

(2011) 09 DEL CK 0066

Delhi High Court

Case No: Regular First Appeal No. 393 of 2002

Jai Parkash Gupta

APPELLANT

Vs

Oriental Bank of Commerce

RESPONDENT

Date of Decision: Sept. 27, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96
- Limitation Act, 1963 - Article 113, 24

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Sameer Dewan, for the Appellant; Gunjan Kumar and Saran Suri, for the Respondent

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.

The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment of the Trial Court dated 14.2.2002. The impugned judgment dismisses the suit of the Appellant/plaintiff on account of being barred by time.

2. The facts of the case as pleaded by the Appellant/plaintiff in the plaint were that he sold certain property as a commission agent and broker for M/s. Skipper Sales Pvt. Ltd. being the property at 3rd Floor, 5, Bhagwan Dass Road, New Delhi. For this transaction M/s. Skipper Sales Pvt. Ltd. had to pay the Plaintiff a commission of Rs. 86,400/- towards brokerage. It was pleaded that only half of the amount being a sum of Rs. 43,200/- was paid by M/s. Skipper Sales Pvt. Ltd. to the Appellant/plaintiff, and, the balance 50% payment was not made. The further case in the plaint was that M/s. Skipper Sales Pvt. Ltd. drew two cheques of Rs. 43,200 and Rs. 36,700/- in favour of Sh. M.K. Gupta, the brother of the Appellant/plaintiff (who was also a commission agent), and which two cheques were credited in the account of Sh. M.K.

Gupta. Since both Sh. M.K. Gupta and M/s. Skipper Sales Pvt. Ltd. had an account with the Respondent/defendant/bank, therefore, by a transfer entry, the amount of the cheques was transferred from the account of M/s. Skipper Sales Pvt. Ltd. to the account of Sh. M.K. Gupta. The further case in the plaint was that when the Appellant/plaintiff demanded a sum of Rs. 43,200/- from M/s. Skipper Sales Pvt. Ltd. it was allegedly found that the amount was deposited in the account of Sh. M.K. Gupta. It was further pleaded in the plaint that the Plaintiff sent a legal notice dated 12.10.1981 to M/s. Skipper Sales Pvt. Ltd., with a copy to the Respondent/defendant to pay the amount of Rs. 43,200/-, but the same was not paid. It was further pleaded in the plaint that the Respondent/defendant/bank had filed a suit in the Court of the Civil Judge at Ghaziabad against Mrs. Malti Gupta, widow of Sh. M.K. Gupta and Smt. Manti Devi, mother of Sh. M.K. Gupta for the recovery of Rs. 3,32,063.47 and in which suit the Appellant/plaintiff was made a party as a guarantor. That suit of the Respondent/defendant against the Appellant/plaintiff was dismissed vide judgment dated 19.7.2000. In this suit, the Appellant/plaintiff alleges that one Mr. M.L. Sarin, Manager of the Respondent/defendant/bank stated that there was a reverse entry made from the account of Mr. M.K. Gupta and which amount was lying in the sundry account. The Appellant/plaintiff therefore laid out a case that the Appellant/plaintiff was entitled to this amount lying in the sundry account.

3. The Respondent/defendant appeared and contested the suit by stating that the transaction in question on the basis of which amount was claimed was of the year 1981 and the suit was filed twenty years later in the year 2001 and therefore no records were available inasmuch as the records are weeded out after 10 years as per the RBI guidelines. It was also pleaded that the filing of the suit by the Respondent/defendant/bank for recovery against the Appellant/plaintiff at Ghaziabad cannot extend the period of limitation. The suit was argued to be barred by time as having been filed in the year 2001 for a claim which arose, assuming it arose, in the year 1981.

4. Before proceeding further, I may state that the plaint of the Appellant/plaintiff was totally vague as to how the Respondent/defendant/bank is liable inasmuch as unless the Respondent/defendant/bank credited a cheque in the account of Sh.M.K. Gupta although the same was drawn in favour of the Appellant/plaintiff issued by M/s. Skipper Sales Pvt. Ltd., the Appellant/plaintiff would have no cause of action against the bank. The Appellant/plaintiff actually and only either had a cause of action against M/s. Skipper Sales Pvt. Ltd. for recovery of the 50% balance commission of Rs. 43,200/- or against Sh. M.K. Gupta who may have wrongly taken away the commission of Rs. 43,200/- by getting a cheque issued in his name instead of the Appellant/plaintiff. On the face of it therefore the averments in the plaint were vague and did not construe sufficient cause of action to claim the relief of recovery of money against the Respondent-bank. Merely because the Respondent/defendant/bank reverses an entry from the account of Sh. M.K. Gupta cannot mean that the said amount was in fact the amount to which the

Appellant/plaintiff was entitled to, inasmuch as it was never the case of the Appellant/plaintiff that any cheque drawn in his name by M/s. Skipper Sales Pvt. Ltd. was wrongly credited, instead of his account, to the account of his brother Sh. M.K. Gupta.

5. The Trial Court has dismissed the suit as being barred by Limitation by holding that the Article 24 of the Schedule to the Limitation Act, 1963 applies in the following words:

14. Plaintiff has filed a suit for recovery of Rupees 2,06,496/- on 29.1.2001. Admittedly the Plaintiff stated that the cause of action for filing of the present suit accrued on the dates mentioned in the plaint which in the instant case when the Defendant credited and transferred the sum of Rs. 79,900/- which is inclusive of the amount claimed by the Plaintiff and credited in the account of M.K. Gupta the brother of the Plaintiff since deceased on 25.1.1980 by the Defendant.

15. The Plaintiff has further stated that on 7.12.1981 when the amount was transferred in the sundry account, the cause of action accrued in favour of the Plaintiff to file the present suit. Cause of action has been defined in Order II of the Code of Civil Procedure: Cause of action in its general term means a cause of action for which the suit was brought. A cause of action is that which gives the occasion and foundation of the suit as held in [The Cantonment Board, Meerut Vs. Naraindas and Others](#), . It includes every fact which would be necessary for the Plaintiff to prove if traversed in order to support his right to judgment of the court as held in AIR 1975 Del 15.

16. Article 24 of part I of the Limitation Act prescribes a period of recovery of the money payable by the Defendant to the Plaintiff for the money received by the Defendant for the Plaintiff's use as three years from the time money was received. It is the case of the Plaintiff that the suit is based on the bill dated 12.2.1979 and when the payment was due and subsequently when the amount of the half of the commission was erroneously deposited in the account of Sh.M.K. Gupta the deceased brother the Plaintiff. It is an admitted case of the Plaintiff that the said cause of action accrued on 25.1.1980 and 7.12.1981, which in itself is beyond period of limitation.

17. The Plaintiff also wishes to exclude the period wherein the Defendant had filed a suit against the said Sh.M.K. Gupta wherein the Plaintiff was the guarantor. Such a ground is not available to the Plaintiff as there was no order restraining the filing of the present suit or the release of the payment.

6. Though in my opinion, the Trial Court has wrongly applied Article 24, inasmuch actually it is Article 113 which applies, however, the same will not make any difference because the period of limitation under both the Articles is 3 years from arising of the cause of action. As per the Appellant/plaintiff himself the cause of action had arisen allegedly in 1981 itself when he had come to know of wrong entry

having been made in the account of his brother Sh.M.K. Gupta instead of the Appellant/plaintiff. Assuming that there was any cause of action for this entry, and which is very much doubted because the cheque issued by M/s. Skipper Sales Pvt. Ltd. has not been proved to be in the name of the Appellant/plaintiff (and consequently there cannot be any liability at least against the Respondent/defendant/bank), however, even if we take that the limitation began in 1981, the suit should have been filed definitely by the years 1984-1985, however the suit has been filed much much later in the year 2001 and therefore the same has been rightly held to be barred by limitation by the impugned judgment. As per para 8 of the plaint, the Appellant/plaintiff in the year 1981 itself had himself sent the legal notice to M/s. Skipper Sales Pvt. Ltd., with the copy to the Respondent/defendant/bank on allegedly coming to know that an amount of Rs. 43,200/- has been deposited in the account of Sh. M.k.Gupta and not in the account of the Appellant/plaintiff. As already stated, though there was no cause of action against the Respondent/defendant/bank inasmuch as the cheque was not proved to have been drawn in the name of the Appellant/plaintiff by M/s. Skipper Sales Pvt. Ltd., and thus the cause of action can only be against either M/s. Skipper Sales Pvt. Ltd. of having drawn the cheque in the name of Sh.M.K. Gupta instead of the Appellant/plaintiff or against Mr. M.K. Gupta for wrongly receiving the amount, yet, assuming that any cause of action had arisen the same arose in the year 1981 as per the Appellant/plaintiff himself and therefore the suit filed in the year 2001 has been rightly dismissed by the impugned judgment as being barred by limitation. One of the main object of Limitation Act, 1963 is that a suit should be filed within a particular period of time because otherwise valuable evidences may be lost and which evidence is necessary to decide the suit. The Respondent/defendant/bank claimed that it had no record of transaction of the year 1981, for the suit filed in 2001, as records have been weeded out after 10 years as per instructions of RBI, and which is in my opinion, is another valid reason for the suit to have been rightly barred by limitation. The Trial Court has also rightly disallowed exclusion of any period with respect to the suit filed against the Appellant/plaintiff in the Court at Ghaziabad because there is no provision for exclusion of limitation merely because a suit is pending against the Appellant/plaintiff.

7. In view of the above, there is no merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs.