

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Sugato Majumdar

**CS-COM/29/2025
[OLD NO CS/108/2018]**

**STARLITE VYAPAAR PVT. LTD.
VS
SNG FASHIONS PVT. LIMITED**

For the Plaintiff : Mr. Shuvasish Sen Gupta, Adv.
Mr. Balarko Sen, Adv.
Mr. Soumyajit Mishra, Adv.

For the Defendant : Mr. Varun Kothari, Adv.
Mr. Dhruv Surana, Adv.
Mr. Jai Kumar Surana, Adv.
Ms. Ravina Sharma, Adv.

Hearing concluded on : 25/03/2025

Judgment on : 03/04/2025

Sugato Majumdar, J.:

This is a suit for recovery of money with interest.

The Plaintiff is a company registered under the Companies' Act 1956, having its registered office at 21, Chittaranjan Avenue, Kolkata – 700072. The Plaintiff carries on business as non-banking financial institution and obtained certificate of registration under Section 45-IA of the Reserve Bank of India Act, 1934 on 08/12/2003.

The Defendant is a company registered under the Companies' Act 1956, having registered office at 161/1, M.G. Road, Kolkata – 700007 within jurisdiction of this Court.

In the month of March 2011, the Defendant approached the Plaintiff for financial accommodation for a sum of Rs.50,00,000/- with assurance to pay interest at a rate of 9% per annum. The Plaintiff agreed to and transferred the said amount to the Defendant on 30/03/2011 by way of Real Time Gross Settlement (RTGS). The Defendant acknowledged the payment of the said amount.

The Defendant paid interest till 31/03/2012 but thereafter paid on Rs.10,000/- by cash on 11/07/2014; Rs.12,000/- by cash on 09/09/2015 and Rs.15,000/- by cash on 20/09/2016. Money receipts were duly issued by the Plaintiff against the aforesaid payments. Thereafter, in discharge of liabilities towards the principal amount, the Defendant issued a cheque bearing number 231670 dated 23/03/2017 drawn on ICICI Bank, Park Street Branch, containing the sum of Rs.50,00,000/- in favour of the Plaintiff. The said cheque was dishonoured on the ground of closure of the account. The cheque return memo dated 27/03/2017 had endorsement "Debit Account Closed". It is the case of the Plaintiff that since then, the Defendant neglected and failed to pay the agreed rate of interest and refused to pay the principal amount.

As on 31/03/2018 a sum of Rs.72,67,390/- was outstanding on account of the unpaid principal amount and interest, details of which is:-

Principal amount	:	Rs.50,00,000/-
Interest at a rate of	:	Rs.22,67,390/-
9% p.a. upto 31/03/2018		

Rs.72,67,390/-

In order to recover the said sum of money, the Plaintiff instituted the instant suit on 08/06/2018, praying for decree of Rs.72,67,390/- along with interest at a rate of 18% per annum.

The Defendant appeared in the suit but did not file written statement. Hence the suit became undefended.

The Plaintiff adduced oral as well as documentary evidence.

The Defendant cross-examined the Plaintiff's witness and produced one document which was exhibited and marked as Ext. 1 only for the purpose of contradiction and testing the veracity of the witness of the Plaintiff.

Uncontroverted case of the Plaintiff is that money was advanced and lent on 30/03/2011. Although there was no written agreement, conduct of the parties show that an amount of Rs.50,00,000/- was transferred to the account of the Defendant. Ext.C is the statement of accounts of the Plaintiff's bank account, maintained in Canara Bank, Kolkata Princep Street Branch. Ext.D establish that on 30/03/2011, a sum of Rs.50,00,000/- was transferred to the Defendant. There is no evidence to the contrary that this amount was lent or advanced for any other purpose. It is established, therefore, that the Plaintiff lent a sum of Rs.50,00,000/- to the Defendant.

It is argued principally, by Mr. Kothari, the Learned Counsel for the Defendant that the debt is time barred and, therefore, cannot be recoverable. Consequently, according to him, the suit must fail.

Per contra, Mr. Sengupta, the Learned Counsel for the Plaintiff, argued that there was acknowledgement in writing. The Defendant, from time to time, partly paid the loan against duly issued receipts and all these payments extended the

period of limitation. The cheque was issued on 23/03/2017. The cheque was dishonoured and the suit was filed within three years from the date of cheque; therefore, according to the Mr. Sengupta, the suit is not barred by limitation. He further argued that documentary evidence unequivocally established the claim of the Plaintiff for which the Plaintiff is entitled to the money as claimed.

As observed above there is no dispute on lending of money. Money was lent on 30/03/2011. Under Article 19 of the Limitation Act, 1963, period of limitation is three years from the date when the loan was made for a suit for recovery of money payable for money lent. Accordingly, the period of limitation is three years from the date when the money was lent.

Section 18 of the Limitation Act states that,

“18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.”

Section 19 provides that,

“19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of

the payment appears in the handwriting of, or in a writing signed by, the person making the payment. Explanation.—For the purposes of this section,— 9 (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment; (b) “debt” does not include money payable under a decree or order of a court.”

In **Shanti Conductors Private Limited Vs. Assam State Electricity Board and Others [(2020) 2 SCC 677]**, three Judges Bench of the Supreme Court of India observed that Section 19 provides for a fresh period of limitation which is founded on certain facts, namely, i) whether payment on account of a debt or interest on legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, ii) an acknowledgement of the payment appears in handwriting of or in a writing signed by the person making payment. In **Sant Lal Mahton Vs. Kamala Prasad and Others (1951 SCC 1008)**, three Judges Bench of Supreme Court of India considered applicability of Section 20 of the Limitation Act, 1908, *pari materia* with Section 19. It was observed by the Supreme Court of India therein that two conditions were essential that payment must be made within the prescribed period of limitation and it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him.

Coming to the case in hand, certain money receipts are adducing in evidence by the Plaintiff which were collectively marked as Ext. E. These money receipts – one bearing date 11/07/2014 and another bearing date 20/09/2016 were issued by the Plaintiff himself. It is stated in the money receipts that payments were made in cash. The receipts were not signed by the Defendant nor is there any acknowledgment of receiving the receipts. Issuance of receipts are unilateral act of

the Plaintiff. These two documents neither establish that payment was made by the Defendant towards repayment of the loan or interest therein nor is there any acknowledgment in writing as required by Section 19 of the Limitation Act. Therefore, these two documents, namely, Ext. E collectively, do not extend the time of limitation.

It is contended by the Plaintiff that cheque bearing no. 231670 drawn on ICICI Bank, Park Street Branch for a sum of Rs.50,00,000/-was issued in payment of the debt liability on 23/03/2017. The original loan was advanced on 30/03/2011. By 23/03/2017, period of limitation had already expired for reasons stated above. Now, operation of Section 25(3) of the Indian Contract Act may be considered. Section 25 (3) states as follow:

“25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.”

Requirement of applicability of Section 25(3) is that firstly, it is a promise; secondly, there is an existence of time barred debt; thirdly, a promise is made in writing and signed by the person to be charged therewith or any authorized person; fourthly, to pay wholly or in part a debt and finally which could have been enforced but could not, only for the operation of Limitation Act. In this case, there is no

promise made in writing to pay the time barred debt. Even if it is argued that issuance of cheque is to pay a time barred debt, is itself a promise to pay the same, the argument cannot be accepted for certain reasons. The cheque was adduced in evidence and was marked as 'Ext - F'. The cheque is typed one that is to say name of the payer and the amount is typed. The cheque bears signature in blue pen whereas the date is put with black pen. It is most unlikely that a person who issued the cheque would sign the cheque by one ink and put date in the same cheque by another ink. The Defendant's document, namely, Ext.1 may be considered at this stage. This document was admitted in evidence for a very limited purpose of contradicting the statement of PW 1 or challenging his veracity only. This document being a letter bears date 26th May, 2014. This is in relation to the instant cheque identified by the cheque number and amount issued by the Defendant to the Plaintiff. This letter purported to request the Plaintiff not to present the cheque in bank since the account had been closed. This letter shows that the cheque was issued in the year 2014. Date of the cheques was not mentioned in the letter which indicates that the cheque might have been undated and the date was put subsequently. This hypothesis is reinforced by use of different ink in writing the date. This letter challenged and demolished the veracity of the evidence of the Plaintiff that the cheque was issued on 23/03/2017. This letter rather shows that the cheque was issued at least prior to 26th May, 2014 which is the date of Ext. 1. Therefore, section 25(3) of the Indian Contract Act is also not applicable.

Aforesaid analysis leads to certain conclusions: firstly, the loan was given on 31/03/2011; secondly the cheque was given in the year 2014 thirdly, there is no proof of acknowledgement in writing or part payment of the loan; fourthly, the Ext.1 conveys an intention of the Defendant not to pay the amount covered by the cheque, far short of a promise in writing to pay the debt. The instant suit was filed on

08/06/2018. Limitation runs from 31/03/2011 when the money was lent and comes to an end after lapse of a period of three years. Therefore, manifestly and obviously the suit was filed long after the period of limitation. Therefore, the suit is barred by limitation.

In nutshell, the instant suit fails.

Hence, it is ordered that the instant suit be and the same is dismissed without costs and disposed of along with the pending applications, if any.

(Sugato Majumdar, J.)