IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

SECOND APPEAL NO. 949 OF 2022

1. Sau. Kamalabai Nandlal Rathi ... **APPELLANT**
(Ori. plaintiff)

VERSUS

1. M/s K.G. Industries Dal Mill

2. Rajesh Kisanlal Agrawal

3. Narayan Mishrilal Dayama (died)
Through his legal representative

3-A. Sanjay Narayan Dayama

4. Sunil Knhaiyyalal Dayama ... **RESPONDENTS**
(Ori. Defendants)

...

Mr. Amit S. Savale – Advocate for Appellant
Mr. Rajendra Deshmukh, Senior Advocate a/w. Mr. Shriram Deshmukh i/b. Mr. D.R. Deshmukh – Advocate for Respondent Nos.1, 2 and 4

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 23rd September, 2024

ORDER :

1. Heard rival submissions at admission stage.

2. Being dissatisfied with the judgment and order dated 06.10.2017 passed by the learned District Judge – 4, Dhule

*(hereinafter referred to as **"the learned First Appellate Court"**)* in Regular Civil Appeal No. 255 of 2012, which set aside the judgment and decree dated 28.06.2012 passed by the 2nd Jt. Civil Judge Senior Division, Dhule *(hereinafter referred to as **"the learned Trial Court"**)* in Special Civil Suit No. 17 of 2004, the appellant/plaintiff has filed this Second Appeal.

3. **Background facts of the case are as under :**

The appellant/plaintiff has filed the aforesaid civil suit in the Court of learned Trial Judge for recovery of an amount of Rs.7,70,510/- alongwith the interest. It is contended by the plaintiff that, she has deposited certain amount in Partnership Firm of the defendants, whereby the defendants had agreed to pay interest at the rate of 18% per annum on the said amount and to give annual statement of accounts also. The amount of interest accrued was to be merged in the capital amount and the interest of next year was to be calculated on that total amount. As such, amount deposited was having compound interest. The said amount was deposited in the year 1986 and accordingly the defendants communicated the accounts extracts to the plaintiff from 1986 to 1995, but thereafter they did not communicate the accounts extracts to the plaintiff. As such, by the end of

31.03.2003 the amount of Rs.6,87,957/- was due from the defendants. On 19.08.2003 plaintiff had issued the demand notice to the defendants claiming the amount of Rs.7,70,510/- inclusive of interest, however the defendants by refusing to pay the aforesaid amount, replied the said notice falsely and therefore, the plaintiff was constrained to file the aforesaid civil suit.

4. While resisting the suit, it was the case of the defendants that their Firm closed its affairs after satisfying all the dues and from the year 1995 it was not in existence. The Firm was established in the year 1962 and it was not a financial institution and therefore, they were not indulging in accepting the deposits on interest. According to them, the plaintiff did not deposit any amount with them and the suit filed by the plaintiff was not within limitation period of three years from the date of so called accounts extracts. As such, they prayed for dismissal of the suit. The learned Trial Court after conducting the trial, decreed the suit however, the said decree has been set aside by the learned First Appellate Court only on the point of limitation and hence, this second appeal.

5. Learned Counsel for appellant/plaintiff vehemently argued

that, the learned First Appellate Court has dismissed the suit of the plaintiff only on the point of limitation but kept intact other findings in favour of plaintiff that she had deposited amount with defendant No.1 – Firm. He pointed out that, the learned Trial Court had correctly held that the suit is within limitation as per Article 22 of the Limitation Act. He pointed out that, after filing of the suit the defendant – Firm had even preferred an application for rejection of plaint under Order VII Rule 11 of the Civil Procedure Code below Exhibit – 76 but it was rejected. Thus, he submitted that the finding of the learned First Appellate Court in respect of term “statements of accounts” and “account stated”, is erroneous. He pointed out that, Article 26 of the Limitation Act has no application in the present matter as it does not involve concept of “account stated”. On the contrary, he claimed that the learned Trial Court rightly held that, the contract in writing was not mandatory and oral agreement to that effect was sufficient. In support of his submissions he relied upon the following judgments:

(a) Hon’ble Supreme Court in the case of **Hiralal and Ors. Vs. Badkulal and Ors.** reported in *1953 AIR (SC) 225*

(b) Hon'ble Supreme Court in the case of **Gordon Woodroffe and Co. (Madras) Ltd. Vs. Shaikh M.A. Majid and Co.** reported in *1967 AIR (SC) 181*

(c) The Karnataka High Court in the case of **Dyavanagouda Rudragouda Vs. V.S. Hubli** in *R.S.A. No. 128/75* decided on 15.01.1982

6. On the contrary, learned Counsel for the respondents supported the judgment of the learned First Appellate Court and contended that, the learned First Appellate Court has rightly applied Article 26 of the Limitation Act and dismissed the suit on the point of limitation. According to him, the citations relied upon by the learned Counsel for appellant differ from facts of the present case. As such, he prayed for dismissal of this appeal at admission stage.

7. From the submissions made on behalf of the appellant/plaintiff the learned Counsel for appellant has raised a substantial question of law as to which articles namely Article 22 or Article 26 of the Limitation Act, is applicable in the instant matter. On going through the observation of the learned Trial Court it appears that, the learned Trial Court has applied provisions of the Limitation Act, 1963 under Section 30 to the

present case and held that, the contract in writing is not at all mandatory and only oral agreement as claimed by the plaintiff in respect of amount deposited with the defendants was sufficient. The learned Trial Court has relied upon the document at Exhibit – 58 i.e. certificate issued by the defendant – Firm in the name of plaintiff which indicated that certain amount was issued with them. Thus, by applying Article 22 of the Limitation Act, the suit is held within limitation by the learned Trial Court. However, the learned First Appellate Court by applying Article 26 of the Limitation Act held that, the suit of the plaintiff was barred by limitation. Therefore, only substantial question of law in the instant matter is that whether Article 22 or Article 26 of the Limitation Act is applicable ?

8. Considering the language of Article 22 of the Limitation Act, the limitation period of three years is given for recovery of amount under an agreement that, it shall be payable on demand, including a money of the customers in the hands of his partner, so payable and the period of limitation begins to run in such case when the demand is made. It is not in dispute that, the plaintiff had issued notice dated 19.08.2003, demanding the amount deposited which was refused by the defendants under reply dated 07.10.2003 and

therefore, according to the learned Trial Court the suit instituted on 02.01.2004 from the said date of refusal of notice was well within limitation. However, it is to be noted that, in the instant case the plaintiff has not established that there was any agreement for deposit of money.

9. On the other hand, the learned First Appellate Court has held the suit was not within limitation mainly by observing that, after statements of accounts in the year 1995, the plaintiff did not even care to ask for the accounts subsequently till final notice in the year 2003. The learned First Appellate Court has observed that, the plaintiff herself had stated that, the defendants issued statement of accounts lastly in the year 1995–1996 and therefore period of limitation expired on 31.03.1999. Further, it was also observed by the learned First Appellate Court even if it is held that the case of plaintiff would fall under Article 22 or Article 26 of the Limitation Act, but Article 22 was not applicable since there was no agreement in writing in existence between plaintiff and the defendants in respect of deposit of money. The learned First Appellate Court has further observed that, lastly the statements accounts was issued by the defendants to plaintiff in respect of her deposited money till the year 1995–1996. It is the case of plaintiff

herself that, the defendants were issuing the accounts of statements by merging the interest thereafter and charging further interest on compound basis. Thus, if we see the language of Article 26 of the Limitation Act then it is evident that, the money which the plaintiff is claiming from the defendants was according to account stated between them. The plaintiff herself stated that, the defendants issued statements of accounts lastly in the year 1995 – 1996. Thus under Article 26 of the Limitation Act, the period of three years for recovery of such money would start from said statements of accounts. It is extremely important to note that, after issuance of Exhibit – 58, which was in respect of statements of accounts till 31.03.1996, the plaintiff never demanded the amount of deposit alongwith interest till 19.08.2003 i.e. the date of demand notice. Thus, considering the applicability of Article 26 of the Limitation Act, the period of limitation for recovery of the deposited amount was expired on 31.03.2003 even under the new Act, 1963.

10. Learned Counsel for appellant heavily relied on the judgment of Hon’ble Apex Court in the year case of **Hiralal and Ors.** (*supra*) wherein the concept of “statements of accounts” and “account stated” has been discussed. He pointed out that, the Hon’ble Apex

Court has observed that, the word “account stated” means that, the defendants had admitted the balance amount which is not her in the present case. However, the facts of this case are different from the facts of aforesaid case. Further, the Hon’ble Apex Court in the case of **Gordon Woodroffe and Co. (Madras) Ltd.** (*supra*) has also observed “account stated” and “account settled”. It is observed that, it is sufficient if the accounts are accepted and such acceptance may be inferred by the conduct. In the instant case the plaintiff herself is saying that, up to the year 1995–1996, the defendants had issued statements of accounts. However, there is nothing on record to show that, till the year 2003 the plaintiff demanded the amount of deposit even after knowing the balance amount as on 31.03.1996 and therefore, the observations of Hon’ble Apex Court in the aforesaid cases are not helpful to the appellant. Further, it has already come on record that, there was no agreement in writing between plaintiff and the defendants in respect of deposited amount and therefore, the findings of the learned First Appellate Court that, Article 22 of the Limitation Act is not applicable definitely appears proper in view of the circumstances on record. As such, the substantial question of law as raised by the learned Counsel for appellant is appropriately answered by the learned First Appellate Court and therefore, the Second Appeal needs to be dismissed as the suit of plaintiff is barred by law of limitation.

11. Accordingly, the Second Appeal stands dismissed and disposed of at admission stage alongwith pending Civil Applications, if any.

[SANDIPKUMAR C. MORE]
JUDGE