

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

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Date of decision: 18th November, 2013

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RFA 87/2005

HARCHARAN SINGH

..... Appellant

Through: Ms. Kamlesh Mahajan, Adv.

Versus

SUNIL SARIN (DECEASED THROUGH LRS)

.....Respondent

Through: Mr. Saurabh Suman Sinha, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree dated 3rd December, 2004 of the Court of the Addl. District Judge, Delhi of dismissal of Suit No.47/03/99 filed by the appellant for recovery of Rs.6,80,000/- from the respondent/defendant.
2. The appeal was, vide order dated 16th February, 2005 admitted for hearing. The appeal was on 22nd May, 2009 dismissed in default of appearance of the appellant/plaintiff but was, on application of the appellant, restored vide order dated 16th September, 2009. The counsel for the appellant/plaintiff was substantially heard on 11th October, 2013 when he sought time to answer the queries raised by this Court. Thereafter it was informed that the respondent/defendant had died and vide order dated 6th

November, 2013 his legal heirs were substituted. The counsel for the appellant and the counsel for the legal heirs of the respondent/defendant have been heard.

3. The appellant/plaintiff on 6th January, 1999 instituted the suit from which this appeal arises pleading:-

- (a). that the appellant/plaintiff had vide cheque dated 10th December, 1994 advanced a loan of Rs.5 lacs to the respondent/defendant for a period of one year and carrying interest at 12% per annum;
- (b). that in the first week of January (1996) the respondent/defendant issued a cheque for Rs.60,000/- in favour of the appellant/plaintiff towards interest of one year; the said amount was credited in the bank account of the appellant/plaintiff on 6th January, 1996;
- (c). that the respondent/defendant however failed to re-pay the loan inspite of numerous requests and reminders; and,
- (d). that the cause of action for the suit had accrued to the appellant/plaintiff on 10th December, 1994 when the loan was given and again on 6th January, 1996 when the cheque for

Rs.60,000/- issued by the respondent/defendant in favour of the appellant/plaintiff towards interest of one year was credited in the bank account of the appellant/plaintiff and yet again on 17th December, 1998 when the appellant/plaintiff issued legal notice demanding the loan.

4. The respondent/defendant contested the suit by filing a written statement, pleading:-

- (i). that the suit claim was barred by time;
- (ii). that the respondent/defendant did not at all know the appellant/plaintiff though admitting receipt of Rs.5 lacs vide cheque aforesaid but denying that it was on account of loan from the appellant/plaintiff;
- (iii). that the respondent/defendant used to purchase and sell stocks through M/s. FTC Investment Services owned by Shri Ashok Kumar Arora and Shri Krishan Kumar Arora;
- (iv). that the respondent/defendant had on 6th December, 1994 placed an order on M/s. FTC Investment Services for purchase of certain shares of the value of Rs.5,18,047/- and paid Rs.5 lacs in cash;

- (v). however M/s. FTC Investment Services represented to the respondent/defendant that they were required to make payment by cheque only and arranged an entry for Rs.5 lacs from some party and obtained a cheque for Rs.5 lacs from him in favour of the respondent/defendant by making cash payment of Rs.5 lacs and requested the respondent/defendant to encash the said cheque;
- (vi). that the respondent/defendant accordingly deposited the said cheque in his bank account and which cheque after being dishonoured once, was encashed on representation;
- (vii). denying that any amount of Rs.60,000/- towards interest was paid by the respondent/defendant to the appellant/plaintiff;
- (viii). that Mr. Arora of FTC Investment Services had approached the respondent/defendant in January, 1995 (sic for 1996) representing that the appellant/plaintiff who had given the cheque aforesaid and for Income Tax purposes had to show the said amount as loan and if the respondent/defendant issued a cheque for Rs.60,000/- in the name of the appellant/plaintiff, the appellant/plaintiff will return Rs.60,000/- in cash to the

respondent/defendant; it was in these circumstances that the cheque for Rs.60,000/- was issued by the respondent/defendant; and,

- (ix). that Mr. Arora of FTC Investment Services in connection with sale/purchase of shares used to take signatures of the respondent/defendant on a lot of blank papers and one of such papers appeared to have been misused for the purposes of fabricating a receipt of Rs.5 lacs as loan in favour of the appellant/plaintiff.

5. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 26th February, 2004:-

- “1) Whether the suit of the plaintiff is within limitation? OPP*
- 2) Whether the suit is bad for non-joinder of necessary parties? OPD*
- 3) Whether Rs.5,00,000/- were given to the defendant as loan? OPP*
- 4) Whether Rs.60,000/- paid by the defendant were towards interest? OPP*
- 5) Whether the plaintiff is entitled to the suit amount? OPP*
- 6) Whether the plaintiff is entitled to any interest. If yes, at what rate and for what period? OPP*
- 7) Relief.”*

6. The appellant/plaintiff examined himself and an official from Punjab National Bank in support of his case. The respondent/defendant did not lead any evidence despite opportunity.

7. The learned Addl. District Judge has vide the impugned judgment dismissed the suit finding/observing/holding:-

- A. that since the respondent/defendant did not lead any evidence, issue No.2 was decided in favour of the appellant/plaintiff and against the respondent/defendant;
- B. that again in the light of the evidence led by the appellant/plaintiff and the respondent/defendant having not led any evidence issues no.3,4&5 were decided in favour of the appellant/plaintiff;
- C. under issue no.6, the appellant/plaintiff was held entitled to interest at 12% per annum;
- D. that the appellant/plaintiff had sought to bring the suit filed on 6th January, 1999 within time by pleading the cause of action to have arisen on 6th January, 1996 when the cheque given towards interest was got encashed;

- E. that since the respondent/defendant had admittedly issued a cheque for Rs.60,000/- in the first week of January, 1996 which was got encashed by the plaintiff on 6th January, 1996 and as such payment had been made through an instrument in writing signed by the respondent/defendant; thus the period of limitation was to be computed not from the date of execution of the receipt of loan but from the date of payment of Rs.60,000/- through cheque;
- F. that the appellant/plaintiff had however not mentioned the date of cheque for Rs.60,000/-, neither in the plaint nor in evidence;
- G. though the appellant/plaintiff was *suo motto* recalled in evidence to give the date of the cheque but stated that he did not know the same and that it takes two or three days for encashing the cheque;
- H. thus the cheque must be bearing the date latest of 4th January, 1996 as the amount was credited in the account of the appellant/plaintiff on 6th January, 1996;
- I. that the cheque supposedly bearing the date of 4th January, 1996 amounted to acknowledgment within the meaning of Section 19

of the Limitation Act, 1963 and a fresh period of limitation started from 4th January, 1996 as in cases of payment by cheque, the issuance/handing over of the cheque amounts to payment, of course the same is subject to realization;

- J. that the reliance by the counsel for the appellant/plaintiff on Article 20 of the Schedule to the Limitation Act was misplaced as the appellant/plaintiff was not a lender in respect of the cheque for Rs.60,000/- but a recipient thereof;
- K. that the payment under a cheque stands made on the date of handing over cheque provided it is not dishonoured on presentation and which was not the fact in the instant case; and,
- L. thus the period of limitation expired on 3rd January, 1999 and the suit filed on 6th January, 1999 was barred by time.

axiomatically the suit was dismissed.

- 8. During the hearing on 11th October, 2013 it was enquired from the counsel for the appellant/plaintiff as to which Article of the Schedule to the Limitation Act would be applicable.

9. The counsel had drawn attention to Article 20 which provides limitation of three years for a suit for money lent by a cheque, commencing from the date when the cheque is paid.

10. It was however put to him that even if that be so, since the cheque for which the loan was given was dated 10th December, 1994, would not the limitation of three years expire on or before 10th December, 1997. It was yet further enquired from him that even if the limitation was to be counted from after one year, for which period the loan was stated to have been given i.e. from 10th December, 1995, would not the limitation of three years expire on or before 10th December, 1998.

11. It was yet further enquired from the counsel for the appellant/plaintiff on that date as to how the issuance of a cheque for Rs.60,000/- could be in acknowledgment of liability in the sum of Rs.5 lacs.

12. The counsel for the appellant/plaintiff was on that date not able to reply and had sought an adjournment.

13. In spite of the questions having been so crystallized in the order dated 11th October, 2013, neither the counsel for the appellant/plaintiff nor the counsel for the respondent/defendant have any replies thereto and have left it to this Court to decide as per its wisdom.

14. Article 19 of the Schedule to the Limitation Act, for a suit for money payable for money lent, provides a limitation of three years commencing from the date when the loan is made. However if the lender has given a cheque for the money lent, the limitation of three years under Article 20 commences from the date when the cheque is paid. If the loan is under an agreement that it shall be payable on demand, the limitation of three years, under Article 21 is again from the date when the loan is made. However if the money is deposited under an agreement that it shall be payable on demand, the limitation of three years, under Article 22 commences from the date when the demand is made.

15. The appellant/plaintiff claims the money to have been lent vide a cheque. If the period of three years from when the cheque is paid is counted, the suit would definitely be barred by time. However the receipt proved to have been executed by the respondent/defendant at the time of loan provides the loan to be for a period of one year with interest at 12% per annum to be paid after one year along with principal amount. The case pleaded by the appellant/plaintiff also is of the said loan being repayable after one year. Even if three years are to be counted from expiry of the said one year, the suit would still be barred by time.

16. The appellant/plaintiff for the aforesaid reason has pegged his case on extension of limitation under Section 19 of the Limitation Act, the relevant part whereof is as under:-

“19. Effect of payment on account of debt or of interest on legacy. – Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.”

17. The first question which thus arises is whether a mere issuance of a cheque (though dishonoured on presentment) purportedly on account of debt or of interest amounts to acknowledgment or the same has to be necessarily accompanied by evidence to show the same to be on account of debt or of interest. The second question which arises is that even if a mere cheque leads to computation of fresh period of limitation, the fresh period is to be computed from what date, whether from the date when the cheque is handed over or the date which the cheque bears or the date on which the payment under the cheque is received; or in other words, what is to be the meaning to be ascribed to the word “when the payment was made”.

18. The Full Bench of the Gujarat High Court in ***Hindustan Apparel Industries Vs. Fair Deal Corporation*** AIR 2000 Gujarat 261 and this Court

in ***Rajesh Kumari Vs. Prem Chand Jain*** AIR 1998 Delhi 80 have held that a cheque would *prima facie* amount to an admission of debt unless a contrary intention has been expressed by the person issuing the cheque and merely because subsequently such a cheque is dishonoured and the admission is retracted, the admission or the acknowledgement can hardly be said to cease as an admission/acknowledgment of liability and to hold otherwise would be contrary to fair play between the parties, justice and equity. It was further held that the payment by cheque having been accepted and the plaintiff having earned the advantage of extension in period of limitation, that advantage cannot be wiped out or undone by the tortuous act of the defendant withholding the payment by the cheque.

19. The Supreme Court in ***Jiwanlal Achariya Vs. Rameshwarlal Agarwalla*** AIR 1967 SC 118 held (in the context of equivalent Section 20 under the 1908 Act) that the cheque itself is an acknowledgment of the payment in the handwriting of the person giving the cheque and on the basis thereof, a fresh period of limitation can be computed within the meaning of Section 19 of the Act. To the same effect is the judgment in ***Rakesh Gupta Vs. Khoday India Ltd.*** MANU/DE/5553/2012.

20. Even otherwise, the respondent/defendant in his written statement admitted the said cheque for Rs.60,000/- to have been issued by him towards interest on the loan transaction of five lacs though pleaded the transaction to be fictitious. The respondent/defendant has failed to prove such defence of the transaction being fictitious. The respondent/defendant is however bound by his admission of the cheque for Rs.60,000/- being towards interest on loan.

21. As far as the second of the aforesaid questions is concerned, I find the Supreme Court, as far back as in *Commissioner of Income Tax Vs. M/s. Ogale Glass Works Ltd.* AIR 1954 SC 491 to have held that a cheque, unless dishonoured is payment and the said payment takes effect from the delivery of the cheque but is defeated by the happening of the condition, i.e., non-payment at maturity and that the payment on encashment of the cheque relates back to the date of the receipt of the cheque and in law the date of payment is the date of the delivery of the cheque. The question again arose before the Supreme Court in *Jiwanlal Achariya* supra. In that case, on 04.02.1954, the post dated cheque dated 25.02.1954 was delivered and the contention was that the period of limitation has to be computed from 04.02.1954 and not from 25.02.1954. The Supreme Court held that mere

delivery of a cheque on a particular date does not mean that the payment was made on that date unless the cheque was accepted as unconditional payment; where the cheque is not accepted as an unconditional payment, it can only be treated as a conditional payment; in such a case, the payment for the purpose of Section 19 would be the date on which the cheque would be actually payable at the earliest, assuming that it will be honoured. It was accordingly held that if the cheque is post dated, meaning that it could not be paid till the date it bore, the payment was conditional and would only be good when the cheque is presented on the date it bears viz. 25.02.1954 and is honoured. It was yet further held that the fact that the cheque is presented later on than the date it bears is immaterial for it is the earliest date on which the payment could be made which would be the date of payment.

22. The Division Bench of this Court in *Ashok K. Khurana Vs. M/s. Steelman Industries* AIR 2000 Delhi 336 further clarified that if an ante dated cheque is delivered, then the date of payment would be the date of delivery of the cheque and not the date which the cheque bears.

23. Again in *DCM Financial Services Ltd. Vs. Sunil Kala & Co.* 97 (2002) DLT 700, this Court held that if the debtor himself requests the creditor to postpone the presentation of the cheque, it would amount to

postponement of the date of payment itself and period of limitation then cannot be said to be commencing from the date of the cheque.

24. The law is thus well settled that the date of payment, within the meaning of Section 19 of the Limitation Act, would be the date of delivery of the cheque or date which the cheque bears, whichever is latter and a further period of three years has to be counted therefrom.

25. In the present case, there is no evidence whatsoever of the date of delivery of the cheque or the date which the cheque bears. All that has been proved is that the cheque was encashed on 06.01.1996. In these facts and circumstances, the learned Additional District Judge is correct in his conclusion that for the payment under the cheque to have been received on 06.01.1996, the cheque must have been delivered and deposited in the account of the appellant / plaintiff on an earlier date and which latest can be 04.01.1996 and if the limitation of three years is to be counted therefrom, the suit is barred by time.

26. Before parting with this case, it is also deemed apposite to deal with the question as to which article of the Schedule to the Limitation Act would apply in a case of loan repayable after a particular date.

27. The Division Bench of this Court in *Allied Trading Co. etc. Vs. S.L. Verma* MANU/DE/0270/1983 held that where the agreement specifies the point of time when or within which or after which the loan is to be repaid, Article 28 (being for a suit on a bond where a day is specified for payment and prescribing limitation of three years commencing from the date so specified) or Article 55 (being for a suit for compensation for breach of any contract express or implied and not specifically provided for and providing a limitation of three years commencing from the date when the contract is broken) would apply.

28. The Full Bench of the Allahabad High Court in *Dhapai Vs. Dalla* AIR 1970 Allahabad 206 also held Article 55 (equivalent to Article 115 of the 1908 Act) to apply in a suit for recovery of money, time for repayment whereof had been agreed. The residuary Article 113 (equivalent to Article 120 of the 1908 Act) was held not applicable.

29. A profitable discussion in this regard is also to be found in *Jailebdeen Vs. Mohammed Basheer* AIR 1992 Kerala 31 also holding Article 55 to apply in a suit for recovery of monies loaned, the date for repayment of which was specified and held the limitation of three years to commence from the date fixed for repayment.

30. The question arose before the Supreme Court in *Syndicate Bank Vs. Channaveerappa Beleri* (2006) 11 SCC 506, though in the context of a claim against a guarantor. The contention that Article 55 owing to the use of the word “compensation” therein would not be applicable for recovery of monies lent/guaranteed, and the residuary Article 113 would apply, was not accepted, owing to the earlier decision in *Margaret Lalita Samuel Vs. The Indo Commercial Bank* (1979) 2 SCC 396 holding Article 55 to be applicable in such a case. However, no definite view was given in view of the period of limitation both under Articles 55 and 113 being the same, under the 1963 Act.

31. A learned Single Judge of this Court however in *Sh. Virender Kumar Jain Vs. M/s. Alumate (India) Pvt. Ltd.* MANU/DE/0885/2012 held that where a loan is given without fixing any date of repayment, the loan would be repayable on demand and the period of limitation therefor would be three years from the date of such demand. Article 19 was not adverted to, and the judgment was pronounced in the absence of the counsels. The same learned Single Judge in *Satish Kumar Vs. Reena Bhoumik* MANU/DE/2394/2012 and *IFCI Venture Capital Funds Ltd. Vs. Santosh Khosla* MANU/DE/1078/2012 with regard to loans repayable after a particular

period of time has observed that in such cases the limitation cannot be said to commence from the date of grant of loan within the meaning of Article 19 and held that such cases would be governed by the residuary Article 113 with the cause of action accruing to the plaintiff on the date of default i.e. the date when the loan ought to have been repaid but is not repaid. However the possibility of Article 55 applying to such cases was not explored.

32. There is thus no merit in the appeal which is dismissed. However, the counsel for the respondent also having not assisted in the matter, no costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 18, 2013

pp/gsr/bs..