



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 370 OF 2025

BETWEEN:

SRI ASHOK B SHAH
S/O BABULALJI,
AGED ABOUT 63 YEARS,
R/A 14/2, 40TH CROSS,
8TH MAIN, 5TH BLOCK,
JAYANAGAR, BANGALORE - 560041

...APPELLANT

(BY SRI. GAURAV C PATIL, ADVOCATE)

AND:

SRI PARIMAL HARISHBHAI MODI
PROPRIETOR
"MODI SONS"
KARANJ ROAD, OPP. ST. DEPO,
AT POST OLPAD - 394540
SURAT DISTRICT, GUJARAT.
ALSO, R/A FLAT NO. B,
903, GALAXY IMEPRIAL,
ABOVE SURAT DISTRICT BANK,
PAL WALWAY ROAD,
PAL - ADAJAN, SURAT 395009
GUJARAT.

...RESPONDENT

(RESPONDENT IS SERVED AND UNREPRESENTED)



THIS COMAP IS FILED UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE R/W SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 PRAYING TO SET ASIDE THE JUDGMENT DATED 03.04.2025, IN COM.OS NO. 1048/2024 ON THE FILE OF THE LD. LXXXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT), BENGALURU CITY(CCH 89) AT BANGALORE (ANNEXURE-A).

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The plaintiff has filed the present appeal under Section 96 of the Code of Civil Procedure, 1908 [**CPC**] r/w Section 13(1A) of the Commercial Courts Act, 2015, [**CC Act**] calling in question the judgment and award dated 03.04.2025 [**impugned judgment**] passed by the LXXXVIII Additional City Civil and Sessions Judge (Exclusive Commercial Court), Bengaluru City (CCH-89) [**Commercial Court**], in Com.O.S.No.1048/2024, whereunder the suit for recovery of a sum of ₹50,42,972/- filed by the plaintiff against the defendant has been dismissed.



2. The parties will be referred to as per their rank before the Commercial Court for the sake of convenience.

3. It is the case of the plaintiff that the families of the plaintiff and the defendant are known to each other for the past 100 years and they are neighbours having cordial relationship. That the defendant used to borrow money from the plaintiff for the business to run their business styled as "Modi Sons". The defendant has borrowed money from the plaintiff on various occasions, from 2018 to 2021 and agreed to repay the same with interest of 18% p.a. The defendant made part payments and the balance sum due and payable was in a balance sum of ₹27,50,000/- towards the principal amount and a sum of ₹22,92,972/- towards interest calculated at 18% p.a., as on 03.01.2024. Despite repeated requests, since the defendant did not pay the said amount, the plaintiff filed a suit claiming a sum of ₹50,42,972/- together with interest at 18% p.a. from the date of the suit till recovery.

4. The respondent, who was arrayed as the defendant in the suit entered appearance and contested the same. The defendant denied that he had borrowed any money at any point of time from



the plaintiff. The defendant denied the case put forth by the plaintiff in the suit as also denied that he was liable to pay any money at an interest of 18% p.a. That the father of the defendant started a business at Surat in Gujarat under the name and style of M/s Modi Sons. That after the demise of the father, the brother of the defendant, Sri Vimal Modi was looking after the business and managing the account transactions. That due to the onset of the COVID-19 pandemic, Vimal Modi died on 29.05.2021 and after his death, the defendant was looking after the business. That the defendant had not borrowed any money from the plaintiff.

5. The Commercial Court, consequent to the pleadings of the parties, framed the following issues:

"1) Whether plaintiff proves that defendant has approached the plaintiff sought for financial assistance for his business purpose and availed loan amount of Rs.27,50,000/- on different dates?

2) Whether plaintiff proves that he is entitled for suit claim amount of Rs.50,42,972/- with future interest @18% p.a from the defendant?

3) Whether suit is time barred?

4) Whether suit is hit by Order 7 Rule 11 of CPC?

5) What order or decree?"



6. The plaintiff was examined as PW1 and marked Exs.P1 to P4. No oral or documentary evidence was adduced on behalf of the defendant. The Commercial Court, by the impugned judgment, answered Issue Nos.1 and 2 in the negative; Issue Nos.3 and 4 in the affirmative and dismissed the suit.

7. The Commercial Court noticed that the primary document relied upon by the plaintiff was its bank account statement (Ex.P3), apart from the legal notice (Ex.P1) and the postal acknowledgement (Ex.P2). That, apart from the said documents, no other material was produced by the plaintiff to prove its case. It was also noticed that PW1, in the cross-examination, although having admitted that he was filing income tax returns for more than 30 years and also stating that there was no impediment to produce the income tax returns for the period 2017 to 2024, has not produced the same. It has also noticed that there were no documents to show any transactions with the defendant. In the cross-examination, PW1 has stated that reference to "Modi Sons Vimal" in the bank statement [Ex.P3] is the defendant. It is further stated by PW1 that he does not have any document to show that



defendant is related to Modi Sons. Hence, issue nos.1 and 2 were answered in the negative.

8. The Commercial Court while considering Issue Nos.3 and 4 has recorded a finding that there is no cause of action for the plaintiff to sue the defendant since the documents relied upon by the plaintiff do not, in any manner, pertain to the defendant. It has further noticed that the transaction pertains to the year 2021 and the suit is filed on 31.07.2024 after a lapse of 3 years. Hence, by the impugned judgment, the Commercial Court dismissed the suit.

9. Being aggrieved, the present appeal is filed. Along with the above appeal, IA No.1/2025 is filed seeking to produce the GST details of the defendant and his business; as well as the letter from the bank of the plaintiff. IA No.1/2026 is filed under Order No.XLI Rule 27 r/w Section 151 CPC seeking to produce the Income Tax returns for the period 2019-20, 2020-21 and 2021-22.

10. In the affidavit filed in support of IA No.1/2025, it is deposed that the existence of the documents produced along with the application came to the knowledge of the plaintiff only after the passing of the impugned judgment. It is further deposed that the



plaintiff learnt about the GST details of the business of Modi Sons being operated by the defendant. That the bank account of the plaintiff could not be produced before the Commercial Court wherein the requisite information is forthcoming. That the trial Court has observed that the same had not been produced by the plaintiff. Vide the affidavit filed in support of IA No.1/2026, it is deposed that although in the cross-examination, the plaintiff had deposed that there was no impediment to produce his Income Tax returns, before the plaintiff had an opportunity to produce the same before the Commercial Court, since the defendant did not lead any evidence, the Commercial Court heard the matter and posted the same for judgment within a short period. It is further deposed that the Income Tax returns would clearly demonstrate that the defendant has borrowed the money from the plaintiff.

11. The learned counsel for the plaintiff further contends that the finding of the Commercial Court that the suit is barred by time is erroneous since the plaintiff is entitled to extension of limitation, having regard to the judgment of the Supreme Court in **Re:Cognizance for Extension of Limitation¹**.

¹ (2022) 3 SCC 117



12. It is further contented that the documents now sought to be produced would clearly demonstrate that the finding recorded by the Commercial Court is erroneous. Hence, the learned counsel seeks for setting aside of the impugned judgment and remanding the matter to the Commercial Court to afford an opportunity to the plaintiff to prove his case before the Trial Court.

13. The Trial Court while holding that the suit is barred by time, noticed that the transactions relied upon by the plaintiff were dated 15.01.2021, 16.01.2021 and 25.01.2021 and the suit was filed on 31.07.2024, after lapse of 3 years. The Supreme Court, in the case of in ***Re:Cognizance*** (*supra*), has *inter alia*, issued the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022.



notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."

14. It is clear that while calculating the limitation from January 2021, the period between 15.03.2020 to 28.02.2022 is to be excluded. The suit was filed on 31.07.2024. The period of limitation, if the period between 15.03.2020 and 28.02.2022 is excluded, would extend up to 28.02.2025 and the suit is within time. Hence, the finding of the Commercial Court that the suit is barred by time is erroneous and requires to be interfered with.

15. With regard to the finding of the Commercial Court that there are no documents to demonstrate that the defendant owed money to the plaintiff, the documents now produced along with the present appeal by IA No.1/2026 and IA No.1/2025 would demonstrate that the defendant is also carrying on the business under the name of Modi Sons. Further, certain transactions in the Income Tax returns and bank accounts also reflect the name of the defendant. Having regard to the reasons set out in the affidavits filed in support of the applications, it is just and proper that the applications be allowed



and the documents produced along with the applications be taken on record and the appellant be afforded another opportunity to prove his case. The said aspect of the matter is required to be considered by the Commercial Court and an opportunity also needs to be afforded to the defendant to contest the same.

16. In view of the aforementioned discussions, it is expedient that the impugned judgment be set aside and the matter be remanded to the Commercial Court.

17. Accordingly, the applications (IA Nos.1/2026 and 1/2025) are allowed and the documents produced along with the said applications are taken on record. The above appeal is allowed with costs. The impugned judgment and decree are set aside and the matter is remanded to the Commercial Court to afford another opportunity to the plaintiff to prove his case and to afford an opportunity to the defendant to contest the same. All contentions of the parties are reserved.

18. Registry to transmit the records produced along with the applications to the Commercial Court forthwith.



19. All pending applications are also disposed of.
20. The appellant is entitled to refund of Court fee as per Rules.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

Vmb
List No.: 1 Sl No.: 22