

(2007) 10 BOM CK 0055

Bombay High Court (Nagpur Bench)

Case No: Criminal Application No. 2032 of 2007

Vijay Ganesh
Gondhlekar

APPELLANT

Vs

Indranil Jairaj Damale

RESPONDENT

Date of Decision: Oct. 4, 2007

Acts Referred:

- Contract Act, 1872 - Section 25, 25(3)
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Limitation Act, 1963 - Section 18
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2008) 2 BC 695 : (2007) 4 CivCC 647 : (2008) CriLJ 657 : (2007) 6 MhLj 419 : (2008) 1 RCR(Civil) 530

Hon'ble Judges: C.L. Pangarkar, J

Bench: Single Bench

Advocate: P.M. Kalar, for the Appellant; V.S. Dhobe and Ananta Bandre, for the Respondent

Final Decision: Dismissed

Judgement

C.L. Pangarkar, J.
Rule

2. Heard finally with consent of parties.

3. This is an application u/s 482 of Criminal Procedure Code seeking to quash order dated 12-3-2007 passed by the Sessions Judge whereby he confirmed the order of the Magistrate.

4. The facts are as follows:

The present application u/s 482 of Criminal Procedure Code is filed by the accused in Criminal Complaint instituted u/s 138 of Negotiable Instruments Act. It is alleged that the accused/applicant had borrowed a sum of Rs. 20,000/- from the complainant on 1-3-1995 and the accused-applicant issued a cheque in favour of the complainant. The loan was to be repaid within a period of one year but was not, and an extension of one more year was granted. Further extension of yet another one year was sought and it was also granted by the complainant and ultimately time was extended upto the year 1999. The cheque was tendered in the bank thereafter and it was dishonoured. Hence the complaint came to be filed u/s 138 of Negotiable Instruments Act.

5. Accused filed an application for his discharge and dismissal of the complaint on the ground that the debt sought to be recovered is barred by law of limitation. Although the complaint was filed in the year 1999 and accused had appeared in the case in 1999 he chose to file this application for discharge in the year 2005 i.e. after 6 years. The main ground upon which discharge was sought was that the period of limitation for recovery of loan had already expired when the complaint case was filed and cheque could not have revived the barred debt. Loan was advanced on 1-3-1995 and the cheque is dated 1-3-1999.

6. Mr. Kalar learned Counsel for the accused/applicant contended that the limitation for recovery of loan amount under civil law is only 3 years and the cheque is dated 1-3-1999. He submits that the complainant seeks to recover the barred debt. He also submits that there is no acknowledgment at all of the debt within limitation and hence the debt is completely barred on the date of issue of cheque. The argument has no force for two reasons. Firstly complainant along with the complaint has filed a deposit receipt said to be issued by the accused. It shows that it was first renewed in 1996 and then in 1997. It is renewed under the signature of the accused. The said acknowledgment mentions that the date of repayment was extended upto 1998. Finally there is an endorsement that the contract is renewed upto 1-3-1998. As said earlier it is under the signature of the accused. It is obvious that the accused acknowledged the debt by making endorsement on the same document that the contract is renewed. Thus if this acknowledgment is taken into consideration the debt could be recovered even under the civil law within 3 years from 1-3-1997. The time of three years from 1-3-1997 would expire on 1-3-2000. The cheque was tendered in bank on 10-3-1999. Even complaint u/s 138 is filed in April, 1999. Obviously even on date of institution of complaint the debt was legally recoverable. The ratio in [Narendra V. Kanekar Vs. The Bardez-Taluka Co-op. Housing Mortgage Society Ltd. and Another](#), cited by Shri Kalar could squarely be applied to this case. Next reason is that, the cheque was issued and renewed from time to time could itself, be treated as an acknowledgment. The cheque bears the amount, the name of the payee and the signature of the drawer of the cheque as well as the date of issue. Therefore, a cheque itself is a document which could fall within the scope of Section 18 of the Limitation Act. Acknowledgment is given before the expiry of period of limitation since time was extended under the signature. In the instant case therefore we need not go into

the question whether the claim could be said to be barred by limitation if a suit was to be filed. In fact in Narendra Kanekar's case cited supra the Court has observed as follows:

Mere giving a cheque, without anything more, will not revive a barred debt, because cheque has to be given, as contemplated by the explanatory in discharge of a legally enforceable debt. There is no doubt that in terms of the Indian Limitation Act, 1963, a signed acknowledgment of liability made in writing before the expiration of the period of limitation, is enough to start a fresh period of limitation. Likewise, when a debt has become barred by limitation, there is also Section 25(3) of the Contract Act, by which, a written promise to pay, furnishes a fresh cause of action. In other words, what Clause (3) of Section 25 of the Indian Contract Act in substance does is not to revive a dead right, for the right is never dead at any time, but to resuscitate the remedy to enforce payment by suit, and if the payment could be enforced by a suit, it means that it still has the character of legally enforceable debt as contemplated by the explanation below Section 138 of the Act. As far as this aspect of the case is concerned, the learned Division Bench observed that to determine as to whether or not a liability is legally enforceable, the provisions of the Contract Act cannot be said to be irrelevant. This can provide a cause for a legal liability. Although the primary question answered by the Division Bench was that a cheque becomes a promise to pay u/s 25(3) of the Contract Act, this view need not be followed by this Court in the light of the Judgment of this Court in the case of Ashwini Satish Bhat v. Shri Jeevan Divakar Loliengar (supra) and the other two Judgments referred to hereinabove. Nevertheless, the Division Bench Judgment is relevant to the extent that it holds that a promise to pay in writing as per Section 25(3) of the Indian Contract Act, 1972, matures into an enforceable contract, which can be enforced by filing a Civil Suit. If a suit could be filed pursuant to a promise made in writing and signed by the person to be charged therewith, as contemplated by Clause (3) of section 25 of the law of Contract, then, in my view, the debt becomes legally enforceable and if a cheque is given in payment of such debt is dishonoured and subsequently, the statutory notice is not complied with, then the person making the promise in writing and issuing the cheque, would still be liable to be punished u/s 138 of the Act.

Learned Counsel for the applicant had also relied on a decision of this Court in Smt. Ashwini Satish Bhat v. Shri Jeewan Divakar II (1999) BC 519. This decision has no bearing on the case at hand as in the case at hand there is an acknowledgment before expiry of limitation.

7. Assuming for the sake of argument that there was no acknowledgment before the expiry of period of limitation and the cheque is issued after a period of expiry of limitation, still whether there is an enforceable liability or not will have to be considered. I have already observed above that the cheque is issued under the signature of the debtor after putting the sum payable. The cheque directs the bank to pay the bearer sum mentioned in the cheque. As such it becomes the promise in favour of the payee within the meaning of Section 25(3) of the Indian Contract Act. Once it becomes a fresh promise, fresh period of limitation of 3 years would begin to run from the date of cheque. Hence the liability

would certainly be a legally enforceable liability.

8. In a case reported in *Veera Exports v. T. Kalavathy* 2002(1) All MR 275, Supreme Court has observed as follows:

In our view this reasoning is entirely fallacious. There is no provision in the Negotiable Instruments Act or in any other law which stipulates that a drawer of a negotiable instrument cannot re-validate it. It is always open to a drawer to voluntarily revalidate the negotiable instrument, including a cheque.

Thus when a drawer revalidates cheque from time to time which is permissible, it could be said that on each occasion there was a fresh promise as envisaged by section 25 of the Contract Act as well as an acknowledgment within the meaning of Section 18 of the Limitation Act if such revalidation is made within the period of limitation. In the instant case admittedly the accused-applicant had extended the date of cheque from time to time under his own signature and had validated the cheque. As said earlier such validation amounts to a fresh promise and therefore, he has revived a barred debt. The proceedings have been filed within 3 years from the last such revalidation and in view of this it could not be said that under the cheque the applicant sought to recover a barred debt. In view of this I find no substance in the application. It is dismissed.