A.No.2967 of 2022
in C.S.No.294 of 2017

R.N.MANJULA,J.

The petitioners are the defendants and the respondent is the plaintiff. The respondent/plaintiff filed a suit for recovery of money of Rs.66,54,340/- towards excessive amount received by the defendants with interest at 18% p.a. at Rs.28,23,294/- from the date of plaint till the date of realizaion. The defendants have filed this application to reject the plaint on the ground of limitation.

2. As per the case of the plaintiff, the respondent/plaintiff has borrowed a loan from the first petitioner/1st defendant Bank and the loan was settled on 11.04.2007. However, there were some further disputes and hence the matter was referred to Arbitration and the loan amount was ultimately settled before the Arbitrator in the year 2010. Subsequently, the plaintiff realized that he had made some extra payment than the due, and hence he wrote a letter to the bank on 01.08.2011. After receiving the statements and after taking various steps including complaint filed before the Banking Ombudsmen and the police complaint, the suit came to be filed for recovery of the excess amount on 04.01.2016.

3. The learned counsel for the petitioners/defendants submitted that the knowledge about the excess payment was acquired to the plaintiff on 01.08.2011, when he wrote a letter to the defendant Bank by demanding the statement of accounts, the statement of accounts was furnished to the respondent/plaintiff on 18.08.2011 and thereafter the respondent/plaintiff had approached the Banking Ombudsmen by seeking a specific direction to the petitioners/defendants for settling the excess payment and the said complaint was dismissed. The respondent/plaintiff has challenged the same by preferring a Writ Petition in W.P.No.21836 of 2012 and the same was also dismissed on 12.12.2022. In the meanwhile, the respondent/plaintiff has also filed a Criminal Complaint and thereafter he had chosen to file the suit only on 04.01.2016 on which date, the suit is barred by limitation.

3.1. The learned counsel for the petitioners attracted the attention of this Court to Article 113 of the Limitation Act and submitted that the Limitation as per Article 113 starts from the date from which the right to sue accrues. As per the submission of the learned counsel for the petitioners, the right to sue accrues for the plaintiff on 01.08.2011 itself. But the respondent did not exercise his right to file the suit for recovery within the time and hence it is barred by Limitation.

4. In support of the above contention, the learned counsel for the petitioners cited the following decisions:

i. *T.Arivandandam Vs. T.V.Satyapal and another reported in (1977) 4 SCC 467;*

ii. *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and others reported in (1998) 2 SCC 70;*

iii. *Hardesh Ores (P) Ltd. Vs. Hede and Company reported in (2007) 5 SCC 614;*

iv. *Dahiben Vs. Arvindbhai Kalyani Bhanusali (Gajra) Dead through legal representatives and otehrs reported in (2020) 7 SCC 366;*

v. *Canara Bank Vs. P.Selathal and others reported in (2020) 13 SCC 143;*

vi. *Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by legal representatives reported in (2020) 6 SCC 601;*

vii. *V.Gowrishankar and another Vs. S.Balakumar and others reported in (2021) SCC Online Mad 6845.*

5. The learned counsel for the respondent/plaintiff submitted that the respondent / plaintiff came to know the fact about the excess payment from his Auditor. The advice of the Auditor is his opinion and hence, the plaintiff attempted to get a fresh statement from the bank with regard to the payments made by him. Even though the statement of accounts was furnished to him on 18.08.2011, it did not contain the essential details. When the Writ Petition

was filed challenging the orders of the Banking Ombudsmen, the payment of Rs.14,30,509/- was credited in the accounts of the respondent/plaintiff on 27.12.2012. Earlier the plaintiff was called by the defendants for discussions and during that time, it is stated that the amount of Rs.14,30,509 was credited as profit for the bank. The defendants cannot take advantage of their own wrong and claim that the suit itself is barred by limitation. Since the defendants had made payment on 27.12.2012, the plaintiff derives his cause of action from 27.12.2012 and that he filed the suit immediately after vacation on 04.01.2016 which is well within time.

5.1. The learned counsel for the respondent/plaintiff cited the following decisions in support of his claim:

i. *S.P.Chengalvaraya Naidu (dead) by LRS. Vs. Jagannath (dead) by LRS. and others reported in (1994) 1 Supreme Court Cases 1;*

ii. *Shakti Bhog Food Industries Limited Vs. Central Bank of India and another reported in (2020) 17 Supreme Court Cases 260;*

iii. *Devendra Kumar Vs. State of Uttaranchal and others reported in (2013) 9 Supreme Court Cases 363;*

6. Admittedly the respondent/plaintiff had availed the loan from the first defendant's bank and he settled the same. The dispute is with regard to the

excess payment made by the plaintiff. According to the plaintiff the excess payment was collected by the defendants by playing fraud upon him by colluding between themselves. The fact came to be known to the plaintiff when his auditor told him that the had paid a sum of Rs.1.70 crores, which is in excess of the loan of 1.5 crore availed by him. Subsequently, the plaintiff wrote a letter to the defendant bank by asking them to furnish the statements of accounts. The plaintiff himself has stated that the statement of accounts have been furnished on 18.08.2011.

7. The learned counsel for the respondent / plaintiff further submitted that the plaintiff was called upon for discussion on 08.10.2012 and at the end of the discussion, the plaintiff came to know that a sum of Rs.14,30,509/- has been found to be excess, but it was appropriated as profit in the bank's account; however, in a subsequent meeting held on 22.11.2017, the plaintiff had disputed the quantum as calculated and hence the plaintiff has the knowledge about the excess amount right from 01.08.2011, 18.08.2011, 08.10.2012 and 22.11.2012.

8. Even for the sake of arguments, the above submission is taken to be correct, when the plaintiff has filed a writ Petition in W.P.No.21836 2012 and

the same was pending, the defendants bank made payment of Rs.14,30,509/- on 27.12.2012. As the same was admitted to be the excess payment, the said action of the plaintiff that is done on 27.12.2012 can well within the term acknowledgement. Hence, the right to sue continues on 27.12.2012 also, on which date the cause of action also continues in view of the payment made by the defendants. In this regard it is relevant to refer the decision reported in ***Shakti Bhog Food Industries Limited Vs. Central Bank of India and another*** reported in ***(2020) 17 Supreme Court Cases 260*** cited supra. In the said case, the Supreme Court has made a distinction between the right to sue first accrues and right to sue accrues. Thus the application of Article 113 and Article 58 of the Limitation Act has been explained in paragraph 18 to 19 of the above judgment. For the sake of clarity the same is reproduced hereunder:

> *"18. Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue "first" accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him) and Article 104 (when the plaintiff is "first" refused the enjoyment of the right). The view taken by the trial Court, which commended to the first appellate Court and the High Court in second appeal, would inevitably entail in reading the*

expression in Article 113 as – when the right to sue (first) accrues. This would be rewriting of that provision and doing violence to the legislative intent. We must assume that the Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression "when the right to sue accrues" in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts.

19. We may usefully refer to the dictum of a three Judge Bench of this Court in Union of India & Ors. vs. West Coast Paper Mills Ltd. 13, which has had an occasion to examine the expression used in Article 58 in contradistinction to Article 113 of the 1963 Act. We may advert to paras 19 to 21 of the said decision, which read thus: (SCC p.754)

"19. Articles 58 and 113 of the Limitation Act read thus:

	Description of suit	Period of limitation	Time from which period begins to run
	*	*	*
58	To obtain any other declaration.	Three years	When the right to sue first accrues.
	*	*	*
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

20. It was not a case where the respondents prayed for a declaration of their rights. The declaration sought for by them as regards unreasonableness in the levy of freight was granted by the Tribunal.

21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when "the right to sue first accrues", in terms of Article 113 thereof, the period of limitation would be counted from the date "when the right to sue accrues". The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefore arose."

(emphasis supplied)

9. Admittedly, Article 113 speaks about the right to sue accrues. It does not state about the right to sue first accrues. In the case in hand, the plaintiff has filed the suit only under Article 113, which speaks about the right to sue accrues. Since the first defendant bank had admitted its act of excess collection and acknowledged it by way of crediting the excess of Rs.14,30,509/- in the

bank account of the plaintiff, without any confusion, the right to sue can be calculated from 27.12.2012. The plaintiff has filed the suit on 04.01.2016. On account of the closure of the Court due to Christmas occasion, the suit was presented on the first day when the Court re-opened i.e., on 04.01.2016. The suit is filed well within the period of limitation and hence the suit is maintainable

10. In view of the above stated reasons, this petition filed by the petitioners / defendants stands dismissed.

17.03.2023

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