respondent and in favour of the appellant.

26. Even though the document in Ex.A.3 cannot be construed to be an acknowledgment within the meaning of Section 25(3) of the Indian Contract Act, the earliest document marked as Ex.A.1 dated 24.09.1999 is found to be an acknowledgment by the appellant agreeing to pay the amount within a period of three months. In case the date of grant of loan by the respondent is taken as the starting point of limitation, they should have filed the suit on or before 20.08.1999. The document in Ex.A.1 is dated 24.09.1999 and in view of the acknowledgment as found mentioned in Ex.A.1, the respondent is entitled for a fresh period of three years as provided under Section 18 of the Limitation Act. If the date of Ex.A.1 is taken as the starting point of limitation, the respondent ought to have filed the suit within a period of three years which expires on 23.09.2002. Admittedly, the suit was filed only in January 2003 and as such, Ex.A.1 will not come to the rescue of the respondent so as to save the suit from the statutory bar. Therefore, the suit is clearly barred by limitation. Though the substantial question of law with respect to Ex.A.1 is to be answered in favour of the respondent being an acknowledgment within the meaning of Section 25(3) of the Indian Contract Act and satisfies the conditions enumerated in Section 18 of the Limitation Act, still the suit is barred by limitation, inasmuch as the respondent failed to institute the suit within the period of three years from the date of Ex.A.1.

27. The pleadings as well as evidence adduced in the suit shows that even after by-pass surgery, the appellant continued to be in the employment of the respondent till September 1999 and he was

allowed to retire after payment of all terminal benefits.

28. In Hero Vinoth vs. Seshammal reported in 2006(5) Scale 477, the Apex Court considered the principles governing Section 100 of the Civil Procedure Code and summarised the principles thus:

> "24. The principles relating to Section 100 CPC, relevant for this case, may be summarised thus:-
>
> (i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.
>
> (ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.
>
> (iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the Courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

29. On a careful consideration of Exs.A.1 and A.3, I am of the view that the first appellate Court had grievously erred in granting the decree on the basis of the said document which necessitates interference by this Court invoking Section 100 of the Civil Procedure Code.

30. Therefore, I am inclined to set aside the judgment and decree of the first appellate Court, as it misconstrued the documents in Exs.A.1 and A.3.

31. In the result, the Second Appeal is allowed by setting aside the judgment and decree dated 23.03.2006 in A.S.No.46 of 2005 on the file of Principal District and Sessions Judge, Madurai and the judgment and decree dated 21.06.2005 in O.S.No.151 of 2003 on the file of Second Additional Subordinate Judge, Madurai is restored. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

To

1.The Principal District and Sessions Judge, Madurai.

2.The Second Additional Subordinate Judge, Madurai.