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

% *Date of Decision: January 02, 2017*

+ **RSA 391/2016**

M/S SHAKTI BHOG FOOD INDUSTRIES LTD Appellant

Through: Mr.R.K.Jain & Mr.G.L.Bhatia, Advs.

versus

THE CENTRAL BANK OF INDIA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.48194/2016

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

RSA 391/2016

1. This Regular Second Appeal has been preferred by the appellant assailing the concurrent decision of the two Courts below; order dated 06.01.2016 by the learned Trial Court and order dated 23.07.2016 by the First Appellate Court rejecting the plaint in Civil Suit No.950/2014 being barred by limitation.

2. Mr.R.K.Jain, Advocate for the appellant has submitted that both the courts below have wrongly applied Article 113 of the Limitation Act to hold that the suit filed by the appellant/plaintiff is barred by limitation.

Mr.R.K.Jain, Advocate has further submitted that in fact the suit of the plaintiff was governed by Section 22 and Articles 2 & 3 of Limitation Act, 1963 as the period of limitation has to be computed with effect from 08.05.2002 when the Senior Manager of the respondent bank communicated to the appellant/plaintiff that the cheques were being purchased at the prevalent rate. Hence, reckoned from that date, the suit filed by the plaintiff in the year 2005 was well within limitation.

3. Learned counsel for the appellant/plaintiff has relied upon Khaja Quthubullah vs. Government of Andhra Pradesh & Ors. AIR 1995 Andhra Pradesh 43 and Mohan Lal Sukhadia University, Udaipur vs. Miss Priya Soloman AIR 1999 Rajasthan 102 contending that question of limitation is a mixed question of law and fact and could not have been disposed of without giving an opportunity to lead evidence.

4. I have considered the submission made by learned counsel for the appellant and carefully perused the record.

5. While dismissing the appeal, the First Appellate Court has made the following observations:

‘6. Having gone through the observations made by the learned trial Court, I find that learned trial Court has rightly observed that for the relief of rendition of account and repayment of excess money, there is no specific article provided in the Limitation Act, 1963 and therefore as per Article 113 of the Limitation Act in cases where the limitation period is not provided in the Act, their limitation period of three years would commence from the date when the right to sue accrued. Thus the suit to recover the excess amount could have been filed only within the stipulated period of three years from the date when the right to sue accrued.

7. *In the instant case as per the plaintiff's own version, the local cheques/drafts discounting facility to the extent of ₹25 lacs was extended w.e.f. the month of November 1997 to December 1999 and somewhere in the month of July 2000, the plaintiff/appellant noticed that the defendants/respondents herein were charged interest/commission @ ₹4/- per thousand rupees on local cheques/drafts in arbitrary manner in violation of the assurances given to the plaintiff/appellant.*

8. *By these averments of the plaintiff/appellant, it transpires that the alleged excess amount charged by the defendant from the plaintiff was till December 1999 and therefore the learned trial Court rightly observed that at best it can be said that right to sue accrued in favour of the plaintiff/appellant herein in December 1999 and as such, the plaintiff was legally entitled to file the present suit for rendition of account and repayment of excess amount till December 2002 and not till May 2005 as claimed by the plaintiff/appellant herein. Thus I find no merit in the plea taken by the appellant, hence, this plea is rejected.'*

6. Learned First Appellate Court also rejected the contention raised on behalf of the appellant that the decision in C.P.Kapur vs. Chairman 2013 (198) DLT 56 has no applicability to the facts of the present case or the same has been wrongly applied by the learned Trial Court in the instant case.

7. Copy of the plaint annexed with this appeal incorporates the following averments which were considered by the Courts below to decide the question of limitation:

'8. That the facility as referred to in the foregoing paras was extended with effect from 01.04.1997 and somewhere in the month of July, 2000 it was noticed by the plaintiff that the defendants were charging interest/commission @ ₹4/- per

thousand rupees on local cheques and drafts in an arbitrary manner in violation of the assurance given to the plaintiff.

9. *That after the detection of the above over-charging of interest/commission the plaintiff sent a letter to the defendants on 21.07.2000 complaining about the overcharging and thereafter the interest/commission was charged as per assurance given.'*

8. In the subsequent paragraphs, the appellant has pleaded about the various communications addressed to the bank in respect of the alleged overcharging and various dates when cause of action arose.

9. Suffice it to note that both the courts below have held the case to be barred by limitation on the basis of the averments made in the plaint and on the admitted case of the appellant/plaintiff. That being so, there was no necessity to allow the appellant/plaintiff to lead evidence on this aspect.

10. The averments that the suit has been filed within limitation, is on the strength of letter dated 08.05.2002 received from the Senior Manager of the respondent bank informing appellant/plaintiff that the cheques were being purchased at the prevalent rate. The thrust of the arguments before this Court is that prior to the above communication dated 08.05.2002, there was no occasion for the plaintiff to file the suit and it was only on refusal by the respondent bank to rectify the error that the cause of action to file the suit arose. The suit has been filed within three years from the date of said communication.

11. I do not find any force in the above contentions.

12. The case of the appellant/plaintiff is that the appellant company was having a current account with the respondent bank. It being a manufacturer of wheat flour and other products used to sell the same to various purchasers

and receive the payment through cheques and drafts which were deposited with the respondent bank. The appellant was availing local cheques/drafts discounting facility to the extent CC Limit of ₹25 lacs in its account No.CCM202251, which was being maintained with defendant No.2. As per the practice, the interest on the account of local cheques/drafts to be lodged by the plaintiff was to be charged for the actual number of days for which the bank remained out of fund. This facility was extended w.e.f. 01.04.1997 till July 2000.

13. When interest/commission is allegedly charged illegally on each discounted cheque/draft the same is not a case of continuous cause of action falling under Section 22 of Limitation Act. Each entry towards alleged illegal interest is a cause of action for seeking refund of the same. In cases, such as the present case, case is covered under Article 113 of Limitation Act, 1963 as the cause of action has arisen on alleged illegal debiting of interest/commission charged each time.

14. Both the courts below have rightly held that the cause of action arose in the year 2000 for the said facility availed by the appellant/plaintiff and the amount was allegedly charged in excess by the respondent bank upto that period. It has also been rightly held by both the Courts below that the communications by appellant/plaintiff or the service of legal notice did not extend the period of limitation for institution of the suit. It was not a case where plea of acknowledgment under Section 18 and 19 of Limitation Act, 1963 was taken. Rather the communication dated 08.05.2002 from the Senior Manager was reiterating the fact that the cheques were being purchased at the prevailing rates.

15. In my opinion, arguments as raised by learned counsel for the

appellant/plaintiff do not raise any substantial question of law.

16. Since no question of law much less any substantial question of law arises in this appeal so as to require interference by the High Court in exercise of jurisdiction under Section 100 of CPC, the instant Regular Second Appeal is dismissed.

17. No costs.

**PRATIBHA RANI
(JUDGE)**

JANUARY 02, 2017
'st'

