IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.42 OF 2016
WITH
CIVIL APPLICATION NO.1760 OF 2015

Ramganga Adat Shop And Another … Appellants/Applicants
Versus
Sou. Meena H. Patil … Respondent.

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Ms. Gauri Jadhav for the Appellants/Applicants.
Mr. C.G. Patil for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 14 MARCH 2017

P.C. :

. Heard learned Counsel for the parties.

2 This second appeal challenges a judgment and order passed by the Principal District Judge, Kolhapur, in Regular Civil Appeal No.30 of 2010. By the impugned judgment and order, the learned District Judge partly allowed the civil appeal and set aside a decree of dismissal passed by the Trial Court in Regular Civil Suit No.415 of 1999.

3 The suit claim arises on account of jaggery sale contract between the Respondent (original Plaintiff) and the Appellants (original Defendants), who run an Adat Shop for sale of jaggery. It was the case of the Plaintiff that she had given jaggery for sale to the Defendants and that a sum of Rs.1,54,439.54 ps was due and payable by the Defendants to the Plaintiff

on account of sale of jaggery. This claim comprised of four amounts, i.e. amounts of Rs.24,857=60 and Rs.33,504=00 arising, respectively, under Receipts Exhibits 41 and 42, and amounts of Rs.59,077=94 and Rs.35,000=00, respectively, under Exhibits 52 and 53. The Trial Court dismissed the suit on the ground that the claim was barred by limitation and also that the amounts due under the receipts (Exhibit 41 and 42) were already received by the Plaintiff. The lower Appellate Court came to a finding that insofar as claim under Receipt No.41 was concerned, the same was not hit by the Limitation Act, but there was evidence to show that the amount due under that receipt was duly received by the Plaintiff. The lower Appellate Court further found that as far as the other receipt, namely, Exhibit 42, was concerned, the claim arose on account of sale of jaggery which took place on 13 April 1995 and the suit for recovery of that amount had been barred by limitation. The lower Appellate Court found that though the Plaintiff's claims under receipts Exhibits 41 and 42 were rightly rejected by the Trial Court, it omitted to enter any finding as regards claims under Exhibits 52 and 53. The Appellate Court noted that Exhibits 52 and 53 were duly proved. These were income tax returns along with the lists of those with whom the Defendants had transactions. These documents clearly reflected the admitted claims of the Plaintiff, respectively, for Rs.59,077/- and Rs.35,000/-. The lower Appellate Court had held that these claims should have been decreed. The liability of Rs.59,077/- was acknowledged in the income tax returns filed by the Defendants for the Assessment Year 1996-97, enclosing the details of the concerned business transaction. Upon filing of the returns, the date of acknowledgment being 30 August 1997, in which sum of Rs.59,077/- is admitted, the period of limitation is liable to be computed from the date of the acknowledgment.

Exhibit 53, which was an income tax returns for the Period 01.04.1996 to 31.03.1997, which admitted the sum of Rs.35,000/-, was acknowledged in October 1997. The amounts of Rs.59,077/- and Rs.35,000/-, respectively, under Exhibits 52 and 53, were clearly within time.

4 Learned Counsel for the Appellants submits that statements made in the income tax returns do not amount to acknowledgment in writing of the assessee's liability. She submits that the acknowledgment is not addressed to the Plaintiff. There is no such requirement in law. Acknowledgment of liability need not be addressed to the Plaintiff. Any acknowledgment of liability made in writing by the defendant enures to the benefit of the plaintiff for the computation of period of limitation.

5 Alternatively, it is submitted by learned Counsel for the Appellant that the amount of Rs.94,077/- decreed by the lower Appellate Court has already been paid by the Defendants to the Plaintiff. Whether the amount is due and payable or already paid by the Defendants, are pure questions of fact. The lower Appellate court has come to a conclusion based on the pleadings of the parties and evidence placed before the Court. In the written statement of the Defendants, there is no plea of payment of this amount. The income tax returns filed by the Defendants as of 30 August 1997 and October 1997 clearly acknowledge and admit those two liabilities.

6 On these facts, the impugned judgment and order of the lower Appellate Court cannot be faulted on a substantial question of law. It cannot be said to be an order passed on no evidence. So also, it cannot be

said that any germane or relevant material was disregarded or any non-germane or irrelevant material was considered, by the Court, for arriving at the conclusion.

7 There is no merit, accordingly, in the second appeal. The second appeal is dismissed. The Respondent will be entitled to withdraw the amount deposited by the Appellants in the lower Appellate Court.

8 In view of the dismissal of the second appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)