



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-03-2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.97 of 2006

R.Ravinder Kumar

.. Plaintiff

vs

1.M/s.Melo Leather Manufacturers
represented by it's Proprietor
Gunasekaran
No.16, Thiruneermalai Road
Saraswathipuram
Chrompet, Chennai 44

2.Sargunam

3.N.Selvakumar

4.Thamizharasan

5.Dhanapal

.. Defendants

Civil suit filed under Order IV Rule 1 of Original Side Rules and under Order VII Rule 1 of Code of Civil Procedure praying for a judgment and decree directing the defendants jointly and severally to pay a sum of Rs.30,44,673/- with future interest at the contractual rate of 3% per month being on the principal amount of Rs.7,85,000/- from the date of plaint till realisation and for costs.

For Plaintiff : Mrs.Aparna Devi
for Mr.P.Subba Reddy

For Defendants : Mr.R.Ravi for D1

D2 died and suit dismissed as
not pressed on 29.1.2016

JUDGMENT

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The plaintiff would aver in the plaint, as follows:-

(a) The first defendant has approached the plaintiff for arrangement of loan not less than Rs.50 lakhs, and accordingly, the plaintiff and the first defendant have entered into an agreement dated 29.1.1994, and as per the terms and conditions of the agreement, the plaintiff himself can advance the loan, or he can arrange loan from the third parties to the defendants. The first defendant, in adherence to the said condition, also agreed to pay 1% commission to the plaintiff for the amount being arranged by him by way of loan, among other terms and conditions mentioned in the said agreement.

(b) The first defendant, for the borrowal effected by him, had also executed a promissory note in favour of the third parties. The defendants 2 to 5 acted as guarantors for the first defendant in respect of the said loan transaction, and they also executed a deed of guarantee in favour of the plaintiff.

(c) The plaintiff also arranged loan from third parties and gave out particulars in the annexures. According to him, the defendants had borrowed a sum of Rs.7,85,000/- between 29.1.1994 and 23.12.1994, and executed promissory notes in favour of the third parties promising



them to repay the said sum with interest at the rate of 2.9%
- 3% per month.

(d) The defendants had paid interest of Rs.37,900/- towards the promissory notes numbering 27, and thereafter, did not pay anything either towards principal, or interest in respect of the above said promissory notes, and the defendants are due and payable, a sum of Rs.30,44,673/- and in spite of repeated requests and demands, they have neglected to repay the said amount.

(e) The third parties, in whose favour promissory notes have been executed, had made over the said promissory notes in favour of the plaintiff, and as such, he is entitled to prosecute the suit as the cause of action is one and the same, due to the above said single transaction. Hence, the plaintiff came forward to file the present suit for recovery of Rs.30,44,673/- with future interest at the rate of 3% per month, being on the principal amount of Rs.7,85,000/-, till realisation and also for costs.

2.The first defendant has filed a written statement contending among other things, that the suit is not tenable either in law, or on facts, and denied all the averments made in the plaint, and also took a stand that the suit is barred by law of limitation and is liable to be dismissed irrespective of the merits of the case. He would further state that he borrowed a sum of Rs.5 lakhs in the



year 1994, pursuant to the loan agreement dated 29.1.1994, and signed a number of blank promissory notes, cheques and empty green and white sheets as demanded by the plaintiff, and even at the time of releasing the loan amount, a sum of Rs.1,40,000/- was withheld by the plaintiff towards interest, and he released only a sum of Rs.3,60,000/- in favour of the first defendant.

3.The first defendant would further contend that periodically every month, a sum of Rs.50,000/- was paid in instalment and the entire loan amount has been settled by him in December, 1994, and on the same terms and conditions, the amount was borrowed by him in December, 1994, and the entire loan amount was paid back at the rate of Rs.50,000/- per month, by October, 1995, and in spite of full settlement, the signed blank papers have not been returned by the plaintiff and the first defendant trusting the integrity of the plaintiff, did not insist for return of the said signed blank papers and also did not imagine that the plaintiff in the suit, will misuse the same.

4.The first defendant denied the statement that the defendants 2 to 5 stood as guarantors of the loan transaction covered under the loan agreement dated 29.1.1994, and would further state that the second defendant

is his father and the third defendant is an employee, who



worked under him, and they also executed blank unfilled printed forms, and the defendants 4 and 5 are his brothers and did not execute any documents in favour of the plaintiff.

5.It is further contended by the first defendant, that the second defendant died on 4.3.2007, and since his legal representatives have not been brought on record, the suit is abated as against him. He further denied the allegation that only a sum of Rs.37,900/- was paid towards interest, and no sum was paid towards either interest, or principal, till 31.10.2002, and reiterated his stand that he had discharged the entire loan amount with interest during the year 1995 itself.

6.The first defendant would further state that the suit documents 3 and 4 dated 20.1.1997 and 16.1.2000 respectively, have been fabricated by the plaintiff to bring the loan agreement dated 29.1.1994, to life and the said documents have been created by using the signed blank papers executed by the first defendant, and also challenged the contents of the said documents.

7.The first defendant would further contend that he has never given the letters dated 20.1.1997 and 16.1.2000, to the plaintiff acknowledging the debt or



liability, and reiterated his stand that two blank sheets signed by him, have been used for creating the said documents and it is nothing but a misuse.

8.It is further stated by the first defendant, that admittedly, no pre-suit notice has been issued and in the event of issuance of such a notice, he would have been in a position to bring on record, the above said facts and however, the plaintiff has deliberately avoided sending the pre-suit notice and he has also sent a reply notice dated 20.12.2002, and in respect of the criminal prosecution lodged by the plaintiff in C.C.No.4153 of 2003, on the file of the Court of XVII Metropolitan Magistrate, Chennai, he has filed CrI.O.P.No.45077 of 2003, on the file of this Court, and it was allowed and the Calender Case proceedings were quashed and pendency of the said Criminal Original Petition, the plaintiff as respondent therein, filed his counter statement stating that he is in possession of signed blank papers executed by the first defendant.

9.The first defendant also took a stand that the suit as framed, is not maintainable for the reason that the plaintiff cannot project or espouse the cause of the third parties and the alleged made over of the promissory notes by the third parties, is also not supported by consideration and hence, prays for dismissal of the suit with exemplary costs.



10. This Court on consideration of the pleadings, has framed the following issues on 4.10.2012, for trial and adjudication:-

- (1) Whether there was any loan transaction between the plaintiff and the defendants for commercial purpose based on duly executed loan documents by the defendants?
- (2) Whether the promissory notes and other documents executed by the defendants, in favour of the plaintiff, are valid and enforceable by law?
- (3) Whether the suit documents dated 20.01.1997 and 16.01.2000, were fabricated by the plaintiff in order to give life to the suit loan agreement?
- (4) Whether the suit promissory notes are supported by consideration for their assignment in favour of the plaintiff?
- (5) Whether the suit is barred by law of limitation?
- (6) Whether the plaintiff is entitled for the relief prayed for?



11. Pendency of the suit, the second defendant died and no steps have been taken to bring on record, his legal representatives and the remaining defendants viz. defendants 3 to 5, were called absent and set ex-parte on 2.4.2012. The suit as against the second defendant was dismissed as not pressed as early as on 18.6.2012, in view of the endorsement made by the learned Counsel appearing for the plaintiff.

12. The plaintiff has filed his proof affidavit in lieu of chief-examination, as P.W.1, marking Exs.P1 to P10, and the Proprietor of the first defendant viz. Gunasekaran, has filed his proof affidavit in lieu of chief-examination, as D.W.1, marking Exs.D1 to D6.

13. Mrs. Aparna Devi, learned Counsel appearing for the plaintiff, would submit that the first defendant had approached the plaintiff for arrangement of loan not less than Rs.50 lakhs and it was agreed upon and accordingly, an agreement dated 29.1.1994, (Ex.P1), came into being between them and as per the terms and conditions of the agreement, the plaintiff himself can advance the loan, or he can arrange it through third parties and the first defendant had also agreed to the said conditions and it is further agreed to pay 1% commission to the plaintiff for the amount arranged by him, and thereafter, the plaintiff made



arrangement from the third parties, from whom, the first defendant had borrowed amounts and also executed promissory notes marked as Ex.P5 series, and in the said promissory notes, the defendants 2 to 5 had signed as guarantors and in all, a sum of Rs.7,85,000/- was borrowed on the said promissory notes.

14.It is the further submission of the learned Counsel appearing for the plaintiff, that a sum of Rs.37,900/- was paid by way of interest and thereafter, nothing has been paid and as on 31.10.2002, the defendants were due and payable, a sum of Rs.30,44,673/-.

15.The learned Counsel appearing for the plaintiff, has also drawn the attention of this Court to the written statement filed by the first defendant, and would submit that even for the sake of arguments that the defence projected by the first defendant is a tenable one and that he pleaded discharge in the form of payment of Rs.50,000/- every month by way of instalments and thereby, the entire loan amount was wiped out even by December, 1994, itself, he has not produced any iota of material to show such a discharge, but has made a false plea that the blank signed papers got by the plaintiff at the time of availing the loan, have been utilised for the purpose of creating documents, for which also, no tenable and



acceptable evidence is made available.

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16.It is the further submission of the learned Counsel appearing for the plaintiff, that the cheques given by the first defendant, were dishonoured and in this regard, a criminal complaint in C.C.No.4153 of 2003 was filed on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai and it was put to challenge in CrI.O.P.No.45077 of 2003 before this Court, and de hors the closure of the proceedings under Section 138 of Negotiable Instruments Act, still it is open to the plaintiff to avail the civil remedy and the plaintiff through pleadings and oral and documentary evidences, had substantiated his case in all probabilities and prays for decreeing the suit.

17.Per contra, Mr.R.Ravi, learned Counsel appearing for the first defendant, would contend that the suit is hopelessly barred by limitation, for the reason that even as per the averments made in the plaint, the date on which a sum of Rs.37,900/- was paid to the plaintiff by way of interest, has not been made known and even in the cause of action paragraph, it has been averred that due to limitation purpose, suit demand notice could not be caused to the defendants, and also invited the attention of this Court to the oral and documentary evidences and would submit that since the suit has not been laid within a



period of three years from the date of alleged default on the part of the first defendant, it is hit by law of limitation and prays for dismissal of the suit.

18. In response to the said submission, the learned Counsel appearing for the plaintiff, has invited the attention of this Court to Ex.P1 loan agreement, and would submit that as per Clause No.5 of the said agreement, the parties expressly made it clear that the securities offered and are to be offered by the party of the first part (first defendant) in favour of the party of the second part (plaintiff), shall be deemed to be the security offered to the third parties, who advances monies through the party of the second part, and shall continue to subsist till the entire amounts advanced is fully paid over inclusive of interest, and though the first defendant pleaded discharge, he has not produced any material to show the settlement of the entire loan amount and in the light of Clause No.5, the cause of action continues and therefore, the suit is well within the period of limitation.

19. ISSUE No.5:- (LIMITATION POINT)

19(i) The plaintiff has filed the proof affidavit in lieu of chief-examination (P.W.1), and in paragraph



No.9, he would state that "Since the first defendant failed to pay the interest, I sent a letter to them on 18.08.1995." and in paragraph No.10, would state that the defendants paid interest for two times on 20.01.1997 and 23.12.2000, to the tune of Rs.37,900/- under Exs.P7 and P8 respectively, and the cheques issued in that regard, also got dishonoured and therefore, the plaintiff came forward to file the present suit. In the cross-examination, P.W.1 would state that with regard to the dishonour of two cheques, a notice dated 25.11.2002, was sent through his Counsel to the first defendant and copies of the same are Exs.D1 and D2, for which, the first defendant also caused a reply under Ex.D3 dated 20.12.2002, and also filed CrI.O.P.No.45077 of 2003 and the said proceedings were also marked as Ex.D5 and ultimately, the criminal prosecution came to be quashed by this Court on 10.11.2009, under Ex.D6, and no further challenge has been made to the said order passed by this Court, and would further add that the suit was filed in the year 2002, and came to be numbered in the year 2006.

19(ii) P.W.1 would further depose in the cross-examination, that he has not issued any notice to the first defendant from the date of obtaining loan in the year 1994, till the filing of the suit in the year 2002, and the first defendant has paid interest partly for two times and



subsequently, promissory notes under Ex.P5 series, were made over to him by the concerned parties and there is no mentioning of consideration by way of endorsement in Ex.P5 series, and the other defendants had also signed the promissory notes as guarantors. It is further deposed by P.W.1 that in para 4 of Ex.D5, it is mentioned, "the petitioner/accused gave many blank signed cheques and signed many unfilled loan documents", and he has not filed any document to show that the first defendant had paid interest between Ex.P7 dated 20.01.1997 and Ex.P8 dated 16.01.2000, and also admitted, normally, if interest was paid, receipts would have been issued and he has not filed any accounts in the case.

19(iii) When the attention of P.W.1 was drawn to Ex.P7, he would state that the signature of the first defendant is found far below the contents of the letter and he did not ask the first defendant as to why he signed far below the contents of the letter. P.W.1 would admit that he is doing money lending business, which is his ancestral business, and is maintaining proper receipts for the loan lent and repaid, and also filed several cases for default in payment of loans and denied the suggestion that Exs.P7 and P8 were created; the first defendant had paid the entire loan amount borrowed from him, and that he is misusing the blank papers signed by him, to claim money by



way of this suit. It has been further deposed by P.W.1 that the deeds of guarantee pertaining to the defendants 2 and 3, alone were filed as Exs.P3 and P4 respectively.

19(iv) The Proprietor of the first defendant filed his proof affidavit in lieu of chief-examination (D.W.1), and in the cross-examination, would state that at the time of handing over loan documents, promissory notes, signed empty cheques and signed blank papers, he has also handed over the partition deed and at the time of entering into Ex.P1 agreement, about 30 cheque leaves were handed over to the plaintiff and the said documents were not collected by him though he made a request to the plaintiff to do so. D.W.1 would further depose that the last payment was made by him during October, 1995, and he has not produced any receipts from the plaintiff and all the payments were not substantiated by receipts and he has shown the above payments in his income-tax returns; but, he has not produced the income-tax returns before this Court, to substantiate the said plea.

19(v) D.W.1 would further admit that the signatures found in Exs.P7 and P8, are his signatures; but, he signed the same in the year 1994, in blank papers and also admitted the signature in the pro-note, but disputed the signatures of his father and brothers, stating that



they have been forged. D.W.1 denied the suggestion that he has paid certain amounts periodically every three or four years till now. Insofar as the plea of discharge, D.W.1 would state that he had repaid the amount by way of cash and the said payments were reflected in his income-tax returns and he filed the income-tax returns in his individual name and he has not filed the copy of his PAN Card and however, given the PAN Card number. D.W.1 would further state that he used to maintain books of accounts whether it is cash, cheque or DD, and used to mention in the books of accounts.

19(vi) A specific question was put to D.W.1 i.e., Have you accounted for payment of Rs.1 lakhs in the year 2012-2013?, and he answered by saying that after arriving settlement in the year 2013, he paid a sum of Rs.1 lakh to the plaintiff by way of cash in the presence of both side counsel, and he would further depose that though the plaintiff demanded a sum of Rs.7,85,000/- under the terms of settlement, it was not agreed and he has agreed to pay Rs.5 lakhs; but, the settlement did not materialise, and denied the suggestion that he is liable to make good the suit claim.

19(vii) As pointed out earlier, as per the proof



defendants paid interest for two times, on 20.1.1997 and 23.12.2000, to the tune of Rs.37,900/-. Ex.P7 is the letter dated 20.1.1997, said to have been written by Mr.Gunasekaran to the plaintiff, wherein, he has admitted the borrowal and would state that on 20.1.1997, he paid a sum of Rs.2,700/- as part payment of interest, and undertook to settle the entire arrears upto date. Similarly, under Ex.P8 dated 16.1.2000, the Proprietor of the first defendant has addressed a letter on similar lines, stating among other things, that on 16.1.2000, he has paid a sum of Rs.2,700/- towards part payment of interest and undertook to settle the entire dues.

19(viii) It is a primordial submission of the learned Counsel appearing for the first defendant, that those two letters viz. Exs.P7 and P8, were brought forth by the plaintiff to bring the suit within the period of limitation and it is a categorical stand of the first defendant that at the time of availing loan, he signed many blank papers and such papers have been utilised for the purpose of creating Exs.P7 and P8. The learned Counsel appearing for the first defendant, has also drawn the attention of this Court to the cross-examination of P.W.1, wherein, he has deposed that in Ex.D5, he has admitted the fact that the petitioner/accused (first defendant) gave many blank signed cheques and signed many unfilled loan



documents, and in the light of the said categorical admission, the defence projected by the first defendant, stands substantiated and if Exs.P7 and P8 are eschewed from consideration, the suit is hopelessly barred by limitation.

19(ix) In response to the said submission, the learned Counsel appearing for the plaintiff, would contend that in the light of Clause No.5 of Ex.P1 loan agreement, unless and until the first defendant settles the entire amount, it gives continuous cause of action to the plaintiff and therefore, it cannot be stated that the suit is hit by limitation.

19(x) It is pertinent to point out that the first defendant challenging the legality of the proceedings initiated under Section 138 of the Negotiable Instruments Act, filed Crl.O.P.No.45077 of 2003, on the file of this Court, and the plaintiff herein (respondent therein) has filed a counter affidavit marked as Ex.D5, and it is relevant to extract paragraph Nos.4 and 8 as under:-

"4.Pursuant to that a total sum of Rs.7,85,000/- was advanced to him by a consortium of financiers. As against this the petitioner/accused executed pronotes in favour of various



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financiers. In addition to that he deposited property documents and his brother and father stood guarantee by executing guarantee deeds. The petitioner/accused gave many blank signed cheques and signed many unfilled loan documents.

....

8. On 16.1.2000 the petitioner visited the respondent's office and sought for some more time. He executed documents to validate the loan agreements and pronotes for further period of 3 years. The principal and the upto date interest were informed to him and he promised to return the total amount by two payments within two years. He filled up two cheque leaves which were in the custody of the respondent/complainant giving dates as 14.11.2002 and 15.11.2002. He suppressed the fact that he had already closed the account."

19(xi) It is a categorical stand of the first defendant that some of the blank signed papers have been



utilised by the plaintiff to create Exs.P7 and P8 letters, and he would further contend that the signatures are found at the very bottom of the said documents, and there is a long gap between the last sentence of those documents and the signatures and thereby, it would imply that the plaintiff had typed out the contents in those two documents, in order to bring the suit within the period of limitation.

19(xii) This Court finds considerable force in the said submission made by the learned Counsel appearing for the first defendant.

19(xiii) A perusal of Ex.D5 would disclose that the plaintiff as respondent in Cr1.O.P.No.45077 of 2003, took a stand that in addition to the deposit of title deeds, the brother and father of the first defendant stood as guarantors and also executed deeds of guarantee and the first defendant also gave many blank signed cheques and signed many unfilled loan documents. In paragraph No.8 of the very same counter, the plaintiff (respondent) took a stand among other things, that the first defendant visited the office of the respondent and sought time and he executed documents on 16.1.2000, validating the loan agreement and pro-notes for a further period of three years, and promised to make good the payment in two



instalments within two years and also filled up two cheque leaves, which were in the custody of the respondent/complainant, putting dates as 14.11.2002 and 15.11.2002, suppressing the fact that he had already closed the bank account. A perusal of Exs.P7 and P8 would disclose that there is a long gap between the last sentence of those two letters and the rubber stamp seal of the first defendant-firm and on behalf of the first defendant-firm, the first defendant had subscribed the signature.

19(xiv) Therefore, this Court is of the view that the blank signed papers given by the first defendant, as admitted by the plaintiff in Ex.D5, have been utilised for the purpose of creating Exs.P7 and P8 in order to bring the suit within the period of limitation.

19(xv) It is also very pertinent to point out at this juncture, that P.W.1 in the cross-examination, would admit that he has not filed any document to show that the first defendant paid interest between Ex.P7 dated 20.1.1997, and Ex.P8 dated 16.1.2000, and also made a crucial admission that normally, if interest was paid, receipt would have been issued and would further admit that he has not filed any accounts in the case. When the attention of P.W.1 was drawn to Exs.P7 and P8, he has



defendant is found far below the contents of the letter in Ex.P8. I did not ask the first defendant as to why he signed far below the contents of the letter, Ex.P8." P.W.1 would further admit that he is doing money lending business, which is his ancestral business, and is maintaining proper receipts for the loan lent and repaid and filed several cases for default in repayment of loans and denied the suggestion that Exs.P7 and P8 create suspicion. In the light of the said admission on the part of P.W.1, that he is in the habit of issuing receipts for the amount received, and further that he is also maintaining accounts, coupled with the fact that neither the receipts apart from Exs.P7 and P8, nor the copies of account books have been filed, it would amply probablise the case of the first defendant that Exs.P7 and P8 have been created/brought forth to bring the suit within the period of limitation.

19(xvi) The learned Counsel appearing for the plaintiff, made a forceful submission, in the light of Clause No.5 of Ex.P1 loan agreement, the cause of action is a continuous one and therefore, the suit was filed within the period of limitation. A perusal of the plaint would disclose that no such plea has been taken and even in paragraph No.15, which deals with cause of action, the plaintiff would aver that due to limitation purpose, suit



demand (pre-suit) notice could not be issued to the defendant. If really, the plaintiff was conscious of the fact that by virtue of Clause No.5 of Ex.P1, the suit was well within the period of limitation, he would not have taken such a plea in paragraph No.15 of the plaint.

19(xvii) Alternately, it is the submission of the learned Counsel appearing for the plaintiff, pending disposal of the suit, there were some compromise talks and pursuant to the same, the first defendant has paid a sum of Rs.1 lakh by way of cash, during the year 2013, and therefore, the said payment would revive the cause of action as well as the period of limitation.

19(xviii) As already pointed out, as per the evidence of P.W.1, the first defendant paid interest on 20.1.1997 and 23.12.2000, respectively and this Court held that Exs.P7 and P8 have not been proved and are brought forth to bring the suit within the period of limitation. If the Court divests those two documents, there is nothing on record to show that the suit has been filed within the period of limitation. This Court has also pointed out in the earlier paragraphs, that though P.W.1 would admit that he used to issue receipts, no such copies of receipts have been filed and so also the copies of the accounts maintained by him in the normal course of business.



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19(xix) If this Court takes into consideration the payment of Rs.1 lakh made by the first defendant during the year 2013, still it would not revive the cause of action for the reason that the said payment has been made beyond the period of limitation and therefore, Section 18 (1) of the Limitation Act would not come to the aid of the plaintiff.

19(xx) Alternately, it was also open to the plaintiff to contend that in the light of Section 25(3) of the Indian Contract Act, 1872, any payment made towards time-barred debt, would revive the cause of action and therefore, the suit was well within the period of limitation.

19(xxi) In AIR 1956 NAGPUR 267 (SETH NARSINGDAS KANHIYALAL V. CHHAIKODILAL RATILAL AND OTHERS), it has been held that "a mere admission of past liability should not by itself, be construed as an admission of a subsisting liability unless there were circumstances from which an inference could be drawn that the acknowledgement was intended to be of a subsisting liability." and reliance was also placed upon the judgment of this Court reported in AIR 1922 MADRAS 104 : 1945 MADRAS 443 (KANDASWAMI REDDI V.



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19(xxii) In AIR 1996 HIMACHAL PRADESH 14 (DIVISION BENCH) (M/S.ROSHAN LAL KUTHIALA AND ANOTHER V. RAJA RANA YOGENDRA CHANDRA AND OTHERS), the requirements of Section 18 of the Limitation Act have been dealt with and are as under:-

- (a) An admission of the acknowledgement;
- (b) Such acknowledgement must be in respect of a liability in respect of property or right;
- (c) It must be made before the expiry of the period of limitation; and
- (d) It should be in writing and signed by the party against whom such property or right is claimed.

19(xxiii) As pointed out above, the above said essentials have not been proved by the plaintiff and necessary pleadings and evidence are also lacking in that regard.

19(xxiv) Incidentally, a question that arises for consideration in the light of Section 25(3) of the Indian Contract Act, is whether the suit was filed within the period of limitation?



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19(xxv) It is relevant to extract Section 25 of the Indian Contract Act as under:-

"25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law:- An agreement made without consideration is void, unless -

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) it is a promise, made in writing and signed by the person to be charged



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therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract."

19(xxvi) In AIR 1963 ANDHRA PRADESH 337 (LALAM SAMBAYYA V. PATTAM SHEMSHERKHAN), the question that arose for consideration, was whether a statement made by a witness in the Court admitting a time-barred debt, fulfills the requirements of Section 25(3) of the Contract Act? and it is relevant to extract paragraph Nos.5 and 6 as under:-

"5.The ruling has no direct application and helps only to bring out that while a mere acknowledgement was sufficient for the purpose of Section 19, Limitation Act, a promise to pay in writing was required to attract the provisions of Section 25(3) of the Contract Act. A careful perusal of the abovementioned provisions which have the effect of saving limitation, clearly makes out the



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essential differences between the two sections. Under Section 19 of the Limitation Act an acknowledgement of a subsisting debt addressed to a person other than the person entitled to the property or right is sufficient - vide the Explanation I. - But Section 25(3) of the Contract Act contemplates a promise made in writing to pay a debt of which the creditor might have enforced payment but for the law for the limitation of suits. Under the Limitation Act an acknowledgement made in writing signed by the party and addressed to a person other than the person entitled to the property or right would save a subsisting debt. But Section 25(3) of the Contract Act contemplates a promise made in writing and signed by the person in favour of the creditor. The latter postulates a novation of the contract while the former provides for mere acknowledgement. In order to bring a deposition within the meaning of a fresh contract, the necessary ingredients of



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'proposal and acceptance' with the consciousness of the purpose for which the contract is being entered into have to be clearly brought out.

6. It is well settled that in determining whether a particular statement is an acknowledgement or promise the language of the document has to be considered in every case. If it amounts to an acknowledgement the writing would not be useful for the plaintiff under Section 25(3) of the Contract Act. The statement attributed to the petitioner and reproduced in the preceding paras appears to be nothing more than an acknowledgement. It is to be borne in mind that the said statement was made in the course of the cross-examination obviously with the intention of showing the motive which had led the petitioner to appear as a witness against the respondent. In other words, it was elicited to damage and destroy the evidentiary value of his deposition. A statement made in those circumstances cannot be placed on the same pedestal as



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a fresh contract, which to my mind involves a deliberate undertaking to renew a time-barred claim. Further, if the statement is to be taken on its face value it is no more than a proposal or an offer. Admittedly, it has not been made to the respondent and there is nothing on record to show that the respondent has accepted this offer so as to bring it within the definition of a contract. It cannot be urged from the subsequent notices that passed between the parties that the offer has been accepted nor could it be said that the advocate who was representing the respondent in the suit was an agent of the respondent and was competent to accept the offer on his behalf. On a consideration of these facts, I am not inclined to agree with the lower Court that the statement made by the petitioner came within the purview of Section 25(3) of the Contract Act."

19(xxvii) In AIR 1975 MADRAS 333 (N.ETHIRAJULU



that arose for consideration, were whether Ex.A.1 is in the nature of an account stated or in the nature of a valid acknowledgement? and whether in any event, the suit claim is in time? This Court on the facts of the case, found that the defendant has admitted his signature in Ex.A.1, which, according to the trial Court, is a prima facie proof that the defendant had acknowledged his liability to pay the amount of Rs.7,830/- contained in Ex.A.1 to the plaintiff and held that the lower Court has overlooked the fact that the execution of a document implies intelligent and conscious appreciation of the contents thereof and the facts connected therewith; and where the defendant admitted only that he had put his signature in a blank piece of paper, which, he alleged, had possibly been utilised for fabricating Ex.A.1, it cannot be regarded as his having admitted the execution of Ex.A.1 and the onus of proving that a particular paper, which is the basis of a suit, was duly executed by the defendant, must, therefore, have been thrown upon the shoulders of the plaintiff.

19(xxviii) This Court has already held that in the light of the plea taken by the first defendant in respect of Exs.P7 and P8, the onus of proving the same has been cast upon the plaintiff; but, he miserably failed to discharge the same.



19(xxix) Insofar as acknowledgement of time-barred debt, it has been held in the said decision, that "Even assuming that there was an acknowledgement, it would be merely an acknowledgement of a time-barred debt and could not in law operate to revive the debt and give it a new lease of life." and has also placed reliance upon the decision reported in AIR 1940 MADRAS 678 (GOVINDA NAIR V. ACHUTAN NAIR), and in the said decision, it has been held as under:-

"The promise referred to in S.25, sub-sec. (3) Contract Act, must be an express one and cannot be held to be sufficient if the intention to pay is unexpressed and has to be gathered from a number of circumstances. In other words, there must be a distinct promise to pay before the document could be said to fall within the provisions of this section - See Ramaswami Pillai v. Kuppuswami Pillai, 1910 Mad WN 547; Govind Das v. Sarjudas, (1908) ILR 30 All 268; Manraj Sath v. Sethrup Chand (1906) ILR 33 Cal 1047, and Mukhilal v. Gul Muhammad, AIR 1933 Lah 209."



19(xxx) The distinction between Section 18 of the Limitation Act and Section 25(3) of the Contract Act was also discussed in the said judgment and it is also relevant to extract that portion of paragraph No.8 as under:-

"8.....

The distinction between an acknowledgement under Section 18 of the Limitation Act 1963 and a promise within the meaning of Section 25(3) of the Contract Act is of great importance. Both have the effect of creating a fresh starting point of limitation, if they are in writing signed by the party or his authorised agent. But while an acknowledgement under the Limitation Act in order to be valid, must be made before the expiry of the period of limitation, a promise under Section 25, sub-section (3) of the Contract Act, to pay a debt may be made after the debt has become barred by limitation. Ex.A.1

which purports to be an account stated, may conceivably amount to an acknowledgement, but it is of no avail to the plaintiff because it is an



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acknowledgement of a time-barred debt. As it contains no express words promising to pay a time-barred debt, it will not avail the plaintiff either. In *Jethibai v. Putlibai* (1912) 14 Bom LR 1020, an account stated has been held to be a mere acknowledgement, as distinguished from a promise to pay under Section 25(3) of the Indian Contract Act."

19(xxxi) This Court has already held that since Exs.P7 and P8 have not been proved in a manner known to law and those documents have been created by using the signed blank papers, it cannot be construed as an acknowledgement of liability under Section 18(1) of the Limitation Act and in respect of the alternate plea made, that a sum of Rs.1 lakh paid by the first defendant during the pendency of the suit i.e., during the year 2013, would revive the time-barred debt, is of the view that it cannot also be so in the light of the ratio laid down in the above cited judgment, as there was no conscious decision on the part of the first defendant, to revive the time-barred debt. Therefore, Issue No.(5) is answered in affirmative and in favour of the first defendant.



20.ISSUE Nos.(1) and (2):- It is not in serious dispute that the first defendant/D.W.1 would admit the execution of the loan agreement; but, he pleads discharge. However, he has not produced any document to show that he discharged either the interest or principal or both. From the pleadings, it appears that both the plaintiff and the first defendant are at fault. It is a well settled position of law, in a case of equal guilt, the position of the defendant is always better. Since the plaintiff as P.W.1, had categorically admitted that he did not produce any receipts to show that payments were made by the first defendant under Exs.P7 and P8, coupled with the fact of non-production of account books, this Court is of the view that though issue Nos.(1) and (2) have to be answered in affirmative and in favour of the plaintiff, in the light of the findings given by this Court in respect of Issue No. (5), he is not entitled to get the said reliefs. Therefore, issue Nos.(1) and (2) are answered accordingly.

21.ISSUE No.3:- In the light of the findings given by this Court in respect of Issue No.(5), this Court is of the view that Exs.P7 and P8 have been created by utilising the blank signed documents executed by the first defendant in favour of the plaintiff. Therefore, the said issue is answered in affirmative and in favour of the first



defendant.

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22.ISSUE No.4:- Admittedly, the first defendant did not execute any promissory note in favour of the plaintiff and Ex.P5 series - promissory notes, have been made over in his favour. A specific question was put to P.W.1 as to whether any endorsement has been made with regard to the passing of consideration, and the answer was in negative. Unfortunately, the plaintiff has failed to examine any one of the persons who assigned Ex.P5 series - promissory notes, in his favour. In the absence of the same, this Court is of the view that Issue No.(4) has to be answered in negative and against the plaintiff and accordingly, it is answered.

23.ISSUE No.(6):- Though the suit as against the second defendant, was already dismissed as not pressed by this Court on 18.6.2012, in view of the endorsement made by the learned Counsel appearing for the plaintiff, and though rest of the defendants viz. defendants 3 to 5, were called absent and set ex-parte, in the light of the findings given by this Court in respect of Issue Nos.3, 4 and 5, this Court is of the view that the plaintiff is not entitled to get any relief against the defendants.



However, in the circumstances of the case, there shall be no order as to costs.

PLAINTIFF'S SIDE WITNESSES AND DOCUMENTS:

P.W.1	R.Ravinder Kumar	
Ex.P1	29.1.1994	Original loan agreement
Ex.P2	20.3.1987	Original partition deed
Ex.P3	7.12.1994	Original guarantee deed
Ex.P4	7.12.1994	Original guarantee deed
Ex.P5 (series)		Promissory notes
Ex.P6	18.8.1995	Copy of letter sent by the plaintiff along with the two postal receipts and two acknowledgement cards
Ex.P7 defendant	20.1.1997	Original letter sent by the first to the plaintiff
Ex.P8 defendant	16.1.2000	Original letter sent by the first to the plaintiff
Ex.P9		Statement of accounts
Ex.P10 (series)		Original dishonoured cheques

DEFENDANTS' SIDE WITNESSES AND DOCUMENTS:

D.W.1	S.Gunasekaran	
Ex.D1	25.11.2002	Copy of legal notice sent by the plaintiff's counsel to the first defendant
Ex.D2	25.11.2002	Copy of legal notice sent by the plaintiff's counsel to the first defendant



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Ex.D3	20.12.2002	Copy of reply notice sent by the first defendant's Counsel to the plaintiff's counsel along with postal acknowledgement card and receipt
Ex.D4	25.8.2009	Office copy of notice sent by the first defendant's counsel to the plaintiff
Ex.D5	9.11.2009	Photocopy of the counter filed in Crl.O.P.No.45077/2003
Ex.D6	10.11.2009	Certified copy of the order passed in Crl.O.P.No.45077 and 13179/2003, by High Court, Madras.

Sd/. M.S.N.J

28.03.2016

//Certified to be a true copy//

Dated this the day of 2016.

S.s/14.06.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.