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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16.08.2016

RFA 589/2016

M/S NATIONAL MINORITIES DEVELOPMENT
AND FINANCE COPRORATION ..... Appellant
Through: Mr. Danish Zubair Khan, Advocate

versus

ANDHRA PRADESH MAHILA WELFARE SOCIETY
THR ITS PRESIDENT & ORS ..... Respondents
Through: None

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

CM APPL.29547/2016 (Condonation of Delay in Refiling)

For the reasons stated in the application, which are duly supported by an affidavit, the delay in refiling the accompanying appeal is condoned.

The application is disposed of accordingly.

RFA 589/2016 & CM APPL.29546/2016 (Condonation of Delay in Filing), CM APPL.29545/2016 (Stay)

1. The present appeal under Section 96 of the Code of Civil Procedure, 1908 assails the judgment and decree dated 27.08.2015, passed by the District & Sessions Judge (East), Karkardooma Courts, Delhi in CS

No.109/2015, titled *"M/s National Minorities Development and Finance Corporation vs. Andhra Pradesh Mahila Welfare Society & Ors."* whereby the said suit for recovery of money, instituted on behalf of the appellant herein came to be dismissed, as being barred by limitation.

2. Learned counsel appearing on behalf of the appellant canvasses a solitary ground before this Court in the present appeal. It is urged on behalf of the appellant that the guarantee executed by the defendant was in the nature of a continuing guarantee and that consequently, since the appellant kept issuing demand notices invoking the said guarantee, the period of limitation came to be extended on account of the acknowledgement of debt, in terms of Section 19 of the Limitation Act, 1963 (hereinafter referred to as the 'said Act').

3. In this behalf, it would be expedient to consider the provision of Section 19 of the said Act:-

> "**19. Effect of payment on account of debt or of interest on legacy. –** Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:
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> Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.
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> *Explanation.* – For the purpose of this section, --
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> (a) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

> (b) “debt” does not include money payable under a decree or order of a court.”

4. A plain reading of the above provision clearly postulates that where a payment is made on account of a debt, before the prescribed period of limitation under the said Act expires, by the debtor, a fresh period of limitation is set into motion from the time such payment is made.

5. In the present appeal, it is observed that subsequent upon the disbursement of the loan on 23.12.2000, the appellant has not averred that any payment has been received from the defendants.

6. In this backdrop, the learned trial court dismissed the suit with the following order:-

> “ Vide this order, I shall dispose arguments on the point of limitation. Present suit has been filed by the plaintiff against defendants for recovery of Rs.3,80,366/- (Rupees Three Lacs Eighty Thousand Three Hundred Sixty Six). Facts as mentioned in the plaint are that defendant No.1 Society requested the plaintiff for financial assistance by way of loan and the plaintiff sanctioned loan under Micro Credit Scheme to the tune of Rs.4,32,000/- in two installments. First installment of Rs.2,16,000/- was released vide bank draft dated 01.07.2000 and the second installment of the same amount was released on 23.12.2000. The plaintiff requested the defendants several times to refund the loan amount but defendants avoided to pay back the same on one pretext or the other. As per statement of account, a sum of Rs.3,80,366 /- (Rupees Three Lacs Eighty Thousand Three Hundred Sixty Six) was due as on 16.06.2014. Demand notice dated 24.06.2014 was sent to the defendants calling upon them to repay the amount due, but of no avail.
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> 2. Perusal of averments of the plaint shows that the plaintiff has sought to recover the loan amount advanced in the year 2000 in two installments and last installment was

> released to the defendants on 23.12.2000. Documents such as loan agreement, disbursement slip etc. have been filed on record. Limitation for recovery of loan amount is three years. But there is nothing on record to show that defendants have acknowledged their liability in the last three years. No reply has been received by the plaintiff from the defendants in response to demand notice sent whereby defendants had acknowledged the liability. Merely sending demand notice to the defendants can not extend the period of limitation. The limitation can be extended only either by way of acknowledgement of debt in writing or part payment of debt as provided under Sections 18 & 19 of the Limitation Act, 1963. In the absence of any document i.e. acknowledgement of debt in writing or part payment of debt allegedly made by the defendants, I hold that there is inordinate delay in filing of the present suit. So, the present suit, being barred by limitation, is liable to be dismissed. Accordingly, present suit is dismissed, being barred by limitation. Decree sheet be drawn.
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> File be consigned to record room."

7. It is trite to state that the Court has no discretion to extend the period of limitation prescribed by the said Act, except insofar as it falls within the mandate of the provisions contained in Sections 4 to 24 (inclusive) of the said Act.

8. In the present case, in my view, in the facts and circumstances, the submission made on behalf of the appellant to the effect that there was an acknowledgement on the part of the defendants, in view of the guarantee furnished by the latter, which according to them was a continuing guarantee and extended the period of limitation on account of acknowledgement of debt, is fallacious and devoid of merits. There admittedly is no other acknowledgement of debt in writing by the defendants apart from this unsupported argument of "continuous guarantee" set up by the appellant. Thus, the provision of Section 19 of the said Act, are not attracted to the facts of the present case.

9. The suit being CS No.109/2015 titled *"M/s National Minorities Development and Finance Corporation vs. Andhra Pradesh Mahila Welfare Society & Ors.",* instituted on behalf of the appellant was patently barred by time in view of the findings of the trial court, which have not been controverted on behalf of the appellant. Accordingly, its dismissal as being barred by limitation cannot be found fault with.

10. Since no other ground has been urged on behalf of the appellant in the present appeal, I confirm the decision arrived at by the trial court, which has been impugned in the appeal.

11. The appeal is accordingly dismissed. Pending applications also stand disposed of.

SIDDHARTH MRIDUL, J

AUGUST 16, 2016
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