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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 07.12.2010

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RSA No.223/2010

SMT. TARANJIT KAUR Appellant
Through: Mr.M.M.L.Sharma, Advocate.

Versus

S.IQBAL SINGH Respondent
Through: Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

CM No.21946/2010 (for exemption)

Allowed subject to just exceptions.

RSA No.223/2010

1. This appeal has impugned the judgment and decree dated 05.10.2010 which had endorsed the finding of the Trial Judge dated 01.10.2009 whereby on an application under Order 7 Rule 11 CPC preferred by the defendant, the plaint of the plaintiff had been rejected.
2. The plaintiff/appellant Taranjit Kaur had filed a suit for recovery. The contention was that the defendant had taken a loan of Rs.1,00,000/- from the plaintiff in November, 2000 with an assurance that the same would be repaid within 3 to 4 months.

Rs.70,000/- was repaid on 26.02.2001 with assurance to repay the balance amount of Rs.30,000/- but the same was not repaid. On 28.8.2005 a sum of Rs.5000/- was paid by cheque with a further assurance to repay sum of Rs.25,000/- with interest in the near future. In spite of legal notice dated 28.11.2005 payment was not made. Suit for recovery of Rs.76,000/- inclusive of interest @ 3% per month totaling Rs.51,000/- had been filed.

3. Written statement had contested the suit. It was stated that the amount was not due.

4. Issues were framed. Thereafter an application under Order 7 Rule 11 CPC was filed by the defendant. Contention was that the suit was barred by limitation.

5. From the record, it is borne out that the loan had been advanced by the plaintiff in November 2000; part repayment had been made of Rs.70,000/- on 26.02.2001. The present suit was filed on 27.4.2006. The part re-payment of the loan had been effected on 26.02.2001, suit could have been filed within three years thereafter i.e. up to 26.2.2004. Alleged acknowledgment of Rs.5000/- by a cheque dated 28.8.2005 was made beyond the prescribed period of limitation. It would not be a valid acknowledgment. This has been held by the Trial Judge.

6. This finding on limitation was affirmed by the first Appellate Court. Section 19 of the Limitation Act had been adverted to.

7. The questions of law have been formulated in the body of the appeal on page 1. They are three in number and are all fact based. The finding in the impugned judgment in view of the facts that have emerged from the record show that there is no perversity in the said finding. It was rightly held that the suit is barred by

limitation. To be an effective acknowledgement, the acknowledgement has to be within the prescribed period of limitation which in this case was beyond the said period. Plaint was rightly rejected.

8. Appeal is dismissed in limine.

INDERMEET KAUR, J.

DECEMBER 07, 2010
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