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

% **Date of decision: 6th March, 2020**

\+ **CS(COMM) 171/2018**

BALBIR RAJPUT .... **Plaintiff**

Through: Mr. Avanish Kumar, Adv.

Versus

R.P. EXPORTS & ORS. …...**Defendants**

Through: Mr. Subhash Bhudiraja, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for recovery of Rs.1,99,12,000/- jointly and severally from defendant No.1 R.P. Exports and its partners defendant No.2 Rekha Kushwaha and defendant No.3 Jatan Kumar.

2. The suit came up first before this Court on 5th February, 2018, when summons thereof were ordered to be issued and in response whereto, the defendants appeared through counsel. The order dated 13th November, 2018 records that written statement had been filed by the defendants; the written statement was not filed within the prescribed time; though the counsel for the defendants stated that an application for condonation of delay had been filed but the said application was not on record. The order dated 14th January, 2019 records the statement of the counsel for the plaintiff that since the delay in filing the written statement was of 20 days only, the same be condoned subject to payment of costs. Vide the same order dated 14th January, 2019, the delay in filing written statement was condoned subject to payment of Rs.5,000/- to the plaintiff.

3. The costs was not paid inspite of repeated opportunities as recorded in orders dated 28th February, 2019, 15th April, 2019 and 23rd July, 2019 and ultimately vide order dated 11th October, 2019, the written statement which was permitted to be taken on record subject to payment of costs, was said to be not on record and not entitled to be considered.

4. On 11th October, 2019, after holding the written statement to be not on record, the plaint was perused to consider, whether the plaintiff was entitled to a decree forthwith.

5. It is the case of the plaintiff in the plaint, (i) that on 2nd April, 2012, an Agreement to Sell and Purchase dated 2nd April, 2012 was executed by the plaintiff on the one hand and the defendants on the other hand, whereunder the defendants agreed to sell their factory admeasuring 1000 sq. mtrs. situated at B-70, Sector-80, Phase-II, Noida (U.P.) to the plaintiff for a total consideration of Rs.2,28,50,000/-, with the transaction to be completed by 1st June, 2012; (ii) that in the last week of May, 2012, the defendant No.3 Jatan Kumar requested the plaintiff to extend the date of performance till 31st December, 2012 and to which the plaintiff agreed; (iii) that in December, 2012 when the plaintiff approached the defendants for completion of the transaction, the defendant No.3 Jatan Kumar informed the plaintiff that the defendants were not willing to sell the factory as they had received big orders/assignment and chance of revival of their business had become bright; the defendants requested the plaintiff that the earlier payment advanced by the plaintiff be considered as a loan with interest @ 2% per month; though the defendants promised to enter into a separate agreement with the plaintiff with regard thereto, and also assured that the

entire amount with interest would be refunded within three to four months, but no separate agreement was executed by the defendants and the defendants did not refund the monies received from the plaintiff; (iv) that the plaintiff, from time to time, either himself or through his close friend Chandra Mohan Bhandu, who is also the owner/chairman/MD of Asian Townsville Farms Limited and who also owes money to the plaintiff, advanced the following amounts to the defendants and to Fourth Vision, another firm of the defendant No.3 Jatan Kumar:

Date	Amount (Rs.)
16.11.2011	20,00,000/-
03.04.2012	2,00,000/-
09.04.2012	40,00,000/-
17.04.2012	1,00,000/-
27.04.2012	7,00,000/-
01.08.2012	20,00,000/-
06.09.2012	3,00,000/-
06.09.2012	7,00,000/-
06.09.2012	10,00,000/-
13.12.2012	8,00,000/-
23.12.2012	5,00,000/-
28.12.2012	2,00,000/-
23.01.2013	5,00,000/-
15.10.2013	1,00,000/-
TOTAL	1,31,00,000/-
Rupees One Crore Thirty One Lacs only	

(v) that the plaintiff made various requests to the defendants to re-pay the monies and also got notices issued to the defendants; (vi) that after various follow up by the plaintiff, on 18th March, 2015, the defendant No.3 Jatan Kumar, vide email to the plaintiff, admitted liability towards the plaintiff and expressed inability to then re-pay the loan with interest, due to financial crunch; (vii) that the plaintiff, vide his emails dated 21st March, 2015 and 4th April, 2015 asked the defendants to re-pay the loan with interest but to no avail; (viii) that the defendants, on 18th March, 2015 having admitted their liability to re-pay the loan amount to the plaintiff vide email of the said date, the period of limitation stood extended and/or fresh period of limitation is to be reckoned from the said date; (ix) that in first week of October, 2017, the plaintiff learnt that the defendants had sold their aforesaid factory at Noida for more than Rs.3 crores and had clandestinely moved their business to another address; (x) that the plaintiff is entitled to a total sum of Rs.1,99,12,000/- comprising of principal amount of Rs.1,31,00,000/- and Rs.68,12,000/- towards interest @ 9% per annum till December, 2017; and, (xi) that paragraph 20 of the plaint is as under:

> *"20. That the cause of action for filing the present suit arises in favour of the plaintiff firstly on 02.04.2012 when the defendants agreed to sell their factory to the plaintiff. It further arose when the plaintiff made payment to the defendants time to time on various dates. The cause of action further arose in June, 2012 when the period for performance of contract extended till 31.12.2012. The cause of action further arose time to time when the plaintiff made requests for repayment of the loan. The cause of action further arose on 18.03.2015 when the defendants acknowledged their liability towards the plaintiff for repayment of amount with agreed rate of interest. The cause of action further arose when the plaintiff demanded repayment of his loan with interest through notices. The cause of action*

further arose when the defendants sold the factory to the third person. The cause of action is continuing as the defendants have failed to repay the above amount to the plaintiff."

6. This suit was instituted on 10th January, 2018 and re-filed on 22nd January, 23rd January and 29th January, 2018 and came up first, as aforesaid before this Court on 5th February, 2018.

7. The counsel for the plaintiff, on 11th October, 2019 on enquiry as to how the suit claim was within time, referred to the email dated 18th March, 2015 and contended that the same was an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963 and the suit claim was within time.

8. However a perusal of the said email did not show the same to be satisfying the requirement of Section 18 of the Limitation Act. On request of the counsel for the plaintiff, the matter was adjourned to 22nd October, 2019. On 22nd October, 2019, the counsel for the plaintiff handed over copies of judgments in ***Craft Centre Vs. The Koncherry Coir Factories, Cherthala*** AIR 1991 Ker 83 and ***Food Corporation of India Vs. Assam State Cooperative Marketing & Consumer Federation Ltd.*** (2004) 12 SCC 360. No arguments were addressed by the counsel for the defendants on the aspect of limitation. Orders were reserved on 22nd October, 2019.

9. A perusal of the copy of the Agreement to Sell and Purchase dated 2nd April, 2012 filed by the plaintiff does not show the plaintiff to have paid any amount as advance or earnest money to the defendants. The same is found to provide in Clause 2 and 3 thereof for the plaintiff to deposit Rs.40 lacs in the account of the defendants with Okhla Industrial Estate Branch of Canara

Bank and the remaining amount of Rs.1,88,50,000/- to be paid on or before 1st June, 2012. It is not the plea of the plaintiff that the plaintiff deposited any amount of Rs.40 lacs in the account of the defendants with Canara Bank. In any case, the suit of the plaintiff is not for refund of monies paid under an unfulfilled agreement to sell of immovable property but for recovery of monies loaned to the defendants and which loan, of the total amount of Rs.1,31,00,000/-, is stated to have been made / granted between 16th November, 2011 and 15th October, 2013.

10. The plaintiff, along with the plaint has also filed photocopies of the following documents which are reproduced hereinbelow:

(I). *"Date April 3, 2012*
To,
Mr. Balbir Rajput
R161, Greater kailash
New Delhi-110048

Sub-loan of Rs.200000.00
Sir,

Thanks to received Rs.200000.00 (Rs. Two Lacs only) from Mr. Balbir Rajput S/o Late Sh. Shrawan Kumar Thakur on the following terms-

1- Loan of Rs.2,00,000.00 (Rs. Two Lacs only)
2. Rate of Interest is 24% Per annually
3. Interest payable on monthly basis.
4. Delay in interest shall attract penal interest @ 24%.
5. The aforesaid loan will adjust in the final payment of property no.B70, Sector-80, Noida, U.P. as per sale agreement date 02.04.2012.

Thanking you
Yours

For Fourth Vision
Sd.
Jatan Kumar
118, Bhagat Mohalla,
Khanpur, New Delhi – 110062
9811209826"

(II). *"**Receipt***

Date April 10, 2012

To,
Mr. Balbir Rajput
R161, Greater Kailash-I,
New Delhi – 110048

Thanks We Received a cheque bearing no. 074709 Date 09.04.2012 for Rs.40,00,000.00 (Rs. Forty lacs Only) drawn on HDFC BANK LTD., plot no.1&2, V4 Mayur Plaza, Mayur Vihar Ph-1, New Delhi-110091 towards advance payment against sale of property bearing no.B70, Sector-80, Phase-2, Noida, UP. As per agreement to sale executed between M/s R.P. Exports at B70, Sector-80, Phase-2, Noida, UP (Seller) and Mr. Balbir Rajput residing at R161, Greater Kailash-I, New Delhi -110048 (Purchaser), on dt 02.04.2012.

For R.P. Exports
Sd. *Sd.*
(Jatan Kumar) *(Rekha Kuswaha)*
Partner *Partner"*

(III). *"**RECEIPT***

***Reference :** Agreement to Sell & Purchase Dtd 2nd April 2012 and Addendum to Agreement for Sell & Purchase Dated 31st July, 2012*

Received a sum of Rs.20,00,000/- (Rupees Twenty Lac Only) Vide Ch. No.008016 dated 01/08/2012 drawn on AXIS Bank Ltd. from Asian Townsville Farms Limited F-42A, Ist Floor, Saidulazab, New Delhi-110030 on behalf of Sh. Balbir Rajput r/o R-161, Greature Kailash-I, New Delhi-110048 towards part payment for Sale of Property bearing No.B-70A, Sector-80, Phase-2, Noida, UP.

For R.P. Exports

Date : 01/08/2012
Place : New Delhi

Sd.
(Jatan Kumar) ***(Rekha Kushwaha)***
Partner *Partner"*

(IV). *"**RECEIPT***

Reference : Agreement to Sell & Purchase Dtd. 2nd April 2012 and Addendum to Agreement for Sell & Purchase Dated 1st August, 2012

Received as sum of Rs.7,00,000.00 (Rs. Seven Lac Only) Vide Ch. 000240 Dated 06.09.2012 Drawn on Axis Bank Ltd., Lajpatnagar, New Delhi and Ch. No.701068 dated 06.06.2012 For Rs.3,00,000/- (Rupees Three Lac Only) drawn on ICICI Bank Ltd., Saket, New Delhi from Asian Townsville Farms Ltd., F-42A, First Flor, Saidulajab New Delhi – 110030 on Behalf of Sh. Balbir Rajput R/o R-161, Greater Kailash – 1, New Delhi – 110048, towards part payment for Sale of property bearing No.B-70A, Sector – 80, Ph-11, Noida, UP.

For R.P. Exports

Date : 06/09/2012
Place : New Delhi

Sd.
(Jatan Kumar) ***(Rekha Kushwaha)***
Partner *Partner"*

(V). *"**RECEIPT**"*

Reference : Agreement to Sell & Purchase Dtd. 2nd April 2012 and Addendum to Agreement for Sell & Purchase Dated 1st August, 2012

Received as sum of Rs.10,00,000.00 (Rs. Ten Lac Only) in Cash through Maj (Retd) CM Bhando, R/o C-15, JVTS Gardens, Chattarpur Extn., New Delhi – 110074 on Behalf of Sh. Balbir Rajput R/o R-161, Greater Kailash - 1, New Delhi – 110048, towards part payment for Sale of property bearing No.B-70A, Sector – 80, Ph-II, Noida, UP.

For R.P. Exports

Date : 06/09/2012
Place : New Delhi

Sd.
(Jatan Kumar) ***(Rekha Kushwaha)***
Partner *Partner"*

(VI). *"Receipt*

Received with thanks from Asian Townsville Farms Ltd., F42A, Saidulajab, New Delhi – 110030 a sum of Rs.8,00,000/- (Rupees Eight Lac only) vide ch.No.723284 dated 13.12.2012 drawn on ICICI Bank Ltd., E-30, Saket, Nrew Delhi on a/c of payment of Sh. Balbir Rajput.

FOR R.P. EXPORTS

Date : 13/12/2012
Place : New Delhi

Sd.
(JATAN KUMAR)

(VII). *"Receipt*

Received with thanks from Asian Townsville Farms Ltd., F42A, Saidulajab, New Delhi – 110030 a sum of Rs.500000/- (Rupees Five Lac only) in cash on a/c of payment of Sh. Balbir Rajput.

Date : 23/12/2012
Place : New Delhi

Sd.
Signature
(JATAN KUMAR)"

(VIII). *"Receipt*

Received with thanks from Asian Townsville Farms Ltd., F42A, Saidulajab, New Delhi – 110030 a sum of Rs.2,00,000/- (Rupees Two Lac only) vide ch.No.723304 dated 28.12.2012 drawn on ICICI Bank Ltd., E-30, Saket, Nrew Delhi on a/c of payment of Sh. Balbir Rajput.

FOR R.P. EXPORTS

Date : 28/12/2012
Place : New Delhi

Sd.
(JATAN KUMAR)"

11. A perusal of the aforesaid documents shows each transaction to be independent from the other. Per Article 19 of the Schedule to the Limitation Act, the limitation for a suit for money payable for money lent, of three years, begins to run from the time when the loan is made. Thus, the limitation for the loans made from 16th November, 2011 to 15th October, 2013 would be till 16th November, 2014 and till 15th October, 2016. The suit has been filed much thereafter on 10th January, 2018 and re-filed on 22nd January, 23rd January and 29th January, 2018. The plaintiff however seeks to

extend the period of limitation by relying on an email dated 18th March, 2018 as under:

> *"Date: Wed, 18 Mar 2015 11:45:06 +0000*
> *To: businessguru@hotmail.com*
> *Subject: General*
> *From: fourthvision31@rediffmail.com*
>
> *Dear Balbir Ji,*
>
> *how are you..?? hope you are doing well in Perth*
>
> *enjoying Cricket World cup!!*
>
> *as you are well aware about Rekha's Mother she is suffering from physical problem due to she is staying with us now her father has also shifted with us and currently is staying with us.*
>
> *i like to inform you that due to this matter we have shifted from Delhi to Ghaziabad*
>
> *and we are very sorry to say that this tyme we cannot arrange your residing facility for you as we are fully occupied*
>
> *please yourself arrange your residing*
>
> *also sir i m suffering from financial crunch right now and my payments are stuck in market and no one is ready to pay for it.*
>
> *therefore i told you before to come in the month of June but as you have made the program in first week of april it is all of your choice. at this time i don't have money in hand and will be not able to give you any type of money.*
>
> *hope you will understand me*
>
> *regards*

JATAN
Fourth Vision
mobile no: 9811209826"

12. Section 18 of the Limitation Act invoked by the counsel for the plaintiff is as under:

> *"**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.*
>
> *(2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act,1872 (1 of 1872), oral evidence of its contents shall not be received.*
>
> *Explanation.—For the purposes of this section,—*
>
> *(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;*
>
> *(b) the word "signed" means signed either personally or by an agent duly authorized in this behalf; and*
>
> *(c) an application for the execution of a decree or order shall not be deemed to be an*

application in respect of any property or right."

13. What is thus required to be seen is, whether there is an acknowledgment of liability in the email aforesaid. In my view, there is none. All that the defendant No.3 Jatan Kumar states in the said email is, that during the visit of the plaintiff in April, 2015 to India, the defendants will not have any money in hand and will not be able to give to the plaintiff any type of money.

14. The counsel for the plaintiff contended that an acknowledgement of liability to pay money has to be read in the said words.

15. The High Court of Kerala in ***Craft Centre*** supra relied upon by the counsel for the plaintiff observed that the Court must lean against limitation and in favour of the subsistence of the right to sue, where two views are clearly possible and the benefit of doubt must go to the plaintiff. Supreme Court in ***Food Corporation of India*** supra relied upon by the counsel for the plaintiff held, (i) that to amount to an acknowledgement of liability, it need not be accompanied by a promise to pay either expressly or even by implication; (ii) that the statement providing foundation for a plea of acknowledgement must relate to a present subsisting liability, though the exact nature or the specific character of the said liability may not be indicated in words; (iii) that the words used in the acknowledgement must indicate the existence of jural relationship between the parties such as that of debtor and creditor—the intention to attempt such jural relationship must be apparent; however, such intention can be inferred by implication from the nature of the admission and need not be expressed in words; (iv) that Courts generally lean in favour of a liberal construction of such statements though

an acknowledgement shall not be inferred where there is no admission so as to fasten liability on the maker of the statement by an involved or far-fetched process of reasoning; and, (v) that so long as the statement amounts to an admission, acknowledging the jural relationship and existence of liability, it is immaterial that the admission is accompanied by an assertion that nothing would be found due from the person making the admission or that on an account being taken something may be found due and payable to the person making the acknowledgement by the person to whom the statement is made.

16. Though the written statement has not been taken on record but I have perused the same to verify, whether there is an acknowledgement of liability thereunder. The defendants in the written statement are found to have totally denied liability and rather accuse the plaintiff of having made false signatures of the defendants in the documents aforesaid.

17. Applying the judgments cited by the counsel for the plaintiff also, I am unable to find any acknowledgement of liability in the email relied upon by the plaintiff, for it to be said that two views are possible. In fact, there is no acknowledgement of a jural relationship even. Reading the email alone, the words "…at this time I don't have money in hand and will be not able to give you any type of money..." do not show a relationship of debtor and creditor between the defendants and the plaintiff. The statement of the defendants, of not having money in hand and being unable to 'give' any type of money to the plaintiff, could also have been in the context of a promise earlier made by the defendants to the plaintiff, to in April, 2015 lend monies to the plaintiff. When the document is such, no liability which has

otherwise become barred by time, can be fastened. It has been held in ***Khan Bahadur Shapoor Freedom Mazda Vs. Durga Prasad Chamaria*** AIR 1961 SC 1236 with respect to the *pari materia* provision in the Limitation Act, 1908, that though Courts lean in favour of a liberal construction, but it does not mean that where no admission is made, one should be inferred, by an involved or far-fetched process of reasoning.

18. Supreme Court ***State of Kerala Vs. T.M. Chacko*** (2000) 9 SCC 722 held that for treating the writing as an acknowledgment of liability, the person acknowledging must be conscious of his liability and commitment should be made to that liability. Applying the said test also, the e-mail dated 18th March, 2015 reproduced above, does not qualify as acknowledgment of liability within the meaning of Section 18 supra. Refusal to 'give' any money does not show that the defendant no.3 Jatan Kumar was conscious of his liability or making any commitment to pay in future. The defendant no.3 Jatan Kumar did not use the word 'repay' or 'return' or 'refund' or make any promise to pay in the future, any of which would show a relationship of debtor–creditor. The word 'give' does not indicate so.

19. Once it is so and the suit claim is found to be barred by time, need to give an opportunity to the plaintiff to lead evidence is not felt.

20. The suit is dismissed.

No order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MARCH 06, 2020/'bs'..