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

% Date of Decision: 20th December, 2022

+ RFA 206/2022

SMT. SUSHMA SINGH Appellant
Through: Mr. R.N. Sharma and Mr. R.S.
Singh, Advocates.

versus

SH. RAM BHAJAN PAL Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. Present appeal lays a challenge to the impugned judgment and decree dated 23.11.2020, whereby the learned Trial Court has partially allowed the claim of the Appellant in the sum of Rs.1,80,000/- along with interest @ 5% per annum in Civil Suit No. DJ/551/2019, under Order XXXVII CPC titled as '*Smt. Sushma Singh v. Sh. Ram Bhajan Pal*'. Appellant before this Court was the Plaintiff before the Trial Court and Respondent was the Defendant and parties are hereinafter referred to by their litigating status before this Court.

2. At the outset, it needs to be noted that Respondent refused to accept the summons issued by the Trial Court and did not enter appearance. In the present appeal also Respondent did not appear, despite service and on 13.12.2022 Court proceeded to hear arguments in the absence of the Respondent.

3. The facts, which are in a narrow compass and as pleaded by the Appellant are that Appellant and Respondent were employed in the Central Vehicle Depot and were known to each other since 1993.

In 1996, Respondent invited the Appellant to be a part of certain committees for making investments. It is the case of the Appellant that till 2012, Respondent was regularly paying back the money invested along with profits earned thereon. In the meantime, from 2007 Respondent starting taking loans from the Appellant, which also he was repaying till 2012, however, from the beginning of 2013, there were repeated defaults in repayment of the amounts due. As on 01.01.2013, liability of the Respondent towards the Appellant was Rs.1,00,000/-, which increased to Rs.1,10,000/- on 01.04.2013. Respondent returned Rs.10,000/- on 01.04.2013 but took a further loan of Rs.50,000/- on the same day. Subsequently, Respondent borrowed Rs.20,000/-, Rs.1,00,000/- and Rs.60,000/- on 01.11.2013, 01.06.2014 and 01.08.2014, respectively. As per the Appellant, Respondent had acknowledged on 01.02.2015, in writing, that he owed Rs.3,30,000/- to the Appellant and therefore, as on 08.12.2015, the amount due and payable to the Appellant was Rs.4,15,000/-, which included the interest component. Appellant lent a further sum of Rs.85,000/- on 01.11.2015 and Rs.95,000/- on 01.04.2018 to the Respondent. Appellant pleads that Respondent again acknowledged on 01.07.2018, in writing, that he owed a total sum of Rs.7,00,000/- to the Appellant.

4. Even after written acknowledgment of the debt on 01.07.2018, Respondent stopped paying not only the principal amount but also the interest accrued thereon and did not even respond to the legal notice sent by the Appellant on 27.03.2019, demanding Rs.7,00,000/- along with interest. This compelled the Appellant to file a suit on 26.07.2019, under Order XXXVII CPC before the Trial Court, from which the present appeal arises, to recover the money, admittedly received by the Respondent. Upon failure of the Respondent to enter

appearance, within a period of ten days of the receipt of the summons, Trial Court proceeded to pass the judgment on 23.11.2020, after hearing the Appellant.

5. Trial Court decreed the suit only to the extent of recovery of Rs.1,80,000/- with interest @ 5% per annum from the date of filing of the suit i.e. 26.07.2019, till realisation, however, in so far as claim for recovery of balance amount of Rs.3,30,000/- was concerned, the Trial Court held that it was time barred. Relevant part of Trial Court's order, impugned herein, is as follows:

*"6. Even if it is presumed that acknowledgment dated 01-02-2015 is free from doubt, it is not going to help the plaintiff in any manner. Before that acknowledgment, the last amount taken by defendant was Rs.60,000/- on 01.08.2014. All the pending amount till 01-08-2014, was recoverable from the defendant till three years which expired on 31.07.2017. But the prescribed period was rejuvenated with the help of first acknowledgment dated 01.02.2015. With the help of that acknowledgment, the period of limitation of three years for filing suit for recovery of Rs.3.3 lacs had expired on 31.01.2018. Before expiry of prescribed period on 31.01.2018, either the recovery suit should have been filed or there should have been another acknowledgment. But the case was filed on 26.07.2019, i.e., after the limitation period was over. The second acknowledgment of Rs.7,00,000/- is dated 01.07.2018 and hence it is also after the expiry of period of limitation and so, the second acknowledgment dated 01.07.2018 cannot be taken into account to rejuvenate the overdue amount of Rs.3.3 lacs. So, plaintiff's case for due amount of Rs.3.3 lacs till 01.08.2014 is hit by law of limitation as held in the case titled as **Netrapal Singh Vs. Ravinder Kumar Kalyanai & Anr., CRP 37/2019** decided by the Hon'ble High Court of Delhi on 25.03.2019.*

7. Now, let us take the second part. It is mentioned in the plaint and argued by plaintiff's counsel that after 01.08.2014, the defendant had taken loan from plaintiff only twice, i.e. on 01.11.2015 and 01.04.2018 as Rs. 85,000/- and Rs. 95,000/- respectively. It has already been held that amount of Rs.3.3 lacs is hit by period of limitation. So, only amount of Rs. 85,000/- and Rs. 95,000/- are left outstanding.

8. In view of the above discussion, the suit is decreed against the defendant. Plaintiff is held entitled to recover the amount of Rs. 1,80,000/-. Plaintiff is also entitled to interest @ 5% per annum from the date of filing of suit, i.e. 26.07.2019 till realization."

6. Assailing the impugned judgment and decree to the extent the Trial Court has disallowed part claim of the Appellant, learned counsel for the Appellant submitted that Trial Court has erred in bifurcating the loan transactions into two parts, overlooking that these were continuing transactions and also overlooking that Respondent had in his own handwriting acknowledged and admitted his liability to pay Rs.7,00,000/- with interest @ 20% per annum, on 01.07.2018. Trial Court has failed to appreciate the fact that the acknowledgement contained in the document dated 01.07.2018 constituted a 'promise to pay the debt' and discharge the outstanding liability and thus the Appellant, as a creditor, is entitled in law, to enforce the contract against the debtor/Respondent and seek recovery of the amount, under Section 25(3) of the Indian Contract Act, 1872 (hereinafter referred to as the 'Act'),

7. It was argued that this Court in **RSA No. 248/2015** being **State Bank of India v. Kanhiya Lal**, has held that while under Section 18 of the Limitation Act, 1963, for enforcing an acknowledgement, the same must be made on or before the date of expiry of the limitation period whereas such a condition is non-existent in respect of a promise to pay under Section 25(3) of the Act. The claim of the Appellant is squarely covered under provisions of Section 25(3) of the Act, as the acknowledgment by the Respondent is an 'express promise' to pay as envisaged under Sections 2(b) and 9 of the Act.

8. Without prejudice to the above, it was argued that even otherwise, the claim of the Appellant was not barred by limitation, being in the nature of debt arising from continuing running account of loan transactions and arrears of the profits earned on investments in the committees, duly acknowledged by the Respondent from time to time.

9. It was contended that Respondent chose not to appear and contest the suit, despite service of summons and there was thus no rebuttal to the averments in the plaint and/or the liability to repay. Appellant had averred in the plaint that Respondent had on 01.07.2018, acknowledgement his liability to repay the loan with interest @ 20% per annum and thus in the absence of a rebuttal, there was no reason or basis for the Trial Court to hold that part of the claim was time barred or to grant only interest @ 5% per annum on the amount decreed, as against interest @ 20%, sought for.

10. I have heard learned counsel for the Appellant and examined the record.

11. Perusal of the impugned judgment and decree passed by the Trial Court shows that it has bifurcated the claims of the Appellant in two parts. The first part pertains to loan of Rs.3.3 lakhs, for which the acknowledgment was given by the Respondent on 01.02.2015 and the second part relates to loan of Rs.85,000/- and Rs.95,000/- taken by the Respondent on 01.11.2015 and 01.04.2018, respectively. Insofar as the first part is concerned, Trial Court has declined to decree the suit on the ground that the last amount taken by the Respondent was on 01.08.2014 and therefore, all pending amounts till the said date were recoverable upto 3 years, which expired on 31.07.2017. Though the prescribed period was rejuvenated on account of the acknowledgement dated 01.02.2015, even then the limitation period of 3 years for recovery of Rs.3,30,000/- expired on 31.01.2018 and therefore, either the recovery suit should have been filed before the said date or there should have been another acknowledgement. The second acknowledgement on 01.07.2018, was after the expiry of limitation period and therefore, the claim for recovery of Rs.3,30,000/- was barred by limitation. It is this part of the judgment and decree

which is assailed by the Appellant before this Court.

12. The case of the Appellant is primarily predicated on the acknowledgement dated 01.07.2018, which according to her, is a promise to pay under Section 25(3) of the Act. Before proceeding further, it would be relevant to examine the nature of 'acknowledgement' in the document dated 01.07.2018. From a plain reading of the said document, it is clear that Respondent had admitted that he had borrowed a sum of Rs.7,00,000/- from the Appellant and had also assured that he shall return the same in due course of time with interest @ 20% per annum. The document is in Hindi language and handwritten, bearing the signatures of the Respondent on the revenue stamp. The document also bears signature of a witness namely, Shri Bindeshwer Rai. There is no rebuttal to the execution and/or the contents of the said document, in the absence of the Respondent, who has failed to appear and contest, both before this Court and the Trial Court. Plain reading of the contents of the document evidences a clear admission of liability of the dues outstanding towards the Appellant and in my view, constitutes a promise to pay. In *Adivelu (dead by LRs) v. Narayanachari*, AIR 2005 Kar 236, the Karnataka High Court dealing with the effect of an acknowledgement in writing on a pro-note held that in order to judge the nature of the acknowledgement as to whether it is a promise in future, the entire acknowledgement along with the surrounding circumstances has to be taken into consideration. Section 9 of the Act provides that where the proposal or acceptance of any promise is made in words, promise is said to be express and where it is made otherwise than in words, the promise is implied. The document, as referred to above, is certainly a promise to pay the outstanding amount and is on a higher pedestal than a mere acknowledgement.

13. As the Trial Court has declined to decree part of the claim of the Appellant on account of the bar of limitation, provisions of Section 18 of the Limitation Act, 1963 and Section 25(3) of the Act will have to be examined. Section 18 of the Limitation Act, 1963 is as follows:

“18. Effect of acknowledgment in writing.— (1) *Where, before the expiration of the prescribed period for a suit of 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 acknowledgment 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 authorised 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.”

14. From a reading of the aforesaid provision, it is palpably clear that where a debtor makes an acknowledgement of his liability towards the creditor, before expiration of the prescribed period, then a fresh period of limitation becomes available to the creditor from the said date. Quite different from the said provision is the provision of Section 25(3) of the Act which is reproduced hereunder, for ready reference:

“25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law-

....

(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.”

15. It would be apposite, at this stage, to allude to illustration (e) to this Section, which is as follows:

“(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.”

16. A plain reading of Section 25 of the Act shows that each of the sub-Sections of Section 25 relate to an agreement which is a contract and therefore, a creditor can enforce the contract against a debtor for recovery of the amounts agreed to be paid by the debtor under the contract. The conditions, which are necessary to constitute a promise under Section 25(3), have been laid down in ***Kasturchand Jiwaji v. Manekchand Devchand, AIR 1943 Bom 447*** and are as follows:

“7. ... the conditions necessary to make it a promise within Section 25(3) of the Contract Act, are that it should be made in writing; be signed by the persons to be charged therewith; and be a promise to pay wholly or in part a debt, of which the creditor might have enforced payment but for the law for the limitation of suits. He does not say that the writing itself must purport to pay such a debt, if in fact the writing was passed for the payment of such debt.”

17. How far a contractual obligation under the said provision is enforceable has also been a subject matter of several judgments and in order to avoid prolixity, I may only refer to ***Kishen Lal v. Gohli, AIR 1938 Lah 757***, where it was held that when a promise falls under Section 25(3) of the Act, it constitutes a valid agreement for the purpose of enforcing the right accruing under it, whether or not the debts covered are within limitation.

18. The interplay between Section 25(3) of the Act and Section 18(1) of the Limitation Act came up for consideration before the Supreme Court recently in the case of ***Kotak Mahindra Bank Limited v. Kew Precision Parts Private Limited and Others, 2022 SCC OnLine SC 978*** and the relevant part of the judgment is as follows:

“30.To invoke Section 25(3), the following conditions must be satisfied:

30.1. It must refer to a debt, which the creditor, but for the period of limitation, might have enforced.

30.2. There must be a distinct promise to pay such debt, fully or in part.

30.3. The promise must be in writing, and signed by the debtor or his duly appointed agent.

*31. Under Section 25(3), a debtor can enter into an agreement in writing, to pay the whole or part of a debt, which the creditor might have enforced, but for the limitation of a suit in law. A written promise to pay the barred debt is a valid contract. Such a promise constitutes novation and can form the basis of a suit independent of the original debt, for it is well settled that the debt is not extinguished, the remedy gets barred by passage of time as held by this Court in *Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay* [*Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay, AIR 1958 SC 328*].*

32. Section 25(3) applies only where the debt is one which would be enforceable against the defendants, but for the law of limitation. Where a debt is not binding on the defendant for other reasons, and consequentially not enforceable against him, there is no question of applicability of Section 25(3).

33. There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time-barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional.”

19. Relying on the said judgment of the Supreme Court, a Co-ordinate Bench of this Court in *Manju Aggarwal v. Prayag Polytech Private Limited and Others, 2022 SCC OnLine Del 3596*, held that a written promise to pay a time barred debt is a valid contract in law and such a promise can form an independent basis for a suit. It was further observed that the settlement agreement between the parties in that case qualified as an agreement under Section 25(3) of the Act inasmuch as it was a clear and unconditional promise on behalf of the Defendants to pay a certain sum of money to the Plaintiff. On the face of it, the agreement was signed by all the Defendants wherein they had admitted their liability to pay the loan amount to the Plaintiff.

20. Conjoint reading of Section 18 of the Limitation Act and Section 25(3) of the Act shows that there is a distinction between the nature of acknowledgement by a debtor under the respective provisions, inasmuch as while both have the effect of giving a fresh lease of life to the creditor for enforcing the debt, however, an acknowledgement under Section 18 of the Limitation Act must be made on or before the date of expiry of the limitation period, whereas such a caveat/condition is non-existent for a promise under Section 25(3) of the Act. In other words, a promise under Section 25(3) of the Act, even if made after the limitation period expires, would give a cause of action to the creditor to enforce the claim, notwithstanding the initial period of limitation and the debt cannot be said to be barred.

21. Therefore, the finding of the Trial Court, impugned herein, that the claim of the Appellant for Rs.3,30,000/- is time barred, as the acknowledgement of the Respondent on 01.08.2014 would have entitled the Appellant to recover money under the debt due only upto 31.07.2017 or at the highest upto 3 years from 01.02.2015, clearly

overlooks the distinction between Section 18 of the Limitation Act and Section 25(3) of the Act, where the latter is of a wider scope and ambit. It bears repetition to state that Respondent has categorically admitted in the document dated 01.07.2018 that he was indebted to the Appellant for a total sum of Rs.7,00,000/- and had undertaken to discharge the liability along with interest @ 20% per annum. This constitutes a 'promise' to pay and hence a contract under Section 25(3) of the Act with consideration and acceptance, giving a right to the Appellant to enforce the same, *de hors* the expiry of a period of 3 years from the initial acknowledgement dated 01.02.2015 and satisfies the parameters required for filing a suit under Order XXXVII CPC. Appellant was thus entitled to recover a sum of Rs.3,30,000/- along with interest and the Trial Court has erred in not decreeing the suit to this extent.

22. In view of Respondent's written acknowledgment and liability to pay, the observation of the Trial Court that there is inconsistency in the plaint, is an erroneous observation. The cloud cast by the Trial Court on why anyone would return part of the loan on one day and borrow more on the same day cannot hold water as long as the Appellant was able to show that the money was borrowed by the Respondent and he has so acknowledged in writing and promised to pay the same.

23. Suit is accordingly decreed in the sum of Rs.7,00,000/- along with interest @ 5% per annum from the date the amount fell due till actual realisation and the judgment, to the extent impugned herein, is set aside.

24. Appeal stands allowed and disposed of.

JYOTI SINGH, J

DECEMBER 20, 2022/shivam

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