

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

+ **RFA No.684/2006**

% **18th April, 2012**

SHRI SATISH KUMAR Appellant
Through : None.

versus

SMT. REENA BHOUMIK Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes.

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 26.3.2012. No one appears for the parties although it is 12.35 P.M. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 6.10.2006 dismissing the suit on a preliminary issue by holding that the suit was barred by limitation.

3. The facts of the case are that the appellant/plaintiff filed the subject suit for recovery of Rs. 2 lacs alongwith interest @ 18% per annum

on account of having given the loan to the respondent/defendant in November, 1999. The respondent/defendant executed an undertaking dated 15.9.1999 acknowledging Rs. 2 lacs as loan amount. The appellant/plaintiff pleaded that the loan amount was repayable after five years and since the same was not repaid, the subject suit came to be filed for recovery of the amount alongwith interest, on 6.10.2005.

4. Trial Court has dismissed the suit as barred by limitation by making the following observations:-

“7. The case of the plaintiff is that he has advanced a loan of ₹2,00,000/- to the defendant for raising construction over the plot bearing no.A-45, Block-A, Utsav Vihar, Karala on execution of undertaking on 15.11.1999 and the said loan was to be repaid within a period of 5 years. The plaintiff also stated that the said undertaking was containing a conditional sale in favour of the plaintiff in case the loan is not repaid within a period of 5 years. On the other hand, the defendant stated that she has never taken the loan of ₹2,00,000/- on execution of undertaking dated 15.11.1999 for the purposes of raising construction over the plot in question and also denied the execution of any undertaking or handing over of the title documents in favour of the plaintiff. The plaintiff in the present case has claimed recovery of ₹ 4,10,000/- which includes ₹ 2,00,000/- as principal amount and interest thereon @ 18% p.a. alongwith relief of permanent injunction.

8. Sh. Rajneesh Vats, ld. counsel for the defendant argued that the suit is barred by limitation in view of Article 19 of the schedule attached to the Limitation Act, 1963. Sh. Vats, further argued that if it is assumed that the undertaking dated 15.11.1999 is a bond even then the suit is barred in view of Article 29 of the Limitation Act as no date is specified for the payment. On the other hand, Sh. Amarjeet Rai, counsel for the plaintiff argued that the undertaking dated 15.11.1999 is a promissory note and the

cause of action for filing the suit has accrued after the expiry of period of 5 years from the date of advancement of loan. Sh. Rai further argued that the plaintiff did not file the suit earlier as it would have been a pre-mature suit. Sh. Rai argued that the suit is within the period of limitation.

9. I am not in agreement with the argument advanced by Sh. Amarjeet Rai, counsel for the plaintiff that the cause of action has accrued in favour of the plaintiff when the defendant failed to repay the loan after the expiry of period of limitation. The period of limitation cannot be extended by mutual agreement of the parties. The period of limitation can be extended as per the provisions contained in the Limitation Act, 1963, particularly from section 4 to 24.

10. As per the claim of the plaintiff, the loan was advanced on 15.11.1999 on execution of undertaking. By said undertaking, the defendant allegedly undertook to repay the entire loan amount within 5 years alongwith interest @ 18% p.a. The actual date of repayment of loan is not mentioned in undertaking dated 15.11.1999. If the suit is presumed to be a suit for recovery of loan amount then the period of limitation will start from the date of advancement of loan as per Article 19, for which the period of limitation is prescribed as 3 years when the loan is made. The loan was advanced on 15.11.1999 while the present suit was filed on 06.10.2005 i.e. after the expiry of period of 3 years. If the undertaking dated 15.11.1999 is taken as a bond even then in view of Article 29, the period of limitation is prescribed as 3 years from the date of execution of the bond when the date is not specified in the bond. In the undertaking no date is specified for the return of loan.

11. The suit is covered by Article 19. In view of my above discussion, I am of the opinion that the plaintiff should have filed the suit within the period of 3 years from 15.11.1999 i.e. from the date of advancement of loan. The suit has not been filed within the period of limitation. The suit is barred by limitation. The suit is dismissed. No order as to costs. The decree sheet be prepared accordingly. File be consigned to record room.”

(underlining added)

5. A reading of the aforesaid paras shows that the trial Court has held that period of limitation of every loan granted is three years and the suit has to be filed under Article 19 within three years of the loan being granted. This reasoning of the trial Court is ex facie incorrect because loan can be granted to be repayable after a particular period of time of, let us say one year, two years, three years and so on. Limitation to recover the loan on the cause of action will arise on the date when the loan is not repaid i.e. not from the date of grant of the loan but after one year or two years or three years of grant of loan when cause of action will arise to file the suit for recovery of amount. The period of limitation will be three years from the date of default i.e. the date when the loan ought to have been repaid but is not repaid. Such suits for recovery of loan granted will not be governed by Article 19 of the Limitation Act, 1963, and in fact will be governed by Article 113 of the Limitation Act, 1963 which states that a suit has to be filed within three years from arising of cause of action.

6. In view of the above, the suit is held within limitation inasmuch as the loan was repayable after five years from 15.11.1999 and therefore cause of action begins from 15.11.2004. The suit was filed on 6.10.2005 and therefore cannot be said to be barred by limitation.

7. In view of the above, the appeal is accepted. Impugned

judgment dated 6.10.2006 is set aside. Trial Court will now hear and dispose of the suit in accordance with law. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

APRIL 18, 2012

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