



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 20 May 2024**
Judgment pronounced on :09 August 2024

+ C.R.P. 11/2024 & CM APPL. 1037/2024

USHA Petitioner
Through: Mr. Jai Prakash Gautam and
Mr. Jaibhagwah, Advs.

versus

KANTA Respondent
Through: Mr. Sumit Kumar Rana, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This is a civil revision petition under Section 115 of the CPC¹ preferred by the petitioner, who is the defendant in the main suit instituted by the respondent/plaintiff before the learned ADJ-4, North West District, Rohini Courts Delhi² for recovery of a sum of Rs. 3.12 lacs, assailing the impugned order dated 23.09.2023, whereby her application under Order VII Rule 11 CPC claiming that the suit is barred by limitation, was rejected.

2. Learned counsel for the respondent/plaintiff is present on advance notice.

3. Having heard the learned counsels for the parties and on perusal of the record, unhesitatingly, this Court finds that the impugned order dated 23.09.2023 cannot be sustained in law.

¹ Code of Civil Procedure, 1908

² ADJ



4. Shorn of unnecessary details, it is the case of the respondent/plaintiff that the petitioner/defendant, who is her sister-in-law, was in need of some financial assistance, and therefore, she advanced a friendly loan of Rs.3 lacs in August, 2015 from the respondent/plaintiff. It was specifically pleaded that the loan was given as a friendly loan without fixing any time to return/repay the same. The plaintiff further pleaded that in May, 2020, when he requested the defendant to return and repay the loan amount, the petitioner/defendant expressed her inability to repay the loan amount in one shot and instead, issued a cheque bearing No.555718 dated 01.06.2020 for a sum of Rs.1.50 lacs requesting the plaintiff to grant her some more time to return the balance amount. The cheque issued by the petitioner/defendant was, however, dishonoured for non-compliance of KYC (Know Your Customer) formalities by the concerned bank. The plaintiff claims that she contacted the defendant in August, 2020 for repayment of the loan amount but later, refused to make any payment, and therefore, a legal demand notice dated 14.09.2021 was issued but the same was not complied with.

5. On the suit being filed by the respondent/plaintiff, summons were issued to the petitioner/defendant and though the written statement was filed disputing the claim of the plaintiff, she also moved an application under Order VII Rule 11 (a) and (d) of the CPC for rejection of the plaint on the ground that the suit was barred by virtue of Article 21 read with Article 113 to the Schedule under the



Limitation Act, 1963³. It would be expedient to reproduce the relevant observations made by the learned ADJ while disposing of the application and passing the impugned order, which goes as under:

5. In the case in hand, the loan was given as averred in the plaint in August 2015 without fixing any time to return / repay. The plaintiff requested the defendant to return the loan amount in May 2020. Considering that there was no time fix to return the amount which was a special condition, it appears to me at this stage that the period of limitation to file the present suit started running in the month of May 2020 when the plaintiff requested the defendant to return the loan amount as per the ratio of the case of Virender Kumar Jain. The suit filed by the plaintiff is within limitation. The plaint is having para no. 10 and is also having averment qua the entitlement of plaintiff to seek interest on the loan amount. Thus, the application is devoid of merits, as such, is dismissed.

6. Put up for filing of replication if any, completion of pleadings, filing of document in original if any, admission/denial of documents and settlement of issues on 25.11.2023.

6. Upon hearing the learned counsels for the parties and on perusal of the relevant record, it is evident that the friendly loan was advanced in August, 2015 and there was no stipulation with regard to the return or repayment of the loan amount.

7. Article 21 read with Article 22 and Article 113 of the Schedule to the Act cater to different situation as under:

PERIODS OF LIMITATION			
	Description of suit	Period of limitation which period begins	Time from to run
	xxx	xxx	xxx
21.	For money lent under an agreement that it shall be payable on demand.	Three years	When the loan is made
22.	For money deposited under an agreement that it shall be payable on demand, including money of a customer	Three years	When the demand is made

³ Act



in the hands of his
banker so payable

XXX

XXX

XXX

- | | | | |
|------|--|-------------|--------------------------------|
| 113. | Any suit for which no period of limitation is provided elsewhere in this Schedule. | Three years | When the right to sue accrues. |
|------|--|-------------|--------------------------------|

8. It would be pertinent to refer to the decision of the Supreme Court in the case of **Syndicate Bank v. Channaveerappa Beleri**⁴, wherein the aforesaid articles were discussed at length and it was held as under:

“12. We will examine the meaning of the words “on demand”. As noticed above, the High Court was of the view that the words “on demand” in law have a special meaning and when an agreement states that an amount is payable on demand, it implies that it is always payable, that is payable forthwith and a demand is not a condition precedent for the amount to become payable. The meaning attached to the expression “on demand” as “always payable” or “payable forthwith without demand” is not one of universal application. The said meaning applies only in certain circumstances. The said meaning is normally applied to promissory notes or bills of exchange payable on demand. **We may refer to Articles 21 and 22 in this behalf. Article 21 provides that for money lent under an agreement that it shall be payable on demand, the period of limitation (3 years) begins to run when the loan is made. On the other hand, the very same words “payable on demand” have a different meaning in Article 22 which provides that for money deposited under an agreement that it shall be payable on demand, the period of limitation (3 years) will begin to run when the demand is made. Thus, the words “payable on demand” have been given different meanings when applied with reference to “money lent” and “money deposited”. In the context of Article 21, the meaning and effect of those words is “always payable” or payable from the moment when the loan is made, whereas in the context of Article 22, the meaning is “payable when actually a demand for payment is made”.** {Bold portions emphasized}

⁴ (2006) 11 SCC 506



9. In view of the aforesaid proposition of law, evidently, it is the own case of the plaintiff/respondent that the loan amount was advanced in August, 2015 and she approached the defendant for return or repayment of the loan amount in May, 2020, and thus, by virtue of Article 21 referred to hereinabove, the same is clearly barred by limitation. The loan amount was lent and not deposited, thereby making Article 21 of the Act applicable.

10. It is also manifest that even the cheque for Rs.1.50 lacs was issued after the prescribed period of three years i.e., on 01.06.2020, and the plaintiff/respondent cannot even claim any acknowledgement of debt in terms of Section 18(1)⁵ of the Act so as to get the period of limitation extended.

11. In view of the aforesaid proposition of law, the present revision petition is allowed. The impugned order dated 23.09.2023 passed by the learned ADJ is hereby quashed. The application under Order VII Rule 11(a) and (d) of the CPC is allowed. The suit is rejected for being barred by limitation.

12. The pending application also stands disposed of.

13. The parties are left to bear their own costs.

DHARMESH SHARMA, J.

AUGUST 09, 2024

VLD

⁵ Section 18. Effect of acknowledgment in writing