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

% Delivered on: 19th November, 2019

\+ **RFA 984/2019**

ANIL VASHISTH ..... Appellant

Through : Mr.Amit Swami, Advocate.

versus

M/S AWAAZ INDIA MEDIA P. LTD & ORS ..... Respondents

Through : None.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

CM APPL No.49721/2019

For the reasons mentioned in the application, the delay of 08 days in refiling the appeal stands condoned.

The application stands disposed of.

CM APPL No.49720/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

RFA 984/2019 & CM APPL No.49719/2019

1. This appeal is preferred by the appellant/plaintiff against the *ex parte* judgment and decree dated 19.07.2018 passed by the learned Additional District Judge-10/Central District, Tis Hazari Courts, Delhi (hereinafter referred as the learned '*Trial Court*') in CS No.*11/2018* whereby the suit of the appellant for recovery of Rs.4.00 lac was

dismissed. Though, initially, the suit was filed under Order XXXVII CPC, but subsequently per order dated 20.02.2018 passed by learned Trial Court, the suit was treated as *ordinary money recovery suit.*

2. The brief facts are:-

a) the respondent No.1 company is a duly incorporated company under the Companies Act and respondents No.2 & 3 are its director. The respondents No.2 & 3 had friendly relations with the appellant herein since the year 2006;

b) in the year 2010 the respondents No.2 & 3 being in dire need of finances for their company came to the appellant and seeks assistance of Rs.5.00 lac for a period of five years. The appellant advanced a sum of Rs.4.00 lac by way of account transfer to the account of respondent No.1 company and respondents No.2 & 3 promised to return the money in installments;

c) **i**n discharge of their liability the respondents issued four cheques of Rs.50,000/- each thus totaling Rs.2.00 lac towards satisfaction of their partial liability. All the cheques were dishonoured with remarks *'funds insufficient'* vide returning memos dated 01.02.2017;

d) despite demand, the respondents failed to repay the loan amount and legal notices dated 08.02.2017 and 25.02.2017 were sent to respondents, but of no avail , hence this suit was filed.

3. The summons were issued to the respondents, but despite their service they did not file any written statement and were proceeded *ex parte* vide order dated 18.07.2018.

4. The appellant examined himself as *PW1* and proved certified copy of the bank account statement as *Ex.PW1/1;* copy of four cheques as Ex.*PW1/2* (colly); the copies of bank memos dated 01.02.2017 as Ex.*PW1/3* (colly); certified copies of legal notices as Ex.*PW1/4* (colly); and certified copies of postal receipts and AD Cards as Ex.*PW1/5* (colly).

5. Though the respondents were *ex parte*, yet the learned Trial Court dismissed the suit of the appellant being barred by limitation observing, *interalia,* the loan was granted on 23.12.2010 hence the period of limitation for filing the suit, in case of failure of the respondents to repay the loan amount ended on 22.12.2013. Admittedly, the four cheques towards part discharge of liability were issued in the year 2017, hence were not considered as *acknowledgment* which could extend the period of limitation, *per* Sections *18* & *19* of the Limitation Act. The learned Trial Court observed as under:-

> *"9. The Hon'ble Delhi High Court in* ***Rajinder Valecha & Anr Vs.Satpal 2018 2 AD Delhi 699*** *has held that:*
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> > *'acknowledgement should be executed before the expiry of prescribed period.'*
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> *The Hon'ble Supreme Court in* ***J.C.Budhiraja Vs Chairman Orissa Mining Corporation Limited 2008 2 SCC 444*** has held that:
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> > *'acknowledgement of liability U/s 18 of the Limitation Act must be made prior to the expiry of period of limitation in the suit.'*
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> *10. Therefore there is a basic fallacy in this argument. It is clear that any acknowledgment in writing after the expiry of period of limitation, would not extend the period of limitation. The plaintiff can also not take the benefit of Section 19 as in the said case also, the payment has to be made prior to the expiry of period of limitation, The judgments relied upon by plaintiff are not applicable as the suit is barred by law of limitation, Therefore the question of lifting of corporate veil does not arise. Hence suit of the plaintiff stands dismissed with cost of Rs.10,000/-"*

6. Sections *18* & *19* of the Limitation Act require the acknowledgment of debt and / or part payment need to be made within

the period of limitation and not beyond that. Hence the cheques Ex.*PW1/2* (colly) given in the year 2017 cannot be treated as acknowledgment/part payment, sufficient to extend the limitation for filing a suit for recovery of the loan granted in the year 2010. There is no force in the appeal. The reasoning given by the learned Trial Court needs no interference.

7. In view of above, the appeal stands dismissed. The pending application, if any, also stands dismissed. No order as to costs.

YOGESH KHANNA, J.

NOVEMBER 19, 2019
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