IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

R.S.A No.2291 of 2016(O&M)
Date of decision : 06.05.2016

Baljinder Kaur

...... Appellant

Versus

Krishan Lal through L.R's and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Naveen Bawa, Advocate
for the appellant.

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1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

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DARSHAN SINGH,J

CM No. 5987-C of 2016

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 69 days in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 69 days in filing the present appeal is hereby condoned.

R.S.A No.2291 of 2016(O&M)

The present appeal has been preferred by appellant-plaintiff against the judgment and decree dated 17.10.2015 passed by learned District Judge, Ludhiana, vide which the appeal filed against the judgment and decree dated 26.07.2013 passed by the learned Civil Judge (Junior Division), Ludhiana, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. As per the case of the appellant-plaintiff, defendants-respondents Krishan Lal (deceased) and Charanjit Kaur approached the plaintiff for grant of loan of Rs. 15,000/- on 10.09.2000. The said loan was advanced to the defendants. In consideration thereof, deceased-defendant Krishan Lal executed the pronote and receipt and defendants agreed to repay the said loan amount along with interest @ 2 % per month. They also handed over the FDR no. 1889, dated 28.05.1998 worth Rs. 12,500/- drawn at P.S.B Housing Finance Ltd as a security. Defendants failed to repay the loan amount despite demand by the plaintiff. On 27.03.2003, defendant no.2-Charanjit Kaur made the part payment of Rs. 2000/- to the plaintiff, regarding which the plaintiff issued the receipt. Defendant no.1 also made the payment of Rs.1500/- out of the said loan amount against the proper receipt. But, the defendants failed to repay the balance amount. Hence, the suit.

4. Defendants-respondents contested the suit on the grounds *inter alia* that they never approached the plaintiff for advancement of the loan of Rs. 15,000/- nor they received any loan of Rs. 15,000/- from the plaintiff on 10.09.2000. They also denied the execution of the pronote and receipt in favour of the plaintiff. They also denied that they handed over their FDR's to the plaintiff as a security and pleaded for dismissal of the suit.

5. Plaintiff filed replication to the aforesaid written statement controverting the pleas raised therein. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 06.12.2006:-

1. Whether the plaintiff is entitled for recovery of suit amount along with interest of pronote and receipt dated 10.09.2000 as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the instant suit is within time?OPP
4. Whether the instant suit is bad for mis-joinder and non-joinder of necessary parties?OPD
5. Whether the plaintiff is estopped by her act and conduct?OPD
6. Whether the plaintiff has no locus-standi to file the present suit? OPD
7. Relief.

6. On moving of application by defendants, the learned trial Court has also framed the following additional issue vide order dated 20.07.2013:-

6-A. Whether this Court has no territorial jurisdiction to entertain and try the present suit?OPD

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the appellant-plaintiff, vide impugned judgment and decree dated 26.07.2013.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal, which was also dismissed by the learned District Judge, Ludhiana, vide impugned judgment and decree dated 17.10.2015. Hence this Regular Second Appeal by the appellant-plaintiff.

9. I have heard Mr. Naveen Bawa, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the suit filed by the plaintiff-appellant has been dismissed on the grounds that the suit is time barred and the Civil Court at Ludhiana has no territorial jurisdiction. He contended that the loan was advanced by the appellant-plaintiff on 10.09.2000. In consideration thereof, respondent-defendant Krishan Lal executed the pronote and receipt Ex.P-1 and Ex.P-2 respectively. He contended that Charanjit Kaur respondent no.2 paid a sum of Rs. 2000/- to the plaintiff vide receipt mark A dated 27.03.2003. Similarly, deceased Krishan Lal also paid Rs. 1500/- vide receipt mark B on 21.03.2004 which is a valid acknowledgment of their liability under Section 18 of the Limitation Act, 1963 (for short Act). The present suit has been filed on 05.11.2005 i.e. within three years from the receipts mark A and B. So, the learned trial Court has wrongly held the suit of the appellant-plaintiff to be barred by limitation.

11. I have duly considered the aforesaid contentions.

12. As the issue of limitation goes to the root of the case, so firstly, I take up the issue regarding limitation. The pronote Ex.P-1 and receipt Ex.P-2 were executed on 10.09.2000, on the basis of which the present suit has been filed by the appellant-plaintiff. It is also the case of the appellant-plaintiff that the loan amount of Rs. 15000/- was also advanced by him on 10.09.2000 itself and in consideration thereof on the same day, respondent-defendant Krishan Lal executed the pronote Ex.P-1 and receipt Ex.P-2. The present suit has been filed on 05.11.2005. This

fact is not disputed that the limitation to file the suit for recovery is three years. In order to bring the suit within limitation, the appellant-plaintiff has relied upon the receipts mark A dated 27.03.2003 and mark B dated 21.03.2004 respectively, which are pleaded to be valid acknowledgment of liability by the defendants under Section 18 of the Limitation Act. But, these receipts are only the copies. The original of these receipts have not been produced on record. The appellant-plaintiff has not issued any notice nor moved any application before the learned trial Court for giving direction to defendants to produce the original of the receipts mark A and mark B. These receipts do not bear the signatures or thumb impressions of the defendants. The appellant-plaintiff has also not sought any permission to lead the secondary evidence. These receipts are only the marked documents, which have not been proved in accordance with law and cannot be taken into consideration. Moreover, as per Section 18 of the Limitation Act, the acknowledgment of liability has to be made in writing and signed by the parties against whom such right is claimed. In the instant case, receipts mark A and B are not bearing the signatures or thumb impressions of the defendants. So, the said receipts cannot be termed as valid acknowledgment of the liability to repay the loan as per provisions of Section 18 of the Limitation Act. Thus, the receipts mark A and B cannot enlarge/extend the period of limitation and cannot be taken into consideration while computing the period of limitation. The loan was advanced on the basis of pronote dated 10.09.2000 and the present suit has been filed on 05.11.2005 much after the expiry of three years i.e. the period of limitation. So, the suit filed by the appellant-plaintiff was clearly barred by limitation and has been rightly dismissed by the learned Courts below.

13. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

14. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

15. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

May 06, 2016 **(DARSHAN SINGH)**
s.khan **JUDGE**