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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **RFA 192/2022**

SATYA PRAKASH KANSAL, SOLE PROP. OF M/S NEW V. K. ELECTRICALS
668, Main Bazar, Tri Nagar
New Delhi-110035

.....Appellant

Through: Mr. Vedant Gupta and Mr. Kunal Singhal, Advocates.

Versus

RAJ KUMAR TIWARI
R/o H.No. B-7/95-96
Sector 3, Rohini, Delhi-85

.....Respondent

Through: Mr. Sunil Dutt Dixit, Mr. Utkarsh Anand and Mr. Avinash Kumar, Advocates.

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\+ **RFA 306/2022**

VINOD KUMAR KANSAL, SOLE PROP. OF M/S SHREE KRISHNA JEWELLERS
Office at 2722/203, Tri Nagar
New Delhi-110035

.....Appellant

Through: Mr. Kunal Singhal, Advocate.

Versus

HARSHIT TIWARI
R/o H.No. B-7/95-96

Sector 3, Rohini, Delhi-85

.....Respondent

Through: Mr. Sunil Dutt Dixit, Mr. Utkarsh Anand and Mr. Avinash Kumar, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **16.03.2026**

1. Two Appeals under Section 96 read with Order XLI of CPC have been filed on behalf of the respective Appellants against the Judgments and Decrees dated 15.12.2021 and 22.03.2022 passed in CS DJ Nos.444/2020 and 765/2019 respectively, whereby the Suits of the Plaintiff for recovery of Rs.4,98,760/- and Rs.4,50,000/- respectively, along with interest, have been *rejected under Order VII Rule 11 of CPC.*

2. As per the case of the Plaintiff / Appellant, he had filed the Suits for Recovery of Rs.4,98,760/- and Rs.4,50,000/- respectively, against the Defendant / Respondent on the averment that both the parties were known to each other and were on visiting terms. In the first week of November, 2016, upon the request of the Defendant / Respondent for a friendly loan of the aforesaid amounts for a period of one year, the Plaintiff had advanced Rs.4,98,760/- through RTGS, Bank of Baroda, Ashoka Park Main, Rohtak Road, New Delhi Branch on 18.11.2016 and Rs.4,50,000/- by way of cheque drawn on Bank of Baroda, Ashoka Park Main Rohtak Road, New Delhi Branch on 18.11.2016. The Defendant had assured that he would return the loan amount within one year, i.e. till November, 2017.

3. When the Appellant contacted the Respondent in November, 2017, the Respondent again assured repayment, but despite repeated requests, the

Respondent failed to repay the loan amount. A Legal Notice dated 06.11.2019 was served upon the Respondent, despite which the amount was not paid. *Hence, the Suits for Recovery were filed.*

4. The Respondent in respective suits, filed an Application under Order *VII Rule 11 CPC* claiming that the Suits filed by the Plaintiff *were barred by limitation.* The amount had been encashed on 18.11.2016, whereas the Suits were filed on 30.09.2020 and 27.11.2019 respectively, which was beyond the period of limitation.

5. The Application were allowed and *vide* the impugned Judgments and Decrees dated 15.12.2021 and 22.03.2022 respectively, the Suits of the Plaintiff were rejected as being barred by limitation. Aggrieved by the aforesaid Judgments, the present Appeals have been preferred.

6. **The main ground of challenge** is that while considering the Application, the learned District Judge has considered the defence raised by the Defendant / Respondent in the Written Statement, which is contrary to Order VII Rule 11 of CPC, under which the defence of the Defendant cannot be considered at that stage.

7. Furthermore, it is contended that *Article 19 of the Schedule to Limitation Act* is not applicable to the facts and circumstances of the present case. It is submitted that the loan, though disbursed on 18.11.2016, was repayable within one year, i.e., by November, 2017, and despite repeated requests, the Defendant failed to repay the same. According to the Plaintiff, in the absence of any written Agreement stipulating the exact date of repayment, would be governed by the residuary provision, i.e. Article 113 of the Limitation Act.

8. It is further submitted that the loan was repayable on demand and that

a demand for repayment was made, and upon failure of the Defendant to comply, a **Legal Notice dated 06.11.2019** and therefore, the period of limitation is liable to be computed, from the said date. It is, therefore, urged that in terms of Article 113 of the Limitation Act, the period of limitation would commence from the date when the cause of action accrued i.e. from the day when Legal Notice was served upon the Defendant. The Suits, having been filed on 30.09.2020 and 27.11.2019, are within the period of 03 years from the date of accrual of cause of action and are, therefore, filed within the period of limitation.

9. The Plaintiff/Appellant has asserted that Article 113 of the Schedule to the Limitation Act is applicable and that the 3-year period for filing the Suit for recovery has to be reckoned from the date when the cause of action accrues.

10. Reliance is placed on the case of *Shakti Bhog Food Industries Limited vs. The Central Bank of India & Anr*., Civil Appeal No.2514/2020, wherein it has been held that the right to sue under Article 113 of the Schedule of the Limitation Act, 1963, would arise not merely when the right to sue first accrues, but when there is a clear and unequivocal threat of infringement of rights.

11. It is contended that the aforesaid aspect has not been appreciated by the learned District Judge, while rejecting the Suits. Hence, it is prayed that the impugned Judgments be set aside and the Suits be restored for trial on merits.

12. The **Respondent/Defendant** had taken a plea that the period of limitation of 3 years, when reckoned from the date on which the loans were granted, i.e. 18.11.2016, renders the Suits barred by limitation in terms of

Article 19 of the Schedule of Limitation Act.

13. ***Learned counsel for the Respondent*** has further submitted that on identical averments, nine Suits for recovery had been filed in respect of nine loans which were allegedly advanced by the Plaintiffs/Appellants to the Respondent and his other family members. A batch of Five Suits so filed, have been rejected under Order VII Rule 11 CPC, except two Suits, wherein, Appeals were preferred in C.R.P. 10/2022 titled as *Raj Kumar Tiwari HUF vs. Satya Prakash Kansal*, wherein the Co-ordinate Bench of this Court, dismissed the Suits under Order VII Rule 11 CPC. The present two Suits also form part of the same batch of those nine Suits, in which the Applications under Order VII Rule 11 of CPC have been allowed.

14. Thus, there is no merit in the present Appeals, as they are barred by limitation under Article 19 of the Schedule to the Limitation Act.

Submissions heard and record perused.

15. It was the case of the Plaintiffs/Appellants that sums of Rs.4,98,760/- and Rs.4,50,000/- respectively in the two Suits, were advanced as friendly loan, which was transferred through RTGS and cheque respectively on 18.11.2016. The Defendant/Respondent had assured that he would return the loan within one year, i.e., till November, 2017.

16. The Suits were filed on 30.09.2020 and 27.11.2019. The short question that arises for consideration is whether the Suits are within the prescribed period of limitation. *Article 19 and Article 113 of the Limitation Act reads as under:-*

A. 19.	***For money payable for money lent.***	***Three years.***	***When the loan is made.***

A. 113.	***Any suit for which no period of limitation is provided elsewhere in this Schedule.***	***Three years.***	***When the right to sue accrues.***

17. The short controversy in the present case is whether Article 19 or Article 113 of the Schedule to the Limitation Act, is applicable. Article 19 provides *that "for money payable for money lent, a period of 03 years has been prescribed from the date when the loan is made".* Article 113 prescribes that *a period of 03 years of limitation* ***from the date when the right to Sue accrues****, in those Suits where there is no limitation prescribed elsewhere.* The Appellant has claimed that it is Article 113 of the Schedule to the Limitation Act, which is applicable.

18. In the present case, it is not disputed that the loans were advanced by the Appellant on 18.11.2016. In terms of **Article 19** of the Schedule to the Limitation Act, the period of limitation is three years from the date ***when the loan is made***. Accordingly, the Suits ought to have been instituted within a period of 03 years, i.e., on or before 17.11.2019. However, the Suits having been filed on 30.09.2020 and 27.11.2019 respectively, are therefore, patently barred by limitation, in terms of Article 19 limitation Act.

19. The main contention of the Plaintiff/Appellant is that there was a specific averment that the loan was liable to be returned by November, 2017 and, therefore, the limitation should be computed from November, 2017, as per Article 113.

20. This question was specifically considered by the Bombay High Court in *Mortulo Ramchandra Gad v. John Pinto* 2006 SCC OnLine Bom 798, wherein similar facts were under consideration. It was held that *limitation in*

a Suit for recovery on the basis of loan, shall be 03 years from the date when the loan was first given. While the Plaintiff had alleged that the loan was to be returned on demand, it was held that in the absence of any evidence to the contrary, such assertion/ alleged date of payment of loan, cannot be relied upon, for the purpose of calculation of limitation.

21. The facts in the present case are similar to those in *Mortulo Ramchandra Gad* (supra) and the limitation in terms of Article 19 has to be calculated from the date of advancing the loan, i.e. 18.11.2016 and the same cannot be extended by merely asserting that the loan was to be repaid within one year, in the absence of any documentary proof.

22. The learned Trial Court has rightly rejected the Suits under Order VII Rule 11 CPC.

23. There is no merit in the present Appeals, **which are hereby dismissed**. The pending Applications, if any, also stand disposed of.

NEENA BANSAL KRISHNA, J.

MARCH 16, 2026
R/N