IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 07.01.2025	PRONOUNCED ON 10.03.2025

CORAM :

THE HON`BLE MR.JUSTICE K.KUMARESH BABU

A.No.4853 of 2024
in C.S.No.244 of 2023

1.Suganthan M

2.T.P.Mohandoss

3.Sudha M ... Applicants

vs.

S.Aparna ... Respondent

For Applicants :Mr.K.V.Babu
for Mr.R.Vasudevan

For Respondent :Mr.Sankara Narayanan
Senior Counsel
for Mr.N.P.Vijay Kumar

ORDER

The present application has been filed to reject the suit in C.S.No.244 of 2023.

2.Heard Mr.K.V.Babu, learned counsel on behalf of Mr.R.Vasudevan, learned counsel appearing on behalf of the applicants and Mr.Sankara Narayanan, learned Senior Counsel for Mr.N.P.Vijay Kumar, learned counsel appearing on behalf of the respondent.

3. Mr.K.V.Babu, learned counsel appearing for the applicant would contend that the present suit had been filed on the basis of various false vexatious allegations and concocted story clubbed with fabricated documents. He would submit that the plaintiff had cleverly drafted the plaint making a claim on the basis of a promissory note which had been executed by applicants/ defendants in the year 2018. Therefore, the suit which has been initiated in the year 2023 is hopelessly barred by limitation. He would take this Court to the averments in the plaint wherein it has been admitted that the promissory note had been executed as early as in the year 2018 and hence, would submit that the time line for filing the suit for recovery of money based upon the said promissory note would elapse by efflux of time on 07.06.2021.

4. He would further submit that the respondent/ plaintiff have attempted to rely upon a cheque that had been issued by the first applicant on 10.01.2023 as acknowledgment of liability of the applicants/ defendants to maintain the

suit. He would submit that any acknowledgment of liability would have to be given in writing and the claim that the defendants have given a cheque would not extend the period of limitation. He would submit that if the very same cheque had been given within the period of three years of limitation which came to an end on 07.06.2021, then it could be considered to be an acknowledgment of liability for extending the period of limitation.

5. He would submit that the cheque was issued much beyond the period of limitation and therefore the same cannot be also taken as an acknowledgement of liability. He would rely upon various judgement of the Hon'ble Apex Court in support of his contention. Relying upon the judgment reported in **AIR 1967 SC 935,** he would contend that there should be an admission or acknowledgment and that the such acknowledgment should be in respect of liability and it should have been made before the expiry of period of limitation and in writing.

6. Relying upon a judgment reported in **2020 (16) SCC 601**, he would contend that even by a clever drafting of the plaint, to bring in a cause of action within the period of limitation which is otherwise barred by law, have to be considered by this court. He would submit that the present facts of the case

there has been a clear lapse of limitation beyond which the plaint had been filed and the drafting of the plaint trying to bring in a future date on which the cheque was issued that too after the period of limitation is sought to be relied upon.

7. He would further submit that the said judgement also lays down the law that if a suit is clearly barred by limitation the same would also be rejected by this court in exercise of its power under Order 7 Rule 11 (e) of C.P.C. For the very same proposition he had also relied upon a judgement of the Hon'ble Apex Court reported in **2023 (5) CTC 60**.

8. He had also relied upon a judgement of the Hon'ble Apex Court reported in **2025 INSC 42**. Relying upon the said judgement, he would submit that the right to sue accrued when the cause of action arises. According to him a suit for recovery of money under a promissory note payable on demand would fall under Article 35 of the schedule to the limitation Act. The said Article prescribes a period of 3 years limitation and the time begins to run from the date of the promissory note. He would submit that in the present case the promissory note had been made on 08.06.2018 and on and from that date the period of limitation begins to kick in and would expire on 07.06.2021. In such

an event, any demand made or acknowledged after the period of limitation cannot extend the period of limitation. Therefore, he would submit by implication of section 9 of the limitation act the period of limitation had kicked in on the date of promissory note and continuous to run. He would submit that there is no acknowledgement of liability within the period of limitation or the payment alleged to be made by the first applicant on 10.01.2023 would also not help the respondent/ plaintiff, since, section 18 and 19 respectively prescribes that such acknowledgment of liability or the payment of amount should be made before the period of limitation expires. Any payment made thereafter, cannot be held to have given a new cause of action for the respondent/ plaintiff to maintain the suit within the period of limitation. Therefore, he prays this Court to allow the application and reject the plaint.

9.Countering his arguments, Mr.Sankara Narayanan, learned Senior Counsel appearing on behalf of the respondent would submit that the expiry of period of limitation fell during the Covid Pandemic which set in on 15.03.2020. He would submit that the Hon'ble Apex Court in suo moto **Writ Petition (Civil) No.3 of 2020** had excluded the period between 15.03.2020 and 28.02.2022 from computing the period of limitation and therefore, whatsoever the period that was left from 15.03.2020 would have to be counted from

01.03.2022 and that being so, the present suit is filed by the petitioner is well within the period of limitation. According to him even as per the admission of the learned counsel for the defendant, the period of limitation would end on 07.06.2021. The period from 15.03.2020 and 07.06.2021 would be almost 15 months and 27 days. If that period is counted from 01.03.2021, the first respondent/ plaintiff had filed the suit within the period of limitation.

10. The learned Senior Counsel would submit that without prejudice to the aforesaid contention that pleadings in the plaint not only the of cheque given by the first applicant/ first defendant has taken into account, but also an undertaking given by him that the said amount would be settled on or before 09.07.2023 is pleadings. The said undertaking according to him would be governed by Section 25 (3) of the Indian Contract Act, 1872. He would rely upon the communications of the first respondent addressed to the counsel for the plaintiffs, wherein, the applicants admitted to have handed over the cheque indicating that the final settlement would be done on or before 09.07.2023. He had also further relied upon an E-mail communication from the first applicant in reply to the Advocate's notice acknowledging the claim made in the reply statement that the applicants will settle the claim of the plaintiff on or before 09.07.2023. Therefore, he would submit that the claim of the plaintiff based

upon the promissory note coupled with the express statement made in the communications to honour their commitments on or before 09.07.2023 will fall within the four corners of provisions of Section 25 of the Indian Contract Act. Hence, he would submit that the cause of action for filing the suit would arise only on 09.07.2023 and hence, he would submit that the present suit is well within the period of limitation and if the claim of the applicant for limitation can only be deemed to be a mixed question of fact and law which could only be decided after the end of the trial. Hence, he prays this Court to dismiss the application.

11. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

12.The following is the cause of action as pleaded by the plaintiff in the following suit:

> *"24. The cause of action for the suit arises in Chennai where the plaintiff, defendant, and the property in dispute are located within the jurisdiction of this Hon'ble Court. The substantial cause of action arose within the jurisdiction of this Hon'ble Court. The payment of Rs.70 lacs was made form the ICICI Bank account of the plaintiff maintained at Cenotaph*

Road Branch and when sum of Rs. 84,90,950 was repaid as EMI partly and fully repaid on 19.11.2020 to ICICI Bank account of plaintiff at Cenotaph Road Branch and when further sum of Rs.10,000/- was paid on 10.01.2023 by the defendant to plaintiff and deposited in ICICI Bank account at R.A.Puram Branch and when the defendant acknowledged the debt and promise the repayment of the same on by 09.07.2023."

13. Admittedly, the demand of Rs.70,00,000/- indicated in the cause of action had been supported by the promissory note which has been listed as Plaint Document No.1. Further, the claim with regard to the payment of repayment to the Bank by the plaintiff on 19.11.2020 has been relied upon for cause of action. It is the pleadings in the plaint that for making the payment to the applicant/ defendant, he had taken a loan on the ICICI Bank, Cenotaph Branch and that he had repaid the said amount on 19.11.2020. In the considered view of this Court, the said date cannot be counted for the cause of action. However, the claim had been made by the defendants to pay the same of Rs.10,000/- on 10.01.2023 and had acknowledged the debt and promised repayment of the same on 09.07.2023. In support of such claim, the plaintiff has relied upon a communication by the applicants/ defendants, which is the reply to the legal notice issued by the counsel for the plaintiff.

14. A perusal of the said reply would indicate that the applicants/ defendants had informed the third parties on 09.01.2023 that the final settlement of the loan received by them under the promissory note would be made on 09.07.2023 and that they have reiterated that there is still 60 more days for settlement. The said document had been listed as Plaint Document No.5. Further reliance to the E-mail dated 04.05.2023 was also referred to by the learned Senior Counsel appearing for the applicant and the said E-mail has also been listed out in the plaint documents. A reading of the said E-mail would indicate that a further promise had been made by the first applicant that the final settlement will be done on or before 09.07.2023.

15. Admittedly, the money had been lent by the plaintiff to the defendants in the year 2018 for which they had executed a promissory note on 08.06.2018. The promissory note is a demand promissory note. As per the law of limitation the cause of action for filing the suit kicks in from the date of execution of the promissory note and therefore, the period of limitation expires on 07.06.2021 for the plaintiffs to initiate the suit on the basis of the said promissory note. The plaintiffs had not filed the suit before the expiry of the said date. However, it is the case of the respondent/ plaintiff that on

09.01.2023, the first applicant had issued a cheque for a sum of Rs.10,000/- and had promised to settle the dues under the said promissory note on or before 09.07.2023. A reliance had been placed by the learned Senior Counsel appearing of the applicant/ plaintiff on two communications dated 11.04.2023 and 04.05.2023 which had emanated from the defendants, wherein they had expressly stated that the amounts will be settled on or before 09.07.2023. It only *prima facie* concludes that there had been atleast an oral undertaking expressly by the defendants to settle the amounts on or before 09.07.2023.

16. In analysing the said factual scenario in conjunction with Section 25 of the Indian Contract Act, it could be seen that the plaintiffs right to sue can be counted on a fresh cause of action. Even though, the learned counsel appearing for the applicants/ defendants had contended that the payment of Rs.10,000/- would not attract Section 18 & 19 of the Limitation Act, thid Court is of the *prima facie* view that the undertaking given by the defendants to make good the payment on 09.07.2023 would clearly fall within the provisions of Section 25(3) of the Indian Contract Act. Hence, the issue of limitation that had been raised by the learned counsel for the defendants would be a mixed question of fact and law.

17. In such an event, this Court is of the view that the present application

need not be ordered and the issue of limitation can also be framed as an issue while dealing with the suit. In such view of the matter, the application stands dismissed with liberty to the applicants/ defendants to seek framing of issue on limitation. However there shall be no order as to costs.

10.03.2025

Index : Yes / No
Internet :Yes / No
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K.KUMARESH BABU.J.,

Gba

Pre-Delivery Judgment in
A.No.4853 of 2024
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10.03.2025

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K.KUMARESH BABU,J.

After pronouncement of order, the learned counsel appearing for the applicant/ defendant would submit that while if if an issue is framed with regard to limitation the said issue would have to be tried without being influenced by the order of this Court in this instant application.

Considering the fact that this Court had only given its *prima facie* view in the present application, it is made clear that the observations made by this court in the present application shall not have any bearing of the trial on the issue framed on limitation.

10.03.2025

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