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

% Decided **on: 04th September, 2019**

\+ **<u>RFA 5/2019</u>**

M/S MONGIA REALTY & BUILDWELL PVT LTD

..... Appellant

Through : Mr.Dhanesh Relan, Ms.Gauri Chaturvedi and Mr.Vipul Lamba, Advs.

versus

MANIK SETHI

..... Respondent

Through : Mr.Sanjay Sehgal and Mr.Mukesh Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

<u>YOGESH KHANNA</u>, J.

1. This appeal is against the judgment dated 16.08.2018 passed by ADJ-2, West, Tis Hazari Courts, New Delhi, in suit being No.*76/2017*. This suit was dismissed on account of limitation.

2. The case of the appellant/plaintiff is he has granted loans on various dates to the defendants/respondents, as mentioned in para *11* of his plaint, as under :

LEDGER - 1-Apr-2011 to 31-March-2016

Date3	*Particulars*	*Vch No.*	*Debit*	*Credit*
13.06.2012	*Axis Bank A/c - 12333 Cheque - 8830005*		*1,000,000.00*	
11.07.2012	*Axis Bank*		*1,800,000.00*	

A/c - 12333 Cheque - 883014		
21.12.2012 Axis Bank A/c - 12333 Cheque – 883042	*1,500,000.00*	
03.01.2013 Axis Bank A/c - 12333 Cheque - 883043		*3,000,000.00*
09.04.2013 Axis Bank A/c - 12333 Cheque - 883063		*900,000.00*
02.05.2013 Axis Bank A/c - 12333 Cheque - 107517		*200,000.00*
14.05.2013 Axis Bank A/c- 12333 Cheque-		*800,000.00*
24.10.2013 Axis Bank A/c – 12333 Cheque - 204712		*300,000.00*
TOTAL	*8,200,000.00*	*1,300,000.00*
SUKHMANI GROUP	*6,900,000.00*	

3. The account also show some re-payments were made on 02.05.2013, 14.05.2013 and last on 24.10.2013 of ₹ 3 lakhs. Admittedly, the suit was filed on 31.03.2017 clearly beyond three years of last re-payment.

4. It is alleged by learned counsel for the appellant the accounts were open, current and mutual, hence, per Article 1 of the Limitation Act, the limitation would start from the close of the year in which last item admitted or proved is entered in the account; such year to be computed as in the account.

5. An account is said to be open, mutual and current account if it satisfy the conditions as in *Kesharichand Jaisukhal v. The Shilling Banking Corporation* AIR 1965 SC 1711viz.:

10. The next point in issue is whether the proceedings are governed by Art. 85 of the Indian Limitation Act, 1908, and if so, whether the suit is barred by limitation. The argument before us proceeded on the footing that an application under s. 45(D) of the Banking Companies Act is governed by the Indian Limitation Act, and we must decide this case on that footing. But we express no opinion one way or the other on the question of the applicability of the Indian Limitation Act to an application under s. 45(D). Now, Art. 85 of the Indian Limitation Act, 1908 provides that the period of limitation for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties is three years from the close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. It is not disputed that the account between the parties was at all times an open and current one. The dispute is whether it was mutual during the relevant period.

11. Now in the leading case of Hirada Basappa v. Gadigi Muddappa [(1871) VI Madras High Court Reports 142, 144] Holloway, Acting C. J. observed:

> *"To be mutual there must be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations."*

6. The statement of account, as is in para *11* of the plaint would reveal the repayments were only *partial discharge of obligations*, thus the plea of the appellant that accounts so maintained with the respondent were open, current and mutual has no basis.

7. The second limb of argument of the appellant is envisaged in para *5* of the plaint as under :

> *The aforesaid loans have been given by the plaintiff to the defendant always with an understanding that aforesaid loans shall be returned along with interest@18% p.a. That the aforesaid loans were repayable within one year from the date of payment of the last installment of the loan i.e. latest by 9th of April, 2014. However, the defendant was to pay interest on the aforesaid loan amounts on half yearly basis @18% p.a. to the plaintiff.*

8. Hence it is alleged since the loans were repayable *within a year from the date of payment of the last installment* i.e. latest by 9th April, 2014 and since the suit was filed on 31st March, 2017, the suit be held to

be within limitation. Admittedly the plaintiff is a company. It is not expected of a company to have oral mutual understandings with its customers. No such written agreement mentioning the loan being repayable within *one year from the date of payment of the last installment*, as alleged was ever entered into or proved.

9. In the absence of the written agreement it shall be difficult to hold such a condition ever existed between the parties and allowing it would lead to wrong precedent as in every case the plaintiff would take a plea that the loan given in the year 2000 was orally agreed to be payable in 2019 and hence suit filed in 2020 is within limitation. Such leverage cannot be given.

10. I have also perused the impugned order dated 16.08.2018 passed by learned ADJ which read:

> *11. As per limitation Act, 1963, Part-I, suit relating to accounts provide period of limitation as 3 years. As per para 10 of the plaint, the plaintiff admitted that the. last payment made through cheque by the defendant on 20.06.2013. It is further admitted on record that no legal notice served upon defendant prior to filing of the present suit. The last payment is the point of running of limitation i.e. 20.06.2013. Admittedly, present suit is filed on 01.04.2017 after 3 years 9 months and 10 days, which is beyond the period of 3 years. Hence, as per pleadings and documents filed by plaintiff, the suit is barred by limitation. The issue is decided accordingly against the plaintiff and in favour of defendant.*

11. No fault can be seen in the reasoning given. The appeal has no merit and is accordingly dismissed. No order as to costs.

YOGESH KHANNA, J.

SEPTEMBER 04, 2019
VLD