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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) No. 1172/2006

21st September, 2015

K.K.SHARMA

..... Plaintiff

Through: Mr. R.K. Kohli, Advocate.

versus

M/S CITI BANK & ANR.

..... Defendants

Through: Mr. Sanjay Gupta, Mr. Ateev Mathur,
Mr. Ajay Monga and Ms. Richa
Oberoi, Advocates for D-1/Citibank.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The present suit is a suit for recovery of Rs.35,90,181/- by the plaintiff Sh. K.K.Sharma against the two defendants, defendant no.1 being the Citibank which was the collecting bank and the defendant no.2 being the Bank of Baroda, and which was the bank of the plaintiff from where the subject cheques were issued by the plaintiff. The principal amount is the amount of six cheques totaling to Rs. 29,12,926/- and the balance amount is the amount towards interest. The details of the six cheques are as under:-

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S.No.	Cheque No.	Dated	Drawn on	Amount
1.	793805	28.10.1998	BOB-Noida	Rs. 4,76,087.00
2.	801632	09.12.1999	-do-	Rs. 6,07,997.00
3.	807563	14.04.2000	-do-	Rs. 2,23,504.00
4.	801639	13.01.2000	-do-	Rs. 11,17,404.00
5.	868056	03.04.2002	-do-	Rs. 1,800.00
6.	868057	06.04.2002	-do-	Rs. 4,86,134.00
			Total	Rs. 29,12,926.00

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2(i). The case of the plaintiff is that six subject cheques were drawn by the plaintiff in his own favour for transfer of amounts from the defendant no.2/Bank to the defendant no.1/Bank in which the plaintiff claims to have opened a current account. The requirement for opening an account of the plaintiff with the defendant no.1/Bank was on account of the fact that the plaintiff was a dealer of the goods supplied to him by Nestle India Limited and Nestle India Limited was to be given ‘collateral security’ by the modality of the plaintiff opening a bank account in his own name and parking the funds under the subject cheques in such account of the plaintiff with the defendant no.1/Bank.

(ii) Plaintiff pleads that as per the requirement of Nestle India Limited, he had opened in the year 1998 a current account with the defendant no.1/Bank bearing no.0409483807 and in which account the plaintiff deposited the subject six cheques and which were to remain as 'collateral security' for the dealings of the plaintiff with Nestle India Limited.

(iii) Plaintiff pleads that when the plaintiff approached the defendant no.1/Bank to find out the details of the subject account in August, 2003, so as to ascertain the balance money lying in this current account with the defendant no.1/Bank (because in the meanwhile, plaintiff discontinued his dealings with Nestle India Limited), the defendant no.1/Bank informed the plaintiff that it had never any account of the plaintiff with it much less bearing no. 0409483807.

(iv) The case of the plaintiff further is that when he did not get the requisite response from the defendant no.1/Bank of giving information of six cheques, plaintiff approached his bank being the defendant no.2/Bank of Baroda, Noida Branch from where he had drawn the six cheques from his account and that the defendant no.2 informed the plaintiff that the subject cheques were presented for clearing by the Nehru Place Branch of the

defendant no.1/Bank and paid by the defendant no.2. As per the plaint, the defendant no.2/Bank of Baroda is said to have sent its official communication dated 18.8.2004 to the Nehru Place Branch of the defendant no.1/Bank asking the said branch to give information as to in whose account the six cheques were credited. Defendant no.2 followed up the same with another letter dated 7.10.2004 to the defendant no.1/Bank.

(v) Plaintiff then pleads that he then got a Legal Notice dated 25.1.2005 sent to both the defendants when he found the unlawful act of crediting the proceeds of the six cheques in the account of someone else (Nestle India Limited) instead of the plaintiff and demanding from the defendants the amounts of six cheques debited from his account with the defendant no.2 and wrongly credited not to the plaintiff but to someone else ie Nestle India Limited.

(vi) I may note that there are other averments in the plaint of some earlier proceedings before the Banking Ombudsman but these proceedings are not relevant to determine the issues of the present suit.

(vii) The plaintiff has thus filed the present suit in this Court on 4.5.2006 for recovery of the amounts of the six cheques alongwith interest.

3. Though in the suit decree was sought against both the defendants, today before me counsel for the plaintiff states that he is pressing for a decree only against the defendant no.1 viz Citibank and not against the defendant no.2 viz the Bank of Baroda.

4. Defendant no.1/Citibank has pleaded its defence under three heads. Firstly, it is pleaded that the defendant no.1/Bank never had or never opened any account with it of the plaintiff, much less an account no. 0409483807 as is pleaded by the plaintiff. Defendant no.1/Bank secondly pleads that the cheques in question were presented for collection by M/s Nestle India Limited alongwith letters of the plaintiff, and consequently, the defendant no.1/Bank collected six cheques and credited the amounts of six cheques to the account of Nestle India Limited. The third defence of the defendant no.1/Bank is that whatever be the case of the plaintiff on merits, the suit which is filed on 4.5.2006 with respect to the cheques is clearly barred by limitation inasmuch as, for each of the cheques, the limitation, if there is any wrongful collection by the defendant no.1/Bank would arise within a period of a month or so after the cheques were collected by the defendant no.1/Bank, when such commencement of period of limitation is taken and the cheques being of the years 1998, 1999, 2000 and 2002, the suit

at best could have been filed by around June, 2005, but as the same is filed on 4.5.2006, and hence the suit is barred by limitation.

5. The following issues were framed in this suit on 18.9.2007:-

- “1. Whether the plaintiff is entitled for a decree for recovery of Rs.35,90,181/-? OPP
2. Whether the plaintiff is entitled for interest, if so, on what amount, at what rate and for what period? OPP
3. Whether the cheques mentioned in the plaint were handed over by the plaintiff to M/s.Nestle India Ltd. in pursuance of business transaction between them, if so to what effect? OPD
4. Whether M/s.Nestle India Ltd. is a necessary party, if so, to what effect? OPP
5. Whether the suit of the plaintiff is barred by time? OPD
6. Relief.”

Issue Nos. 1, 3 and 5

6. Issue nos. 1, 3 and 5 are taken by me together inasmuch the discussion and decision on these issues would have interrelation.

7. The case of the plaintiff is that plaintiff opened an account with the defendant no.1/Bank for giving ‘collateral security’ of the amounts of the cheques to Nestle India Limited. The case as put up by the plaintiff before this Court in my opinion is unbelievable at the outset because ‘collateral

security' means a security which is handed over to a creditor to secure the dues of that creditor. The story which is put forth by the plaintiff is that Nestle India Limited asked the plaintiff to open his own account and put amounts of cheques in his own account, is at best only a story because how can there be a 'collateral security' to Nestle India Limited from the plaintiff if plaintiff's monies remain in his own bank account. Clearly, the theory put forth lacks sound basis and deserves rejection because the facts even as pleaded, leave aside the fact that they have not been proved as stated below, show that there is no aspect of any 'collateral security' under the subject six cheques being given by the plaintiff to Nestle India Limited.

8. Factually also the amounts of six cheques have not been given as 'collateral security' for two reasons. Firstly, plaintiff has not summoned Nestle India Limited to prove that Nestle India Limited asked the plaintiff to give a curious 'collateral security' by asking the plaintiff to open a bank account in his own name and keep his money there under his own control. Secondly, for existence of 'collateral security' there would have to exist an account of the plaintiff with the defendant no.1/Bank. Admittedly, except giving an account number, plaintiff has led no documentary evidence whatsoever to show that plaintiff had an account with the defendant

no.1/Bank and that the defendant no.1/Bank had opened any account of the plaintiff. Self-serving averments in deposition of the plaintiff having opened an account with the defendant no.1/Bank cannot be discharge of onus of proof which was on the plaintiff that an account was opened by him with the defendant no.1/Bank. Thirdly, if the bank account was opened, at the very minimum, the plaintiff would have had either a cheque book and/or a passbook and/or a statement of account, and/or any document whatsoever confirming or showing the existence of the account of the plaintiff with the defendant no.1/Bank, and admittedly not even one such document has been filed by the plaintiff to show that defendant no.1/Bank ever opened an account of the plaintiff. And, once there is no account, the same having moneys as 'collateral security' does not arise.

9. Clearly therefore, the entire story of 'collateral security' and the plaintiff having opened an account with the defendant no.1/Bank is without any basis whatsoever and is accordingly rejected.

10. What would now be the effect of all these aspects on the plaintiff's case once it is found that plaintiff never had an account with the defendant no.1/Bank and plaintiff could not have deposited six cheques in his account allegedly with the defendant no.1/Bank and allegedly as

‘collateral security’. This aspect, as discussed hereinafter, will have a straight bearing on the aspect of the defence of limitation as pleaded by the defendant no.1/Bank and also consequently, as to whether plaintiff is entitled to the decree of the amount as prayed.

11(i). No doubt, learned counsel for the plaintiff is correct in arguing that the cheques in question were wrongly collected by the defendant no.1/Bank and credited to the account of Nestle India Limited, and which argument this Court accepts as correct for the reason that when we look at the six covering letters exhibited by the defendant no.1/Bank as Ex.D1W1/3 to Ex.D1W1/8, it is seen that so far Ex.D1W1/7 and Ex.D1W1/8 are concerned, they do not bear any signatures much less of the plaintiff. Therefore, in view of Sections 14 and 15 of the Negotiable Instruments Act, 1881, (in short N.I. Act), there is no valid endorsement by transfer of the cheques which were given under these covering letters Ex.D1W1/7 and Ex.D1W1/8 of the amounts of Rs.1,800/- and Rs.4,86,134/-. I may note that though the defendant no.1/Bank had exhibited these documents, these documents were subsequently de-exhibited and marked, but counsel for the plaintiff agrees that these documents may be referred to inasmuch as, these documents support the arguments of the plaintiff that these documents

cannot amount to endorsement as legally required under Section 15 of the N.I. Act.

(ii) So far as the documents Ex.D1W1/3 to Ex.D1W1/6 are concerned, even a cursory visual examination of the signatures alleged to be of the plaintiff on these documents show that these signatures are not of the plaintiff because these signatures on Ex.D1W1/3 to Ex.D1W1/6 are completely different from the signatures of the plaintiff found on the subject cheques. The cheques in question are admitted documents and they have been exhibited as Ex.P-1 to Ex.P-6. This Court is entitled under Section 73 of the Indian Evidence Act, 1872 to compare the signatures appearing in documents filed before it, and I have therefore exercised powers under Section 73 of the Indian Evidence Act and I find that the signatures alleged to be of the plaintiff on Ex. D1W1/3 to Ex.D1W1/6 cannot be said to be the signatures of the plaintiff, and therefore, there cannot be a valid endorsement under Section 15 of the N.I. Act also of the remaining four subject cheques in favour of Nestle India Limited.

12(i). Once there is no valid endorsement as per Sections 14 and 15 of the N.I. Act, it is clear that the action of the defendant no.1/Bank in getting the cheques collected in favour of and for the benefit of the account of

Nestle India Limited was hence illegal though it appears that there were dues of the plaintiff to Nestle India Limited and to repay which the cheques were encashed by Nestle India Limited – an aspect dealt with in the later part of this judgment. Ordinarily, the defendant no.1/Bank therefore would have been liable to pay the amounts of six cheques which it wrongly allowed to be credited in the account of Nestle India Limited maintained by Nestle India Limited with the defendant no.1/Bank, however, the decree as prayed for in this regard by the plaintiff for the amounts of the six cheques cannot be passed on account of the suit being barred by limitation.

(ii). It is already stated above that the dates of the six cheques are 28.10.1998, 09.12.1999, 14.04.2000, 13.01.2000, 03.04.2002 and 06.04.2002, and the question is that when does limitation arise in favour of the plaintiff and against the defendant no.1/Bank in the facts of the present case and when does the liability of defendant no.1/Bank commence for illegally collecting the cheques for the benefit of the account of the Nestle India Limited. This aspect will have a crucial and inextricable link to the fact that plaintiff had failed to prove that he ever opened any account with the defendant no.1/Bank.

13(i). Once the case of the plaintiff is not believed as regards the 'collateral security' theory qua the subject cheques and that plaintiff had ever opened an account with the defendant no.1/Bank, the plaintiff was bound in around the period when these cheques would have been allegedly got credited to the alleged account of the plaintiff with the defendant no.1/Bank to inquire as to why the amounts of the cheques are not credited in the alleged account of the plaintiff with the defendant no.1/Bank. Putting it in other words, the cause of action and entitlement of the plaintiff to question the wrongful crediting of the amounts of the subject cheques in the account of Nestle India Limited with the defendant no.1/Bank would arise in roughly at the end of the clearing period required for presenting and clearing of the six cheques from the account of plaintiff at Bank of Baroda, Noida Branch to the account of the Nestle India Limited with the defendant no.1/Bank.

(ii) Even assuming that one month period would be taken for clearing, though ordinarily for outstation cheques one would take a period of one week to 15 days to be sufficient, even then the cause of action with respect to the illegal crediting of the amounts of the six cheques to the account of Nestle India Limited instead of the alleged account of the

plaintiff would begin one month after the date of each of the cheques in the years 1998, 1999, 2000 and 2002. It is also to be noted that the cheques are of different dates and different years and it is not as if that all the cheques were encashed in one go from the account of the plaintiff with the defendant no.2/Bank of Baroda, Noida whereby plaintiff did not deem it fit to make any further inquiry because there was effectively only one act and one action of all the cheques being cleared together. The cheques in question span from October, 1998 to April, 2002, and therefore, surely in this large period of around three and a half years, the plaintiff was bound to make inquiries with respect to the existence of his account, statement of account of his account, details of his account and so on and merely because the plaintiff has allegedly chosen to remain quiet till August, 2003 would not stop a deemed knowledge being imputed to the plaintiff that he would know after around one month of the date of the each of the cheques of different months and years that amounts of such cheques were wrongly got credited in the account of Nestle India Limited in those months and years instead of amounts being credited to an alleged account of the plaintiff with the defendant no.1/Bank. Obviously, it cannot be that the cause of action will arise whenever the plaintiff deems fit to choose to wake up for inquiring the non-existence of credits in his alleged account opened by the plaintiff allegedly with the

defendant no.1/Bank and which is August, 2003 as per the plaint and which is a random month and year picked up by the plaintiff for checking his credits in the alleged account opened by the plaintiff with the defendant no.1/Bank. Therefore, there cannot be postponed the commencement of the period of limitation till the alleged knowledge of the plaintiff in August, 2003 because commencement of the period of limitation has to be when the cheques were illegally encashed by the defendant no.1/Bank for being credited to the account of Nestle India Limited with the defendant no.1/Bank. If a floating date and year for commencement of the period of limitation is accepted then there is no reason why plaintiff instead of allegedly coming to know in August, 2003 could not have waited even for many years after August, 2003 to claim that plaintiff has then become aware that the subject six cheques were not credited in his account with the defendant no.1/Bank.

(iii) Counsel for the defendant no.1/Bank also rightly argues that the plaintiff has deliberately not filed a copy from his books of account of his account with Nestle India Limited and if this was done, it would have been seen that plaintiff owed monies to Nestle India Limited and for which reason the plaintiff allowed the subject cheques to be encashed by Nestle India

Limited, and thus plaintiff always knew about the encashment of the cheques from the dates of their encashment and hence did not question the encashment of the cheques, and therefore, the suit is clearly barred by limitation. I agree with the argument urged on behalf of defendant no.1/Bank inasmuch as, if the cheques were wrongly encashed by Nestle India Limited, in fact the plaintiff would have also not only sued Nestle India Limited as a defendant in this suit or otherwise, but the plaintiff also would have filed and proved the statement of account maintained by the plaintiff in its books of account qua its dealings as a dealer of Nestle India Limited to show that cheques were wrongly encashed by Nestle India Limited and which would be the position if plaintiff did not owe moneys to Nestle India Limited. By not adding Nestle India Limited as a defendant in this suit or filing his statement of account, this thus clearly shows that plaintiff was all along aware of the encashment of the cheques within a few days of the dates of the cheques and that therefore plaintiff's suit is clearly barred by limitation.

14. In a case such as the present, the aspect of limitation is covered under Article 113 of the Limitation Act, 1963 and which is the residuary Article providing that where no limitation is provided under any of the

earlier Articles, the limitation period is a period of three years from arising of the cause of action. In the present case, cause of action has arisen around one month after the date of each cheque and which is the date of deemed knowledge when the plaintiff would have or ought to have information of the non-crediting of the amounts under the cheques in his alleged account with the defendant no.1/Bank.

15. Counsel for the plaintiff sought to place reliance upon Articles 22 and 68 of the Limitation Act, 1963 to argue that the present suit falls either under Article 22 or Article 68 of the Limitation Act. The arguments urged on behalf of the plaintiff in this regard are misconceived and for which purpose let me reproduce Articles 22 and 68 of the Limitation Act as under:-

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Description of suit	Period of limitation	Time from which period begins to run
22. For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Three years	When the demand is made.
.....		
68. For specific movable property lost,	Three years	When the person having the right to the possession of the

or acquired by theft, or dishonest misappropriation or conversion.		property first learns in whose possession it is.
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16. Article 22 of the Limitation Act does not apply for the reason that plaintiff has failed to prove that in fact an account was opened by the plaintiff with the defendant no.1/Bank and therefore in the facts of the present case it cannot be said that any amount of the plaintiff was lying with the defendant no.1/Bank. Once there is no account of the plaintiff which is opened with the defendant no.1/Bank for the defendant no.1/Bank to have any deposit of monies with it of the plaintiff, there is no scope for a demand as contemplated under Article 22 of the Limitation Act to be made on a non-existent account.

17. Article 68 of the Limitation Act also would have no application because the subject matter of this Article is movable properties and not monies. Movable properties not being monies, there does not arise any issue of any misappropriation or conversion under Article 68 of the Limitation Act if monies are wrongfully collected by the defendant no.1/Bank for its customer. The present case would really be a case of illegal endorsement not falling within Sections 14 and 15 of the N.I. Act and the present case is

not a case of recovery of specific movable property under Article 68 of the Limitation Act. This argument of the plaintiff is also therefore rejected.

18. Accordingly, while in theory issue no.1 is held in favour of the plaintiff, but since the suit is time barred, no decree for recovery of money can be passed and hence issue no.1 is decided against the plaintiff on account of the fact that issue no.5 has to be decided in favour of the defendant no.1/Bank that the suit of the plaintiff is barred by time. Issue no. 3 is held in favour of the plaintiff, but finding of this issue in favour of the plaintiff will not in any manner help the plaintiff for decision of issue no.1 in favour of the plaintiff for the plaintiff to be entitled to a money decree in his favour.

Issue No.4

19. In view of the facts as discussed above, issue no. 4 is decided by holding that Nestle India Limited is not a necessary party as the liability of Defendant no.1/Bank is independent.

Issue No.2

20. Since the plaintiff is not entitled to recovery of the monies, there does not arise any issue of the plaintiff being granted any interest and therefore this issue is decided in favour of the defendant no.1/Bank and against the plaintiff.

Relief:-

21. In view of the decision of issue no.5 in favour of the defendant no.1/Bank and against the plaintiff, the suit has to be dismissed as barred by limitation and the plaintiff is not entitled to any money decree in his favour as prayed. The suit of the plaintiff is therefore dismissed. Parties are left to bear their own costs.

SEPTEMBER 21, 2015
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VALMIKI J. MEHTA, J.