# IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

**CIVIL REVISION APPLICATION NO.103 OF 2024**

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| 1. **M/S. NELCO AND COMPANY**<br>Through Proprietor Shri. Devendra Sugandh;<br>***...Original Defendant no.1*** | **PETITIONERS:**<br>*(Original Defendants)* |
| 2. **SHRI. DEVENDRA SUGANDH**<br>aged about Major, Occ. Business, Both R/o. Flat no. 202, Swarna Apartments, Opp. Khandelwal Bhawan, Quetta Colony, Nagpur – 400008.<br>***...Original Defendant no.2*** | |

**-Versus-**

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| **SMT. SHEELA LAXMIKANT GUPTA**<br>aged about 67 years, Occ. Housewife, R/o Flat.No.101, Le Marvel,Temple Road, Next to Gupta Tower, Civil Lines, Nagpur-440 001. | **RESPONDENT:**<br>*(Original Plaintiff)* |

**WITH**

**CIVIL REVISION APPLICATION NO.104 OF 2024**

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| 1. **M/S. NELCO AND COMPANY**<br>Through Proprietor Shri. Devendra Sugandh;<br>***...Original Defendant no.1*** | **PETITIONERS :**<br>*(Original Defendants)* |
| 2. **SHRI. DEVENDRA SUGANDH**<br>aged about Major, Occ. Business, Both R/o. Flat no. 202, Swarna Apartments, Opp. Khandelwal Bhawan, Quetta Colony, Nagpur – 400008.<br>***...Original Defendant no.2*** | |

**-Versus-**

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| **SHRI. NIKUNJ LAXMIKANT GUPTA,**<br>R/o. Flat. No.101, Le Marvel, Temple Road, Next to Gupta Tower, Civil Lines, Nagpur - 440 001. | **RESPONDENT :**<br>*(Original Plaintiff)* |

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Adv. G.B. Sawal, for Applicant.
Adv. Radhika Gaurav Bajaj, for Respondents.

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CORAM : MRS.VRUSHALI V. JOSHI, J.

Date of Reserving the judgment:- 08/07/2025
Date of Pronouncing the judgment:- 16/07/2025

**COMMON JUDGMENT:-**

1) Heard.

2) **Rule.** Rule made returnable forthwith. Both the Civil Revision Applications are heard finally with the consent of the learned counsel appearing for the respective parties.

3) By way of filing instant Civil Revision Applications, the applicants seek to quash and set aside, the common order which is impugned dated 08.08.2024 passed in Special Civil Suit nos. 890/2019 and 817 of 2019 by the Trial Court, while rejecting application filed below Exhibit-26 and Exhibit 29 respectively by the defendants under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, read with Sections 3, 18 of the Limitation Act 1963, on 11/10/2023, seeking dismissal of suit and rejection of the Suit plaint.

4) Briefly stated, two suits are filed by the respondent in the year 2019 for recovery of amount alleged to have been lent in cash to the petitioners between 13.09.2011 to 20.03.2013 for the purpose of

business of petitioner no.1-firm. Allegedly, Special Civil Suit No.817 of 2019 in Civil Revision Application N0.103 of 2024 is filed by the respondent on 13.09.2019. While the Special Civil Suit No.890 of 2019 in Civil Revision Application No.104 of 2014 filed for the recovery amount from the period between 16.11.2011 to 11.03.2013 and 13.09.2011 to 20.03.2013.

5) It is the contention of the learned counsel for the applicants, that both the suits are barred by limitation. The said suits were ought to have been filed within a period of three years which has not been complied with. It was further pointed out that, as per Section 18 of the Limitation Act, period of limitation is counted from the date of acknowledgement from the time, when the acknowledgement is so signed and not from the date on which payment is deferred. It had further been stated that, the date of acknowledgement is 15.09.2013. Even if the period for limitation is considered from the date of acknowledgement, it is barred by limitation as limitation ends on 14.09.2016 and the suits are filed in the year 2019.

6) Learned counsel for the applicants, Mr. Sawal, argued that the learned Trial Court erred in taking into consideration the aspect of limitation as a pure question of law, which is not a mixed question of facts and law. It is the contention of the learned counsel, that the Trial

Court failed to consider a catena of judgments, ignoring the law laid down by the Apex Court and the High Courts, thus, passing an impugned order.

7) He further placed reliance on the judgment in the case of ***Kovuru Kalappa Devara -Vs- Kumar Krishna Matter and another reported in AIR 1945 Madras 10,*** wherein it is held that *"The suit based on upon the acknowledgement, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed although the acknowledgement deferred the payment for two years".*

(ii) ***A.I.R. 1989 Patna 111 Rajkishor Sahay and others-Vs-Binod Kumar and others,*** wherein it is held that *"Payments acknowledged by the defendant in writing the limitation starts running from the date of acknowledgement".*

8) On the other hand, the plaintiff/non-applicant in her reply has resisted the said application for rejection of plaint on the ground that objection of limitation being a question of facts and law and hence it cannot be decided as a preliminary issue.

9) Heard both the learned counsel.

10) The issue as to whether the claim of applicants is barred by limitation is raised objecting the suits filed by the non-applicants for

recovery of loan. The applicants have specifically set up the plea that the limitation for recovery of the loan amount starts from the date of acknowledgement. On perusal of acknowledgement, it appears that the defendants have promised to pay the amount within three years. The plaintiff has taken a stand that, the limitation starts from the date of expiration of said three years. According to non-applicant though it is not specifically mentioned in the plaint that it starts on expiration of the date which he promised in the acknowledgement. The learned counsel for the non-applicant has stated that the implied promise to pay after three years is there, therefore as per Lord Wrenbury it starts after expiration of period of said three years. It is observed by Lord Wrenbury :-

> ***"a promise to pay forthwith is superseded by the express promise to 'pay six months hence', and an action cannot be brought into force until six months have expired".***

11) Though the specific plea of promissory note is not taken by the non-applicant in the suit, however, it is implied as the acknowledgement itself shows that undertaking was given to pay the entire amount within a period of three years along with interest @ 18% per annum. It appears that the applicants have denied said acknowledgement as fabricated document. The question whether the document is forged or fabricated is a disputed question of fact, which

would be decided after the trial of the suit. If after the trial, the court comes to the conclusion that the acknowledgement is forged and fabricated then the suit would be liable to be dismissed as being barred by the limitation. To decide the issue of forged document, it requires evidence which would be considered after trial only.

12) If a person had promised to do a particular act within a stipulated period, then the cause of action to sue for breach of the promise would accrue either on the specific refusal of the promise to perform the said promise or on the expiry of the period stipulated for the performance. It is observed in the case of ***Manoj Kumar Goyal Vs. Jagdish Prasad Modi reported in 2014 SCC Online Del 698***, that regarding the effect of acknowledgement in writing, Section 18 of the Act prescribes:-

> **18. Effect of acknowledgement 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 acknowledgement was so signed.**
>
> **(2) Where the writing containing the acknowledgement is undated, oral evidence may**

**be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.**

**Explanation.- For the purposes of this section,-**
**(a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set - off, or is addressed to a person other than a person entitled to the property or right,**
**(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and**
**(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."**

**9. In terms of Section 18 of the Act, if before the expiry of the prescribed period for filing a suit an acknowledgement of liability is made in writing by the party against whom such claim is made a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. If a person availing a loan before the expiry of the period of limitation for filing the suit acknowledges his liability in writing, then the lender gets a fresh period of limitation for filing the suit".**

13) The learned counsel for the applicant has relied on the judgment in the case of ***Kovuru Kalappa Devara Vs. Kumar Krishna Mitter and anr reported in AIR 1945 Madras 10***, wherein it is observed as under :-

**The language of Section 19 of the Act is clear that where there is an acknowledgement of liability the result which follows is that the fresh period of limitation shall be computed from the time when the acknowledgement was so signed. There can be no doubt we think that the learned District Judge is right also in holding that any suit based upon the original cause of action in 1930 is barred by limitation. In the result this appeal must fail and is dismissed with costs.**

14) In case in hand the acknowledgement is filed on record. It is signed on 15.09.2013. The limitation expires after three years from the date of signing of said acknowledgement, however, it appears that there is undertaking about payment of loan amount after three years therefore it requires consideration. The acknowledgement is denied by defendant as fabricated document then it becomes question of law and fact.

15) This court has observed in the case of ***Civil Revision Application No.367 of 2023 (Prasad Nandkumar Deshmukh Vs. Dhaku Navlu Aukirkar and ors.) decided on 09/07/2024:-***

"**In every case that is filed, objection raised under O.VII, R.11 has to be decided on the facts of the case pleaded in the suit plaint, cause of action and reliefs sought for. It cannot be stated by the Court that issue of limitation raised by Defendant cannot be decided at an**

> **early stage since it is a mixed question of fact and law as is done in the present case. If what is countenanced by the learned Trial Court is accepted, then provisions of O.VII, R.11 of the CPC will be rendered completely redundant".**

16) The Hon'ble Apex Court in the case of ***Salim D.Agboatwala and ors. Vs. Shamalji Oddhavji Thakkar and ors reported in (2021) 17 Supreme Court Cases*** in paragraph Nos.8 and 11 has observed under:-

> **8. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.**
>
> **11. As observed by this Court in P.V. Guru Raj Reddy vs. P. Neeradha Reddy And Others (2015)8 SCC 331, the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the**

**application under Order VII Rule 11".**

17) On perusal of plaint, it reveals that cause of action was counted from the date when legal notice was issued by plaintiff and the loan is denied by defendant by replying the said notice.

18) It is also observed by the Hon'ble Apex Court in the case of **Mongia Realty and Buildwell Private Vs.Manik Sethi reported in (2022) 11 SCC 5723.**

> **The issue as to whether the claim of the appellant is barred by limitation cannot be isolated from the nature of the transactions between the parties. In any event, whether the plea of the appellant as set up in paragraph 5 of the plaint is proved would depend upon evidence adduced at the trial. The course of action which was followed by the learned trial Judge of directing the parties to address arguments on the issue of limitation was irregular. The issue of limitation in the present case would require evidence to be adduced.**
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> **"In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the**

**question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976".**

19) Here in case in hand, the acknowledgement is disputed by the defendant. It requires examination of disputed facts. Whether limitation starts from date of expiration of period promised in acknowledgement will be decided only after the documentary and oral evidence.

20) As per the observations made by learned Apex Court it is mixed question of law and facts. It will be decided after the evidence, whether the document is fabricated, whether it is a promissory note and limitation starts from the date after giving undertaking. Considering above said observation the application stands dismissed.

21) Rule stands discharged.

(MRS.VRUSHALI V. JOSHI, J)


Kavita.