

**(2001) 08 AP CK 0046**

**Andhra Pradesh High Court**

**Case No:** CRP No. 561 of 1999

Syndicate Bank, Hyderabad

APPELLANT

Vs

A. Vijayarama Rao and Others

RESPONDENT

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**Date of Decision:** Aug. 16, 2001

**Acts Referred:**

- Andhra Pradesh (Telangana Area) Small Causes Court Act, 1330 - Section 12
- Limitation Act, 1908 - Section 20
- Limitation Act, 1963 - Section 19, 20, 4
- Negotiable Instruments Act, 1881 (NI) - Section 6

**Citation:** (2002) 1 ALD 405 : (2001) 2 APLJ 409

**Hon'ble Judges:** P.S. Narayana, J

**Bench:** Single Bench

**Advocate:** K.G. Sastri, for the Appellant; Mohd. Ghouse Mohiuddin, for the Respondent

**Final Decision:** Allowed

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**Judgement**

1. This civil revision petition is filed by the unsuccessful plaintiff in Small Cause Suit No.989 of 1993 on the file of the Court of the Additional Judge, City Small Causes Court at Hyderabad dated 23-9-1994.

2. The facts in brief are that the suit is filed for recovery of a sum of Rs.2087/-with interest thereon. The case of the revision petitioner-plaintiff is that the first respondent-first defendant took a loan of Rs. 9150/- to purchase a house plot by submitting a loan application dated 10-7-1987 and the first respondent-first defendant had furnished respondents 2 and 3 i.e., the defendants 2 and 3 as guarantors and all of them had executed the articles of agreement and as per the direction of the first respondent loan amount was paid to Srinivas Enterprises and the amount is repayable with interest at 17.5% per annum with quarterly rests and the first defendant agreed to pay the loan amount at the rate of Rs. 305/- per month commencing from 31-8-1987. The payments made by the first defendant were

credited to his account. A notice was issued on 4-9-1993 demanding for the balance of amount and since the balance of amount is not paid the suit is filed.

3. The defendants had filed a written statement taking the plea of fraud stating that the bank officials of the revision petitioner plaintiff bank in collusion with some others came to the place of working of the defendants respondents and obtained signatures of the employees of APSRTC including some on blank papers stating that house-sites will be provided to them on monthly instalment basis and "they had signed those papers blindly and accordingly their employer had been deducting at the rate of Rs.323/- per month for a period of 36 months and the site worth about Rs. 2,000/- was only provided to the first respondent and the suit is liable to be dismissed as barred by time.

4. On the strength of the respective pleadings the only point which was framed for consideration is:

Whether the Plaintiff is entitled to suit amount?

On behalf of the revision petitioner plaintiff PW1 was examined and Exs.A1 to A7 were marked and on behalf of the respondent defendants DW1 was examined and Ex.B1 was marked.

5. On consideration of both oral and documentary evidence the Court below had dismissed the suit and aggrieved by the same the plaintiff bank had preferred the present revision.

6. The Court below after a detailed discussion at para 6 of the judgment had appreciated both oral and documentary evidence and came to the conclusion that the element of fraud pleaded by the respondents defendants had not been established. However, the Court below had dismissed, the suit on the ground that the suit claim is barred by limitation.

7. Sri G.K. Deshpande representing Sri K.G. Sastri learned Counsel for the revision petitioner plaintiff bank had made elaborate submissions on the question of limitation. The learned Counsel had submitted that even as per the articles of agreement Ex. A2 the last payment was payable on or before 31-1-1990. The suit was filed on 25-10-1993, which is Monday. The contention of the learned Counsel for the petitioner is that the fast payment was made on 23-10-1990 since the amount under the cheque which was issued by the employer of the first respondent though bears the date 12-10-1990, was actually realized on 23-10-1990 and hence it should be taken that the date of realization is the date from which limitation has to be reckoned with. The learned Counsel also had stressed on the word or expression "repayment" in Sections 19 and 20 of the Limitation Act 1963. The learned Counsel further contended that though the limitation had expired even by 23-10-1993 i.e., three years in view of the intervening holidays the suit was well instituted within time on the date of reopening of the Court after holidays i.e., 25-10-1993 and hence

by virtue of Section 4 of the Limitation Act 1963 the suit is filed within the period of limitation. The learned Counsel had distinguished the decision of the Apex Court in [Jiwanlal Achariya Vs. Rameshwarlal Agarwalla,](#) on facts and had submitted that it cannot be said that always the payment realized in the case of a cheque on a subsequent date will relate back to the date of the cheque when actually cheque was either issued or a date which the cheque bears.

8. The Counsel for the respondents had resisted these submissions stating that the Court below had correctly appreciated the question of limitation and hence in view of the limitations and parameters imposed by virtue of Section 12 of the A.P. Tangana Area Small Causes Court Act the impugned order does not suffer from any legal infirmity.

9. Section 6 of the Negotiable Instrument Act 1881 defines cheque as "a cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand". Section 19 of the Limitation Act deals with the effect of payment on account of debt or of interest on legacy. The word relevant for our purpose in Section 19 of the Limitation Act 1963 are: "by his agent duly authorised in this behalf a fresh period of limitation shall be computed from the time when the payment was so made." The word "payment for the purpose of saving the limitation assumes importance. Now whether the date of cheque as such should be taken as the date of payment or the date on which actually the amount had been realized should be taken as the date of payment is the question invoked in the present revision petition. Section 20 of the Limitation Act deals with the effect of acknowledgement or payment by another person. In T.SUBRAHMANYAM V. C.VENKATARATHNAM ILR 1955 393, the Division Bench was pleased to observe on this as aspect as follows:

"A cheques issued by the debtor would be an acknowledgement of payment within the meaning of the proviso to Sub-section 1 of Section 20 of the Indian Limitation Act (IX of 1908) as amended by Act 1 of 1927. The word "acknowledgement" means only recognition or admission. The admission of payment need not be necessarily subsequent to the payment. It may be simultaneous or even antecedent. The cheque is only evidence of payment but it ex facie contains recitals admitting the payment. The issue of a cheque and the subsequent realization of it may be considered as one process, the cheque containing the acknowledgement and the realization of the cash being the payment."

In fact the learned Judges after referring the entire case law on the subject were pleased to observe at page 397 as follows:

"Horwill J. in Krishnaswami Iyer V. Ramakrishna Iyer (1), when confronted with Machenzie V. Thiruvengadathan (2), made the following remarks:

In Mackenzie V. Thiruvengadathan (2), the learned Judges had to consider a payment by means of a cheque that had not been made by the debtor, but which

had been endorsed over by him to his creditor. An endorsement would not amount to a payment acknowledged in the handwriting of the person making the payment, but the difficulty lies in the words used by the learned Judges in saying so. They said: The cheque is only an order for payment and it does not evidence any payment at all."

In *BADAM THIRIPURASUNDARAMMA v. STATE OF ANDHRA PRADESH* AIR 1984 AP 305 it was observed as follows:

"A Division Bench of the Madras High Court in *United Commercial Bank Limited V. Reliable Hire Purchase Company* (1976) 46 com case. 403 speaking through Veeraswami, C.J., held that:

But it seems to us that until the cheque was cashed, control in respect thereof continued to remain with the drawer. He could, for instance, instruct his banker before the cashing of the cheque not to honour it. That can only be on the basis that he still continues to be the owner. This view was expressed while considering the duty of the banker and the right of the drawer when the latter was alleged to be negligent in making payment and filed suit for the recovery thereof."

In *K.SURYANARAYANA v. STATE BANK OF INDIA* 1988 (2) ALT 843, it was observed the limitation is not saved unless the acknowledgement of payment is in the handwriting of or in a writing signed by the person making payment. The decision in *T. Subrahmanyam* case (supra) was not referred to by the learned single Judge in *K. Suryanarayana* case (supra). Be that as it may. the question which fell for consideration in *Jiwanlal Acharya* case (supra) was one of post dated cheque accepted conditionally and the effect thereof. I am of the considered opinion that the facts are distinguishable and as far as the facts available as on record in the present case for reckoning the period of limitation it is the payment which is to be taken into consideration and the payment should be taken as the date on which amount was realized by the revision petitioner bank by negotiating the cheque and hence the suit cannot fail on that ground.

10. The next question is whether the suit filed on 25-10-1993 is after the period of limitation. Though the limitation had expired on 23-10-1993 in view of the intervening holidays the suit was rightly instituted on the next working day i.e., Monday on 25-10-1993 and hence the suit is saved by virtue of Section 4 of the Limitation Act, 1963.

11. In the light of the view expressed by me above in any view of the matter, it cannot be said that the suit is barred by limitation and since this is the ground of which the suit was dismissed I am inclined to arrive at a conclusion the Court below had not made the judgment in accordance with law and it is tainted with illegality.

12. For the foregoing reasons. I hereby set aside the impugned order dated 23-9-1994 in Small Cause Suit No. 989 of 1993 on the file of the Additional Judge, City

Small Causes Court, Hyderabad and decree the suit in Small Cause Suit No.989 of 1993 with costs through out. The Civil Revision Petition is allowed.