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

Date of decision: 31st May, 2023

\+ **CS(OS) 440/2020**

MR DEV RANJAN MITTRA & ANR. ..... Plaintiffs

Through: Ms.Priya Deep, Adv.

versus

ADITYA BARNA MITTRA ..... Defendant

Through: Mr.S.K. Bhaduri, Mr.Sumit Kumar & Ms.Neetu Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

I.A. 12331/2021

1. This application has been filed by the defendant under Order VII rule 11 (a) and (d) of the Code of the Civil Procedure, 1908 praying for the rejection of the plaint, contending that the suit is barred by limitation.

2. The plaintiffs have filed the present suit seeking recovery of a sum of Rs.2,54,73,584/- (Rupees Two Crore Fifty Four Lakhs Seventy Three Thousand Five Hundred and Eighty Four only) alongwith interest of Rs.54,70,888.36/- (Fifty Four Lakh Seventy Thousand Eight Hundred and Eighty Eight and Thirty

Six Paise only) from 28.05.2018 to the date of filing of the suit, and further praying for *pendente lite* and future interest at the rate of 9% per annum from the defendant.

3. It is the case of the plaintiffs that the plaintiff no.1 and defendant are first cousins, the father of the plaintiff no.1 and the father of the defendant being real brothers. The plaintiff no.1 had shifted to the United States of America in the early 1980s and has been residing there for more than 30 years. Since he owned a large number of properties in Delhi, having implicit trust and faith in the defendant due to their relationship, the plaintiff no.1 executed a Power of Attorney in favour of the defendant on 21.07.1998 for managing the properties located in Delhi, including his various Bank Accounts. The said Power of Attorney dated 21.07.1998 was revoked by the plaintiff no.1 *vide* his letter dated 28.05.2018. After revoking the Power of Attorney, the plaintiff no.1 started reviewing and scrutinizing all his bank statements/bank accounts and noticed that the defendant had over a period of time, withdrawn a sum of Rs.3,70,19,310/- (Rupees Three Crore Seventy Lakhs Nineteen Thousand Three Hundred Ten only) from various Bank Accounts. The plaintiffs give the details of the withdrawals in paragraph 9 of the plaint under the heading "*Loan taken by A.B. Mittra from Dev Ranjan Mittra (HUF)*" and "*Loan taken by A.B. Mittra from Dev Ranjan Mittra (Individual)*. The plaintiffs then claim that out of the total borrowed sum of Rs.3,70,19,310/- (Rupees Three Crore Seventy Lakhs Nineteen

Thousand Three Hundred Ten only), the defendant repaid only an amount of Rs.1,15,34,726/-(Rupees One Crore Fifteen Lakhs Thirty Four Thousand Seven Hundred and Twenty Six only), account of which is given in paragraph 10 of the plaint with the heading "*Loan Paid Back by A.B. Mittra* to *Dev Ranjan Mitra (Individual)*" and "*Loan Paid Back by A.B. Mittra to Dev Ranjan Mittra (HUF)*".The plaintiffs claim that in this manner, the defendant owes a sum of Rs.2,54,73,584/- (Rupees Two Crore Fifty Four Lakhs Seventy Three Thousand Five Eighty Four only) to the plaintiffs, which the plaintiffs claimed from the defendant vide e-mail dated 28.05.2018 and subsequent letter dated 13.07.2020.

4. The plaintiffs allege the cause of action for filing of the plaint as under:-

> *"18. Thus, in view of the above, the Defendant owes an amount of Rs. 2,54,73,584/- (Rupees Two Crores Fifty Four Lacs Seventy Three Thousand Five Hundred Eighty Four Only) to the Plaintiffs <u>on account of loan taken by him over a period of 2010 to 2015.</u> The Defendant despite repeated requests and reminders has failed to repay the said amount to the Plaintiffs and therefore, the present suit has necessitated to be filed.*
>
> *19. That the present suit seeks to recover debt, <u>being in the nature of a loans/borrowings</u> taken by the Defendant for his personal use in an unauthorized manner and without the knowledge of the Plaintiffs on the basis*

of the Power of Attorney dated 21.07.1998.

20. The cause of action arose in favour of the Plaintiffs and against the Defendant on 21.07.1998 when the Plaintiff No. 1 executed a Power of Attorney in favour of the Defendant. The cause of action thereafter arose on 28.06.2010, 16.07.2010, 08.12.2011, 28.07.2012, 25.09.2012, 07.11.2012, 14.11.2012, 01.08.2013, 21.12.2013, 04.10.2014 and 13.03.2015 when the Defendant took loan from the Plaintiffs. The cause of action then arose on 28.05.2018 when the Plaintiff No. 1 revoked the Power of Attorney dated 21.07.1998 and requested the Defendant to repay the loan taken by him, the cause of action then arose on 13.07.2020 when the Plaintiff No. 1 again requested the Defendant to repay the loan amount. The cause of action is still subsisting and continues to arise everyday since the amount due is still unpaid and outstanding against the Defendant, as the loan was taken by Defendant without fixing any date of repayment."

(Emphasis supplied)

5. The learned counsel for the defendant, placing reliance on the judgments of this Court in ***Gautam Seth v. Jaiveer Singh***, 2017 SCC OnLine Del 10296, and ***Balbir Rajput v. R.P. Exports and Others***, 2020 SCC OnLine Del 2298, submits that the limitation for filing of a suit for seeking recovery of a loan, where no time period is prescribed for the return thereof, is governed by Article 19 of the Schedule to the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act'), and such suit is to be filed within a period of three years from when the loan is

made. He submits that the details given in paragraph 9 of the plaint would reflect that the loan alleged to have been taken by the defendant was from the period 28.06.2010 to 13.03.2015. The alleged repayments there-against were also between the period 27.06.2010 to 27.02.2015. The suit was filed by the plaintiffs only on or around 13.10.2020 / 23.10.2020. The suit, therefore, is clearly barred by limitation.

6. On the other hand, the learned counsel for the plaintiffs, placing reliance on the judgments of this Court in ***Sh.Virender Kumar Jain v. M/s Alumate (India) Pvt. Ltd.***, 2012 SCC Online Del 1313 and ***Harcharan Singh v. Sunil Sarin***, 2013 SCC Online Del 4586, submits that as the period of repayment was not prescribed in the loan transactions, the same shall commence only from the date of the demand, which in this case was 28.05.2018. He submits that, therefore, in term of Article 113 of the Schedule to the Limitation Act, the present suit has been filed within the period of limitation.

7. I have considered the submissions made by the learned counsels for the parties.

8. As noted hereinabove, the case of the plaintiffs, though originates from the submission that the defendant has unauthorisedly withdrawn amounts from the Bank Accounts of the plaintiffs, is eventually styled as one for recovery of loan extended by the plaintiffs to the defendant. The alleged loan is then stated to have been extended from 28.06.2010 to 13.03.2015. It is further alleged that the repayment against the

loan transactions were made by the defendant from 27.06.2010 to 27.02.2015. It is not alleged in the plaint that there was any Agreement between the parties prescribing a particular date or time for the repayment of the loan. It is, in fact, the submission of the learned counsel for the plaintiffs that the loan was repayable on demand.

9. Article 19 of the Schedule to the Limitation Act prescribes the period for money payable for money lent as under:-

Description of suit	*Period of limitation*	*Time from which period begins to run*
19. For money payable for money lent.	*Three years*	*When the loan is made*

10. In ***Gautam Seth***(supra), a learned Single Judge of this Court held that once the loans are paid on different dates, then as per Article 19 of the Limitation Act, the limitation will commence from the date of grant of each of the loans. I may quote from the judgment as under:-

> *"**7.** Trial court has held that the suit is barred by limitation because each of the entry of grant of loan is a separate cause of action and for each separate cause of action limitation commences from three years from the date of grant of the loan. <u>I may note that Article 19 of the Limitation Act, 1963 provides that the limitation period is three years from grant of the loan for filing a suit for recovery of loan which is granted. Once loans are paid on different dates then as per Article 19 of the Limitation Act, limitation</u>*

> *will commence from the date of grant of each of the loan,* *and the trial court has rightly observed that it is not the case of the appellant/plaintiff that a specific large amount was agreed to be given as loan and which was thereafter given in different installments thereafter for smaller amounts.*
>
> ***8.*** *The subject suit admittedly has been filed on 22.3.2013. Any loan therefore granted before 22.3.2010 would become barred by limitation.* *Trial court has observed that the case of the appellant/plaintiff as argued, (and which was different from the content of para 4 of the plaint) is that actually the loan granted is only totaling to Rs.15,00,000/- and which is on account of the three entries dated 5.12.2000 (sic.:5.12.2007) of Rs.10,00,000/-, on 27.8.2008 of Rs.3,00,000/- and on 8.4.2009 of Rs.2,00,000/-, and all of which dates are before three years of the date of filing of the suit on 22.3.2013, and hence the suit is time-barred."*
>
> (Emphasis supplied)

11. In ***Balbir Rajput*** (supra), another learned Single Judge of this Court reiterated that each transaction of loan being independent from one another, as per Article 19 of the Schedule to the Limitation Act, the limitation for a suit for the money payable for money lent, of three years, begins to run from the time when the loan is made. It was held that the limitation for the loans made from 16.11.2011 to 15.10.2013 therein, would be till 16.11.2014 and 15.10.2016.

12. In ***Radha Exports (India) Private Limited v. K.P. Jayaram & Anr.,*** *(2020) 10 SCC 538,* while considering maintainability of an application under Section 7 of the Insolvency and Bankruptcy Code, 2016, The Supreme Court observed that

under Clauses 19 to 21 of the Schedule of the Limitation Act, the period of limitation for initiation of a suit for recovery of money lent is three years from the date on which the loan is paid.

13. In ***Harcharan Singh*** (supra), a learned Single Judge of this Court explained the situations covered by Article 19 to 22 of the Schedule to the Limitation Act, as under:-

> *"15. The appellant/plaintiff claims the money to have been lent vide a cheque. If the period of three years from when the cheque is paid is counted, the suit would definitely be barred by time. However the receipt proved to have been executed by the respondent/defendant at the time of loan provides the loan to be for a period of one year with interest at 12% per annum to be paid after one year along with principal amount. The case pleaded by the appellant/plaintiff also is of the said loan being repayable after one year. Even if three years are to be counted from expiry of the said one year, the suit would still be barred by time."*

14. It is no doubt true that in ***Virender Kumar Jain*** (supra), a learned Single Judge of this Court, who was also the author of the judgment of this Court in ***Gautam Seth*** (supra), in absence of the counsels therein and without adverting to Article 19 of the Schedule to the Limitation Act, has held that where the loan is given without fixing any date of repayment, the period of limitation would commence when the demand for repayment thereof is made, in my view, the said judgment is clearly *per incuriam* as the same has failed to take note of Article 19 of the Schedule of the Limitation Act. In fact, the same learned Single

Judge in ***RMS Consultants Pvt. Ltd. vs. Proactive Universal Trading Pvt. Ltd. & Anr.,*** *2018 SCC OnLine Del 8550,* referring to Article 19 of the Limitation Act, has held as under:-

> *"7. It is seen that by the suit plaintiff seeks recovery of Rs.4,89,35,000/- advanced by the plaintiff to the defendant no. 1. Plaint, in my opinion, deliberately does not give the dates when the different amounts totaling to Rs.4,89,35,000/- were advanced, inasmuch as, factually it is seen that the amount which totalled to a sum of Rs.4,89,35,000/- by the plaintiff in favour of the defendant no. 1 are with respect to drawing of entries commencing from the year 2008 with the last entry being dated 17.11.2012, and as seen from the copy of the account filed by the plaintiff as a document. The present suit is admittedly filed on 19.11.2015 i.e well beyond the period of the last entry, taking the same reflecting advance made by plaintiff to defendant no.1, which is actually dated 19.10.2012. In law, once there is no date fixed for repayment of the loan, a period of three years of limitation commences from the date of grant of loan as per Article 19 of the Limitation Act, 1963. With respect to loans given of the year 2008 the suit is barred by limitation because it had to be filed by the year 2011 and considering even all the entries by which loans have been given by the plaintiff to the defendant no. 1, and the last entry of payment to the defendant no. 1 being dated 19.10.2012, the present suit which is filed on 19.11.2015 is in fact beyond three years of the last entry, what to talk of earlier entries which are of around 4-8 years earlier. Therefore, the suit is also otherwise barred by limitation."*

15. In ***Harcharan Singh*** (supra), another learned Single Judge of this Court had expressed similar doubts on the judgment in ***Virender Kumar Jain*** (supra) by observing as under:-

> *"**31.** A learned Single Judge of this Court however in Sh. Virender Kumar Jain Vs. M/s. Alumate (India) Pvt. Ltd. MANU/DE/0885/2012 held that where a loan is given without fixing any date of repayment, the loan would be repayable on demand and the period of limitation therefor would be three years from the date of such demand. Article 19 was not adverted to, and the judgment was pronounced in the absence of the counsels. The same learned Single Judge in Satish Kumar Vs. Reena Bhoumik MANU/DE/2394/2012 and IFCI Venture Capital Funds Ltd. Vs. Santosh Khosla MANU/DE/1078/2012 with regard to loans repayable after a particular period of time has observed that in such cases the limitation cannot be said to commence from the date of grant of loan within the meaning of Article 19 and held that such cases would be governed by the residuary Article 113 with the cause of action accruing to the plaintiff on the date of default i.e. the date when the loan ought to have been repaid but is not repaid. However the possibility of Article 55 applying to such cases was not explored."*
>
> (Emphasis Supplied)

16. Applying the above principles, the present suit is clearly barred by limitation. As noted hereinabove, it is the own case of the plaintiffs that the alleged loan was extended to the defendant between 28.06.2010 to 13.03.2015. It is also the own case of the plaintiffs that no time period was fixed for the repayment of the loan. In accordance with Article 19 of the Schedule to the Limitation Act, therefore, the period of limitation for filing a suit seeking recovery of each of these loan transactions would end between 28.06.2013 to 12.03.2018. No case for extension of this period of limitation under Sections 4 to 24 of the

Limitation Act has been pleaded by the plaintiffs. Even the payments alleged are between 27.06.2010 to 27.02.2015. The suit filed in October 2020 is therefore, barred by limitation.

17. Accordingly, the present application is allowed. The plaint is rejected and consequently the suit is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 31, 2023*/rv/SS/KP*

Click here to check corrigendum, if any