

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

% *Judgment Reserved on: 11.02.2011*
Judgment Delivered on: 17.02.2011

+ **RSA No.126/2004 & CM No.6895/2004**

M/S SHEILA ENTERPRISES & ANR. Appellants
Through: Mr.Gaurav Bahl, Advocate.

Versus

UCO BANK & ANR. Respondents
Through: Mr.Rajesh Ratan, Advocate.

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?
3. Whether the judgment should be reported in the Digest?

INDERMEET KAUR, J.

1. This appeal has impugned the judgment and decree dated 05.2.2004 which has reversed the finding of the trial judge dated 17.3.1998. Vide judgment and decree dated 17.3.1998 the suit filed by the plaintiff i.e. UCO Bank had been dismissed. Vide the impugned judgment the finding of the trial judge was reversed and the suit of the plaintiff stood decreed.

2. Plaintiff had filed a suit for recovery of ₹ 51,850/- against three defendants. Defendant no.2 was the proprietor of defendant no.1. His account was introduced by defendant no.3. Defendant no.2 had requested for availing temporary over-draft facility which was permitted. Defendant no.2 had pledged his FDR in the sum of ₹1,00,000/- which was jointly in his name and in the name of his

wife in the account of defendant no.3 and requisite formalities had been completed by defendants no.2 and 3 in this regard. Defendant no.3 availed over-draft facility on the strength of this FDR which was in the joint names of defendant no.2 and his wife. Since the account of the defendant no.3 was outstanding and he had failed to regularize it in spite of requests, the proceeds of the aforementioned FDR which was in the joint names of defendant no.2 and his wife were adjusted against outstanding account of defendant no.3. On 30.3.1992 the bank came to know that a wrong credit entry of ₹19,000/- dated 24.7.1990 had been made in the account of defendant no.1. Defendant no.1 through defendant no.2 wrote a letter dated 28.3.1992 to the bank wherein he requested the Bank that the FDR which he had pledged be adjusted against his account. The contention of the bank was that the said FDR already stood adjusted against the outstanding against defendant no.3. On 8.3.1995 a legal notice (Ex.PW-1/16) was served upon the plaintiff informing him that since he had failed to regularize his account; he was called upon to pay a sum of ₹40,468.42/- which was outstanding as on 31.12.1993 along with interest failing which legal action would be taken against him. Present suit was accordingly filed.

3. In the written statement, the contention of the defendant No.1 was that he has pledged this FDR of ₹1,00,000/- against his own account; it was not pledged against the account of defendant no.3. The said FDR should have been adjusted against his account i.e. of defendant no.1; no amount is payable by the answering defendants no.1 and 2.

4. Defendant no.3 has filed a separate written statement

wherein he had stated that this FDR which was in the joint in the names of defendants no.1 and 2 had in fact been pledged against the account of defendant no.3.

5. On the pleadings of the parties issues were framed. No specific issue on the question of limitation was framed. Oral and documentary evidence was led by the respective parties. Suit of the plaintiff was dismissed.

6. In appeal, the impugned judgment was reserved and the suit of the plaintiff stood decreed.

7. This is a second appeal. After its admission on 04.5.2010, the following substantial question of was formulated; it reads as follows:

“In the given case, when period of limitation would start running against the appellants for filing a suit for recovery of money?”

8. Admittedly no issue on limitation was framed by the Trial Court. However, since the question of limitation goes to the root of the matter and there is a mandate cast upon the courts under Section 3 of the Limitation Act, 1963 to examine this issue and in the eventuality of a legal proceeding being time barred it cannot be allowed to proceed the aforementioned substantial question of law was framed.

9. The averments in the plaint have to be necessarily examined to answer this query. Defendant no.2 proprietor of defendant no.1 had opened a current account with the bank on 18.7.1989 on the introduction of defendant no.3. Overdraft facility was permitted to defendant no.2. On 01.4.1990 a debit of ₹10,596/- had been shown in the account of defendant no.1. On 16.4.1990 by virtue of a cash

deposit of ₹3,20,000/- there was a credit balance of ₹3,31,596/- in the account of defendant no.1. On 13.5.1991 defendants no.2 and 3 came to the bank to pledge the FDR which was in the joint names of defendants no.2 and his wife against the account of defendant no.3. The account of defendant no.3 became bad; he defaulted in making payments. The proceeds of this FDR i.e. ₹1,00,000/- which was in the joint names of defendants no.2 and his wife was adjusted against the account of defendant no.3 on 24.9.1992. On 30.3.1992 a credit balance of ₹1298.40 was reflected in the account of defendant no.1 but this was because of a wrong credit entry which had been made in the account of defendant no.1 of ₹19000/- on 24.7.1990 which had come to light on 30.3.1992. On 20.7.1992 debit balance in the account of defendant no.1 was ₹28,478.60. No money had been deposited by defendant no.1 or defendant no.2 to clear this amount. This was in spite of requests. Letter dated 28.3.1992 (Ex.PW-1/7) addressed by defendant no.2 to the bank requested for an adjustment of his FDR which stood pledged with the bank. Ex.PW-1/3 is the said FDR; it is dated 9.10.1989; showing maturity date as 09.10.1991. It was duly discharged; the back of Ex.PW-1/3 bore signatures of both defendant no.2 and his wife. Contention of the bank is that this amount stood adjusted against the account of defendant no.3; which stand was supported by defendant No.3.

10. The Bank through oral and documentary evidence had proved that a wrong credit entry of ₹19,000/- stood reflected in the account of defendant no.1 on 24.7.1990. Contention of the Bank was that the letter of defendant No.2 dated 28.3.1992 Ex.PW-1/7 was an acknowledgment of liability by defendant No.2; period of

limitation stood extended. Relevant would it be at this stage to reproduce this document which was held in the impugned judgment to be a valid acknowledgment. The said document reads as under:

“To
The Manager,
United Commercial Bank,
Sadar Bazar,
DELHI

Reg: Encashment of my FDR No. 364579/334/dt. 9-10-89 maturing on 9.10.91 for Rs. 1,00,000/- pledged with you.

Sir,

This is to say that I have my C/Account named M/s SHEELA ENTERPRISES in my proprietorship on which I availed overdraft in my A/c so and often.

Now I request that above F.D.R. may be credited with interest in my Current Account.

Thanking you,

Yours faithfully,

(SUDESH SALUJA)
B 63 Jyoti Nagar,
DELHI

DATED : 28.3.92

ENCLOSER:
Photocopy of F.D.R.”

11. Vide Ex.PW-1/7 dated 28.3.1992 duly signed by defendant no.2, he had acknowledged his liability. A scrutiny of this document shows that the jural relationship of debtor and creditor stood admitted; the defendant no.2 had admitted that he had pledged this FDR with the Bank; further this amount be credited in his current account. This was a valid acknowledgement under Section 19 of the Indian Limitation Act extending the period of limitation. This finding returned in the impugned judgment calls for no interference.

12. Article I of Part I of the Schedule appended to the Indian

Limitation Act, 1963 presupposes a period of three years as limitation to recover balance due, in a current account where there are reciprocal demands between the parties which was admittedly so in this case. The time would begin to run from the closing of the year. In the instant case, last entry in the statement of account (Ex.PW1/19) showed a credit balance of ₹1298.40 on 12.3.1992 as is evident in the version of DW-2. This statement of account has been certified under Section 4 of Bankers' Books Evidence Act. It has been duly proved as Ex.PW-1/19; this document has to be read in evidence. On the close of the year i.e. on 31.3.1992 there was a credit of ₹1298.40 in the account of defendant no.1; this was because of the wrong entry of ₹19,000/- which although wrongly credited on 24.7.1990 was known to the Bank only on 30.3.1992. However Ex.PW-1/7 dated 28.3.1992 being a valid acknowledgment had extended the period of limitation. Suit filed on 25.3.1995 was within a period of three years.

13. In AIR 1987 Karnataka 236 S. Kotrabasappa Vs. The Indian Bank while examining provisions of Section 72 of the Indian Contract Act a Division Bench of the Karnataka High Court had held that where a sum of money had been wrongly credited in the account of a person by the bank, the said amount is liable to be refunded back with interest to the bank. In this case a mistaken credit of Rs.1,00,000/- was made in the account of the defendant by the plaintiff bank on 21.6.1980. This mistake was discovered after nearly two years. Adverting to the provision of Section 72 of the Indian contract Act, 1972, the Court was of the view that this wrongful money was bound to be repaid back to the bank with interest.

14. The judgment relied upon by learned counsel for the appellant reported in AIR 1997 Gujarat 24 M/s Shivam Construction Co. Vs. Vijay Bank recites that in a running account, under Article I of Schedule of the Limitation Act, the period of limitation has to be computed from the close of the year in which the last item admitted or proved is entered into account. There is no dispute to this legal proposition. The last entry in the account of defendant no.1 is dated 30.3.1992. Counsel for the appellant has failed to show how this judgment come to his aid. The second judgment relied upon by learned counsel for the appellant reported in 898 SCR (1967) Chandradhar Goswami & Ors. Vs. The Gauhati Bank Ltd. also lays down the proposition that the entries in a statement of account which have been certified under Section 4 of Bankers' Books Evidence Act become prima facie evidence. There is no dispute to this proposition either. Again learned counsel for the appellant has failed to show how this judgment has come to his aid.

15. The evidence on record both oral and documentary had established that the suit filed by the plaintiff Bank was filed within time entitling him to recover the suit amount. The substantial question of law is answered against the appellant and in favour of the respondent.

16. There is no merit in the appeal. The appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

FEBRUARY 17, 2011
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