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S.A(MD)No.699 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.09.2025

Pronounced on : 19.12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

**S.A(MD)No.699 of 2022
and
C.M.P(MD)No.10333 of 2022**

S.R.Gopala Krishnan

...Appellant/Respondent/
Defendant

Vs.

G.Nagarajan

...Respondent/Appellant/
Plaintiff

PRAYER :- This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 21.03.2022, made in A.S.No.59 of 2021 on the file of the I Additional District Judge, Madurai and to confirm the judgment and decree, dated 27.02.2018, made in O.S.No.952 of 2012 on the file of the Principal Sub Court, Madurai.

For Appellant : Mr.N.P.Ravichandran

For Respondent : Mr.K.Sudalaiyandi



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JUDGMENT

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This Second Appeal is preferred against the judgment and decree, dated 21.03.2022, made in A.S.No.59 of 2021 on the file of the I Additional District Court, Madurai, reversing the judgment and decree, dated 27.02.2018, passed in O.S.No.952 of 2012 on the file of the Principal Sub Court, Madurai.

2. The appellant is the defendant and the respondent is the plaintiff in O.S.No.952 of 2012 on the file of the Principal Sub Court, Madurai. The respondent/plaintiff filed the suit for recovery of money from the appellant/defendant.

3. For the sake of convenience, the parties are referred to as per their rank in O.S.No.952 of 2012 on the file of the Principal Sub Court, Madurai.

4. Case of the plaintiff:

The plaintiff and the defendant are relatives. The defendant was doing jewellery business. The defendant obtained loan of Rs.1,90,000/- on 01.09.2002 and another loan of Rs.1,50,000/- on 05.12.2002 from the plaintiff. The defendant acknowledged the same in a stamped pocket notebook.



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The defendant also borrowed a total sum of Rs.17,20,000/- on various dates from family members of the plaintiff. The defendant paid monthly interest for total loan of Rs.3,40,000/- upto 2004 as noted in the pocket notebook. Thereafter, the defendant has not paid any amount, in spite of efforts taken by the plaintiff, it went in vain. Instead, the defendant filed PCEIOP.No.20/2006 before the I Additional Sub Court, Madurai with allegation that the plaintiff claimed exorbitant interest for loan upto May 2006 and that the petition was filed on 20.10.2006. Therefore, the plaintiff filed this suit within three years from 20.10.2006, as the defendant acknowledged his loan in PCEIOP.No.20/2006.

5. Case of the Defendant:

The money transaction between the plaintiff and the defendant is deposit. So the trial Court has no jurisdiction when the Special Court under TNPID Act is functioning. The proceedings in PCEIOP.No.20/2006 are made to disclose the payment of exorbitant interest and to get back the documents from the plaintiff, it will not be an acknowledgment as defined in the Limitation Act. As per the plaint averment, the limitation ends in September 2005 for the first loan and ends in December 2005 for 2nd loan.



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The PCEIOP.No.20/2006 was filed on 20.10.2006. Hence, the suit is barred by limitation. The suit is liable to be dismissed.

6. During trial, on the plaintiff's side, two witnesses were examined as P.W.1 and P.W.2 and 5 exhibits were marked as Ex.A.1 to Ex.A.5. On the defendant's side, no witness was examined and no exhibit was marked.

7. The trial Court has framed the following issues:

(1) Whether the plaintiff is entitled to recover the suit amount from the defendant?

(2) To what other reliefs and costs?

7.1. Additional Issue:

Whether the suit is barred by Limitation Act, 1963?.

8. After hearing both sides, the learned Principal Sub Judge, Madurai, concluded that the suit is barred by limitation as defined in Section 18 of the Limitation Act and thereby dismissed the suit by passing judgment and decree dated 27.02.2018.



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9. Aggrieved by the judgment and decree in O.S.No.952 of 2012, the plaintiff preferred the first civil appeal in A.S.No.59 of 2021 before the I Additional District Court, Madurai. The first Appellate Court, after hearing both, passed the judgment, dated 21.03.2022, allowing the appeal in A.S.No.59 of 2021 and reversing the judgment and decree passed in O.S.No.952 of 2012, decreeing the suit in favour of the plaintiff.

10. Challenging the judgment and decree of the First Appellate Court, the defendant preferred this Second Appeal and the same has been admitted on 07.11.2022 on the following substantial questions of law:-

(i) Whether the suit was barred by limitation or not as per the mandatory provision of Section 18 of the Limitation Act or not?

(ii) Whether the Lower Appellate Court is correct in reversing the judgment and decree passed by the trial court?

(iii) Whether the limitation starts from the date of execution of Ex.P.1 or not?

11. Heard both side. Both side counsels have also filed their respective written arguments.



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12. The learned counsel for the appellant/defendant has submitted that the plaintiff alleged that the defendant obtained two loans on 01.09.2002 and 05.12.2002, the limitation period of three years ends on 01.09.2005 and 05.12.2005. It is further pleaded that the plaintiff received interest upto 2004, if so, the limitation ends with 2007. The plaintiff mainly relies on PCEIOP petition which was filed by the defendant on 20.10.2006 as if the defendant acknowledged the loan. In fact, that petition was filed to get back the documents. The acknowledgement for loan should be written within the limitation period. The defendant only made averments and prayed to direct the plaintiff to adjust the enormous interest amount paid by defendant towards loan and to return back all the documents. No pronote or agreement or even payment of interest made after 2004. Moreover, any acknowledgment should be in writing, and the averment made in the PCEIOP petition could not be held as an acknowledgement for loan. Moreover, the mother of the plaintiff has filed a suit for the same transaction by pleading as deposit. The first Appellate Court has also decided the present suit transaction as a deposit of the appellant. Further, the first Appellate Court relied on the decision of the **Kerala High Court** in **P.D.Pillai's case (AIR 1995 Ker.78)**, in that decision the defendant made payment on 20.04.1981 for the debt amount from 09.05.1979, so the



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limitation was extended, but in this case there is no amount paid by the defendant acknowledging the loan. The plaintiff pleaded as loan transaction, not for recovery of deposit. Hence, the judgment of **P.D.Pillai's case** will not be applicable to the facts of this case. Hence, the suit is purely barred by limitation as correctly held by the trial Court. Moreover, the plaintiff admitted in his evidence that he and his mother and sister made deposits to the defendant and his mother filed a suit in O.S.No.16 of 2008 for recovery of that deposit amount and hence, the plaintiff has no *locus standi* to file another suit for recovery of the same amount. In support of his argument, the learned counsel for the defendant relied on the following rulings:

- (1) AIR 1999 SC 1047 (Sampuran Singh and Others /v/ Nirajan Kaur & Others)***
- (2) 2019 (2) MWN (Civil) 738 Kone Elevator India Ltd., /v/ Hotel Padma Private Ltd.***

13. Per contra, the learned counsel for the respondent/plaintiff has argued that the defendant admitted the payment of interest upto 2006. Earlier the mother of the plaintiff filed suit on the very same ground after filing of PCEIOP petition of defendant, that suit was decreed and in the first appeal preferred by the defendant was dismissed by this Court holding that the



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averments made by the defendant in PCEIOP petition is a real and valid acknowledgement in respect of alleged transaction by relying on **Union of India /v/ Ibrahim Uddin** case of the Hon'ble Supreme Court reported in **2012 (8) SCC 148**. The plaintiff's counsel produced copy of the judgment of this Court, dated 23.04.2019, passed in A.S.(MD)No.163 of 2010 preferred by the defendant against the mother of the plaintiff. The facts of A.S(MD)No.163 of 2010 and this case are similar. Hence, the suit is not barred by limitation as rightly held by the first Appellate Court. The questions of law could not be decided in favour of the appellant as the suit was factually decided by the first Appellate Court based on the decision of this Court in A.S.(MD)No.163 of 2010. Therefore, this Second Appeal may be dismissed.

14. In reply, the learned counsel for the defendant submitted that in the suit filed by the mother of the plaintiff, it was held as deposit amount, whereas in this case, the plaintiff clearly pleaded as loan transaction, hence, the aforesaid decision of this Court in A.S(MD)No.163 of 2010 is not applicable to the facts of this case, and prayed to allow the Second Appeal.



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15. It is admitted by both sides that plaintiff and defendant are relatives.

The plaintiff has filed the suit for recovery of money by pleading as loan transaction taking on limitation from the filing of PCEIOP petition by the defendant. The defendant strenuously contended that the plaintiff cannot take the averment of PCEIOP petition as an acknowledgement of debt or liability and it was filed only to get back the documents from the plaintiff after adjusting payment made by the defendant towards exorbitant interest.

16. From the perusal of records, it is clear that not only the plaintiff, but his mother and sister have given amount to the defendant as deposit for receiving interest. The mother of the plaintiff already filed a suit for recovery of money on the basis of very same PCEIOP petition and the said suit was decreed in favour of his mother and also the appeal preferred by the defendant was dismissed by this Court. At this juncture, the defendant submitted that in the present suit, the plaintiff pleaded and let in evidence as loan transaction only, not as deposit, so the suit is barred by limitation. On perusal of pleadings and evidence of plaintiff as P.W.1 it is very clear that the suit is filed for recovery of loan transaction, so the plaintiff is estopped from claiming as deposit as held in earlier suit filed by his mother. Hence, the judgment passed



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by this Court in **A.S.(MD)No.163 of 2010** arisen out of suit filed by the mother of the plaintiff is not applicable to the facts of this case.

17. Hence, it is now to be considered whether the averment made in PCEIOP petition of the defendant is an acknowledgment as per provision of Section 18 of the Limitation Act.

18. Section 18 of the Act, 1963 deals with the effect of acknowledgment in writing, which reads as follows:-

"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 acknowledgement 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 of liability, a fresh period of limitation shall be computed from the time when the acknowledgment 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



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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 authorized 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."

19. Section 19 of the Act 1963, deals with the effect of payment on account of the debt for the purpose of calculating the period of limitation or of interest, which reads as follows:

"19. Effect of payment on account of debt or of interest on legacy.-



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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 acknowledgement 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 -

(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."

20. Section 18 of the Act, 1963 is corresponding to Section 14 of the Act, 1908, but with slight change. The word 'acknowledgment' is not a word of Art but an ordinary word. As held in various judgments, the essential ingredients of the Section are as follows:



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(a) It must be an acknowledgment or affirming admission of an accepting liability. But the acknowledgment need not directly refer to the liability sought to be enforced in the suit.

(b) It must be made by the person under the liability. The liability must relate to some debt or other application or to some property or right.

(c) The liability must be subsisting on the date of the acknowledgment; it must not have become barred, or satisfied, or destroyed.

(d) The acknowledgment must be made before the expiry of the period prescribed for a suit or application in respect of such property or right.

(e) The acknowledgment must be in writing.

(f) The acknowledgment must be signed.

(g) The signature must be of the party against whom such property or right is claimed, or of some person through whom he derives title or liability.

(h) The acknowledgment must not be vague or ambiguous.

(i) The surrounding circumstances are also relevant and can be taken into consideration in construing the words in which an acknowledgment said to have been expressed.



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21. Section 19 of the Act, 1963 is corresponding to Section 20 of the Act 1908 with a change in Clause (b). In order to get the benefit of an extended limitation the creditor has to prove

(1) that (a) there has been a payment; (i) on account of a debt, or (ii) on account of interest on a legacy; (b) before the expiration of the prescribed period; (c) by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf; and (2) that, except in the case of payment interest made before the 1st day of January, 1928, there is an acknowledgment of the payment in the handwriting of, or in a writing signed by the person making the payment.

22. The fundamental difference between the above said two provisions are as follows:

Under Section 18, there must be an acknowledgment of liability unaccompanied by part payment under Section 18. To invoke Section 19 there should be an endorsement regarding payment and signed by the concerned party. If there is a part payment which does not comply



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with the terms of Section 19, that cannot prevent the endorsement from operating as an acknowledgment within Section 18.

23. In the decision in **State of Kerala v. Chacko, 2000 (3) M.L.J. 135** (S.C.), the Hon'ble Supreme Court had an occasion to deal with the scope of Section 18 of the Limitation Act and held as follows:-

"From a perusal of Sub-section (1) of Section 18 it is evident that to invoke this provision:

(1) there must be an acknowledgment of liability in respect of property or right;

(2) the acknowledgment must be in writing signed by the party against whom such right of property is claimed (or by any person) through whom he derives his title or liability;

(3) the acknowledgment must be made before the expiration of the period prescribed for a suit or application (other than application for the execution of a decree) in respect of such property or right.

The effect of such an acknowledgment is that a fresh period of limitation has to be computed from the time when the acknowledgment was so signed.



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24. Therefore, it is now necessary to decide whether the averment made by the defendant in PCEIOP can be taken as an acknowledgment of liability. It is admitted by both parties that the defendant borrowed two loans on 01.09.2002 and 05.12.2002. The limitation ends on 01.09.2005 and 05.12.2005 without any acknowledgment. The plaintiff pleaded that the defendant has paid interest upto 2004 in a pocket notebook. Whiles, the limitation ends with 2007. But the plaintiff has not produced any document except Ex.A.1 - Pocket Notebook to substantiate the payment for subsequent interest by the defendant. Ex.A.1 reveals that the defendant made writings for the receipt of amount of Rs.1,90,000/- on 01.09.2002 and another amount of Rs.1,50,000/- on 05.12.2002. The plaintiff has filed the suit on 01.06.2009, which is beyond the period of three years from 2004. The plaintiff has submitted that the defendant has filed PCEIOP.No.20/2006 during October 2006, wherein he pleaded that the plaintiff claimed exorbitant interest and he paid the interest for the loan amount upto May 2006. The said petition has been marked as Ex.A.2. On perusal of Ex.A.2, it is clear that the defendant borrowed loans and he had regularly paid exorbitant interest at the rate of 36% p.a. upto May 2006, since the plaintiff collected exceeding 12% p.a. fixed by the TN Prohibition of



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Charging Exorbitant Interest Ordinance (Act, 33 of 2003) he sought relief for directing the plaintiff to adjust the enormous interest amount paid by the defendant towards loan and for directing the plaintiff to return back the original documents to the defendant.

25. As stated supra, the acknowledgment must be in writing and signed by the party accepting liability. But the averments made in the PCEIOP petition - Ex.A2 are that the defendant paid an excess amount towards principal and interest by paying exorbitant interest and disputing his liability to pay any amount towards principal or interest. In other words, the defendant categorically alleged that the debt has been satisfied and he has no liability to pay any debt. So the petition could not be taken as an acknowledgement. As the defendant has not admitted the liability for loan to the plaintiff and the plaintiff has not produced any other document to show that the defendant gave acknowledgement of debt by writing and by putting their signature before the expiry of the limitation period, the trial Court has correctly appreciated the evidence and held that the suit is barred by limitation, relying on the decision of the **Sampuran Singh** case reported in **AIR 1999 SC 1047**. It is settled principle of law that it is the duty of the Court that if a suit or



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appeal is filed beyond the limitation period, the same has to be rejected even without any evidence or pleading by the opponent party. The plaintiff alone has to establish his case by producing acceptable evidence. In this case, the plaintiff has not established that the defendant acknowledged the debt as well as liability before the expiry of limitation. As already discussed as per Section 18 of the Limitation Act "an acknowledgement of debt" means a legally subsisting debt and the liability to pay the debt. When a person contended that he already discharged the debt and he had no liability to pay the debt it cannot extend or revive the period of limitation.

26. From the facts of the case, the limitation starts from Ex.A.1, thereby the limitation ends with 2005, the suit is filed on 01.06.2009, which is hopelessly barred by limitation. So, the first Appellate Court is not correct in reversing the judgment of the trial Court. Therefore, the finding of the first Appellate Court warrants interference by this Court by way of Second Appeal. Hence, the questions of law framed in this appeal are answered in favour of the appellant/defendant. Thus, this Second Appeal succeeds.



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27. In the result, the Second Appeal is allowed. The judgment and decree dated 21.03.2022 made in A.S.No.59 of 2021 on the file of the I Additional District Court, Madurai, reversing the judgment and decree, dated 27.02.2018 passed in O.S.No.952 of 2012 on the file of Principal Sub Court, Madurai, is set aside. The judgment and decree of the trial Court passed in O.S.No.952 of 2012 is restored and the suit in O.S.No.952 of 2012 is dismissed. There will be no order as to costs.

19.12.2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The I Additional District Court,
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- 2.The Principal Sub Court,
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- 3.The Record Keeper,
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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
S.A(MD)No.699 of 2022
and
C.M.P(MD)No.10333 of 2022**

19.12.2025