IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

AS.NO. 27 OF 1996 ( )

AGAINST THE JUDGMENT IN O.S. NO.424/1993 OF ADDITIONAL SUB COURT,NORTH PARAVUR DATED 31-08-1994

APPELLANT(S)/PLAINTIFF :

THE FEDERAL BANK LTD.,
REGISTERED OFFICE, ALWAYE,
BRANCH KIZHAKKAMBALAM.

BY ADVS.SRI.GEORGE VARGHESE
SRI.GEM PAUL EDAMPADAM

RESPONDENT(S)/DEFENDAT :

ROY GEORGE, S/O GEORGE,
KAKKADAN HOUSE,
KIZHAKKAMBALAM KARA.

BY ADV. SRI.C.K.PAVITHRAN
BY ADV. SMT.P.N.SEETHA

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

NS

P.B. SURESH KUMAR, J.

A.S. No.27 of 1996

Dated this the 30th day of January 2015

J U D G M E N T

The plaintiff in O.S.No.424 of 1993 on the file of the Court of the Additional Subordinate Judge, North Paravur is the appellant. The sole defendant in the suit is the respondent.

2. The plaintiff is a scheduled bank. O.S.No.424 of 1993 is a suit filed for realisation of Rs.23,000/- outstanding in the account of the term loan provided by the plaintiff to the defendant on 26.03.1986. As per the terms of the agreement entered into by the plaintiff with the defendant, the amount disbursed to the defendant had to be repaid by him in 72 monthly instalments, commencing from 26.10.1986. According to the plaintiff, the defendant committed defaults in repaying the instalments of the loan and hence the suit for realisation of the outstanding in the loan account with interest, amounting to Rs.40,575/-.

3. The defendant resisted the suit contending mainly

that the suit is barred by limitation.

4. The trial court, though not framed an issue relating to the plea of limitation, found that Ext.A5 letter of confirmation of balance relied on by the plaintiff to save the period of limitation is not a genuine document and consequently dismissed the suit as barred by limitation. The plaintiff has therefore, come up in this appeal challenging the decision of the trial court.

5. Heard the learned counsel for the appellant and the learned counsel for the respondent.

6. The finding of the court below as to the validity of Ext.A5 letter of confirmation reads thus:

> "On a perusal of Ext.A5, it is seen that the confirmation statement is dated 30.06.92 which is not a working day as far as the banks are concerned (Half yearly closing), PW1 the then bank Manager of the Plaintiff bank at Kizhakkambalam has deposed that Ext.A4 balance confirmation letter was signed by the defendant in his presence. But on a perusal of Ext.A5 it is seen that the branch Manager has verified the signatures on 16-7-92. Therefore, the deposition of PW.1 cannot be relied on. The defendant has categorically denied the signatures in Exts.A4 and A5 confirmation letters. Moreover in Ext.A4 the rate of interest shown is 12% and there is no quarterly rests therein, whereas in Ext.A5 the rate of interest shown is 14% per annum with quarterly rests. Similarly there is difference in the balance amount outstanding due from the defendant in Exts.A4 and A5 and

> according to the plaintiff's counsel the amount shown in Ext.A5 is after deducting the subsidy amount of Rs.5000/-. Even then it is not mentioned that the said amount of 25943.46 is inclusive of interest upto 27.11.89 as seen from the top portion of the Ext.A5. Moreover, in Ext.A5 is the balance amount outstanding as on 30.06.92, whereas Ext.A6 the certified extract of the accounts maintained by the plaintiff bank in respect of the defendant shows the accounts upto 27.11.89. There is no explanation why the plaintiff bank had not produced the accounts upto the date of filing of the suit i.e. 22.07.93. As pointed out earlier PW2 has deposed before this Court that he had witnessed the defendant signing Ext.A5 confirmation letter. But from the document itself it is seen that he verified the defendant's signature on 16.7.92. Therefore, as rightly pointed by the learned counsel for the defendant in Ext.A5 is not a genuine document and hence there is no valid acknowledgment."

As is evident from the extracted portion of the judgment, the finding that the suit is barred by limitation has been arrived at by the court below for the reason that the day on which the said document was executed namely, 30.06.1992 was not a working day for the bank; that the signature of the defendant in Ext.A5 letter of conformation of balance was verified only on 16.07.1992; and that the rate of interest as applicable to the loan and the balance outstanding in the loan account as shown in the said document are incorrect.

7. There is nothing on record to indicate that 30.06.1992 was not a working day for the bank. Even assuming that there were no banking operations on 30.6.1992, for, the said day being the half yearly closing day for the banks, so long as the bank is not precluded from obtaining balance confirmations from loanees on that day, it cannot be contended that a balance confirmation executed on that day is not a valid document. True, the signature of the defendant in Ext.A5 is seen verified by the Manager of the bank only on 16.07.1992. Nothing is brought to my notice to indicate that the bank is expected to verify the signature of the loanee in the documents of this nature on the same day itself. Going by the terms of the loan agreement, the rate of interest applicable to the transaction is the rate of interest fixed by the bank from time to time. As such, the mere difference in the rate of interest shown in Ext.A5 will not lead to the inference that the document is not genuine. Likewise, even assuming that the balance outstanding in the loan account as shown in Ext.A5 is

incorrect, it cannot be contended that the document is not genuine. In so far as Ext.A5 is relied on only to save the period of limitation, the only point to be examined is as to whether the defendant has acknowledged the balance outstanding in the loan account on that day. In this context, it is relevant to note that PW1, the Manager of the bank who has obtained Ext.A5 from the defendant has categorically deposed that Ext.A5 letter of confirmation of balance was executed by the defendant in his presence on 30.6.1992. The evidence tendered by the said witness is not seen discredited. The finding of the court below that the suit is barred by limitation is therefore, unsustainable in law.

8. The learned counsel for the respondent submitted that the loan agreement was executed on 26.03.1986 and therefore Ext.A5 confirmation of balance cannot be treated as a valid acknowledgment as the same was not executed within three years from the date of the loan agreement. I do not find any merit in this argument also as Ext.A6 certified extract of the books of account of the

plaintiff bank in relation to the loan of the defendant indicate that the defendant has paid back a portion of the loan in instalments on various dates and the last payment into the loan account was on 05.12.1988. It is settled that the payment into the loan account by the debtor would amount to an acknowledgment of the loan. If the said payment is reckoned as an acknowledgment, Ext.A5 is well within the period of limitation.

In the result, the impugned decree and judgment are set aside and the suit is remitted to the trial court for fresh disposal. This being a suit of the year 1993, I feel it appropriate to direct the court below to dispose of the same on merits, as expeditiously as possible, at any rate, on or before 31.07.2015.

Sd/-

P.B. SURESH KUMAR
JUDGE

/ True Copy /

NS P.A. To Judge