

50.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 350/2010

% ***Judgment Delivered on: 05.04.2011***

PRAMOD TANDON Appellant
Through : Mr. Elgin Matt John, Adv.

versus

ANIL TANDON Respondent
Through : Mr. Anil Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. With the consent of counsel for the parties, present appeal is set down for final hearing and disposal. Learned counsel for the parties submit that trial court record would not be necessary at the time of hearing of the appeal, as copies of all the relevant pleadings and documents sought to be relied upon by them are available.
2. Present appeal is directed against the judgment and decree dated 12.4.2010 passed by the learned Additional District Judge, Delhi, in Suit No.160/2008 dismissing the suit of the appellant as barred by limitation.
3. The necessary facts, to be noticed for disposal of the present appeal, are that the appellant (plaintiff before the trial court) had filed a suit for recovery in the sum of ₹3,53,600/- along with

pendente lite and future interest @ 12%, per annum, against the respondent, who happens to be his real brother. As per the plaint, the appellant had lent a sum of 3150 Pound, approximately, ₹2,60,000/-, to the respondent on 25.5.1998 by means of a bank draft in favour of M/s Creative Cottons (India) Ltd. The appellant vide notice dated 30.1.2008 called upon the respondent to repay the amount, which was given as a loan. Since, despite service of notice, the respondent has failed to repay the loan, the appellant was compelled to file a suit before the trial court. Issues were framed on 12.3.2009 and the suit of the appellant was dismissed on the ground that the suit is barred by limitation.

4. Learned counsel for the appellant submits that learned trial court has failed to consider the error in calculating the period of limitation from the year 1998, when the amount of 3150 Pounds, was lent. Counsel further submits that the trial court has erred in holding the transaction between the two brothers to be a commercial transaction and further failed to appreciate the fact that the amount was lent by the appellant to the respondent on the insistence of the mother of the parties. Counsel also submits that trial court has failed to take into account the communication dated 25.9.2004 in the right prospective and that the said communication resulted in a contract to repay the amount lend under Section 25(3) of the Contract Act, 1982.

5. The main thrust of the argument of learned counsel for the appellant is that the communication dated 25.9.2004 extends the period of limitation, for which the learned counsel has relied upon Section 18 of the Limitation Act read with Section 25 (3) of the Contract Act and further submits that the communication dated 25.9.2004 is to be read harmoniously with the communication sent by the appellant to the respondent on 10.7.2004. Counsel next submits that respondent had agreed to repay the amount after June, 2005.
6. At the outset, learned counsel for the respondent contends that there is no infirmity in the judgment of the trial court and that the suit is barred by limitation since the amount was sent to the respondent as a gift lent in the year 1998 but the suit has been filed in the year 2008.
7. Learned counsel for the respondent submits that appellant had sent a sum of 3150 Pound by a covering letter dated 21.5.1998, Ex.PW-1/2, which letter makes it evident that the suit amount was paid to the respondent but in the name of M/s Creative Cottons (India) Ltd. Counsel further submits that appellant has failed to implead M/s Creative Cottons (India) Ltd., as a party and, thus, there is no privity of contract between the appellant and the respondent. Counsel next submits that there is no acknowledgement of debt by the respondent, at any point of time, much less during the period of limitation. It is further submitted

that appellant has wrongly placed reliance on Section 18 of the Limitation Act read with Section 25 (3) of the Contract Act, as the basic requirement of Section 18 of the Limitation Act is that the acknowledgement of debt should be within the period of limitation and not thereafter. In support of his submission, learned counsel for the respondent has relied upon ***Sampuran Singh v. Niranjan Singh***, reported at AIR 1999 Supreme Court 1047, and more particularly at para 9, which is reproduced below:

“9. In his endeavour, learned counsel for the appellants, referred to Section 18 of the Limitation Act to hold that the acknowledgement by the original mortgagees to the respondents, through the said registered document dated 11th January 1960, the period of limitation is revived which would only start from that date of acknowledgement hence the suit filed in the year 1980 would be within limitation. The said submission is without any force. Section 18, sub-section (1), itself starts with the words "Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made...". Thus, the acknowledgement, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if any, such document is executed, the limitation would be revived afresh from the said date of acknowledgement. In the present case, admittedly the oral mortgage deed is in March 1893. If the period of limitation for filing suit for redemption is 60 years then limitation for filing a suit would expire in the year 1953. Thus, by the execution of this document dated 11th January 1960 it cannot be held by virtue of Section 18 that the period of limitation is revived afresh from this date.

8. I have heard counsel for the parties and also carefully perused the judgment passed by learned trial court and also the copies of the

documents, which have been placed on record. It is not in dispute that an amount of 3150 Pounds, was sent by the appellant to the respondent, which is exhibited as Ex.PW-1/2.

9. The trial court has decided the issue of limitation in the following manner.

"ISSUE NO: 3

3. Whether the suit is within limitation? OPP

13. The onus of proof of this issue lies upon the plaintiff and in support of his contentions the plaintiff has relied upon the various letters written by the parties to each other. The perusal of the record shows that, admittedly, the amount of pounds 3150 was given by the plaintiff to the defendant in May, 1998 and till the year 2004 there was no correspondence between the parties and there was no demand by the plaintiff for payment of the said amount to the plaintiff. It appears that some dispute has arisen between the parties in the year 2004, after the sad demise of their mother on 25.6.2004 and thereafter the plaintiff has made the demand for repayment of the said amount given by him to the defendant in the year 1998. In the considered opinion of this Court, as per the provisions of Section 18 of the Limitation Act, the period of limitation gets extended only if the acknowledgment is made by the defendant, for his liability, only during the period of limitation and no subsequent acknowledgment by the defendant extends the period of limitation for filing the suit for recovery. The alleged loan was advanced on 21.5.1998 and the present suit has been instituted on 8.4.08 and, therefore, the same is hopelessly time barred. Accordingly this issue is decided in favour of the defendant and against the plaintiff."

10. A bare reading of this communication would show that in fact a draft was sent by the appellant not in the name of the respondent but in favour of M/s Creative Cotton (India) Limited. There is also no explanation as to why the company was not made a party to the suit. A strong reliance has been placed on the communication dated 25.9.2004, but a complete and careful reading of this

communication would show that at no point of time the respondent acknowledged the debt and in fact the stand of the respondent in the reply is that appellant had remitted 3150 Pounds six years ago, as a gift to the appellant. Relevant portion of this communication is reproduced as under:

“.....

In legalistic terms, you are forcefully seeking immediate return of a gift of money given by you to your brother six years ago and at a time when you know fully well that the person concerned is presently facing tough financial difficulties. It is quite possible that you may now prefer to take a position that this amount was not intended to be a gift but a loan. Dear brother, in such a case, before this matter can be seen from the legal perspective, a few ‘true facts’ need to be established. If it was a loan, who had requested for it, what were the terms, what was the tenure, what were the repayment terms, and if there was a default, what was the correspondence exchanged during the long six years. This is an exercise in futility. The position is that you wish me to refund your gift of 3150. This is NOT a legal matter. This is a matter between two brothers and will be resolved with brotherly understanding. As I have responded to you during our 7th July 2004 telephonic conversation, let me get out of the present jam with the monthly deferred repayment schedule of the debt funds undertaken for investment in our company plant. In any case, this schedule will be over by June 05. I wish to first get out of this jam and only then make any commitment in this regard. I do not wish to make any meaningless commitments at this stage when under a cloud.

I am sure what is bothering both of us will be sorted out with complete satisfaction to all very soon. I am sure our dear mother’s holy spirit will help and guide us in this regard.”

11. In this communication, on which strong reliance has been placed by counsel for the appellant, the respondent has clearly stated that he has been forced to return the gift money, which was given six years

ago, and further this demand would be an exercise in futility. Besides the respondent has expressed his financial inability to repay the amount and has made clear that till he is able to get out of the financial crunch, he would not be in a position to make any commitment. The aforesaid communication cannot be treated as an acknowledgement. Even otherwise, this communication pertains to September, 2004, is beyond the period of limitation.

12. It has been argued by counsel for the appellant that the communication dated 25.09.2004 resulted in a contract to repay the loan amount as per Section 25(3) of the Contract Act. Section 25(3) of the Contract Act, 1872, reads as under:

“25 (3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.”

13. A plain reading of Clause (3) of Section 25 of the Indian Contract Act makes it clear that a promise to pay a time barred debt is a condition precedent for application of the Section. From a careful perusal of the communication dated 25.09.2004, it cannot be inferred that there was any promise made by the respondent to the appellant that he would pay the suit amount so as to make the communication a contract between the parties. In fact, in the said communication, the respondent has clearly stated that he does not wish to make any meaningless commitments at that stage nor has

he stated that he would pay the suit amount in future. Thus, the communication dated 25.09.2004 falls short of the ingredients of Section 25(3) of the Contract Act, 1872.

14. In view of above, I find no infirmity in the judgment and decree passed by learned trial court. There is no merit in the present appeal. Accordingly, the appeal stands dismissed, leaving the parties to bear their own cost.

G.S. SISTANI, J.

April 05, 2011
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