

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 4TH DAY OF APRIL 2018

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A. No.3345 of 2017

in

C.S. No.226 of 2017

1.Mrs.Padmini Rajan

W/o Mr.Rajan,

No.131, Race Course Road,

Coimbatore 641 018

2.Mrs.Uma Rajan,

W/o Late Naren Rajan,

No.131, Race Course Road,

Coimbatore 641 018

3.Mrs.Rashmi Rajan,

D/o Late Naren Rajan,

No.131, Race Course Road,

Coimbatore 641 018

..Applicants/Defendants

Vs.

I.Jeyakanthan,

S/o Ayyamperumal,

J.K.S.Enterprises,

No.6/1, Bharathi Apartment,

1<sup>st</sup> Floor, Bharathi Nagar 3<sup>rd</sup> Street,

North Usman Road, T.Nagar,

Chennai 600 017

..Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.No.226/2017 as barred by limitation.

This application coming on this day before this court for hearing the court made the following order:

This application has been filed for rejection of the plaint in C.S.No.226 of 2017 filed under Order VII Rule 1 of Civil Procedure Code on the ground that the suit itself barred by limitation. The main contention of the applicants/defendants is that the alleged loan transaction between the plaintiff and the father/husband of the defendants were taken place in the year 2011 to 2013 whereas the suit has been filed on 19.12.2016 which is barred by limitation. The plaintiff relied upon the agreement dated 21.12.2013 said to have been executed between him and husband/father of the defendants. But the claim does not arise out of the aforesaid agreement. Hence, the learned counsel for the applicant submitted that on the face of it, the suit is barred by limitation.

2. Heard both sides. It is the contention of the learned applicants/ defendants that the alleged amount said to have been given during the period between 2011 and 2013, whereas the suit said to have executed in the year 2013. The agreement cannot be construed as acknowledgment of liability under Section 18 of Limitation Act, since the agreement itself has been entered much after the limitation period from the date of the alleged loan amount. Hence, it is the contention of the learned counsel for the applicants that the suit is hopelessly barred by limitation and the same has to be rejected. He has also relied upon the judgments of the Honourable Supreme Court reported in **AIR 1967 SC 935 [Tilak Ram and others v. Nathu and others]** and **AIR 2008 SC 1363 [J.C.Budhraja v. Chairman, Orissa Mining Corporation Ltd. and Anr.]**

3. Learned counsel for the respondent/plaintiff would submit that admittedly the loans have been given in the year 2011 to 2013, thereafter the husband of the 1<sup>st</sup> defendant and father of other defendants have executed a sale agreement towards the security of the loan already advanced. These aspects clearly explained in the plaint. He would further submit that the limitation makes question of law and facts, which cannot be decided at this stage. Hence, prayed for dismissal of the application.

4. In the light of the above submission, now it has to be decided whether the suit is liable to be rejected and whether it is hopelessly barred by limitation.

5. The only ground on which the application filed by the 3<sup>rd</sup> defendant is that the suit is barred by limitation. On a careful perusal of the plaint averments, it is the contention of the plaintiff that the amount of Rs.1,60,000/- were paid to the husband of 1<sup>st</sup> defendant and the father of the other defendants from 2011 to 2013 at Chennai. Thereafter, he has also executed an agreement dated 21.12.2013 as the security for the loan. The agreement is also filed as a plaint document. The suit has been filed on 19.12.2016 within the period of three years from the date of agreement. Though the agreement does not indicate the fact of acknowledgment of alleged loan, the fact remains that there was a contract between the parties and necessary pleadings were in fact made in the plaint. Though, the agreement could not directly fall within the ambit of Section 18 of

the Limitation Act, I am of the view that a contract entered in respect of time barred debt will very much fall under Section 25 of the Indian Contract Act. I am of the view that even the promise in the nature of contract entered in respect of the time barred debt is certainly enforceable under Section 25 of the Indian Contract Act. Therefore, at this stage it cannot be concluded that the suit is barred by limitation. The plea of limitation makes question of law and fact and it can be decided only at the stage of trial and not at this stage. Therefore, the application for rejecting the plaint cannot be entertained at this stage. Admittedly, there is an agreement in the year 2017. According to the plaintiff it was executed only as a security towards the loan. Whether it was executed for the loan transaction or not will be decided only after the trial and not at this stage. In view of the same the application is liable to be dismissed. Accordingly, the application is dismissed.

6. The defendants are directed to file their written statement before 27.04.2018. Post the suit on 27.04.2018.

Sd/.N.S.K.J

04.04.2018

//Certified to be a true copy//

Dated this the            day of            2018.

TR/03.05.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.