(2006) 02 BOM CK 0098

Bombay High Court (Nagpur Bench)

Case No: Second Appeal No. 386 of 1991

State Bank of India		APPELLANT
	Vs	
Ramkrishna Sakharkar and Another		RESPONDENT

Date of Decision: Feb. 13, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 7
- Limitation Act, 1877 - Article 132
- Limitation Act, 1963 - Article 62
- Maharashtra Provision of Facilities for Agricultural Credit by Banks Act, 1974 - Section 5(1)

Citation: (2006) 3 ALLMR 527 : (2007) 3 BC 84 : (2006) 5 BomCR 746 : (2006) 3 MhLj 630

Hon'ble Judges: V.A. Naik, J

Bench: Single Bench

Advocate: Agrawal, holding for M.G. Bhangde, for the Appellant; A.S. Bang, holding for J.T. Gilda, for the Respondent

Final Decision: Dismissed

Judgement

V.A. Naik, J.
When this second appeal came up for admission before this Court on 8-8-1991, this Court admitted the appeal on the substantial question of law formulated as under:

Whether a suit for recovery of loan which is secured by creation of registered charge on the property of debtor, is governed by Article 62 of the Limitation Act, 1963, if the recovery is based on the charged properties?

2. In order to deal with the controversy in this second appeal as well as the substantial question of law involved therein, it is necessary to narrate a few facts which give rise to the substantial question of law, in this second appeal.

The appellant-State Bank of India is the original plaintiff. The plaintiff filed a suit for recovery of Rs. 16,179.49 against the respondents-defendants. The plaintiff pleaded that defendant No. 1, namely Ramkrishna approached the plaintiff-Bank and requested for advancement of loan for agricultural development purposes with the limit of Rs. 8,000/-. The advance was to be guaranteed as to its repayment by two solvent sureties. Defendants No. 2 and 3 namely; Himmatrao and Janrao were the guarantors for the amount advanced to defendant No. 1, and therefore, according to the plaintiff, defendants No. 1 to 3 were jointly and severally liable to repay the dues to the Bank. The advance was to carry interest '' 13.5% per annum. It was then pleaded by the plaintiff that defendant No. 1 executed an agreement of hypothecation in favour of the plaintiff on 13-7-1978. Defendants No. 2 and 3 also executed a deed of guarantee in favour of the plaintiff-Bank on the same day. Defendant No. 1 further executed a declaration cum undertaking u/s 5(1) of the Act No. V (r)f 1975 thereby creating a charge on his immovable property. It was the case of the plaintiff that the property mentioned in the declaration had been registered with the Sub Registrar camp at Amravati on 1-8-1977 and was subject to charge for the amount outstanding on account of loan. It is the case of the plaintiff that on completion of all the requirements and on execution of the aforesaid documents, defendant No. 1 was allowed to avail the advance and accordingly he had withdrawn the total amount of sanctioned limit. The plaintiff also filed along with the plaint a ledger extract of loan account which gave details of the disbursement of the loan, interest and other charges. The advance was repayable, according to the plaintiff by March, 1979. That, since the defendants did not repay as per the schedule and had committed defaults, the plaintiff served a notice dated 18-4-1983 on the defendants. That, since the defendants failed to comply with the notice, the plaintiff instituted the suit for recovery of amount which came to be registered as Regular Civil Suit No. 407 of 1983. In the plaint it was further mentioned that the cause of action for the suit arose initially on 13-7-1978 when the documents were executed and the loan was advanced and in view of the charge on the immovable property, the suit was filed within prescribed period of limitation of 12 years in view of Article 62 of the Limitation Act, 1963. The plaintiff, therefore, claimed an amount of Rs. 16,179.49 ps. with future interest from the defendants. The defendants filed joint written statement denying the claim of the plaintiff. The defendants denied that defendant No. 1 approached the plaintiff-Bank for the loan and that a limit of Rs. 8,000/- was granted. The defendants then denied that defendant Nos. 2 and 3 stood as sureties/guarantors for the amount advanced to defendant No. 1. Almost every pleading in the plaint was denied by the defendants. It was submitted in para 10 of the written statement that defendant No. 1 approached plaintiff-Bank for a loan for development of agricultural land and the plaintiff-Bank, from time to time advanced the loan of Rs. 8,000/- to the defendant. It is further stated in paragraph 10 that the interest charged by the plaintiff was excessive and not as per the directions of the Reserve Bank of India. It was further pointed out that the extract of ledger and accounts was not correct and the Court should, therefore, not rely on those

documents. It was then submitted that the suit was not filed within the prescribed period of limitation and hence it be dismissed with costs.

3. The trial Court framed the issues and after considering the oral and documentary evidence as well as the arguments advanced by the parties, by a judgment dated 27-3-1985 dismissed the suit of the plaintiff. It was held by the trial Court that the plaintiff proved that the Bank advanced a loan of Rs. 8,000/-to defendant No. 1 for agricultural development and that defendants No. 2 and 3 stood as guarantors. The trial Court further held that the plaintiff proved that on the date of institution of the suit, an amount of Rs. 16,179.49 was due and payable by the defendant to the plaintiff-Bank. Though the trial Court answered the aforesaid two issues in favour of the plaintiff-Bank, the trial Court dismissed the suit filed by the plaintiff-bank on the ground that the suit was barred by limitation. That, being aggrieved by the judgment passed by the trial Court on 27-3-1985 in Regular Civil Suit No. 407 of 1983, the plaintiff-Bank preferred an appeal before the District Judge, Amravati which came to be numbered as Regular Civil Appeal No. 296 of 1985. The appellate Court, by a judgment dated 25-1-1990, dismissed the appeal filed by the plaintiff-Bank and maintained the findings recorded by the trial Court. The appellate Court was also of the view that the suit filed by the plaintiff was barred by the provisions of the Limitation Act. These findings of the trial as well as the appellate Court are assailed in the instant second appeal as according to the appellant-Bank, the case clearly fell within the ambit of the provisions of Article 62 of the Limitation Act, 1963 and hence, the prescribed period of limitation was not 3 years as recorded by the trial as well as the appellate Court and was 12 years in case of the suit which sought the enforcement of payment of money secured by a mortgage or otherwise charged upon immovable property.

4. Shri Agrawal, learned Counsel holding for Shri M.G. Bhangde, learned senior counsel appearing on behalf of the appellant submitted that the period of limitation for institution of a suit to enforce payment of money secured by a charge upon immovable property could have been instituted within a period of twelve years from the date when the money had become due in view of the provisions of Article 62 of the Limitation Act, 1963. It was canvassed on behalf of the appellant that the trial as well as the appellate Court erred in holding that the suit filed by the plaintiff was not governed by Article 62 of the Limitation Act on the ground that the prayer clause in the suit did not disclose that the suit was filed for recovery of the amount based on the charge upon immovable property. It was submitted on behalf of the appellant-Bank that though there was no mention in the prayer clause that the suit was filed for enforcing the charge on immovable property, yet the Court could have considered the suit as one where relief was claimed as against the immovable property which was charged. The counsel for the appellant further submitted that this suit was not a suit for personal decree against the defendants and the claim in the suit was based upon a charge on the immovable property. The counsel appearing on behalf of the appellant relied on the pleadings in para 3 of the plaint

wherein the plaintiff had stated that defendant No. 1 had also executed a declaration cum undertaking u/s 5(1) of the Act No. V of 1975 and had thereby created a charge on his immovable property. The counsel further relied on a statement in paragraph 6 of the plaint wherein it was pleaded that in view of the charge on immovable property, the suit was within limitation under Article 62 of the Limitation Act. It was further submitted on behalf of the appellant that on a combined reading of the pleadings in paragraph 3 and paragraph 6 of the plaint, it could be said that the suit was within the prescribed period of limitation under Article 62 of the Limitation Act as the claim in the suit was based on the charge on the immovable properties,

5. Shri Bang, learned Counsel holding for Shri Gilda learned Counsel appearing on behalf of the respondents submitted that the trial as well as the appellate Court were justified in holding that the suit filed by the plaintiff was not governed by Article 62 of the Limitation Act and the suit ought to have been filed within a period of three years from the date when the amount became due and payable to the Bank. The counsel appearing on behalf of the respondents then submitted that after reading of the plaint in its entirety, it could be gathered that the suit filed by the Bank was a suit simpliciter for recovery of the amount of Rs. 16,179.49 seeking a personal decree against the defendants in respect of money due and payable to the Bank under the agreement and no relief was claimed in respect of immovable properties which were charged. The counsel for the respondents then submitted that even otherwise, the oral as well as documentary evidence produced on record clearly shows that the suit had not been instituted for enforcing the payment of amount of loan from the immovable properties on which the charge was created.

6. The counsel for the respondents referred two decisions of this Court and a decision of the Privy Council in the cases of Pestonji Bezonji v. Abdool Rahiman ILR 1881 (Bom.) 463, Lallubhat v. Naran ILR 1882 (Bom.) 719 and Ram din v. Kalka Prasad ILR 1885 (All) 502 to fortify his submission that a suit could have been very well instituted within a period of twelve years from the date the amount became due and payable to the creditor only if the suit had been instituted against the property charged and not against the person for the recovery of the said amount.

7. Relying on the decision reported in ILR 1885 (All) 502 the counsel submitted that so far as the personal demands for recovery of amounts were concerned, the period of limitation would be three years and the remedy against the person would be barred if the suit was instituted after a period of three years. However, in case of a suit which was instituted to enforce a demand against the charged property, the period of limitation would be twelve years under the provisions of Article 62 of the Limitation Act, 1963. It is necessary to note that Article 62 of the Act of 1963 replaces Article 132 of the Act of 1877 and 1908.

8. In the case reported in ILR 5 Bom. 463, after considering the provisions of Article 132 of the Limitation Act, 1877, it was held by this Court that the plaintiff therein was

too late in bringing a suit for a money decree as Article 132 of the Act of 1877 applied only to suits to enforce "against the land" money charged upon it and not to suits for a mere money decree. The fact, that the money lent, which was the subject of the suit happened to be secured by a charge on immovable property, was in the opinion of this Court, immaterial, if the suit was not brought to enforce that charge. However, this Court by a Full Bench judgment reported in ILR 6 Bom. 719 overruled I.LR. 5. Bom. 463 and held that Article 132 ought to be held applicable to a suit by a mortgagee to obtain a mere money decree. In the case reported in ILR All 502, the plaintiff therein had distinctly sought two remedies against the defendant therein, one for recovery of money against the mortgaged property and the other against the defendant in person and the other properties of the defendant. The Privy Council in the aforesaid decision held that Article 132 applied only to suits to raise money charged on immovable properties, out of that property and the 12 years'' bar did not apply to personal remedy, as to which a shorter period of limitation applied. In view of the Privy Council decision reported in 1885 Vol VII All 502, the decision reported in ILR 5 Bom. 463 must be taken to have correctly stated the law and ILR VI Bom. 779 which overruled ILR 5 Bom. 463 cannot be treated as good law.

9. After considering the provisions of Article 62 of the Limitation Act, 1963 and the decisions referred to hereinabove, it is crystal clear that the prescribed period of limitation for enforcing the payment of money secured by a charge created on the immovable properties, would be twelve years from the date when the money issued have become due to the creditor if the recovery was claimed against the charged property. It is also necessary to consider the title of Part V of the Schedule to the Limitation Act, 1963, which reads thus; "Suits relating to immovable property". Perusal of heading to Part-V of the Schedule clearly shows that Article 62 which is included in Part-V deals with the suits relating to the immovable properties or the claims based on immovable properties and does not relate to a suit for personal decree for recovery of amount against the defendants.

10. To consider the controversy in question, it is necessary to refer some admitted facts involved in the case. Defendant No. 1 had applied for loan by his application dated 29-6-1978 and the loan was sanctioned by the plaintiff-Bank on 13-7-1978. It is further not disputed that an agreement of hypothecation was executed by defendant No. 1 on 13-7-1978. A deed of guarantee was further executed by defendants No. 2 and 3 on 13-7-1978. Exh.18 is an undated document creating charge on the immovable properties belonging to defendant No. 1. It appears that stamp papers for executing the document creating charge were purchased on 27-6-1988. The last para of Exh.18, i.e. the document creating charge on the properties shows that on 5-7-1977 the Branch Manager of the State Bank of India wrote to the Talathi/concerned Revenue Officer to make an entry in respect of the said charge on the field properties in the record of rights. This document clearly shows that on 5-7-1977 a charge was created on the field properties belonging to defendant No. 1 to secure the loan amount advanced by the State Bank of India to

defendant No. 1. The plaintiff-Bank has stated in the plaint that the charge had been registered with the Sub Registrar, camp at Amravati on 1-8-1977. It is necessary to note that the loan amount was admittedly advanced in the instant case on 13-7-1978. The hypothecation agreement, a deed of guarantee, were also executed on 13-7-1978 and the document creating charge appears to have been executed on 5-7-1977.

11. It is the case of the appellant that the trial as well as appellate Court ought to have considered the suit as one for recovery of amount based on the charged property by considering paragraph 3 and paragraph 6 of the plaint. This submission advanced by the counsel for the appellant is ill founded. It is necessary to consider the plaint pleadings which clearly show that it was a suit for recovery of amount against defendants No. 1 to 3 seeking personal decree against them. It is conspicuous to note that the plaint paragraphs did not state that the relief or claim was related to the immovable property on which the charge was created. The counsel for the appellant submitted that the charge was created on his field property u/s 5(1) of the Maharashtra Provision of Facilities for Agricultural Credit by Banks Act, 1974, It is the case of the appellant that in view of the Order 7 Rule 7 of the Code of Civil Procedure, it was the duty of the Court to read the plaint as a whole and the Courts should have considered all the relevant pleadings in the plaint and ought to have looked to the substance of the matter and not its form. The counsel for the appellant relied on a decision in the case of L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others, to canvass that the plaint ought to have been read as a whole by considering all the relevant pleadings and hence, according to the appellant, by applying the aforesaid test to the instant suit, it was apparent that the claim in the suit filed by the plaintiff was based on the properties charged and it was not a suit, simpliciter for the recovery of amount. It is no doubt true that it is necessary for the Courts to consider the pleadings in the plaint in entirety and to look to the substance and not the form of pleadings. It is also true that a relief in a given case could also be granted to a plaintiff where he fails to seek a particular relief in the prayer clause of the plaint but specific particulars for that relief are stated in certain other paragraphs of the plaint. Therefore, in a fit case and in the interest of justice, a Court is empowered to grant a relief which is not specifically prayed for if the Court comes to a conclusion that the combined reading of all the plaint paragraphs as well as prayer clause, reveal that the plaintiff intended to pray for such relief though it was not specifically and in terms incorporated in the prayer clause. However, considering the facts of this case, it could be seen that the charge was created only on the properties of defendant No. 1. The prayer clause in the plaint showed that a decree against all the defendants was sought so as to render them liable, jointly and severally for payment of the money claimed. In paragraph 3 of the plaint, the plaintiff merely mentioned that a charge was created on the immovable properties belonging to defendant No. 1. However, the plaintiff had not stated in the plaint that the plaintiff had based its claim on the immovable

properties on which charge was created.

12. It has been casually pleaded in para 6 of the plaint that the suit was filed within the limitation prescribed under Article 62 of the Limitation Act as charge was created on the immovable properties. The entire plaint showed that the suit was a suit simpliciter for recovery of amount based on accounts, the details of which were annexed to the plaint and which formed a part of the pleadings. The title of the plaint as well as the prayer clause made it abundantly clear that the suit was not for an enforcement of payment of money secured by a charge created upon the immovable property. The pleadings in the plaint showed that the suit was mainly based on the accounts. There was a mere mention of the creation of charge on the immovable properties in plaint paragraph 3 along with a mention about the declaration cum undertaking, the deed of hypothecation and the execution of the deed of guarantees. The ratio laid down in L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others, would be inapplicable to the facts of the instant case as the suit is filed for personal decree against the defendants and no relief is claimed against the immovable properties which were charged. It is also further noticeable that in the notice dated 18-4-1983 issued by the plaintiff-Bank to the defendants there was no whisper about the creation of the charge on the immovable properties.

13. As already pointed out hereinabove, defendant No. 1 applied for loan on 29-6-1978 and the loan was sanctioned on 13-7-1978. Exh.18, as already mentioned hereinabove, is an undated document creating charge on the property executed on a stamp papers purchased on 27-6-1977 and apparently executed on 5-7-1977 i.e. on the date on which the Branch Manager of the plaintiff-Bank asked the talathi/revenue authority to make an entry about the charge in the official revenue records. Thus, even on the facts of the instant case, it cannot be said that the charge was created on the immovable properties belonging to defendant No. 1 for securing the loan advanced on 13-7-1978 as admittedly the loan was sanctioned on 13-7-1978 and the charge was created much earlier, in July, 1977. The plaintiff had wrongly relied on Exh.18, a document creating charge so as to bring the suit filed by the plaintiff-Bank within the prescribed period of limitation. The plaint paragraph 3 also refers to the registration of the document creating charge on 1-8-1977 i.e. much prior to the date on which the loan was sanctioned. Thus, the suit of the plaintiff for recovery of amount could not be based against the charged properties. The trial as well as the appellate Court were, therefore, justified in holding that the provisions of Article 62 of the Limitation Act, 1963 did not apply to the facts of the case as no relief was claimed by the plaintiff as against the immovable properties charged and the suit was for personal decree against the defendants. Thus, even though the question of law is answered in the affirmative to hold that a suit to enforce the payment of money secured by a charge upon immovable property is covered by Article 62 of the Limitation Act, 1963 if the recovery is sought against the charged properties and the prescribed period of limitation would be twelve years in the

instant case, no relief could be granted to the plaintiff as the suit was not one for recovery of loan against the properties charged but was a suit seeking a personal decree against the defendants.

14. Hence, for the aforesaid reasons, the second appeal is liable to be dismissed. Second Appeal is dismissed. However, in the facts and circumstances of the case, there would be no orders as to the costs.