

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

216

RSA No.639 of 2016 (O&M)

Date of decision: 14.11.2019

B.S. DHILLON

... Appellant

Versus

CORPORATION BANK & ANR

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Amit Jaiswal, Advocate for the appellant.
None for respondent No.1.

REKHA MITTAL, J. (Oral)

CM No.1738-C of 2016

Prayer in this application is for condonation of delay of 217 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the appellant and that there is no contest to the application by the respondents, application is allowed and delay of 217 days in filing the appeal is condoned.

Main Case

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery was decreed by the trial Court and respondent No.1 was held entitle to recover Rs.1,20,676/- with interest @ 16% per annum from the date of filing of the suit till realisation of the decretal amount, vide judgment and decree dated 11.04.2014 passed by the Civil Judge (Jr. Div.), Panipat (hereinafter referred to as 'the trial Court'). The appeal preferred by the appellant/defendant No.1 was dismissed by the Additional District Judge, Panipat vide decree and judgment dated 03.04.2015.

Counsel for the appellant has assailed the impugned judgments primarily on two counts namely suit filed by the respondent/plaintiff is barred by limitation and Courts have wrongly allowed recovery of the aforesaid amount with interest @ 16% per annum in the face of situation that principal amount was Rs.30,000/- out of which the appellant had made payments bringing the outstanding liability to Rs.19,537/-.

There is no representation on behalf of respondent No.1, earlier and Advocate appeared on its behalf only on 22.03.2017.

The primary question for consideration is 'Whether suit for recovery filed on 26.02.2013 is within limitation?'

The respondent/plaintiff, in para 11 of the plaint, has raised averments with regard to cause of action and a relevant extract therefrom, reads as follows:-

That the cause of action arose in favour of the plaintiff Bank and against the defendant firstly on 07.01.2000, when the defendant applied for loan to the plaintiff Bank and the plaintiff Bank sanctioned the said personal loan to the defendant and the date of execution of agreement for personal loan and guarantee agreement and other documents in favour of the plaintiff Bank, the cause of action also arose on 03.02.2010, the date of execution for revival letter in favour of the plaintiff Bank and the cause of action also arose on 11.01.2013 the date of legal notice. The cause of action is still continuing one and continuation of each day, till the defendant makes the payment of the aforesaid amount.

The loan was given in January, 2000 on the basis of documents executed by the loanee and guarantor. The respondent/plaintiff marked documents namely revival letters dated 03.01.2003 Ex.P11, 22.07.2007 Ex.P6 and 03.02.2010 Ex.P5 meaning thereby that the last revival/acknowledgment is dated 03.02.2010. The second revival vide acknowledgment Ex.P6 is dated 22.07.2007 which is clearly beyond three years from the first revival on 03.01.2003. The present suit was instituted beyond the period of three years reckoned w.e.f. 03.02.2010, therefore, the respondent/plaintiff cannot derive any advantage to its contention from the provisions of Section 18 of the Limitation Act, 1963 to contend that the suit is within limitation from the date of last revival dated 03.02.2010. There is no requirement in law for the respondent/plaintiff to issue a legal notice before filing the suit for recovery, therefore, issuance of a legal notice would not extend the period of limitation in the given scenario.

The trial Court did not record any clear findings on the question of limitation by adverting to the documents on record whereas the appellate

Court has not at all adverted to the question of limitation despite noticing contention of the appellant in para 8 of the judgment. Since the respondent/plaintiff failed to file the suit within three years from the last acknowledgment on 03.02.2010, the present suit is clearly barred by limitation. In view of the above, findings of the trial Court on the question of limitation suffer from perversity, thus, set aside. Since the suit is barred by limitation, the same is liable to be dismissed on this score alone. That being so, judgments and decrees passed by the Courts cannot be allowed to sustain and are accordingly set aside.

In view of what has been discussed hereinbefore, the appeal is allowed. Impugned judgments and decrees are set aside. Suit filed by the respondent/plaintiff for recovery is dismissed leaving the parties to bear their own costs.

14.11.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No