



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.539 OF 2025**

Seema Yogesh Awari ... Appellant
versus
Kishor Waman Darne ... Respondent
WITH
INTERIM APPLICATION NO.11853 OF 2025

Mr. Amol G. Gatne, for Appellant.
Mr. Kaustubh Patil, for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 24 DECEMBER 2025

ORDER :

1. Heard the learned Counsel for the parties.
2. This Second Appeal is directed against the judgment and decree dated 11 April 2025 passed by the learned District Judge – 1, Alibag in Regular Civil Appeal No.1 of 2023 whereby the appeal preferred by the Respondent – original Plaintiff against the judgment and decree in Special Civil Suit No.72 of 2019 passed by the learned Civil Judge, Sr.Division, Alibag, on 25 November 2022 dismissing the suit instituted by the Respondent – Plaintiff, came to be allowed by setting aside the said judgment and decree, and, resultantly, the suit came to be decreed directing the Appellant – Defendant to pay a sum of Rs.5,50,000/- along with interest @ 6% p.a. from 15 February 2016.
3. Mr. Yogesh Awari, the husband of the Appellant – Defendant, was a real

estate agent. Mr. Yogesh Awari had induced the Plaintiff to purchase an agricultural land for a consideration of Rs.82,00,000/-. The Plaintiff had paid a sum of Rs.30,00,000/- to Yogesh Awari on 9 September 2012. Yogesh, however, resiled from the transaction and agreed to refund the said amount of Rs.30,00,000/-. Yogesh committed default in repayment, despite repeated assurances. Eventually, Yogesh had drawn cheques for sums of Rs.7,50,000/- and 7,00,000/- payable on 14 January 2013 and 7 April 2013, respectively, towards the repayment of the said amount. Both the cheques were dishonoured upon presentment.

4. The Plaintiff had lodged complaints, being Summary Criminal Case Nos.203 and 244 of 2013, for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. In the said complaints, the parties arrived at an amicable settlement. A compromise pursis (Exh.28) dated 15 February 2016 was filed.

5. Under the terms of the said compromise pursis, Yogesh agreed to pay a sum of Rs.8,50,000/- in four installments to the Plaintiff, and, thereupon, the latter agreed to withdraw the complaints. First two installments of Rs.50,000/- and Rs.2,50,000/- were cleared. Yogesh however, committed default in payment of third and fourth installments of Rs.2,50,000/- and Rs.3,00,000/- due on 16 May 2016 and 13 June 2016 respectively. Yogesh died on 16 February 2017. Hence, the suit for recovery of the said amount from the

Defendant.

6. The Defendant contested the suit by raising multiple defences, including that she was not the wife of Yogesh. Learned Civil Judge answered all the issues in favour of the Plaintiff. However, it was held that the suit was barred by law of limitation. Learned Civil Judge was of the view that the limitation started to run from the last day of the scheduled payment as per the acknowledgment and had even started to run from 13 June 2016 and, thus, the suit instituted on 21 June 2019 was barred by law of limitation.

7. In the appeal, the learned District Judge was persuaded to interfere with the judgment of the Trial Court as the suit was, in fact, instituted on 22 April 2019 as it was initially registered as a Summary Suit and, later on, re-registered as a Special Civil Suit, on 21 June 2019. Therefore, on the own reasoning of the trial Court, the suit was within the statutory period of limitation.

8. Mr. Gatne, learned Counsel for the Appellant, would urge that the learned District Judge committed a manifest error in law in overturning the finding of the trial Court. Firstly, according to Mr. Gatne, the learned District Judge was not justified in holding that the suit was instituted on 22 April 2019, though it was registered as a Summary Suit. Secondly, Mr. Gatne would urge that, the suit was governed by the provisions contained in Article 21 of the Limitation Act, 1963 and as under the said Article the period of limitation

commenced when the loan was made, the institution of the instant suit was clearly beyond the period of limitation.

9. The first contention of Mr. Gatne is required to be stated to be repelled. The period of limitation commences from the date of the institution of the suit and not from the date of its registration under one or other category. The fact remained that the suit was instituted on 22 April 2019. Learned Civil Judge in paragraph No.25 of the judgment has proceeded on an incorrect premise that the suit was instituted on 21 June 2019, and, thus, despite noting that the limitation started to run from the last day of the scheduled payment as per the acknowledgment and even from 13 June 2019, and, yet, misdirected herself in dismissing the suit on a wrong impression that, for the purpose of limitation, the suit came to be instituted on 21 June 2019.

10. The Second contention sought to be urged by Mr. Gatne is also unworthy of acceptance. The Courts below have taken into account the fact that the filing of the compromise (Exh.28) before the learned Magistrate in the proceedings under Section 138 of the N.I.Act, constituted an acknowledgment of the liability. Under the said compromise pursis, a sum of Rs.8,50,000/- was agreed to be paid in four installments. First two installments were cleared. Third installment of Rs.2,50,000/-, which fell due on 16 May 2016, and the fourth installment of Rs.3,00,000/-, which fell due on 13 June 2016, were not paid. The limitation for the recovery of the amounts of the third and

fourth installments would commence to run from the date the installments fell due, reasoned the learned District Judge. Thus, the suit instituted on 22 April 2019 was within the period of limitation.

11. Mr. Patil, learned Counsel for the Respondent would urge that the instant case would be governed by Article 26 of the Limitation Act, which provides three years limitation for a suit to recover the money payable to the Plaintiff for money found to be due from the defendant to the plaintiff on account stated between them.

12. Mr. Gatne would urge, the aforesaid Article would not govern the period of limitation as in the instant case the suit was not based on account stated.

13. The term account stated, is not confined to the account which contains items of both credit and debit, and the figure on both sides are adjusted between the parties and a balance struck. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of **Gordon Woodroffe and Co. (Madras) Ltd. V/s. Shaik M.A.Majid and Co.**¹, wherein the Supreme Court enunciated the law as under :

“15.....In this connection, it is necessary to state that the expression “account stated” has more than one meaning. It sometimes means a claim to payment made by one party and admitted by the other to be correct. An account stated in this sense is no more than an admission of a debt out of Court; while it is no doubt cogent evidence against the

1 AIR 1967 SC 181

admitting party, and throws upon him the burden of proving that the debt is not due, it may, like any other admission be shown to have been made in error. Whereas the transaction is of this character, it makes no difference whether the account is said to be “stated” or to be “stated” and agreed”; the so-called agreement is without consideration and amounts to no more than an admission. There is, however, a second kind of account stated where the account contains items both of credit and debit, and the figures on both sides are adjusted between the parties and a balance struck.

.....

(emphasis supplied)

14. At any rate, it is evident that the Trial Court was clearly in error in holding that the suit was filed on 21 June 2019, when the suit was, in fact, instituted on 22 April 2019 and that patent error singularly vitiated the finding of the Trial Court. Thus, the learned District Judge was within her rights in correcting the error committed by the Trial Court. No question of law, much less a substantial question of law, arises for consideration.

15. Hence, the Second Appeal stands dismissed.

16. In view of the dismissal of the Second Appeal, Interim Application No.11853 also stands dismissed.

(N.J.JAMADAR, J.)