

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1035 OF 2022
WITH
CIVIL APPLICATION NO. 1767 OF 2019
IN
FIRST APPEAL NO. 1035 OF 2022**

M/S. Tirupati Automobiles

... Appellant/Applicant

Vs.

Jankalyan Sahakari Bank Ltd.

... Respondent

Adv. Savita Mundra, a/w Adv. Vishal Jain for the Appellant/Applicant.
None for the Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 22nd FEBRUARY, 2024

P.C.:-

1. Heard the learned Counsel for the Appellant. None for the Respondent in spite of service.
2. In the Appeal challenge is raised to the Judgment and Order dated 17/11/2018 passed by the learned Judge City Civil Court at Bombay in Summary Suit No. 741 of 2015.
3. The learned Advocate for the Appellant submits that the suit is dismissed only on the ground of limitation. Para 9 of the impugned Judgment reads as below:-

“9. Even as per letter of defendant Exh.13 the amount became due and outstanding on 02.02.2008. The suit is

lodged on 10.03.2015. It is filed more than 7 years. Limitation of filing the suit was 3 years from 02.02.2008 i.e. when the amount was declined by the defendant and became due. The suit should have been filed on or before 01.02.2011. The suit is filed on 10.03.2015, is barred by limitation. Thus, on all these counts the suit is liable to be dismissed as barred by limitation. Hence, considering this I answer points no. 1 and 2 in the negative and pass the following order.

:ORDER:

1. *Suit is dismissed.*
 2. *Plaintiff to bear his own cost.”*
4. The Learned Advocate submits that the Court has taken a date of institution of the suit as 10/03/2015. The learned Advocate further submits that as a matter of fact the suit was filed within limitation on 3/3/2011 in this Court on the Original Side. Because of enhancement in the pecuniary jurisdiction of the City Civil Court at Bombay, the said suit St. No. 531 of 2011 came to be transferred to the City Civil Court at Bombay and was re-numbered as Summary Suit No. 741 of 2015. He thus submits that the observation of the Court that the Suit is lodged on 10/3/2015 is not correct. The date considered by the Court as 03/3/2015 is the date on which the suit was transferred and was registered in the City Civil Court at Bombay.
5. The learned Advocate therefore submitted that this is a fit case to quash and set aside the impugned Judgment and Order by remanding

the suit to the City Civil Court at Bombay. After going through the record it is seen that, the suit was lodged on the Original Side of this Court on 3/3/2011 there is endorsement of lodging of the suit. Subsequent transfer will not affect the limitation. After the transfer the suit is only re-numbered. The observation of the learned Judge is thus clearly against a record for all the practical purposes suit was filed within limitation. The order of dismissal treating the suit as beyond limitation is certainly erroneous.

6. In view of the above this court finds that the impugned Judgment and Order deserves to be quashed and set aside, hence the following order

ORDER

- a) The Appeal is allowed.
- b) Impugned Judgment and Order is quashed and set aside.
- c) Decree of the Bill of Cost, if any drawn is set aside.
- d) Suit bearing Summary Suit No. 741 of 2015 is remanded for fresh decision on merits. Since the suit was instituted in 2011, the Trial Court is expected to dispose of the main suit as expeditiously as possible.

7. First Appeal is disposed of.

(KISHORE C. SANT, J.)