* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ RFA No. 783/2017

% 12th September, 2017

GAUTAM SETH ..... Appellant

Through: Mr. Ajay Kohli and Mr. R.K. Singla, Advocates.

versus

JAIVEER SINGH ..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. Nos. 33243-44/2017 (for exemptions)

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

C.M. Appl. No. 33245/2017 (for condonation of delay in re-filing the appeal)

Delay of 73 days in re-filing of the appeal stands condoned.

C.M. stands disposed of.

RFA No. 783/2017

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff

impugning the judgment of the trial court dated 22.2.2017 dismissing the suit for recovery of Rs.11,00,000/- filed by the appellant/plaintiff along with the claim of interest. The relief clauses of the plaint read as under:-

> "A) A decree for the recovery of Rs.23,46,582/- (principal Rs.11,00,000/- plus interest Rs.12,46,582/- simple interest @ Rs.24% per annum w.e.f. 5.12.2007 to 17.05.2012 along with pendent lite & future interest till realisation of money
>
> B) A decree for Allow the suit with all costs.
>
> C) Any other relief which this Hon'ble court deems fit and proper may also be granted to the plaintiff concern."

2. The relief clauses above of the plaint show that out of the amount claimed in the suit of Rs.23,46,582/-, the principal amount was of Rs.11,00,000/- and balance of Rs.12,46,582/- was towards interest at 24% per annum. The amount as claimed of the principal of Rs.11,00,000/- is as per para 4 of the plaint and this para 4 of the plaint reads as under:-

> "4. The payments details as described and shown in the ledger and banks statements are following:
>
> On 5th December 2007 onward defendant took different-2 amount from plaintiff on different dates these dates are followings

Date	Amount in Rs.
05.12.2000	10 Lakh
27.08.2008	3 Lakh
08.04.2009	2 Lakh
16.04.2009	1 Lakh
19.05.2009	1 Lakh
21.05.2009	1 Lakh
27.02.2010	2 Lakh

And during this period defendant returned following amount of following dates:-

Date	Amount in Rs.
15.04.2009	1 Lakh
16.04.2009	1 Lakh
18.05.2009	1 Lakh
19.05.2009	1 Lakh
26.05.2009	1 Lakh
26.02.2010	2 Lakh
27.02.2010	2 Lakh

After all transactions the pending amount due and payable from defendant is 11 Lakh Rupees alongwith interest @24% simple interest per annum."

3. In my opinion, there is no confusion whatsoever as to how the principal amount of Rs.11,00,000/- is arrived at as claimed in the relief clause of the suit plaint and as is sought to be argued by the appellant/plaintiff because the entries in para 4 of the plaint show that a total sum of Rs.20,00,000/- was paid by the appellant/plaintiff to the respondent/defendant of which a sum of Rs.9,00,000/- was returned and hence the last line of para 4 of the plaint refers to the principal balance amount due being of Rs.11,00,000/-.

4. Trial court has held that the suit is barred by limitation because each of the entry of grant of loan is a separate cause of action and for each separate cause of action limitation commences from three years from the date of grant of the loan. I may note that Article 19 of the Limitation Act, 1963 provides that the limitation period is three years from grant of the loan for filing a suit for recovery of loan which

is granted. Once loans are paid on different dates then as per Article 19 of the Limitation Act, limitation will commence from the date of grant of each of the loan, and the trial court has rightly observed that it is not the case of the appellant/plaintiff that a specific large amount was agreed to be given as loan and which was thereafter given in different installments thereafter for smaller amounts.

5. The subject suit admittedly has been filed on 22.3.2013. Any loan therefore granted before 22.3.2010 would become barred by limitation. Trial court has observed that the case of the appellant/plaintiff as argued, (and which was different from the content of para 4 of the plaint) is that actually the loan granted is only totaling to Rs.15,00,000/- and which is on account of the three entries dated 5.12.2000 (sic.:5.12.2007) of Rs.10,00,000/-, on 27.8.2008 of Rs.3,00,000/- and on 8.4.2009 of Rs.2,00,000/-, and all of which dates are before three years of the date of filing of the suit on 22.3.2013, and hence the suit is time-barred.

6. Some clarification from this Court is necessary at this stage, inasmuch as, though para 4 of the plaint is clear when the same is read with the relief clause in the plaint, it is seen that the appellant/plaintiff argued that out of the seven entries given in the

beginning of para 4 of the plaint totaling to Rs.20,00,000/-, the entries of loan are only the first three entries of Rs.10,00,000/- dated 5.12.2007, Rs.3,00,000/- dated 27.8.2008 and Rs.2,00,000/- dated 8.4.2009, totaling to Rs.15,00,000/- inasmuch as, it was the case of the appellant/plaintiff before the trial court as also this Court that the next four entries of the first part of para 4 of the plaint of Rs.1,00,000/- dated 16.4.2009, another Rs.1,00,000/- dated 19.5.2009, another Rs.1,00,000/- dated 21.5.2009 and a sum of Rs.2,00,000/- dated 27.2.2010 are not entries showing payment of loans to the respondent/defendant but these four entries dated 16.4.2009, 19.5.2009, 21.5.2009 and 27.2.2010 are ledger entries and bank entries showing that first three entries dated 16.4.2009, 19.5.2009, 21.5.2009 are with respect to cheques issued by the appellant/plaintiff and which were dishonored with the fourth entry dated 27.2.2010 being of the return/repayment of the amount of Rs.2,00,000/- by the respondent/defendant to the appellant/plaintiff towards the total loan of Rs.15,00,000/-. In sum and substance what is argued by the appellant/plaintiff was that para 4 of the plaint is not happily worded and the suit only seeks recovery of three loan amounts being first of Rs.10,00,000/- dated 5.12.2007, secondly a sum of Rs.3,00,000/-

dated 27.8.2008 and thirdly, a sum of Rs.2,00,000/- dated 8.4.2009. Therefore, it is seen that the suit filed on 22.3.2013 would clearly be beyond the period of three years as regards balance amount of Rs.6,00,000/- out of Rs.10,00,000/- granted on 5.12.2007, a sum of Rs.3,00,000/- paid on 27.8.2008 and a sum of Rs.2,00,000/- paid on 8.4.2009. Admittedly, the only payment relied upon by the appellant/plaintiff to extend the limitation is a sum of Rs.2,00,000/- paid on 27.2.2010 and the sum of Rs.2,00,000/- has to be taken towards adjustment of part of the loan amount of Rs.10,00,000/- said to have been loaned by the appellant/plaintiff to the respondent/defendant on 5.12.2007. This is in view of Section 61 of the Indian Contract Act, 1872 and which provides that when there is no statement of the debtor as to how the amount of payment is to be taken for discharge of each loan then the earliest loan is discharged by the payment of the amount paid towards debt. Section 61 of the Indian Contract Act, reads as under:-

> "**61. Application of payment where neither party appropriates**.— Where neither party makes any appropriation, the payment shall be applied in discharge of the <u>debts in order of time</u>, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably." (underlining added)

7. The net and the sum and substance of the aforesaid discussion shows that though as per para 4 of the plaint and the relief cause of the plaint, the appellant/plaintiff claimed the principal amount of Rs.11,00,000/- along with interest, during the course of arguments before the trial court as also this Court it was argued that the total loan given was only of a sum of Rs.15,00,000/- being of the entries dated 5.12.2007, 27.8.2008 and 8.4.2009 and the only repayment made by the respondent/defendant was two sums of Rs.2,00,000/- each with the last payment of Rs.2,00,000/- being made on 27.2.2010. Once the sum of Rs.2,00,000/- paid on 27.2.2010 is taken towards adjustment of the amount of Rs.10,00,000/- granted on 5.12.2007 and of which Rs.8,00,000/- had remained after payment of Rs.1,00,000/- each on 15.4.2009 and 18.5.2009 (totaling to Rs. 2,00,000/-), the appellant/plaintiff through the suit would be claiming a sum of Rs.6,00,000/- being balance out of the sum of Rs.10,00,000/- paid on 5.12.2007, Rs.3,00,000/- paid on 27.8.2008 and Rs.2,00,000/- paid on 8.4.2009 i.e. balance due was of a sum of Rs.11,00,000/-,and each of which three entries totaling to Rs.11,00,000/- are prior to three years of filing of the suit on 22.3.2013, and therefore, *qua* each of these three entries of loan dated 5.12.2007 of balance of Rs.6,00,000/-, dated

27.8.2008 of Rs.3,00,000/- and dated 8.4.2009 of Rs.2,00,000/-, the suit filed would be beyond limitation as per Article 19 of the Limitation Act.

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

SEPTEMBER 12, 2017 **VALMIKI J. MEHTA, J**

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