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

% *Judgment Reserved on: 05.12.2017*
Judgment Pronounced on:02.02.2018

\+ **RFA 590/2016**

RAJINDER VALECHA & ANR. ..... Appellants/plaintiffs.
Through: Ms. Sonali Malhotra & Mr. Amit Sanduja, Advocates.

versus

SATPAL & ANR ...... Respondents/defendants.
Through: None.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. Challenge in this appeal is the impugned judgment and decree dated 16.05.2016 passed by the Court of learned Additional District Judge (North-East)-01, Karkardooma Courts, Delhi (in short 'learned ADJ') by which the civil suit No.114/2016 of the appellants/plaintiffs was dismissed against both the respondents/defendants.

2. The brief facts for disposal of this appeal are that the appellants, who are husband and wife filed a civil suit for recovery of Rs.33,35,000/- against the respondents, who are also husband and wife. It is alleged by the appellants in their plaint that on the request of the respondents they had advanced them a friendly loan of more than Rs.20,00,000/- on interest @ 24% p.a. The

loan was disbursed by the appellants to the respondents from time to time. The appellants have not disclosed any date of disbursement of the amount of loan to the respondents. It is also alleged that the respondents were making the part payment of the loan amount to the appellants from time to time and at one point of time the outstanding amount was Rs.22,50,000/- and lastly the principal sum of Rs.15,00,000/- was outstanding against the respondents.

3. It is further alleged by the appellants that on 06.02.2009, 06.04.2010 and 13.12.2015, the respondents had paid them cash amount of Rs.45,000/-, Rs.1 lacs and Rs.3 lacs respectively. It is further alleged that the respondents have also handed over them a cheque of Rs.3 lacs dated 25.12.2015 from the account of respondent No.2 which was encashed by them. The appellants further alleged that total sum of Rs.33,35,000/- which includes the principal sum of Rs.15,00,000/- and interest Rs.18,35,000/-, is outstanding against the respondents.

4. The appellants further alleged that the respondents have acknowledged the loan amount under the signature of respondent No.1 and by issuing the cheque from the account of respondent No.2. The appellants had issued a notice dated 16.01.2016 to the respondents asking them to make the payment of outstanding amount of Rs.33,35,000/- but of no avail.

5. In their written statements, the respondents have denied the alleged loan transactions. They have also denied handwritten

receipts-cum -details of the payment. The respondents have also taken the objections regarding lack of jurisdiction of the court. They have pleaded that the suit was barred by law of limitation.

6. On merits, it is pleaded by the respondents that there was a business relationship between the appellant No.1 and respondent No.1 which was settled finally and they made the payment of Rs.3 lacs by cash on 13.12.2015 and further Rs.3 lacs by cheque dated 25.12.2015 in full and final settlement pertaining to the business transactions.

7. Learned ADJ found that admittedly the receipts filed by the appellants mentioned the date of transactions of loan from time to time starts from 06.11.2003 till 25.02.2009. As per these receipts, the last payment of Rs.1 lac was made on 25.02.2009 leaving a balance outstanding amount of Rs.15,00,000/-. The respondents have allegedly signed the balance confirmation of Rs.15,00,000/- on 25.02.2009 but the respondents have denied having executed these receipts and documents. The learned ADJ observed even if for the sake of arguments, it is presumed that respondent No.1 has acknowledged outstanding balance amount of Rs.15 lacs, this being the last acknowledgment allegedly executed on 25.02.2009 and the suit having been filed on 16.02.2016 is barred by time.

8. Here it would be profitable to refer Section 18 of the Limitation Act, 1973 which reads as under:-

> **"Section 18 Effect of acknowledgment in writing.—**

> (1) Where, **before the expiration of the prescribed period for a suit** or application **in respect of any property or right**, an **acknowledgment of liability** in respect of such property or right **has been made in writing signed by the party against whom such property or right is claimed**, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.
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9. A bare perusal of the aforesaid provision reflect that the acknowledgment should be executed before the expiry of prescribed period for a suit in respect of any property or right and such acknowledgment of liability in respect of such property or right should be in writing signed by the party against whom such property or right is claimed. If both these requirements are met then a fresh period of limitation shall be computed from time when the acknowledgment was so signed. The **Hon'ble Supreme Court** in **J.C. Budh Raja Vs. Chairman Orissa Mining Corporation Ltd.** ***2008 (2) SCC 444*** has held that acknowledgment of liability under Section 18 of the Limitation Act must be made prior to the expiry of the period of limitation of suit.

10. Here it would also be relevant to refer Section 19 of the Limitation Act, 1963 as the appellants have claimed to have received payment by cash on 06.04.2010 and 13.12.2015 from the respondents. Section 19 of the Limitation Act, 1963 reads as under:-

> **"Section 19 Effect of payment on account of debt or of interest on legacy.—**
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> **Where payment on account of a debt** or of interest on a legacy **is made before the expiration of the prescribed period by the person liable to pay the debt** or legacy or by his agent duly authorised in this behalf, **a fresh period of limitation shall be computed from the time when the payment was made**:
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> **Provided that**, save in the case of payment of interest made before the 1st day of January, 1928, **an acknowledgment of the payment appears in the handwriting of**, or **in a writing signed by, the person making the payment.**"

11. As per this provision where payment is made on account of interest or debt before the expiry of prescribed period of limitation, a fresh period of limitation shall be computed from time to time when the payment was so made. The proviso provides that there should be an acknowledgment of payment in the handwriting of the person making the payment.

12. Having considered the facts of the present appeal in the light of the statutory provisions and judgment of the **Hon'ble Supreme Court** in **J.C. Budh Raj case (supra)**, it is to be noted that after acknowledgment dated 25.02.2009, the alleged payment of Rs.1 lacs and Rs.3 lacs of 06.04.2010 and 13.02.2015 were made by cash by the respondents to the appellants and Rs.3 lacs by cheque dated 25.12.2015. Admittedly, the limitation of three years for filing the suit for recovery from the last acknowledgment dated 25.02.2009 had expired on 25.02.2012.

There is no written acknowledgment of the cash payment of Rs.1 lacs on 06.04.2010 before expiry of limitation i.e. 25.02.2012. Therefore, benefit of Section 19 cannot be extended to the appellants on account of alleged payment made on 06.04.2010. The admitted payment of Rs. 3 lacs made on 13.12.2015 is after expiry of 3 years from acknowledgement dated 25.02.2009 and therefore it is of no help to the appellant in getting period of limitation extended. The payment of Rs.3 lacs by cheque dated 25.12.2015 is also after expiry of three years from 25.02.2009. Therefore, these payments do not fulfil the requirement of Section 18 and 19 of the Limitation Act, 1963.

13. In the circumstances, the learned ADJ has come to the right conclusion of dismissal of the suit being barred by time. I do not find any merits in the appeal. Same is dismissed with costs.

14. Trial Court record be sent back forthwith.

(VINOD GOEL)
JUDGE

FEBRUARY 2nd, 2018