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

Date of decision: 28th January, 2022

+ **RSA 42/2020**

K.N RAO & ANR.

..... Appellants

Through: Mr. Karan Lahiri, Mr. Prateek Arora
and Mr. Vinayak Mehrotra,
Advocates. (M:9999093362)

versus

M/S COMPOSITE SECURITIES LTD. & ORS. Respondents

Through: Mr. Bharat Malhotra, Advocate for R-
1.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. None appears for Respondent Nos.2 & 3/Defendant Nos. 2&3 (*hereinafter "Defendant Nos. 2&3"*).
3. Vide order dated 14th July, 2021, notice was issued to the Respondents in the present second appeal. The ld. Registrar vide order dated 26th August, 2021, recorded that service of all Respondents was complete. Respondent No.1/Defendant No.1 (*hereinafter "Defendant No.1"*) was duly represented by his counsel on the said date. However, there was no appearance for Defendant Nos. 2&3. It was recorded that Defendant No.2 had been served through courier while Defendant No.3 was served through courier, email and *dasti*, which was even received by one Mr. Arun, Manager of Defendant No.3. Thereafter, since no one was appearing for Defendant Nos. 2&3, in order to give another opportunity to them to appear, vide order dated 4th October, 2021, this Court had directed fresh steps to be



taken to serve Defendant Nos. 2&3. Defendant No.3 was also directed to be served through counsel appearing before the Trial Court. On the next date being 29th November, 2021, the Id. Registrar recorded that Defendant No.2 was unserved as the premises was found locked, therefore he was directed to be served fresh notice. It was also recorded that service by e-mail had been effected upon Defendant No.3 and the Registry was directed to report whether the same had bounced back or not.

4. It is clear from a perusal of the order sheet that despite service having been repeatedly effected upon Defendant Nos. 2&3, there is no appearance on their behalf before this Court. Even before the Trial Court and Appellate Court, this Court notes that Defendant No.2 was proceeded against *ex-parte*.

5. Insofar as Defendant No.1 is concerned, Id. counsel for the Appellants/Plaintiffs (*hereinafter "Plaintiffs"*) submits that he does not press for any relief against Defendant No.1.

6. As there is no appearance on behalf of Defendant Nos.2 & 3 despite service, the Court is proceeding to hear the matter.

7. The present second appeal arises out of the impugned judgment of the Appellate Court dated 22nd October, 2019 in **RCA No.61244/2916** titled **KN Rao & Anr. v. Composite Securities Ltd.** by which the Trial Court judgment dated 23rd December, 2014 in **Suit No.567/12** titled **Mr KN Rao & Anr. v. Composite Securities Ltd. & Ors.** was upheld. In effect, the suit of the Plaintiffs for declaration and recovery was dismissed by both the Courts below. The primary ground for dismissal was that the suit was barred by limitation, though on merits the Trial Court held in favour of the Plaintiffs.

8. The case of the Plaintiffs in the suit is that both the Plaintiffs are senior citizens and Plaintiff No.1 – Mr. K.N. Rao – was working in Bank of



Baroda (*hereinafter* “Bank”). The Plaintiffs owned certain shares in different banks, the details of which are as under:

*“i. 500 shares of Bank of India held by Appellant No.1;
ii. 300 shares of Bank of Baroda held by Appellant No.2; &
iii. 100 shares of HDFC Bank held by Appellant No.2 ”*

9. It is the case of the Plaintiffs that Mr. M.P. Jindal – Defendant No.2 was a colleague of Plaintiff No.1 in the Bank where Plaintiff No.1 was working. Post retirement of Plaintiff No.1 from the Bank, since the Plaintiffs had to move to their native town, they handed over/entrusted the aforementioned shares/securities owned by them, to Defendant No.2, for dealing with and maintaining the same as per their instructions. M/s. Alankit Assignments –Defendant No.3 was the share broker/Depository Participant of the said shares owned by the Plaintiffs.

10. The Plaintiffs have contended in their suit that the above three sets of shares were under the control of Defendant No.2 due to the authorizations given to him by the Plaintiffs, by way of blank signed delivery instruction slips. The Plaintiffs, after having moved to their native town, repeatedly attempted to contact Defendant No.2 and sought details of the transactions of the shares which they owned. However, they did not receive any information from Defendant No.2. Thereafter, they contacted Defendant No.3 – the Depository Participant of the Plaintiffs, which finally issued a transaction statement dated 23rd July, 2005 which was received by the Plaintiffs on or about 30th July, 2005. As per the said transaction statement, it was revealed that the shares owned by the Plaintiffs were sold to



Defendant No.1 on 4th June, 2003, 12th June, 2003 and 16th August, 2003. Upon obtaining this knowledge, the Plaintiffs issued a legal notice dated 10th May, 2005, to Defendant No.1. As per the Plaintiffs' case, this notice was issued because they were initially under the impression that Defendant No.1 had received the shares belonging to the Plaintiffs.

11. After issuing legal notice to Defendant No.1, the Plaintiffs again contacted Defendant No.2 seeking details of the shares which were sold, however, no details were given by Defendant No.2, leading to the filing of the suit before the Trial Court. After the filing of the suit, it was revealed that Defendant No.1 had not received any of those shares. Thus, as on today, relief is being sought only *qua* Defendant Nos.2 & 3. The reliefs sought in the said suit are as under:

“i. Pass a judgment and decree in favour of the Plaintiffs and against the Defendants declaring that the Defendants have unlawfully and unauthorisedly transferred the shares of the Plaintiffs and appropriated the sale proceeds thereof

ii. Pass a judgment and decree in favour of the Plaintiffs and against the Defendants directing the Defendants to pay to the Plaintiffs Rs.1,15,400/- being the amount payable to the Plaintiffs as approximate value of the aforesaid shares in August 2003 along with interest @ 18% per annum including pendent lite interest;

iii. Award the Costs of the Suit to the Plaintiffs, and ;

iv. Pass such or other reliefs/orders as this Hon'ble Court may deem fit and proper in



the circumstances of the case and thus render justice.”

12. In the written statement filed by Defendant No.2, the only defence taken was that the shares were sold as per the instructions of the Plaintiffs. Defendant No.2 did not raise any further plea and was, thereafter, proceeded *ex-parte* before the Trial Court. The Trial Court framed the following issues.

*“1. Whether the suit is barred by limitation?
OPD*

2. Whether the suit is bad for mis-joinder of defendant no.2, if so, its effect? OPD-3

3. Whether the plaintiff had given any share certificate to the defendant no.1 for sale on his behalf? OPP

4. Whether the plaintiff is entitled for decree of declaration, as prayed for ? OPP

5. Whether the plaintiff is entitled for decree of recovery of money, as prayed in prayer clause-ii? OPP

6. If issue no.5 is decided in favour of the plaintiff, whether the plaintiff is entitled for any interest on the amount, if so, what rate and for what period? OPP

7. Relief.”

13. In the proceedings before the Trial Court, Plaintiff No.1 had led his own evidence and was cross-examined on behalf of Defendant Nos.1 & 3. The Defendants did not lead any evidence in the matter. The main finding of the Trial Court in respect of issue no.4, i.e., the decree for declaration, is that Defendant No.2 failed to prove that any instructions were given by Plaintiffs for the sale of the shares. Accordingly, the Trial Court found that Defendant No.2 had misappropriated the sale proceeds from such shares. However, after holding that Defendant No.2 misappropriated the sale proceeds, the Trial Court failed to pass a decree of declaration on the ground that the suit



was barred by limitation. On the question of limitation, the Trial Court came to the conclusion that the transactions were of 2003 and the suit could have at best been filed upto July, 2006. The finding of the Trial Court in this regard is as under:

“24. In view of the deposition of the plaintiff no.1 and of the averments made in the WS of defendant no.2 as above, it is clear that the defendant no.2 was requested by the plaintiff no.1 to sell the share at the appropriate time and the defendant no.2, admittedly, had sold the shares of the plaintiffs on 04-03-2003, 12-06/2003 and 16-08-2003. Therefore, it is held that the plaintiffs have failed to prove that defendant no.2 unlawfully and unauthorizedly transferred the shares of the plaintiffs and appropriated the sale-proceeds thereof. The shares were transferred on the basis of delivery instruction slips Ex.PW1/A to Ex.PW-1/C duly executed by the plaintiffs and therefore, it is clear that the shares were transferred by duly authorization vide instruction slips Ex.PW-1/A to Ex.PW-1/C and as such the plaintiffs are not entitled to declaration, as prayed in this regard.

*25. Defendant no.2 has taken plea that the amount claimed by the plaintiffs has already been given/paid to them and nothing has to be given/paid to them but no evidence has been led on behalf of the defendant no.2 to prove that the amount claimed by the plaintiffs i.e. Rs.1,15,400/- was paid by him to them. **Therefore, it is declared that the defendant no.2 has appropriated the sale proceedings of the shares of the plaintiffs.** The relief regarding declaration against the defendant no.2, as prayed is accordingly*



decided.

26. In the light of above discussions and reasons therein, it is held that the plaintiffs are not entitled for decree of declaration, as prayed against defendants no.1 and 3 but they are entitled to declaration against defendant no.2 only to the effect that he appropriated the sale-proceeds of their shares. This issue is decided accordingly.”

14. The finding of the Trial Court was upheld by the Appellate Court, in the following terms:

“36. Accordingly, mere argument that the defendants failed to lead evidence will not suffice, The appellants had to stand on their own legs in the learned Trial Court. They have withheld proving vital document i.e. the statement of account received by them on or around 30.7.2005. They do not even refer to the mode by which they allegedly received the same. On the contrary, PW-1 has made all such answers which suggest to the contrary.

37. Consequently, this Court finds that the appellants' case before the learned Trial Court was indeed barred by limitation, as correctly observed by the learned Trial Court.”

15. It is this order that has been impugned in the present second appeal.

16. Vide order of this Court dated 14th July, 2021, the following substantial question of law was framed in this second appeal:

“Whether the suit is barred by limitation?”

17. Thereafter, repeatedly notices have been issued in this second appeal. However, none has appeared for Defendant Nos.2 & 3 and only Defendant



No.1 has appeared against whom no relief is being sought.

18. Today, submissions have been made on behalf of the Plaintiffs by Mr. Lahiri, Id. counsel. The only issue to be adjudicated herein, is whether the suit of the Plaintiffs was barred by limitation or not. The Plaintiffs rely upon Articles 4, 68 and 91(a) of the Schedule to the Limitation Act, 1963 (“*Limitation Act*”) to argue that the limitation period would run from the time when knowledge is acquired by the person having the right to possession, as to in whose possession the property is and not from the date of the transactions transferring possession of the said property. Reliance is placed upon the following judgments:

- *Varuna Integrated Logistics Pvt. Ltd. v. Goel Road Carriers, RFA No.529/2013, decided on 13th December, 2013;*
- *Jaganji v. Bandan, AIR 1930 Allahabad 397;*
- *P.R.N. Palaniappa Chetty v. P.M.R.M. Firm, 1914 SCC OnLine LB 11;*
- *Sankaranaryana Ayyar v. TDS Bhajanai Sahha, 1938 48 L.W. 775;*
- *Standard Chartered Bank v. Andhra Bank Financial Services Ltd. Ors., (2016) 1 SCC 207.*

19. Id. counsel for the Plaintiff further argues that the misappropriation of the shares by Defendant No.2 is a finding arrived at by the Trial Court and therefore the suit has been wrongly rejected by the Trial Court.

20. Heard and perused the record. A perusal of the Trial Court’s findings in respect of misappropriation, is clear to the effect that Defendant No.2 has misappropriated the shares/movable properties of the Plaintiffs. The suit has been rejected only on the ground of it having been filed beyond the requisite limitation period. In this view of the matter, this Court needs to consider



only as to whether the suit is barred by limitation or not.

21. In so far as the relevant provisions of law are concerned, the applicable Articles from the Schedule to the Limitation Act, are set out herein below:

<i>Article</i>	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>PART I. – SUITS RELATING TO ACCOUNTS</i>			
4.	<i>Other suits by principals against agents for neglect or misconduct</i>	<i>Three years</i>	<i>When the neglect or misconduct becomes known to the plaintiff.</i>
<i>PART V.—SUITS RELATING TO IMMOVABLE PROPERTY</i>			
68.	<i>For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion</i>	<i>Three years</i>	<i>When the person having the right to the possession of the property first learns in whose possession it is.</i>
<i>PART VII.—SUITS RELATING TO TORT</i>			
91. (a)	<i>for wrongfully taking or detaining any specific</i>	<i>Three years</i>	<i>When the person having the right to the possession</i>



	movable property lost, or acquired by theft, or dishonest misappropri- ation, or conversion;		of the property first learns in whose possession it is.
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22. The enquiry in this second appeal is restricted to Articles 68 & 91(a) and not to Article 4, inasmuch as there is no finding in respect of agency of Defendant No.2 appointed by the Plaintiffs and Article 4 would only apply to suits by principals against agents. Therefore, only Articles 68 & 91(a) are being considered. A perusal of these two articles shows that whenever there is misappropriation or conversion of a movable property, the Plaintiff can seek either the movable property back or compensation in lieu thereof. This is also the settled legal position as per the judgment of this Court in ***Varuna Integrated Logistics (supra)*** where the Id. Single Judge of this Court while considering Article 68 holds that compensation in respect of misappropriation of movable property can also be sought. It further holds that the limitation period in such cases begins from the time the plaintiff learns in whose possession the property is. The Id. Single Judge also relies upon various judgments, which the Plaintiffs have also cited. The relevant portion of ***Varuna Integrated Logistics (supra)*** is set out below:

“8. The said Article 68 In part VI titled "suits relating to movable property" of the Schedule to the Limitation Act provides a limitation of three years for a suit for specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion, commencing from the date, when the person



having the right to possession of the property first learns In whose possession It is.

9. On a bare reading of the said provision, it appears that the suit to which the said Article can apply, has to be a suit for recovery of specific movable property and not a suit for recovery of value thereof, as the subject suit was. However, in the judgments relied upon by the counsel for the appellant/plaintiff before the Trial Court, are found to be the following judgments:

(I) *Champalal v. Ramchander AIR 1976 Rajasthan 75*, where relying on *K.S. Nanji and Co. v. Jatashankar Dossa AIR 1961 SC 1474*, it was held that a person having the right to possession of a movable property wrongfully taken from him by another, can file a suit to recover the said specific movable property or for compensation therefor within three years from the date, when he first learns In whose possession It is;

(II) *Lodna Colliery Co. (1920), Ltd. v. Bholanath Raj AIR 1954 Calcutta 233*, where also a suit for damages for coal wrongfully taken away was held to be governed by the equivalent Article to the Limitation Act of the year 1908;

(III) *K.S. Kanji & Co. v. Jatashankar Dossa AIR 1956 Patna 526* to the same effect;

(IV) *Jaganji v. Bandan AIR 1930 Allahabad 397*, where a suit for recovery of money in lieu of specific movable property, was in view of earlier judgments, held to be a suit for specific movable property, though



expressing a doubt qua the said proposition;

(V) K.S. Nanji and Co. v. Jatashankar Dossa AIR 1961 SC 1474 supra;

(VI) Sankar Dastidar v. Shrimati Banjula Dastidar (2006) 13 SCC 470 laying down that though Article 68 Is for recovery of specific movable property but since Article 91 providing for a suit for compensation for wrongfully taking or detaining any specific movable property lost or acquired by theft or dishonest misappropriation or conversion. is three years beginning from the date, when the person having the right to possession of the property first learns in whose possession it is, the principle of Article 68, applies to money claims also in lieu of such property.

10. Thus, it has to be accepted that Article 68 has been correctly invoked by the counsel for the appellant/plaintiff and the learned ADJ is in error in holding that the judgments relied upon by the counsel for the appellant/plaintiff, were not applicable. The learned ADJ appears to have so held without even going through the said judgments.”

23. A brief overview of the other judgments relied upon by the Plaintiffs is as summarised below:

- **Jaganji v. Bandan, AIR 1930 Allahabad 397** - The Court holds that the limitation period commenced from the time the misconduct of his agent came to the knowledge of the plaintiff, which in that case was when the agent instituted a suit against the plaintiff claiming entitlement to certain amounts.



- ***P.R.N. Palaniappa Chetty v. P.M.R.M. Firm, 1914 SCC OnLine LB 11*** was a case where the Court observed that the limitation period under Article 90 of the Limitation Act would run from the time when the plaintiff has knowledge of some misconduct and the words “*become known*” in Article 90, should not be read as “*should have become known*”.
- ***Sankaranaryana Ayyar v. TDS Bhajanai Sahha, 1938 48 L.W. 775*** where Article 90 of the Limitation Act was applied to a suit against an agent for misconduct by retention of items entrusted to him. It was held therein that the period of limitation was to commence from the time that the plaintiff became aware of the misconduct.

24. Finally, the judgment of the Supreme Court in ***Standard Chartered Bank (supra)*** is also clear to this effect that mere suspicion of knowledge is not enough but the knowledge has to be actual knowledge. While the said judgment is in context of Article 91(a) of the Limitation Act, the phrase used therein is the same as that used in Article 68 in this case, i.e., “*When the person having the right to the possession of the property first learns in whose possession it is*”. The relevant extract from the said judgment is set out herein below:

“21. We are unable to agree with this contention advanced by the learned Senior Counsel on behalf of the respondents. A perusal of Article 91 (a) of the Limitation Act shows that it is meant to apply to specific movable property. It further stipulates that the period of limitation shall start running from the date when the person “first learns” about the conversion of the movable property. While it is true that the word used in the said



Article is "first learns" and not knowledge, it is difficult to construe the word "first learns" without attributing to it a certain degree of knowledge. The degree or the extent of knowledge is the subject-matter of controversy in the instant case. Article 91(a) of the Limitation Act was the subject-matter of controversy also in *K.S. Nanji and Co. v. Jatashankar Dossa* wherein the terms of the Article were interpreted by this Court as under: (AIR p. 1478, para 11)

"11. ... The article says that a suit for recovery of specific movable property acquired by conversion or for compensation for wrongful taking or detaining of the suit property should be filed within three years from the date when the person having the right to the possession of the property first learns in whose possession it is. The question is, on whom the burden to prove the said knowledge lies? The answer will be clear if the article is read as follows: A person having the right to the possession of a property wrongfully taken from him by another can file a suit to recover the said specific movable property or for compensation therefor within three years from the date when he first learns in whose possession it is. Obviously where a person has a right to sue within three years from the date of his coming to know of a certain fact, it is for him to prove that he had the knowledge of the said fact on a particular date, for the said fact would be within his peculiar knowledge." (emphasis supplied)

The provision of Article 91(a) of the Limitation Act thus demands two things. First is knowledge on the part of the plaintiff, and second, that the said fact be within his



peculiar knowledge. We agree with the contention advanced by Mr Ram Jethmalani, the learned Senior Counsel on behalf of the appellant, that the term "first learns" places a burden of knowledge which is rather specific in nature. Thus, the knowledge must be of the identity of a specific person in whose possession the bonds are and that he acquired the possession of the said bonds under an arrangement, which in law would constitute wrongful conversion. The knowledge of a specific person against whom the suit can be instituted is what is crucial here. A mere suspicion or a whisper of knowledge is not enough for the period of limitation to start running. Point (i) is thus, answered accordingly."

25. The above decisions thus, make it amply clear that the language 'first learns' clearly means actual knowledge and not speculative knowledge. The knowledge cannot be by means of inference but ought to be clear knowledge. Such knowledge should include the factum as to the exact location of the movable property, as to who is in possession of the same or the proceeds thereof. In order for a proceeding to be filed seeking recovery of moveable property or for compensation in lieu thereof, it would not be sufficient if the Plaintiff has merely been informed of a possibility of the location or possession. A mere possibility would not amount to knowledge in the absence of some concrete information. In view of this settled legal position, this Court finds it necessary to highlight the following facts in the present second appeal:

- (i) The Plaintiffs have repeatedly asked and made enquiries from Defendant No.2 about the whereabouts of their shares as also



the value of their shares.

- (ii) Defendant No.2 has evaded all such queries of the Plaintiff.
- (iii) Defendant No.2 has filed his written statement by merely giving bare denials. The only substantive defence taken is that the sale of the shares was made by him, on the instructions of the Plaintiff. The relevant paragraph of the written statement reads:

“5. That the contents of para 5 of the plaint is admitted to the extent that present defendant is resident of delhi and rest of the para is denied. It is however denied that defendant no 2 has misappropriated the shares without the plaintiffs consent. It is further denied that the defendant no 2 has appropriated the sale proceeds in connivance with the defendant no 1.

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19. That the contents of para 19 of the plaint is wrong and denied. It is denied that the plaintiff visited the house of the defendant no 2 and demanded the explanation with regard to shares. It is submitted that the shares were sold with the consent of the plaintiff and the amount claimed by the plaintiff has already been given to the plaintiff as the same was done on verbal consent and nothing has to be given to the plaintiff.

20. That the contents of para 20 of the plaint is wrong and denied. It is submitted that the transaction of the said shares were done in 2003 as told by the plaintiff and the suit has been filed by the plaintiff in 2008 and the same is not maintainable as the same is barred by law of limitation. It



is submitted that the said shares were sold as per the instructions of the plaintiff and the amount of the same has already been given to the plaintiff. It is denied that the defendant no 2 in collusion with defendant no 1 & 3 have illegally transferred the said shares and have appropriated the amount with them.

21. That the contents of para 21 of the plaint is wrong and denied. It is denied that the defendant no 2 is dealing with the property of the plaintiff without his consent and has appropriated the proceeds of the shares and has caused financial loss to him.”

This being a categorically pleaded defence by the Defendant No.2, he had to prove the same by leading evidence, which has not been done.

- (iv) The case of the Plaintiffs in the plaint, except giving bare denials, has not been seriously or vehemently contested by Defendant No.2 in his written statement. The written statement is extremely sketchy and does not set out any facts whatsoever except saying that the sale was upon the instructions of the Plaintiffs.
- (v) The judgments relied upon are also clear to this effect that in all these decisions cited, the findings of the Court are that knowledge commences from the date of actual knowledge of the property being in possession of the defendant and not knowledge which the plaintiffs are supposed/assumed to have.

26. In view of these facts and the position of law discussed above, this



Court agrees with the finding of the Trial Court that Defendant No.2 was guilty of selling the Plaintiffs' shares without instructions and, in fact, Defendant No.2 misappropriated the Plaintiffs' movable property. Having held so, the Trial Court and the Appellate Court were clearly in error in holding that the suit was barred by limitation. Clearly, in view of the facts and position of law discussed above, the knowledge by the Plaintiffs was acquired only in 2005 when the transaction statement was received and the suit was instituted on 30th July, 2008, when it was also first listed before the Trial Court.

27. Under such circumstances, the suit is held to have been filed within the period of limitation prescribed under the Limitation Act. Since the finding of the Trial Court is already that Defendant No.2 had misappropriated the shares of the Plaintiffs, a decree for recovery of money is passed in favour of the Plaintiffs and against Defendant No.2 for a sum of Rs.1,15,400/- along with interest @ 9% per annum from the date of institution of the suit i.e., 30th July, 2008 till date of actual payment. Decree sheet be drawn by the Registry, accordingly.

28. This second appeal is allowed and disposed of in the above terms. All pending applications are also disposed of.

29. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

JANUARY 28, 2022/dk/ms