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

Date of Decision: 09.04.2025

\+ **C.R.P. 9/2022 & CM Appls.5673/2022, 44547/2022**

SUKHDEV TIWARI .....Petitioner

Through: Mr. Sunil Dutt Dixit and Ms. Gauri Dixit, Advs.

versus

SATYA PRAKASH KANSAL .....Respondent

Through: Mr. Bhagwat Prasad Agarwal and Mr. Ramesh Kumar Agarwal, Advs.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugning the order dated 17.12.2021 [hereinafter referred to as "Impugned Order"] passed by the learned ADJ (North-West), Rohini Courts, Delhi. By the Impugned Order, the Application filed by the Petitioner under Order VII Rule 11 read with Section 151 of the CPC has been dismissed.

2. Learned Counsel for the Petitioner submits that the Respondent has filed a suit for recovery in the sum of Rs. 4,97,420/- along with interest which suit, admittedly was filed on 05.10.2020.

2.1 Learned Counsel for the Petitioner further submits that the loan transaction took place between the parties on 22.11.2016 by way of an RTGS transfer from the Respondent to the Petitioner. He further submits that the limitation to file the suit would have been three years from the date

of the transaction and thus, the suit which was filed in the year 2020 was barred by limitation.

2.2 Learned Counsel for the Petitioner relies on the judgment passed by the Bombay High Court in ***Mortulo Ramchandra Gad (since dec.) through LR's & Ors. v. John Pinto (since deceased) through LR's & Ors.***[1] in support of his contentions.

3. Learned Counsel for the Respondent, on the other hand, admits that the transaction did take place on 22.11.2016, however, he submits that the amount was liable to be returned within one year and that since it was not returned, legal notice was sent by the Respondent to the Petitioner on 06.11.2019. Thus, the limitation is to be calculated from the date of legal notice.

3.1 In support of his contentions, learned Counsel for the Respondent relies on Article 113 of the Schedule to the Limitation Act, 1963 [hereinafter referred to as "Act"] to submit that the cause of action accrued when the legal notice was sent.

4. The learned Trial Court has given a finding in the Impugned Order that since the Petitioner has assured that the money would be returned to the Respondent within a year i.e., in November, 2017 with interest, hence the suit was filed within limitation, dismissing the Application under Order VII Rule 11 of the CPC.

5. A Coordinate Bench of this Court had on 01.02.2022 while issuing notice in the matter had directed both the Respondent and his brother Mr,

[1] 2006 SCC OnLine Bom 798

Vinod Kumar Kansal to appear before the Court to record their statements under Order X of the CPC. The record reflects that these statements were not recorded however, the Respondent filed a Reply to this Petition re-iterating the plaint and the fact that the loan was to be paid within one year i.e. in November, 2017 and thus, the suit was within time.

6. Learned Counsel for the Respondent has relied on Article 113 of the Schedule to Act to submit that the limitation in the present case would be three years from the re-payment date in November, 2017 making the suit within limitation.

6.1 This Court is unable to agree. A plain reading of Article 113 of the Act shows that Article 113 is applicable only in the case where the period of limitation is not provided elsewhere in the Schedule to the Act. It is apposite to extract Article 113 of the Act which is set out below:

Article No	***Description of Suit***	***Period of Limitation***	***Time from which period begins to run***
113	*"Any suit for which no period of limitation is provided elsewhere in this Schedule.*	*Three years*	*When the right to sue accrues.*

7. It is undisputed that the money was lent to the Petitioner by the Respondent. The factum of money being paid by an online transaction on 22.11.2016 is also not disputed.

8. A simpliciter suit for recovery of money is covered by Article 19 of the Act. It is apposite to extract Article 19 of the Schedule to the Act, which is set out below in this behalf:

Article No	***Description of Suit***	***Period of Limitation***	***Time from which period begins to run***
19	*For money payable for money lent*	*Three years*	*When the loan is made.*

8.1 Thus, the amounts which were lent on 22.11.2016 were to be repaid by the Respondent in terms of Article 19 of the Act within a period of three years from the date the loan was made.

8.2 A Coordinate Bench of this Court in the case of ***RMS Consultants Pvt. Ltd. v. Proactive Universal Trading Pvt. Ltd. & Anr.***[2], has held that there is no date fixed for repayment of the loan, a period of three years of limitation commences from the date of grant of loan as per Article 19 of the Act. The relevant extract of the ***RMS Consultants Pvt. Ltd.*** case is below:

> "*7. It is seen that by the suit plaintiff seeks recovery of Rs. 4,89,35,000/- advanced by the plaintiff to the defendant no. 1. Plaint, in my opinion, deliberately does not give the dates when the different amounts totaling to Rs. 4,89,35,000/- were advanced, inasmuch as, factually it is seen that the amount which totalled to a sum of Rs. 4,89,35,000/- by the plaintiff in favour of the defendant no. 1 are with respect to drawing of entries commencing from the year 2008 with the last entry being dated 17.11.2012, and as seen from the copy of the account filed by the plaintiff as a document.* ***The present suit is admittedly filed on 19.11.2015 i.e., well beyond the period of the last entry, taking the same reflecting advance made by plaintiff to defendant no. 1, which is actually dated 19.10.2012. In law, once there is no date fixed for repayment of the loan, a period of three years of limitation commences from the date of grant of loan as per Article 19 of the Limitation Act, 1963. With respect to loans given of the year 2008 the suit is barred by limitation because it had to be filed by the year 2011*** *and considering even all the entries by which loans have been given by the plaintiff to the defendant no. 1, and the last entry of payment to the defendant no. 1 being dated 19.10.2012, the present suit which is filed on 19.11.2015 is in fact beyond three years of the last entry, what to talk of earlier entries which are of around 4-8 years earlier. Therefore, the suit is also otherwise barred by limitation."*
>
> [Emphasis Supplied]

[2] 2018 SCC OnLine Del 8550

9. In the present case, since the money was lent on 22.11.2016, the period for limitation to initiate the proceedings would commence when the loan was made.

10. The only contention raised by the Respondent is that the limitation stood extended in terms of Section 18 of the Limitation Act. Section 18 of the Act provides that a fresh period of limitation is computed if there is an acknowledgment of liability before the expiration of the prescribed period of limitation. The acknowledgement, however, has to be in writing.

10.1 Section 19 of the Act further provides that where payment on account of debt is made before the expiration of the prescribed period of limitation by the person liable to pay the debt or his agent authorized in this behalf, a fresh period of limitation shall be computed from time to time. It is apposite to extract Section 18 and 19 of the Act below:

> *"**Section 18***
> ***18. Effect of acknowledgment 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 acknowledgment was so signed.*
>
> *(2) Where the writing containing the acknowledgment 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 acknowledgment 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.

Section 19

19. Effect of payment on account of debt or of interest on legacy *— 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 acknowledgment 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."

11. A Division Bench of this Court in the case of ***International Breweries (P) Ltd. v. Kalpana International Breweries Ltd.***[3], has clarified that for limitation to be extended, there must be a clear statement of acknowledgment of liability even if there is no promise to pay. It was held that:

"27. The word "acknowledgment" under Section 18 of the Limitation Act has been explained in the case of Food Corporation of India v. Assam State Cooperative Marketing & Consumer Federation Ltd. [(2004) 12 SCC 360]. It has been held that an acknowledgment of a liability within the meaning of Section 18 of the Limitation Act need not be accompanied by a promise to pay either expressly or even by implication. The words used in an acknowledgment must indicate the existence of jural relationship between the parties of a debtor and a creditor. So long as the statement amounts to an admission acknowledging the existence of a liability, it shall have the effect of extending limitation. The relevant extract is below:

[3] 2024 SCC OnLine Del 9466

"14. According to Section 18 of the Limitation Act, an acknowledgement of liability made in writing in respect of any right claimed by the ***opposite party and signed by the party against whom such right is claimed made before the expiration of the prescribed period for a suit in respect of such right has the effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed. It is well settled that to amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication.***

15. The statement providing foundation for a plea of acknowledgement must relate to a present subsisting liability, though the exact nature or the specific character of the said liability may not be indicated in words. The words used in the acknowledgement must indicate the existence of jural relationship between the parties such as that of debtor and creditor. The intention to attempt such jural relationship must be apparent. However, such intention can be inferred by implication from the nature of the admission and need not be expressed in words. ***A clear statement containing acknowledgement of liability can imply the intention to admit jural relationship of debtor and creditor. Though oral evidence in lieu of or making a departure from the statement sought to be relied on as acknowledgement is excluded but surrounding circumstances can always be considered.*** *Courts generally lean in favour of a liberal construction of such statements though an acknowledgement shall not be inferred where there is no admission so as to fasten liability on the maker of the statement by an involved or far-fetched process of reasoning. (See Shapoor Freedom Mazda v. Durga Prosad Chamaria [AIR 1961 SC 1236] and Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd. [(1971) 1 SCC 67 : (1971) 2 SCR 623]) So long as the statement amounts to an admission, acknowledging the jural relationship and existence of liability, it is immaterial that the admission is accompanied by an assertion that nothing would be found due from the person making the admission or that on an account being taken something may be found due and payable to the person making the acknowledgement by the person to whom the statement is made.*

[Emphasis is ours]"

[Emphasis supplied]

12. It is apposite to set out the extract of the plaint which sets out the

averments applicable below:

> *"3. That in the first week of November'2016, defendant, approached plaintiff, that defendant is in urgent need of money and requested him to give a friendly loan of it Rs.4,97,420/- (Rupees Four Lakh Ninety Seven Thousand Four Hundred Twenty only) for some personal needs for one year. As defendant is having a very cordial relation with plaintiff. The plaintiff after considering defendant's request, managed and advanced a friendly loan of Rs. 4,97,420/- (Rupees Four Lakh Ninety Seven Thousand Four Hundred Twenty only) on 22.11.2016 through RTGS from Bank of Baroda, branch at Ashoka Park Main, Rohtak Road, New Delhi-110035.*
>
> *4. That at the time of receiving the said friendly loan amount of Rs.4,97,420/-(Rupees Four Lakh Ninety Seven Thousand Four Hundred Twenty only) defendant assured plaintiff that he will return the said amount to plaintiff within one year i.e. in November 2017 and stated that defendant will pay the said amount with interest to the plaintiff.*
>
> *5. That after one year in month of November 2017, plaintiff contacted defendant and requested to repay the said friendly loan amount, on which defendant told to plaintiff that defendant's financial condition is not good and he requested for further time to repay the said loan amount. The defendant further assured to plaintiff that. he will repay the said friendly loan amount in another one year.*
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> *6. That thereafter in month of November 2018, plaintiff again contacted defendant and requested to repay the said friendly loan amount, on which defendant further told to plaintiff that till defendant's financial condition is not good and he requested for further time to repay the said friendly loan amount. The defendant further assured to plaintiff that he will repay the said friendly loan amount in May 2019.*
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> *…*
>
> *9. That as the defendant failed to pay the said friendly loan amount, the plaintiff through his counsel got issued a legal notice dated 06.11.2019 to the defendant by speed post, calling upon him to pay the said sum of Rs.4,97,420/-(Rupees Four Lakh Ninety Seven Thousand Four Hundred Twenty only) towards the friendly loan amount. The notice has been duly served upon the defendant. The copy of legal notice along with speed post receipts and tracking reports are annexed herewith.*
>
> *…*
>
> *11. That cause of action arose in favour of the plaintiff and against the defendant on 18.11.2017 when said friendly. loan amount is due for return. It further, arose in November 2018 when plaintiff demanded the due amount from defendant. It further arose in May 2019 when the plaintiff again demanded the due amount from the defendant. It further arose when*

plaintiff sent a legal notice dated 6/11/2019 through his counsel, which was duly served upon him. It further arose when defendant failed to repay the due amount after receiving the legal notice. The cause of action is still continuing and subsisting."

13. A reading of the above shows that there is no averment made by the Respondent in the Plaint, which would extend limitation and give effect to compute a fresh period of limitation. In addition, the learned Counsel for the Respondent is unable to show us any document which would extend the limitation period in accordance with the Act.

14. The Supreme Court in the case of ***Dahiben v. Arvindbhai Kalyanji Bhanusali***[4], has held that where the plaint is barred by law, it should be dismissed at the threshold. The relevant extract of ***Dahiben*** case is below:

*"**23.** We have heard the learned counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.*

***23.1.** We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:*

*"**11. Rejection of plaint**.—The plaint shall be rejected in the following cases—*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

[4] (2020) 7 SCC 366

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

(emphasis supplied)

23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. *In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)*

"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.""

[Emphasis Supplied]

15. In the present case, the suit filed is a simpliciter suit for recovery of money which was advanced as a friendly loan. Concededly, the loan was advanced by the Respondent to the Petitioner on 22.11.2016 and the Suit for Recovery was filed on 05.10.2020.

16. Limitation is usually a mixed question of law and fact. The Supreme Court has in the case of ***Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle*** [5] held that limitation is a mixed question of fact and law and in cases where it is glaring from the averments of the plaint that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief in an Application under Order VII Rule 11, CPC since forcing the defendants to undergo the ordeal of leading evidence would cause more harm to the defendants. The relevant extract of ***Shri Mukund Bhavan Trust*** case is below:

> " ***26. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court.*** *We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by the Respondent No. 1 in the Plaint as mandated by Order VII Rule 11(d) of CPC.* ***The spirit and intention of Order VII Rule 11(d) of CPC is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold***."
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> [Emphasis Supplied]

16.1 However, limitation being a mixed question of facts and law would be

[5] 2024 SCC OnLine SC 3844

required to be adjudicated only when such facts are pleaded in the plaint which would entail such an enquiry. However, no such facts have been pleaded by the Respondent.

17. In any event, the only finding of the learned Trial Court in the Impugned Order is that since there was an assurance that the loan will be returned in a year, the suit filed is within time. The following extract is relevant:

> *"This is a suit for recovery pending since September 2020, wherein issues are yet to be settled.* ***As per the contents of the plaint, the loan was advanced to the defendant on 22.11.2016 and the defendant had assured the plaintiff to return the same within one year. Meaning thereby, it was to be returned to the plaintiff by 21.11.2017****. So, the suit is found to have been filed within the period of limitation.* ***The application is accordingly dismissed being devoid of merits.*** *"*
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> [Emphasis Supplied]

17.1 This is contrary to the provisions of Article 19 of the Schedule to the Act. In terms of Article 19 of the Schedule to the Act the prescribed period for limitation would be three years from the date the loan amount was advanced i.e., 22.11.2016 and the suit was filed in the year 2020.

18. Accordingly, the Application under Order VII Rule 11 of the CPC is allowed. The Impugned Order dated 17.12.2021 is set aside. The Plaint is rejected as being barred by limitation.

19. The Petition is disposed of in the aforegoing terms. Pending Application shall stand closed.

20. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

APRIL 9, 2025/r/ *ha*

Click here to check corrigendum, if any