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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 23rd August, 2017

+ RFA 703/2016

INDERJEET SINGH

..... Appellant

Through: Mr. Jayant K. Mehta, Mr. Manikya
Khanna and Mr. Shaurya, Advs.

versus

BIMLA DEVI & ORS

..... Respondents

Through: Mr. Harinder Kumar and Ms. Versha
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 10th February, 2016 whereby the learned Trial Court has dismissed the appellant's suit for recovery under Order VII Rule 11(d) of Code of Civil Procedure.

2. The appellant instituted a suit for recovery of Rs.19,60,000/- against the respondents on the averments that the appellant advanced loan of Rs.15,00,000/- to late Sh. Chakarvaty (husband of respondent No.1 and father of respondents No.2 and 3). The loan was advanced during the period 28th April, 2011 to 08th June, 2011 and was re-payable within a period of four years. According to the appellant, late Sh. Chakravaty issued two cheques dated 19th May, 2015 and 22nd May, 2015 for Rs.8,00,000/- and Rs.7,00,000/- respectively which were dishonored upon presentation due to

insufficiency of funds.

3. Learned Trial Court held the starting point of limitation to be the date on which the loan was made and the suit could have been instituted within three years thereof i.e. up to 08th June, 2014 under Article 19 of the Limitation Act. Learned Trial Court held the suit to be barred by approximately one year and four months and dismissed the same under Order VII Rule 11(d) of Code of Civil Procedure read with Section 3 of the Limitation Act.

4. Learned counsel for the appellant submits that the suit is within limitation. It is submitted that the Article 55 and 113 of the Limitation Act would apply in the present case according to which the suit can be instituted within three years from the date of the breach. It is submitted that the loan was re-payable within four years and the suit has been instituted within three years of the four years. Reliance is placed on *Syndicate Bank v. Channaveerappa Beleri*, (2006) 11 SCC 506, *C. Natrajan v. Ashim Bai*, (2007) 14 SCC 183, *Sundaram Finance Ltd. v. Noorjahan Beevi*, (2016) 13 SCC 1, *Rameshwar Mandal v. Ram Chand Roy*, ILR 10 Cal 1033, *Estannam Ramalinga Sastry v. Nelanerthula Venkata Narayana*, (1972) 1 ALT 202, *Shatzadi Begum v. Girdharilal*, AIR 1976 AP 273, *Jailabdeen v. Mohammed Basheer*, 1991 (1) KLJ 574, *Virender Kumar Jain v. M/s Alumate (India) Pvt. Ltd.*, 2012 SCC OnLine Del 1313, *IFCI Venture Capital Funds Ltd. v. Santosh Khosla*, (2012) 187 DLT 729 and *Kotak Mahindra Bank Ltd. v. Anuj Kumar Tyagi*, 2015 SCC OnLine Del 14130.

5. Learned counsel for the appellant further submits that the issue of limitation is a mixed question of law and fact which can't be decided without evidence and the learned Trial Court erred in dismissing the suit

under Order VII Rule 11(d) of CPC at the initial stage without issuing any notice to the respondents. Reliance is placed on *Saleem Bhai v. State of Maharashtra* (2003) 1 SCC 557, *Sopan Sukhdeo Sable v. Assistant Charity Commissioner* (2004) 3 SCC 137, *Popat and Kotecha Property v. State Bank of India Staff Association*, 2005 (7) SCC 510, *Hardesh Ores (P) Ltd. v. Hede*, (2007) 5 SCC 614, *P.V. Guru Raj Reddy v. P. Neeradha Reddy* (2015) 8 SCC 331, *Balasari Construction v. Hamuman Seva Trust* (2006) 5 SCC 658, *Ramesh B. Desari v. Bipin Vadilal Mehta*, (2006) 5 SCC 638, *Noharlal Verma v. District Cooperative Central Bank Ltd., Jagdalpur*, (2008) 14 SCC 445 and *Satti Paradesi Samadhi & Philliar Temple v. M Sabjybtaka (D)*, (2015) 5 SCC 674.

6. Learned counsel for the respondent submits that the suit was barred by limitation and has been correctly rejected by the learned Trial Court.

7. After hearing the parties for some time, this Court is satisfied that issue of limitation in the present case is a mixed question of law and fact and the Trial Court erred in rejecting the suit under Order VII Rule 11(d) of CPC at the initial stage without issuing any notice to the respondents.

8. The appeal is allowed and the impugned order dated 10th February, 2016 is set aside. The suit is remanded back to the learned Trial Court.

9. The respondents shall file the written statement within 30 days from today. The respondents are at liberty to raise the objection of limitation in their written statement and in that event, the Trial Court shall frame an issue and adjudicate the same after recording the evidence.

10. The parties shall appear before the learned Trial Court on 22nd September, 2017 where the respondents shall file written statement along with the relevant documents within their power and possession.

11. The Trial Court record be returned back forthwith. The Trial Court shall expedite the hearing in this matter.

12. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

AUGUST 23, 2017

J.R. MIDHA, J.

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