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

\+ **<u>RSA No.172/2017</u>**

% **11th July, 2017**

ASHOK KUMAR ..... Appellant

Through: Mr. Pradeep Kumar Saini, Advocate.

versus

KARTAR SINGH ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

<u>VALMIKI J. MEHTA, J (ORAL)</u>

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the first appellate court dated 7.2.2017 by which the first appellate court has set aside the judgment of the trial court dated 15.3.2016. The trial court by its judgment dated 15.3.2016 had dismissed the suit for recovery of Rs.2 lacs filed by the respondent/plaintiff against the appellant/defendant as being time-barred. The first appellate court has held that the suit is within limitation and therefore the suit was decreed. I may note that the appellant/defendant though was served in the suit but he did not file his written statement nor did he lead any evidence.

2. The facts of the case are that the subject suit was filed by the respondent/plaintiff seeking recovery of Rs.2 lacs and which the respondent/plaintiff pleaded was taken by the appellant/defendant for engagement and marriage of his two daughters. A sum of Rs.1,40,000/- was given by the respondent/plaintiff to the appellant/defendant on 23.9.2010 and a sum of Rs.60,000/- was given on 27.9.2010. The loan given was repayable after five months without interest and in this regard a document dated 23.9.2010 was duly executed between the parties i.e signed by both the parties. The appellant/defendant is pleaded to have issued a cheque bearing no.106452 dated 2.12.2013 for a sum of Rs.1.50 lacs in discharge of his liability. This cheque was dishonored and hence the subject suit was filed.

3. As already stated above, the appellant/defendant in spite of service failed to appear in the trial court and failed to file the written statement. The appellant/defendant was therefore proceeded *ex-parte*. Respondent/plaintiff has led evidence and proved the various documents including the document dated 23.9.2010 as Ex.PW1/1. The evidence led by the respondent/plaintiff is referred to in para 7 of the judgment of the trial court and which para 7 reads as under:-

> "7. In support of his case, the plaintiff has examined himself as **PW-1. PW-1** stated and reiterated on oath the contents of the plaint. He has exhibited certain documents on record which are marked as under:-
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> i) Ex.PW-1/1 is the original receipt-cum-halafnama

ii) Ex.PW-1/2 is the original cheque bearing no.106452 dtd.02.12.2013
iii) Ex.PW-1/3 is the original postal receipt dt.27.08.2015
iv) Ex.PW-1/4 is the original reply to RTI dt. 19.09.2015
v) Ex.PW-1/5 is the envelop of RTI
vi) Ex.PW-1/6 is the copy of legal notice dt.31.08.2015
vii) Ex.PW-1/7 & PW-1/8 is the original postal and courier receipt
viii) Ex.PW-1/9 is the original returned AR card
ix) Ex.PW-1/10 is the certified copy of order dt.15.07.2015
x) Mark "B" is the complaint dt.20.01.2014

After recording the evidence, the matter was fixed for ex-parte final arguments."

4. Trial court dismissed the suit by observing that since the loan was given on 23.9.2010, therefore the cheque given by the appellant/defendant dated 2.12.2013 is beyond the limitation period of three years from 23.9.2010, and therefore, such an acknowledgment has to be ignored and consequently once there is no acknowledgment the suit filed on 3.10.2015 with respect to loan given on 23.9.2010 is time barred. The first appellate court has set aside the judgment of the trial court by observing that the document dated 23.9.2010 itself categorically mentions that the loan is granted as an interest free loan of five months and therefore loan would be repayable five months from 23.9.2010 and consequently the cheque dated 2.12.2013 is within the period of three years commencing after five months of the document dated 23.9.2010, and therefore the cheque issued by the appellant/defendant and which was dishonored, serves as an acknowledgment under Section 18 of the Limitation Act, 1963 thereby

extending the period of limitation to three years beyond 2.12.2013 and resultantly the suit filed on 3.10.2015 would be within limitation.

5.(i) Learned counsel for the appellant/defendant has argued that the first appellate court has wrongly held the suit to be within limitation inasmuch as the loan was given on 23.9.2010 and therefore the cheque given on 2.12.2013 cannot be treated as an acknowledgement as it was given after three years of 23.9.2010. Learned counsel for the appellant/defendant places reliance upon Article 19 of the Limitation Act to argue that period of limitation for recovery of money is three years when the loan is given.

(ii) I cannot agree with the argument urged on behalf of the appellant/defendant. The first appellate court has rightly held that the cheque dated 2.12.2013 is within three years period of limitation for recovery of loan. In law the limitation period for recovery of loan which is payable on a specific date then the limitation period commences from the date from which the loan is repayable. Limitation in such a case does not commence from the date of grant of loan. Article 19 of the Limitation Act which is relied upon by the appellant/defendant deals with the situation where there is no date fixed for repayment of the loan. Appellant/defendant therefore cannot place reliance upon Article 19 of the Limitation Act. What would actually apply in the facts of this case is Article 113 of the Limitation Act and which provides that limitation of three years commences from the date of arising of the cause of action i.e it is when the cause of action arises then the limitation period of three years starts for the loan to be repayable. Since in the present case loan was repayable after five months from 23.9.2010 i.e on 23.2.2011, hence the cheque given on 2.12.2013 is within three years of 23.2.2011 and therefore the dishonored cheque had the effect of acknowledgment of the liability under Section 18 of the Limitation Act. Accordingly the subject suit filed on 3.10.2015 i.e within three years from 2.12.2013 was within limitation.

6. This Court with reference to applicability of Article 113 of the Limitation Act relies upon the judgment delivered by this Court in the case of ***Shri Satish Kumar Vs. Smt. Reena Bhoumik*** in RFA No.684/2006 decided on 18.4.2012 wherein this Court by reference to Article 113 of the Limitation Act has held that limitation to recover loan will arise on the cause of action arising and which arises when there is non-payment on the date when the loan is to be repaid. The relevant paras of this judgment read as under:-

> "5. A reading of the aforesaid paras shows that the trial Court has held that period of limitation of every loan granted is three years and the suit has to be filed under Article 19 within three years of the loan being granted. This reasoning of the trial Court is ex facie incorrect because loan can be granted to be repayable after a particular period of time of, let us say one

year, two years, three years and so on. Limitation to recover the loan on the cause of action will arise on the date when the loan is not repaid i.e. not from the date of grant of the loan but after one year or two years or three years of grant of loan when cause of action will arise to file the suit for recovery of amount. The period of limitation will be three years from the date of default i.e. the date when the loan ought to have been repaid but is not repaid. Such suits for recovery of loan granted will not be governed by Article 19 of the Limitation Act, 1963, and in fact will be governed by Article 113 of the Limitation Act, 1963 which states that a suit has to be filed within three years from arising of cause of action.

6. In view of the above, the suit is held within limitation inasmuch as the loan was repayable after five years from 15.11.1999 and therefore cause of action begins from 15.11.2004. The suit was filed on 6.10.2005 and therefore cannot be said to be barred by limitation."

7. There is no merit in the appeal. Dismissed.

JULY 11, 2017 **VALMIKI J. MEHTA, J**

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