IN THE HIGH COURT OF JUDICATURE AT BOMBAY, BENCH AT AURANGABAD

SECOND APPEAL NO.: 326 OF 1996
WITH
CIVIL APPLICATION NO. 3773 OF 1996

1. Subhash S/o Gulabrao Gangarde,
   Age: 32 years, Occu. Agri.,
   R/o Kombhali, Tq. Karjat,
   District: Ahmednagar.

2. Babi Gulabrao Gangarde,
   Age: 29 years, Occu.: Agri.,
   R/o Kombhali, Tq. Karjat,
   Dist. Ahmednagar.

3. Laxmibai Gulabrao Gangarde,
   Age: 56 years, Occu.: Agri.,
   R/o Kombhali, Tq. Karjat,
   Dist. Ahmednagar.

4. Lilabai Laxman Choudhari,
   Age: 40 years, Occu.: Agri.,
   R?o Ashti, Dist. Beed.

5. Shakuntalabai Balbhim Satale,
   Age: 38 years, Occu.: Agri.,
   R/o Bitekawadi, Post Shinde,
   Tq. Karjat, Dist. Ahmednagar. ... **APPELLANTS [ORIG.DEFENDANTS]**

VERSUS

1. Chandanmal Mulchand Bhalgat,
   (Deceased). His L.Rs. brought
   on record as per order passed
   below Exh.23.

   1. Vasantlal Chandanmal Bhalgat.
      Since deceased through L.Rs.
      1-a) Sushil Vasantlal Bhalgat,
      Age 35 years, Occ. Business,
      R/o Tapidas Galli, Ahmednagar.
      District: Ahmednagar.

1-b) Sunil Vasantlal Bhalgat,
Age: 25 years, Occ. : Business,
R/o as above.

2. Rameshlal Chandanmal Bhalgat,
(Since deceased through L.Rs.)

2-a) Akshaykumar Rameshlal Bhalgat,
Age: 30 years, Occu.: Business,
R/o. Tapidas Galli, Ahmednagar,
District Ahmednagar.

3. Smt. Ichrajbai Chunilal Pokharna,
Age: 67 years, Occu.: Household,
R/o Navi Peth, Ahmednagar.

4. Sau. Gulabbai Shantilal Bhandari,
Age: 64 years, Occu.: Household,
R?o Sadar Bazar, Laskar, Solapur.

5. Sau. Vinjaya Champalal Bhandari,
Age: 52 years, Occu.: Household,
R/o Shrigonda, Dist. Ahmednagar.

6. Smt. Shantabai Popatlal Changede,
Age: 51 years, Occu.: Household,
R/o Ahmednagar.

7. Sau. Sarlabai Jawaharlal Bora,
Age: 38 years, Occu.: Household,
R/o Ahmednagar. ... **RESPONDENTS [ORIG. PLAINTIFFS]**

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Mr.A. V. Hon, Advocate h/f Mr. V. D. Hon, Advocate for the Appellants
Mr. S. C. Bora, Advocate for Respondent Nos.1 to 7.

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CORAM:- T. V. NALAWADE, J.
DATED:- 3rd SEPTEMBER, 2015.

JUDGMENT:

1. The appeal is filed against judgment and decree of

Regular Civil Appeal No.7 of 1988 which was pending in District Court Ahmednagar. The appeal filed by present Respondents, plaintiffs against judgment and decree of Regular Civil Suit No.92 of 1978, which was pending in the Court of Civil Judge, Junior Division, Karjat, District Ahmednagar, is allowed and the money suit is decreed in favour of the Respondents. Both the sides are heard.

2. This Court, other Honourable Judge, has formulated substantial question of law at the time of admission of the appeal and that is as follows:

> "*Whether there is perversity in the decision of the first Appellate Court on the ground of limitation*?"

3. Original Plaintiff, predecessor in title of present Respondents Chandanmal was a money lender. It is the case of plaintiff that in the said business he had given loan of Rs.12,500/- to Gulabrao, the predecessor in title of defendants. Gulabrao had executed promissory note on 3rd August, 1972 which was payable on demand and he had agreed to pay interest at the rate of 1% p.m. It is contended that Gulabrao did not repay the money and he died in 1975.

4. It is the case of plaintiff that on 25th July, 1975

defendant No.4 paid Rs.500/- towards the repayment of aforesaid loan and acknowledged the loan by putting thumb impression on the promissory note. It is contended that the defendants then paid Rs.2,000/- on 29th April, 1977 and again acknowledged the debt and so on the date of suit they were liable to pay Rs.19,000/- which is the amount along with interest. It is contended that plaintiff has money lending licence and so he is entitled to recovery the amount along with interest.

5. The defendants contested the suit by filing written statement. They denied every thing. They denied that Gulrao had taken the loan and he had executed promissory note. They have denied that defendant No.4, widow of Gulabrao had paid Rs.500/- and on 25th July, 19975 she had acknowledged the debt by putting her thumb impression on the promissory note They have denied that on 29th July, 1977 they had paid Rs.2,000/- more and they had again acknowledged the debt.

6. In the trial Court, as many as 9 issues were framed. The trial Court answered all the issues against the plaintiff and dismissed the suit. The issue of limitation was decided against the plaintiff. It was also observed by the trial Court

that the evidence given on making payment by the defendants and acknowledging the debt is not believable. The Appellate Court has held that the suit was within limitation and the acknowledgements given by the defendants in respect of the loan were proved. The Appellate Court has also referred to the provisions of Section 118 of the Negotiable Instruments Act and it is held that the presumption needs to be drawn against the defendants.

7 In view of the aforesaid substantial question of law, formulated by this Court, the scope of the present proceeding is very limited. The plaintiff has examined himself and he has examined his accountant, Diwanji to prove the execution of promissory note and also to prove the endorsement made on the promissory note by defendant No.4 on first occasion and by other defendants on second occasion. The evidence is given that payments were made on those occasions by the defendants. As the thumb impression appearing on the endorsement are duly proved, the Appellate Court has observed that the burden was on other side to prove that no such acknowledgement was given.

8. In such a case, provision of Section 18 of the Limitation Act also needs to be considered. In view of section 18 if there is acknowledgement in writing of the debtor then the time again starts to run for the law of limitation and the limitation period gets extended. Though this provision is not specifically referred by the first Appellate Court this provision needs to be used in such a case. In view of this position of law, it is not possible to interfere in the judgment and decree delivered by the first Appellate Court.

9. Before parting with the judgment it needs to be observed that other defences could have been taken by the defendants. The initial first acknowledge was only by the widow. The signature by the minor son of he deceased could not have been used against him. Further, the point that it was a personal debt of the deceased and for that he had executed the promissory note needs to be considered. Though there is no specific observation, this Court has no hesitation to observe that the money decree can be executed only against the property, if any, left behind by the initial debtor Gulabrao and it cannot be executed against the defendants personally.

10. In the result, the appeal stands dismissed with aforesaid observations.

11. In view of dismissal of appeal, pending civil application for stay does not survive and the same stands disposed of.

[T. V. NALAWADE, J.]

Dated:03/09/2015.
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