

RAJASTHAN HIGH COURT

New Age Rice Mills

Vs.

Mahaveer Rice, Dal and Oil Mills

Civil First Appeal No. 58 of 1982

(Sunil Kumar Garg, J.)

27.04.2000

JUDGEMENT

Sunil Kumar Garg, J.

1. This is a first appeal filed by the appellants- defendants against the judgment and decree passed by the learned Additional District Judge No. 1, Hanumangarh on 27-4-1982, by which the learned Additional District Judge No. 1, Hanumangarh decreed the suit of the plaintiff-respondent No. 1 for Rs. 20,000.00 (Rs. 14,796.00 principal amount and Rs. 5204.00 interest) against the appellants-defendants and also against the respondent No. 2 (defendant No. 6) ex parte.

2. This first appeal arises in the following circumstances:-

The plaintiff-respondent No. 1 filed a suit against the appellants-defendants on 1-11-1977 amended on 5-10-1981 for recovery of Rs. 14,796/- principal amount and Rs. 5204/- interest stating that the plaintiff-respondent-firm is a registered firm under the Indian Partnership Act and Shankarlal is one of the partners of the plaintiff-respondent No. 1 firm, who is acquainted with the facts of the case. The appellant-defendant No. 1 is also a registered firm and the plaintiff-respondent firm had money dealings as well as sale and purchase of goods with the appellant-defendant No. 1 firm with effect from 5-12-1973 to 12-9-1975 and so many transactions were held between both the firms and ultimately, upto 12-9-1975, a sum of Rs. 20,000/- (Rs. 14,796 principal amount and Rs. 5204/- interest) was found due against the appellants-defendants and for the recovery of the said amount, this suit has been filed by the plaintiff-respondent No. 1 against the appellants-defendants.

Note :- That during the pendency of this suit, the plaintiff-respondent No. 1 firm amended its pleadings and one para 19 was added stating that Om Prakash, who is one of the partners of the appellant-defendant No. 1 firm issued a cheque (Ex. 53) of Rs. 5,000/- on 11-2-1975 in favor of the plaintiff-respondent No. 1 acknowledging that amount was due in favor of the plaintiff-respondent No. 1 firm and this cheque was also entered in the account book of the plaintiff-respondent No. 1 firm and thus, from this acknowledgment, the suit of the plaintiff-respondent No. 1 should be treated within limitation. The suit of the plaintiff-respondent No. 1 was contested by the defendants-appellants by filing a written statement on 12-1-1979 amended on 31-10-1981 on various grounds, but the main plea of the defendants-appellants is that the suit of the plaintiff-respondent No. 1 is time-barred and no limitation from the cheque (Ex. 53) issued by Om Prakash, one of the partners of the appellant-defendant No. 1 firm, can be claimed by the plaintiff-respondent No. 1, as Om Prakash has no authority to issue cheque and whatever cheque has been issued by Om Prakash, it was in his personal capacity and not on behalf of the appellant-defendant No. 1 firm and furthermore, it is stated that the interest which has been charged by the plaintiff-respondent No. 1 firm is excessive. Hence, the suit filed by the plaintiff-respondent No. 1 be dismissed. On the pleadings of the parties, the following issues were framed on 30-9-1980 and one more issue was added on 4-12-1981: During the proceedings in the lower Court, the evidence on behalf of the plaintiff-respondent No. 1 firm as well as on behalf of the defendants-appellants were produced and some documents were got exhibited by the parties. After weighing the evidence of both the sides, the learned Additional District Judge No. 1, Hanumangarh decided the above issues in the following manner through his judgment dated 27-4-1982 : Issues Nos. 1 and 2 These issues were decided in favor of the plaintiff-respondent No. 1 and against the appellants-defendants and interest was charged @ 12% p.a. instead of 15% p.a. though the plaintiff-respondent No. 1 wanted interest @ 15%. Issues Nos. 3 and 6A These issues were also decided in favor of the plaintiff-respondent No. 1 firm and against the defendants-appellants and it was further held that cheque (Ex. 53) was issued by Om Prakash, who was one of the partners of the appellant-defendant No. 1 firm and this cheque was issued in the capacity as partner and from this cheque, the suit of the plaintiff-respondent No. 1 was found within limitation by the learned lower Court. Issues Nos. 4, 5 and 6

These issues were also decided in favor of the plaintiff-respondent No. 1 and against the defendants-appellants. In view of the findings on issues Nos. 3 and 6A, the suit of the plaintiff-respondent No. 1 firm was decreed by the learned Additional District

Judge No. 1, Hanumangarh for Rs. 20,000/- (Rs. 14,796/- principal amount and Rs. 5204/- interest) against the defendants-appellants through his judgment and decree dated 27-4-1982.

Aggrieved by the judgment and decree dated 27-4-1982 passed by the learned Additional District Judge No. 1, Hanumangarh, the appellants-defendants have preferred this first appeal in this Court.

3. In this first appeal, the learned counsel for the appellants-defendants has raised only two points :-

(1) That the interest which has been charged by the learned lower Court is excessive; and

(2) That the issues Nos. 3 and 6A were wrongly decided by the learned lower Court, inasmuch as, the cheque (Ex. 53) was never issued by Om Prakash on behalf of the appellant-defendant No. 1-firm and, therefore, no acknowledgment on account of debt or amount due can be given to the plaintiff-respondent No. 1-firm and the suit filed by it should be treated as time-barred.

4. So far as the first point is concerned, the rate of interest is not at all excessive as the learned lower Court has only awarded interest @ 12% p.a. Hence, this argument has no force.

5. Now, we come to the second argument.

6. It may be stated here that one para was added in the plaint by the plaintiff-respondent No. 1 through amendment, in which it is stated that on 11-2-1975, Om Prakash, who was defendant No. 6 in the original suit and who is now respondent No. 2 in the present first appeal against whom judgment and decree was passed ex parte, has issued a cheque of Rs. 5,000/- in favor of the plaintiff-respondent No. 1 firm of the amount which was due against the appellant-defendant No. 1 firm and this amount has been entered in the account book (Ex. 28) of the plaintiff-respondent No. 1 firm.

7. The learned lower Court while deciding issues Nos. 3 and 6A has held-

"(1) That Ex. 53, which is a cheque issued by Om Prakash, bears the signature of Om Prakash at places A to B in the capacity as partner;

(2) P.W. 1 Shankarlal, who is partner of the plaintiff-respondent No. 1-firm has stated that this cheque was issued by Om Prakash in the capacity as partner of appellant-defendant No. 1 firm.

(3) That the amount of cheque (Ex. 53) is further entered in the account book (Ex. 28) of the plaintiff-respondent No. 1 firm.

(4) That the evidence of the appellants- defendants on this point is nothing, but a mere denial.

(5) That if the appellants-defendants want to rebut the above facts, they should have produced Om Prakash;

(6) That issuance of cheque Ex. 53 by one of the partners Om Prakash in favor of the plaintiff-respondent No. 1-firm amounts to acknowledgment and thus, suit of the plaintiff-respondent No. 1 is within limitation, as the suit has been filed within three years from the date of issuance of cheque Ex. 53."

8. Now it is to be seen whether the findings of the learned lower Court with respect to issues Nos. 3 and 6A are correct or not.

9. To attract the operation of Section 19 of the Limitation Act, 1963 (hereinafter referred to as 'the Act of 1963'), two conditions are essential-

"(i) the payment must be made within the prescribed period of limitation; and
(ii) it must be acknowledged by some form of writing either in the handwriting of the payee himself or signed by him."

10. The burden is on the plaintiff and he is required to allege and prove not only that there was payment of interest on a debt or part payment of the principal but that such payment had been acknowledged in writing in the manner contemplated by the section. The plaintiff must establish that the payment was in fact made by the debtor towards the debt in dispute. The term 'person liable to pay' in Section 19 of the Act of 1963 means any person liable to pay the debt. Accordingly, a payment by one of the persons liable can avail not merely against the person making the payment and his successors, but even against other persons liable in respect of the same debt.

11. In this respect, Section 20 of the Act of 1963 will also be seen.

12. The principle on which each partner binds all his associates is the principle of

agency and it has accordingly been held by all the High Courts that in a going mercantile concern the authority of a partner to sign acknowledgments etc. on the firm's behalf is to be presumed as an ordinary rule. In such a case, the partner has implied authority to keep the debt alive, and evidence of authority from the other partners is not necessary. Hence, when the acknowledgment or payment is made by one of the partners, it must be binding on other partners also. The agent's authority need not necessarily be in writing and it may be proved by oral evidence. The agent's authority may be either express or implied from all surrounding circumstances and it may be general or special. No formal authorization of the agent is required and his authority may be implied, i.e. it is permissible for the Court to presume authority from the attendant circumstances.

13. Section 20 of the Act of 1963 thus supplements the provisions of Sections 18 and 19 of the Act of 1963 and may be treated as an Explanation to these two Sections. This Section, like Sections 18 and 19, concerns itself with the question as to who can keep alive a liability, which has not become time- barred. It may be made clear that this Section has nothing to do with the revival of a time-barred debt.

14. Keeping in mind the above legal principles, the findings of the learned lower Court in respect of issues Nos. 3 and 6A are based on well settled principles of law and are supported by oral and documentary evidence. When cheque Ex. 53 was issued by Om Prakash, he was one of the partners of the appellant-defendant No. 1 firm and cheque has been issued in the capacity as partner of the appellant-defendant No. 1 firm and this cheque has been acknowledged by the plaintiff-respondent No. 1 firm through Ex. 28 and thus, the plaintiff-respondent No. 1-firm in this case had discharged its burden by placing cheque Ex. 53 and other oral evidence. In rebuttal, the defendants- appellants are not in a position to rebut the above facts. The appellants defendants could rebut the evidence by producing Om Prakash but they have not done so. Hence, the payment made by cheque (Ex. 53) by one of the partners in favor of the creditor-plaintiff-respondent No. 1-firm is a payment which satisfies the conditions of Sections 19 and 20 of the Act of 1963. Thus, the findings of the learned lower Court that through Ex. 53 and with the help of Section 19 of the Act of 1963, a fresh limitation has accrued in favor of the plaintiff-respondent No. 1-firm are correct one.

15. The argument that the learned lower Court has wrongly placed the burden on the appellants-defendants is not correct, as initial burden which was on the plaintiff

respondent No. 1-firm has been well discharged by it. The burden of proof lies on the party who substantially asserts the affirmation of issue and not upon the party who denies it. In the present case, after the amendment of the plaint and when Para 19 was introduced, the plaintiff-respondent No. 1- firm has proved by oral and documentary evidence all the contents of Para 19 and thus, discharged its burden of proving the facts narrated in Para 19 of amended plaint.

16. It may be further stated here that in the matter of proof, there is a distinction between the civil and criminal cases. In a civil case, a defendant cannot take up the same stand as an accused in a criminal case. In civil cases, unlike criminal ones, it cannot be said that the benefit of reasonable doubt must necessarily go to the defendant. Even the preponderance of probabilities may serve as a good basis for decision. Apart from this, where both the parties have already produced whatever evidence they had, the question of burden of proof ceases to be of any importance and in the present case, the plaintiff-respondent No. 1-firm has very well discharged its burden. On the contrary, the facts narrated by the plaintiff-respondent No. 1-firm have not been rebutted by the defendants-appellants. Hence, the issues No. 3 and 6A were rightly decided by the learned lower Court in favor of the plaintiff- respondent No. 1 firm, by which the suit of the plaintiff- respondent No. 1 firm was rightly held within limitation and benefit of Section 19 of the Act of 1963 was rightly given to the plaintiff-respondent No. 1-firm on the basis of acknowledgment. Thus, the argument of the learned counsel for the appellants-defendants that the suit is barred by limitation is wholly untenable. The findings of the learned lower Court in respect of issues Nos. 3 and 6A are liable to be confirmed. For the aforesaid reasons, this first appeal of the appellants-defendants is liable to be dismissed and the same is dismissed with costs by affirming the judgment and decree dated 27-4-1982 passed by the learned Additional District Judge No. 1, Hanumangarh.

Appeal dismissed.