

(2013) 07 AP CK 0078

Andhra Pradesh High Court

Case No: Appeal Suit No. 1714 of 2000

Arunodaya Caterers Pvt. Ltd.
Managing Director

APPELLANT

Vs

Desu Venkata Subba Rao and
Others

RESPONDENT

Date of Decision: July 16, 2013

Acts Referred:

- Limitation Act, 1963 - Section 18

Citation: (2013) 5 ALD 200

Hon'ble Judges: S.V. Bhatt, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: M. Ram Mohan Reddy, for the Appellant; V.S.R. Anjaneyalu, for the Respondent

Final Decision: Disposed Off

Judgement

L. Narasimha Reddy, J.

The defendant in O.S. No. 143 of 1990, on the file of the Senior Civil Judge, Machilipatnam, is the appellant. For the sake of convenience, the parties are referred to as arrayed in the suit.

2. During the pendency of the suit, the sole plaintiff died and his legal representatives were brought on record.
3. The plaintiff filed the suit for recovery of a sum of Rs. 13,16,695/- under different heads. The trial Court decreed the suit as prayed for, except that a sum of Rs. 15,000/- was disallowed.
4. The claim of the plaintiff was that he is the proprietor of M/s. Triveni Nut Powder at Machilipatnam, the defendant is a private limited company, running a hotel and that he advanced amounts, be it for repaying the loan obtained from the A.P. State Financial Corporation or for other needs. The amounts so advanced are said to have

been reflected in the khata up to 01.07.1988, being Rs. 1,96,901/- It was also stated that a sum of Rs. 1,05,000/- was paid in three different spells between 12.03.1986 and 08.04.1986 and Rs. 5 lakhs was paid on five different occasions between 21.09.1987 and 16.03.1988. He pleaded that though he acted as a director of the defendant company between 03.12.1987 and 04.02.1989, he never agreed for the said amounts to be treated as share capital or for allotment of fresh shares. Stating that in spite of repeated demands the defendant did not pay the amount, the plaintiff filed the suit.

5. The defendant opposed the suit by filing written statement. The receipt of the amounts from the plaintiff was admitted. It was, however, stated that the amount was received as loan with a specific understanding that the shares of corresponding value would be allotted and that such shares have, in fact, been allotted to the plaintiff. The plea as to limitation was also raised.

6. Sri. M. Jagannatha Sarma, learned counsel for the appellant/defendant, submits that at every stage of the payments made by the plaintiff, it was made clear that he will be allotted the shares and only with that understanding, the amounts were received. He further submits that the plaintiff was party to certain resolutions of the board of directors, in which the factum of payment was taken note of. He submits that the suit was barred by limitation and still the trial Court passed a decree. He made extensive reference to the documentary evidence adduced by the parties.

7. Sri. Y. Nagaiah, learned counsel for the respondent/plaintiff, on the other hand, submits that though the payment was made to the defendant, a private limited company, such payments can be treated as having been made for allotment of shares, if only the applications for that purpose were made. He submits that nowhere in the evidence it is mentioned that the plaintiff ever made any request for allotment of shares, much less any formal or informal application was made. He contends that the decree passed by the trial Court does not warrant interference.

8. On the basis of the pleadings before it, the trial Court framed the following issues:

- i) Whether the plaintiff is entitled to recover the suit amount?
- ii) Whether the suit is premature as alleged in the written statement?
- iii) Whether the khata copy filed along with the plaint is incorrect?
- iv) Whether the plaintiff is not entitled to any interest much less as claimed in the plaint?
- v) Whether the plaintiff is a share holder and also acted as a director of the defendant company for some time?
- vi) To what relief?

9. The sole plaintiff deposed as P.W. 1 and he filed Exs. A-1 to A-19. On behalf of defendants, D.Ws. 1 to 3 were examined and Exs. B-1 to B-31 were filed.

10. Except for a sum of Rs. 15,000/-, the entire suit claim was accepted and a decree was passed.

11. The points that arise for consideration in this appeal are:

(a) Whether the amount paid by the plaintiff to the defendant was for allotment of shares and whether the steps for allotment of shares were initiated in accordance with law, by the defendant? and

(b) Whether the suit was barred by limitation?

12. The second point needs to be taken up first. The payments under three heads, as mentioned above, were made between 12.03.1986 and 16.03.1988. The suit was filed on 12.12.1990. Since the relief claimed in the suit is one for recovery of money advanced as loan either cash or through cheques, Articles 19 and 20 get attracted. The limitation for recovery of loan advanced in cash starts from the date on which it is made, and for the money lent through cheques, the starting point is the date on which the cheque is encashed. If the dates on which payments are made are taken into account, the suit in respect of some of them stands barred by limitation.

13. The plaintiff, however, took the plea that the defendant acknowledged the payment, particularly in reply to the demand made by them through Ex. A-5 dated 25.04.1988. A perusal of Ex. A-5 discloses that the details of the payments made by them were mentioned and a demand was made for repayment thereof. The reaction to this emerged in the form of resolution dated 08.06.1988, marked as Ex. B-2. A specific reference was made to Ex. B-2 in that resolution. However, it was observed that the money shall be treated as payment towards allotment of shares. It is a different matter that the plaintiff has never given his consent for allotment of shares, much less did he request. That aspect would be dealt with at a bit later. From the point of view of limitation, Ex. B-2 answers the description of "acknowledgement" as defined or described u/s 18 of the Limitation Act. It hardly needs any mention that once an acknowledgement emerges, a fresh period of limitation becomes available to the plaintiff. Therefore, the plea that the suit was barred by limitation cannot be accepted.

14. Coming to the first point, it is not in dispute that the plaintiff made payment of amounts under different heads and at different points of time. The stock plea of the defendant was that shares were allotted against the amounts so paid. Extensive reference is made to resolutions or circulars issued from time to time.

15. The defendant is a private limited company. In the matter of allotment of shares, it is governed by the Companies Act and the Regulations made thereunder. The allotment of a share is purely in the discretion of the board of directors. The occasion to examine a request for allotment of shares would arise if only an

application for that purpose is made. Though the various authorities under the Companies Act stipulate the prescribed form of application for allotment of shares, in a given case, an informal request can also be taken into account. It is only when a specific request, mostly in writing, is made by an agency for allotment of shares, that an occasion to allot them would arise. In the instant case, it was always the unilateral offer which emanated from the board of directors. On certain occasions, the plaintiff was also present in the board. The fact, however, remains that the resolution passed by the board can at the most be treated as an offer and unless it is accepted to whom it is made, it cannot give rise to any concluded contract. It hardly makes any difference whether the offer was made to a third party or the one who is on the board of directors.

16. Once it emerges that the plaintiff did not apply for allotment of shares, any amount of unilateral gesture on the part of the defendant to treat the amount paid by him as the value of the shares allotted to him, would not lead to any legal consequence. The inevitable consequence is that the defendant is liable to repay the amount that was borrowed from the plaintiff.

17. The trial Court has arrived at correct conclusion on proper appreciation of the oral and documentary evidence available on record and we are not inclined to take a different view.

18. The appeal is, accordingly, dismissed. There shall be no order as to costs. The miscellaneous petitions in this appeal shall also stand disposed of.