IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.367 OF 2017

Ashok Jain & Associates … Appellant
Vs
Prakash Meghraj Nahar ... Respondent
…
Mr. S.S.Patwardhan for the Appellant.
Mr. S.V. Sadavarte for the Respondent.

CORAM : SANDEEP K. SHINDE J.
DATE : 25 JANUARY, 2019

P.C. :

Heard the learned counsel for the appellant.

2 The suit for recovery of Rs.2 Lakhs was decreed by the trial Court. However, the appellate Court reversed it in Civil Appeal No.1109 of 2012 at the instance of the defendant by judgment and order dated 27th March, 2005. This appeal is thus preferred against the judgment and decree of the appellate Court by the plaintiff.

3 The appellate Court allowed the appeal and dismissed the suit only on the ground that the suit was barred by limitation in view of the provisions of Article 20 of the Limitation Act, 1963.

4 The alleged loan was given by the plaintiff to the defendant vide cheque dated 25th December, 2005. Cheque was encashed by the defendant. There is no dispute on this fact. The defendant, however, resisted the suit by contending that this amount was paid to him as and by way of compensation by the plaintiff. He contended that the plaintiff is developer and the premise which he sought to develop was occupied by him and his brother as tenants. It is his case that along with his brother, he was carrying on his business in the said premise which was sought to be developed by the plaintiff. It is his case that due to shifting of business inconvenience was caused and thus, to compensate him, the plaintiff had agreed to give some amount. It is his case that part of compensation was paid to him in cash and remaining by issuing the subject cheque. The trial Court decreed the suit on the ground that the agreement executed between the plaintiff and the defendant does not make any reference to such compensation. More so, reliance was also placed on income-tax returns filed by the plaintiff, disclosing this amount being advanced to the defendant. The

appellate Court, however, held since the suit was not filed within three years when the cheque was paid, the suit was barred in view of Article 20 of the Limitation Act, 1963. The cheque in question was dated 25th May, 2005 and the suit was filed on 5th August, 2008. It is plaintiff's case that the defendant had agreed to repay the amount on or before 24th December, 2005. However, at his request, time was extended upto December, 2006. Therefore, the limitation starts from December, 2006. On this premise, the plaintiff would contend that the suit was within limitation.

5 Admittedly, the cheque was dated 25th May, 2005. There is nothing on record that the period for repayment of the loan amount was extended at the request of the defendant. It appears cheque was paid immediately after May, 2005 and, therefore, limitation would govern by Article 20 of the Limitation Act, 1963. Suit ought to have been filed on or before 24th May, 2008, however, it was filed in August, 2008. In my view, finding recorded by the

Appellate Court cannot be faulted with. The appeal does not give rise to substantial question of law. The appeal is, accordingly, dismissed.

(SANDEEP K. SHINDE, J.)