



201 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.3654 of 1999 (O&M)
Date of decision : 06.03.2025**

Smt. Swarn Sethiappellant

Versus

Punjab and Sind BankRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Bhag Singh, Advocate
for the appellant.

None for the respondent.

PANKAJ JAIN, J. (ORAL)

Defendant is in second appeal aggrieved of judgment and decree passed by Additional District Judge, Gurgaon, dated 26.05.1999 whereby suit filed by the plaintiff for recovery of Rs.19,550/- along with interest thereon has been decreed reversing the judgment and decree passed by the Trial Court.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the defendant and the respondent as the plaintiff.

3. Plaintiff filed suit for recovery of Rs.19,550/- including interest calculated up to 31.03.1995 claiming that defendant approached the plaintiff/Bank for financial assistance to run his shop. A loan of Rs.4,000/- was advanced to her on 24.09.1981. Plaintiff further claimed that defendant



agreed to pay an interest @ 16.15% per annum with quarterly rests. Agreement of hypothecation was entered on 24.09.1981 as per which defendant agreed to pay penal interest as well. As per plaintiff, defendant further executed demand promissory note for a sum of Rs. 4,338.98 paise on 29.06.1984 and confirmed the balance of Rs.4,349.83 paise on 08.10.1984. She again executed a letter of confirmation on 12.10.1991 and a promissory note for Rs.12,635/-. Instant suit was filed on 10.04.1995.

4. Suit was contested by the defendant. She admitted of having availed loan facility but claimed that the loan amount was paid back. Nothing was due to be paid by her.

5. On the basis of the pleadings, suit filed by the plaintiff was put to trial, framing the following issues:

- 1) Whether suit is filed by a duly authorised person? OPP.
- 2) Whether plaintiff bank has advanced loan of Rs.4000/- to the defendant on 24.9.81? OPP.
- 3) If issue no.1 is proved, what is the agreed rate of interest? OPP.
- 4) Whether suit is not maintainable in the present form?OPD.
- 5) Whether plaintiff has no locus-standi to file the suit?OPD.
- 6) Whether suit is time barred? OPD.
- 7) Relief.

6. Trial Court decided issues No.1, 2, 3, 4 and 5 in favour of the plaintiff and against the defendant. While returning finding on issue No.6, however, Trial Court held that the loan was contracted on 24.09.1981. Promissory note Exhibit P10, was executed by defendant on 29.06.1984.



Thereafter, promissory note was executed only on 10.12.1991. It being beyond the period of three years commencing from 29.06.1984, the suit of the plaintiff was not filed within the prescribed period of limitation. The suit being barred by time deserved dismissal.

7. Dissatisfied plaintiff, approached the Lower Appellate Court impugning judgment and decree passed by Trial Court.

8. While reversing finding on issue No.6, Lower Appellate Court held as under :

12. Counsel for defendant however submitted that even counted from 10.12.1991, the date of documents Ex.P13, Ex.P14 and Ex.P16, the suit is barred by limitation as the same was instituted on 8.4.1995 i.e. after expiry of limitation period of three years from date of said documents.

This argument is also un-sustainable because the defendant also executed balance confirmation letter Ex. P15 on 17.6.1992. Computed from the date of this document suit as well within limitation of three years. Counsel for defendant-appellant submitted that document Ex. P15 is beyond pleading and, therefore, cannot be looked into. This argument is also devoid of merit because the plaintiff in para.No.5 of the plaint specifically pleaded that the defendant executed documents on 10.12.1991 and thereafter, the amount was confirmed. So it has been pleaded in the plaint that subsequent to execution of 10.12.1991, documents dated the defendant again executed balance confirmation letter which is Ex. P15 dated 17.6.1992 and so it cannot be said to be beyond pleadings and the same 18 rather according to the pleadings it is specifically pleaded in the plaint that the defendant had executed such a balance confirmation letter after 10.12.1991. It is true that date of letter Ex. P15 has not been mentioned in the plaint, but the factun of its execution has been specifically mentioned in the plaint and even its photocopy was produced with the plaint. So, this



document cannot be said to be beyond pleadings and it brings the plaintiff's suit well within limitation.

9. Mr. Bhag Singh, Advocate counsel for the appellant while attacking the findings recorded by the Courts below, submits that even if Exhibit P-13 dated 10.12.1991 is treated to be a contract to pay time barred debt, present suit filed on 10.04.1995 is beyond the period of limitation as balance confirmation letter dated 17.06.1992-Exhibit P-15 would not extend the period of limitation to recover time barred debt.

10. I have heard counsel for the appellant and have carefully gone through records of the case.

11. The issue involved relates to effect of promissory note dated 10.12.1991 (Exhibit P-13) and the balance confirmation letter dated 17.06.1992 (Exhibit P-15).

12. Evidently, after defendant executed demand promissory note Exhibit P-10 on 29.06.1984 and hypothecation letter of even date, Exhibit P-12, she executed balance confirmation letter dated 08.10.1984 (Exhibit P-11). Thereafter, no document was executed till 10.12.1991 (Exhibit P-13). On 10.12.1991 vide Exhibit P-13, she promised to pay time barred debt of Rs.12,635/-.

13. Section 25 of the Indian Contract Act, 1872 deals with promise to pay a debt barred by law of limitation. The same reads as under :

25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something



done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—

- (1) it is expressed in writing and registered under the law for the time being in force for the registration of 1 [documents], and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless
- (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless;
- (3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

13.1. The import of the provision has been illustrated by way of illustrations appended to the provision. Illustration (e) reads as under :

Illustrations

- (a) xxx
- (b) xxx
- (c) xxx
- (d) xxx



(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

14. Accordingly, Exhibit P-13 falls within the ambit of ‘contract’. Counsel for the appellant also admits that Exhibit P-13 is a valid promise to pay time barred debt. Hence, a fresh limitation commenced from 10.12.1991 i.e. on execution of Exhibit P-13. The next document executed by the defendant is balance confirmation letter dated 17.06.1992, Exhibit P-15. Counsel for the appellant submits that Exhibit P-15 does not extend limitation.

15. In the considered opinion of this Court, balance confirmation letter Exhibit P-15 amounts to acknowledgment in writing. Effect thereof on the limitation to prefer suit would be governed by Section 18 of the Limitation Act, 1963 which reads as under:

“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.”

(emphasis supplied)

6. Thus, in view of Section 18 of the Limitation Act, on execution of Exhibit P-15, dated 17.06.1992, the cause of action in favour of the plaintiff got new lease of life. A fresh period of limitation needs to be computed from the time when Exhibit P-15 was signed by the defendant i.e. 17.06.1992. In view thereof, the present suit instituted on 10.04.1995 is well within the period of limitation. No exception can be taken to the finding recorded by the Lower Appellate Court on issue No.6 holding the suit filed by the plaintiff/respondent to be within the period of limitation.

17. In view of above, the instant appeal sans merit and is ordered to be dismissed. Judgment and decree passed by the Lower Appellate Court is ordered to be maintained.



18. Pending application(s), if any, shall also stand disposed off.

March 06, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes