

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 248 of 1999**

(Arising out of judgment and decree dated 18-1-1999 passed by the District Judge, Raigarh, in civil suit No.20-A/1992)

1. State Bank Of India Dharamjaygarh Branch, District Raigarh, Through Its Branch Manager

---- Appellant

Versus

1. Nanhee Ram S/o Dayaram Aged About 50 Years Occupation Agriculturist
2. Bhudh Ram S/o Dayaram Aged About 58 Years Occupation Agriculturist
3. Thakur Ram S/o Dayaram Aged About 40 Years Occupation Agriculturist

1 to 3 are R/o Rairooma Khurd, Tehsil Dharamjaigarh, Dist. Raigarh

4. Ganda Rai (Dead) Through LRs :

4A Jagar Sai S/o Late Ganda Rai Aged About 62 Years

4B Bagar Sai S/o Late Ganda Rai Aged About 60 Years

4C Baigaram S/o Ganda Rai Aged About 55 Years

4A to 4C are R/o Village Manjhapara, Charkapara, Th. Dharamjagarh, District Raigarh Chhattisgarh

5. Dhan Singh (Dead) Through LRs :

5A Masat Ram S/o Dhan Singh Aged About 62 Years R/o Main Basti, Charkapara, Th. Dharamjagarh District Raigarh Chhattisgarh

5B Jaimoti Ratia W/o Baldeo Ratia R/o Village Gochal P.O. Khamhar, Th. Dharamjagarh District Raigarh Chhattisgarh

---- Respondent

For Appellant	Shri Abhishek Sinha, Adv. with Shri Amit Buxy, Advocate
For Respondent No. 4-A, 4-C & 5-A	Shri Sunil Sahu, Advocate
For other Respondents	None

Hon'ble Shri Justice Prashant Kumar Mishra

Judgment On Board

03/10/2017

1. By the impugned judgment and decree the trial Court has dismissed the appellant's suit for recovery of the loan amount by holding that the suit is barred by limitation, even though it has found the other issues proved in favour of the plaintiff/appellant.
2. The respondents No.1 to 3, hereafter referred to as 'the borrower' obtained loan of Rs.71,000/- for purchase of tractor trolley and executed agreement dated 30-10-1984. The respondents No.4 & 5, hereinafter referred to as 'the guarantor' stood guarantee to the said loan transaction. The borrowers have also executed the deed of mortgage securing the repayment of loan in favour of the Bank. As per the plaintiff bank, the repayment of the loan amount began from 13-5-1985 and the borrower made payment of installment till 12-1-1987,

however, thereafter, no payment was made by the borrower or the guarantor. The borrower paid Rs.10,000/- on 27-8-1990; Rs.1,000/- on 8-9-1990; and again Rs.1,000/- on 22-1-1991. Prior to that the borrower executed balance confirmation letter or revival letter on 30-7-1990. When the borrower and/or guarantor failed to repay the loan amount, a suit for recovery of Rs.1,81,575/- was filed on 5-8-1992. The defendants denied the plaintiff's claim.

3. The trial Court framed 6 issues for adjudication and has concluded that the plaintiff is entitled to recover the amount of Rs.1,81,575/-, however, the suit has been dismissed on the ground of limitation.
4. It is argued that the trial Court has wrongly treated the suit to have been preferred under Article 37 or 55 of the Limitation Act, 1963 (for short 'the Act') whereas the repayment of the loan amount being secured by creating a mortgage, it will be governed by the period of limitation as provided under Article 62 of the Act.
5. Per contra, learned counsel appearing for the respondents No.4-A, 4-C & 5-A would submit that the present suit for recovery of money would be governed by Article 37 or 55,

therefore, the trial Court has not committed any error in dismissing the suit.

6. Admittedly, the defendants have not entered the witness box nor preferred any cross-objection or cross-appeal before this Court to challenge the findings recorded by the trial Court on issue Nos.1, 2A to 2C, 3 & 5, therefore, the only issue fallen for consideration in this appeal is the issue No.4 regarding the suit being barred by limitation.
7. Article 37 of the Act deals with a suit for recovery of the amount on a promissory note or bond payable by installments, which provides that, if default be made in payment of one or more installments, the whole shall be due and the period of limitation is 3 years from the date when the default is made, whereas Article 62 deals with a suit to enforce payment of money secured by a mortgage or otherwise charged upon immovable property with period of limitation being 12 years from the date when the money sued for becomes due.
8. A plain reading of both the Articles would explicit that when the suit is for enforcement of payment of money secured by a mortgage the period of limitation is 12 years whereas Article 37 deals with a suit based on promissory note or bond where the

repayment is to be made by installments. The present suit preferred by the Bank was not a suit based on promissory note or bond, but the payment of the loan obtained by the borrower was secured by a deed of mortgage, the original of which has been produced by the plaintiff Bank before the trial Court. The execution of deed of mortgage being not denied by the defendants, it has not been exhibited formally, however, the trial Court has made endorsement over the document that it is admitted by the defendants.

9. In **Indian Overseas Bank v. Kandimalla Narsaiah and Others**, the Andhra Pradesh High Court held that suit for recovery against guarantor based on equitable mortgage, filed 8 years after grant of loan is not barred by limitation.
10. In the considered opinion of this Court, the trial Judge has committed manifest error of law by holding that Article 37 of the Act would govern the period of limitation in the present suit and since it has been preferred after more than 3 years from the date of accrual of cause of action it is barred by limitation. In fact, the agreement having been executed on 30-10-1984 and the suit being filed on 5-8-1992 it was well before the 12 years period of limitation and, as such, the suit was within time and the trial

Judge is not justified in law in holding that the suit was barred by limitation.

11. Once it is found that the suit was not barred by limitation, the other crucial issue regarding plaintiff's entitlement to obtain a decree for recovery of Rs.1,81,575/- having been decided in its favour against which no cross-appeal or cross-objection has been filed by the defendants/respondents, the plaintiff's suit deserves to be and is hereby decreed.
12. Accordingly, it is held that the plaintiff/appellant is entitled to recover a sum of Rs.1,81,575/- from the respondents, jointly and severally, along with interest at the rate of 6% per annum from the date of filing of suit till recovery. If the defendants fails to repay the loan amount, the plaintiff would be entitled to execute the decree by enforcing the mortgage that is to say by sale of mortgage property.
13. As a sequel, the first appeal is allowed, leaving the parties to bear their own cost(s).
14. Decree be drawn accordingly. Sd/-

Judge
Prashant Kumar Mishra