

Manekchand Mohanlal Poonawala Vs Shah Bhimji Kundanmal and Company

Court: Bombay High Court

Date of Decision: Nov. 13, 1968

Acts Referred: Contract Act, 1872 " Section 25

Citation: (1969) 71 BOMLR 370 : (1969) MhLj 698

Hon'ble Judges: K.K. Desai, J

Bench: Single Bench

Judgement

K.K. Desai, J.

In this revisional application Mr. Karanee on behalf of the original defendants has contended that the trial Court was wrong

in not granting unconditional leave to defend, inasmuch as the trial Court should have accepted the defendant's contention that the plaintiffs' suit

was not on a written contract. The writing relied upon by the plaintiffs as constituting the cause of action for the claim in suit did not contain any

promise to pay and was merely an entry in the Sahi book and/or an acknowledgement. The trial Court should have, therefore, held that the

plaintiffs' suit was not maintainable as a summary suit and should not have directed the defendants to deposit Rs. 7,000 and should have granted

unconditional leave to defend.

2. A translation of the writing on which the plaintiffs relied is annexed as exh. A to the plaint. A part of the translation is not entirely correct. The

writing, when translated, runs as follows:

3. Mr. Karanee contends that the above writing is merely an entry in the Sahi book of the plaintiffs. This writing does not disclose any express

promise or any promise at all to make payment. The promise, if any, for payment was previous and oral. In the result, the amount mentioned in the

writing is not debt or liquidated demand in money arising on a written contract as necessary for institution of a suit as summary suit. In support of

his contentions he has relied upon the decisions in Ramji v. Dharma ILR (1882) 6 Bom. 688, Chowksi Himutlal Harivulubhdas v. Chowksi

Achrutlal Harivulubhdas ILR (1888) 8 Bom. 194 and Maganlal Harjibhai v. Amichand Gulabji ILR (1928) 52 Bom. 521 30 Bom. L.R. 783 and

Rule 2 of Order XXXVII of the CPC as amended by this High Court.

4. The relevant part of Rule 2 runs as follows:

... and all suits in which the plaintiff seeks only to recover a debt or liquidated demand in money ... arising on a written contract.

In the submission of Mr. Karanee the debt or liquidated demand in money claimed in a summary suit must arise on a written contract which

contains an express promise to pay the debt or the liquidated demand in money. An implied contract or obligation for payment of such debt or

money even if it arises on a written contract would not justify institution of a suit as a summary suit. In justification of that argument he has referred

to Rule 2 as existing before the same was last amended. The relevant part of the Rule as previously existing ran as follows:

... and all suits in which the plaintiff seeks only to recover a debt or liquidated demand in money ... arising on contract, express or implied

Mr. Karanee emphasises that the word ""implied"" has been removed from the now existing Rule 2. He further argues that the present writing does

not include any express or implied promise and is merely an acknowledgement by the defendants for having received the sum mentioned in the

writing.

5. In connection with the three authorities cited by Mr. Karanee, it may at once be stated that in all the three cases the Court was concerned to

decide the question as to whether the writing relied upon on behalf of the plaintiffs was sufficient to constitute a cause of action for a suit in respect

of an already time-barred debt. The question was whether the writings relied upon were promises made in writing and signed by the persons to be

charged with the debts within the meaning of Sub-section (3) of Section 25 of the Indian Contract Act. In dealing with the question it was

observed that acknowledgements and/or Rufus made might revive the old debts and even so might not contain promises made in writing by the

persons to be charged with the claims and/or liabilities for payment of time-barred debts. The ratio of the decisions in those cases was that mere

accounts stated or mere writings of acknowledgements which did not contain express promise for making payments were insufficient to complete a

cause of action for a suit on the basis of the provisions of Sub-section (5) of Section 25. Apparently, the ratio of these decisions is that a promise

to revive a time-barred debt must be an express promise in writing for payment of the same. That was the condition required to be fulfilled having

regard to the provisions of Sub-section (3) of Section 25. Some observations in these cases are relied upon by Mr. Karanee in connection with the

true construction to be given to the writing annexed to the plaint. It is not necessary to refer to facts of these cases in that connection.

6. Now, the writing relied upon on behalf of the plaintiffs, in my view, is what is ordinarily known as a "Khata Pete receipt". This kind of writing has

been known and understood to constitute not only an acknowledgement for receipt of the money but to contain an implied promise that the money

having been received "Khata Pete" i.e. "on account" would be repaid by the debtor signing the writing.

7. The question is as to whether the Khata Pete receipt in this case is not a written contract within the meaning of Rule 2 cited above. In this

connection it may at once be noticed that the writing does not contain express promise to repay the sum of Rs. 13,000 mentioned in the writing.

Even so it is apparent that the writing contains an implied promise to repay the sum of Rs. 13,000 mentioned therein. This is so because the writing

is made in lender's book by the debtor and the debtor states that the amount is received on Safari and is credited to the account of the creditor in

the ledger of the debtor. The rate of interest is also mentioned. The writing relates to a fresh loan and has no reference to adjustment or otherwise

of accounts of previous dealings. It bears a 4-anna revenue stamp. It is quite clear that the parties did not intend the writing to be and it is not

merely a receipt. The Writing was executed to create an obligation and promise to repay the amount mentioned therein.

8. Now, it is true that prior to the amendment of Rule 2, a summary suit could be instituted in all cases where a debt or liquidated demand in

money arose on contract, express or implied. It is quite clear that previously a written contract was not a necessary condition for institution of a

summary suit to recover debt or liquidated demand in money. Where express or implied obligation to pay debt or liquidated demand in money

arose, even on an oral contract, a summary suit could be instituted. Under the amended Rule, summary suits cannot be instituted when such debt

or demand in money arises on oral contracts. Mr. Karanee, however, is not right in his submission that the deletion of the phrase "express or

implied" from amended Rule 2 indicates that when implied obligation to pay debt or liquidated demand in money arises on a written contract, a

summary suit cannot be filed. Obligations arising on a written contract can in some parts be express and in other parts be implied by law or

otherwise. Such implied obligations, if they create a liability to pay debt or liquidated demand in money, can be enforced by instituting a summary

suit having regard to the language of the amended Rule 2. In my view, it is not correct that implied obligations to pay debt or liquidated demand in

money when they arise on a written contract cannot be good causes of action for institution of summary suits.

9. As I have already stated, the Khata Pete receipts ordinarily executed by debtors in favour of lenders must be held to contain an implied promise

to repay the money mentioned in such receipts. These obligations to repay must be held to arise on a written contract. Under the circumstances,

the contentions made by Mr. Karanee are rejected.

10. Rule discharged with costs. The time to make deposit as directed by the trial Court is extended to November 20, 1968. No further time

should be granted.