

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

RSA-1427-2012 (O&M)**M/s Ram Ji Dass & Co.****.....Appellant****Vs.****M/s Mahalakshmi Rice and General Mills and Ors.****.....Respondents**

**Reserved on: 27.01.2025
Pronounced on: 03.02.2025****CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued By:- Ms. Rupinder Kaur, Advocate
for the appellant.

Mr. Anish Verma, Advocate for
respondent Nos.1 and 2.

Mr. APS Rehan, Advocate for
respondent No.3.

DEEPAK GUPTA, J.

Plaintiff of the suit is before this Court in the present Regular Second Appeal against concurrent findings of the Court below, inasmuch as suit filed by the said firm for recovery has been dismissed by the trial Court on 25.09.2009 and the appeal filed by it (*plaintiff-appellant firm*) was dismissed by the first Appellate Court on 06.06.2011.

2. Trial record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3. Plaintiff is a partnership concern running its business of commission agents at Mandi Mallian Kalan, Tehsil Nakodar, District Jalandhar. Defendant No.1 is a firm, with defendant Nos.2 and 3 as its partners, which used to purchase paddy from the plaintiff on credit basis. According to plaintiff, it supplied paddy to the defendants in the year 1998

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worth ₹17,36,342.31/-, out of which defendants have paid ₹7,52,000/- to the plaintiff through various cheques and cash up to January, 2000 and that an amount of ₹9,84,342.31/- was still due and outstanding against the defendant, which had not been paid despite repeated requests. By adding interest of ₹5,23,292/- to this principal amount, plaintiff sought decree for recovery of ₹15,07,634.31/- along with pendente lite and future interest.

4. Defendants contested the suit by raising various preliminary objections, the material being that suit was barred by limitation. On merits, it was submitted that paddy of the plaintiff was of different varieties belonging to different farmers and thus, was of inferior quality. Defendants also denied having made payment to the plaintiff on 10.01.2000. They further denied that any interest was settled between the parties. Prayer was made for dismissal of the suit.

5. Necessary issues were framed. Evidence produced by the parties was taken on record.

6.1 Trial court, on the basis of evidence produced by the parties found that defendants used to purchase paddy from the plaintiff in 1998 and that an amount of ₹9,84,342.31/- was outstanding against the defendant payable to the plaintiff. However, suit was held to be barred by limitation by observing that last bill issued by the plaintiff was of 24.10.1998, whereas the suit was filed on 24.10.2002. It was also held that alleged payment of ₹10,000/- on 10.01.2000 in cash by the defendants to the plaintiff was not proved and even otherwise, it did not amount of acknowledgment within the meaning of Section 19 of the Limitation Act, 1963 so as to extend the period of limitation. As such, the suit was dismissed being barred by limitation.

6.2 The Appellate Court vide its judgment dated 06.06.2011 affirmed the findings as returned by the trial Court.

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7.1 Assailing the abovesaid concurrent findings, it is contended by learned counsel for the appellant-plaintiff that both the Courts below committed grave error in holding the suit to be barred by limitation, by ignoring the documentary evidence showing that defendants in their Income Tax Return filed for the assessment year 1999-2000 and 2000-01 had clearly shown plaintiff firm in the list of creditors for an amount of ₹9,84,342/- as outstanding, which clearly amounted to acknowledgment within the meaning of Section 18 of the Limitation Act, 1963. It is pointed out that the Income Tax Return for the year 1999-2000 (Ex.P-5) was filed by the defendant on 20.10.2000 bearing the signature of Pawan Kumar (DW-1), the partner of the defendant firm, which extended the period of limitation and as such, the suit filed on 24.10.2002 was within limitation.

7.2 Learned counsel has referred to ***“Shapoor Freedom Mazda v. Durga Prosad Chamaria” 1961 AIR (Supreme Court) 1236***; ***“Punjab National Bank v. M/s K.L. Malhotra & Brothers” 1995 PLJ 151***. With these submissions, prayer is made for setting aside the judgments passed by the Courts below and to decree the suit of the plaintiff-applicant by allowing this appeal.

7.3 Learned counsel also made statement before this court that plaintiff-appellant confines its claim to ₹9,84,342.31/-, which had been shown by the defendants in their Income Tax Return, along with pendente lite and future interest.

8. To refute the aforesaid contentions, learned counsel for the respondents has filed written submissions, wherein it is submitted that learned trial Court rightly concluded that an amount of ₹9,84,342.31/- was due towards the respondents-defendants and that cash payment allegedly made on 10.01.2000 was unsubstantiated and did not constitute acknowledgment under Section 19 of the Limitation Act and as such, the Courts have rightly held the suit filed on 24.10.2002 to be barred by

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limitation. Prayer is accordingly made for dismissal of the appeal.

9. I have considered submissions of both the sides and have perused the record.

10. This is not in dispute that defendants had purchased paddy from the plaintiff in 1998 by virtue of bills (Ex.P-11 to P-14). Last bill is dated 24.10.1998 (Ex.P-14). It has also not been disputed and rather, admitted in the written submissions by the defendants that trial Court has rightly concluded that an amount of ₹9,84,342/- was due towards the defendants-respondents payable to the plaintiff-appellant.

11. The sole question to be decided by the Court is as to whether the suit filed on 24.10.2002 is within limitation.

12. Plaintiff claimed that an amount of ₹10,000/- had been paid in cash by the defendants on 10.01.2000. However the said contention of the plaintiff was not substantiated and as rightly held by both the Courts below, even if the said payment is assumed, it did not amount to acknowledgment within limitation of Section 19 of the Limitation Act, 1908, as the acknowledgment should be writing.

13. However learned counsel for the appellant-plaintiff has heavily relied upon the Income Tax Returns, which were filed by the defendant firm along with balance-sheets, for the year 1999-2000 and 2000-01.

14. Ex.P-5 is the list of sundry creditors of the defendant firm as on 31.03.2000, forming part of balance-sheet of the defendant firm, duly certified by the chartered accountants and signed by one of the partner of the defendant firm namely Pawan Kumar on 20.10.2000. DW-1 Pawan Kumar (defendant No.2) and partner of the defendant firm has candidly admitted his signature on the said document Ex.P-5. In the said list of sundry creditors, the name of plaintiff firm appears with outstanding dues

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of ₹9,84,342.31/-, which tallies with the principal amount as claimed by the plaintiff firm, as has been rightly held so by the trial Court. Even in the Income Tax Return for the year 2000-01, the balance-sheet along with list of creditors was filed by the defendant firm, filed on 01.10.2001, copies of which are Ex.P-7 and P-8, the name of plaintiff finds place in the list of sundry creditors as on 31.03.2001 with an amount of ₹9,76,341.3/- outstanding.

15. It is apparent that in the abovesaid documents particularly Ex.P-5, the defendant firm through its partner has acknowledged the plaintiff firm to be one of the creditors in the list of sundry creditors as on 20.10.2000. Though this acknowledgment of the defendant in the form of balance sheet is not specifically addressed to the plaintiff but nevertheless it is an acknowledgment, duly certified by the chartered accountant and filed before the income tax authorities. The question is that whether the said balance sheet filed along with income tax return, would come within the scope of Section 18 of the Limitation Act, 1963.

16. Section 18 of the Limitation Act, 1963 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,—

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(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."

17. The abovesaid provision will show that following pre-requisites should be there, before fresh period of limitation starts on the basis of an acknowledgment in writing:-

(i) Acknowledgment should have been made before the expiration of the prescribed period for the suit/application in respect of any property or right.

(ii) Such acknowledgment or liability should be 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.

(iii) 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

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- is addressed to a person other than a person entitled to the property or right.

18. If the above conditions are fulfilled, a fresh period of limitation shall be computed from the time, when the acknowledgment was made. It is very important to notice that Section 18 of the Limitation Act, as reproduced above, does not require that acknowledgment of liability on behalf of the party against whom the right of property is claimed should be in favour of the party claiming the right on property. Rather, explanation to the section makes it clear that acknowledgment of liability may even be addressed to a person other than the person entitled to the property or right.

19. In present case, the acknowledgment of liability has been addressed by the defendants to income tax authorities i.e., a person other than the plaintiff, which is entitled to the recovery of acknowledged amount.

20. Similar provision in Section 19 was contained in Limitation Act, 1908. Interpreting the said provision it was held by Hon'ble Supreme Court in ***Shapoor Freedom Mazda v. Durga Prosad Chamaria case (supra)*** as under:

“5. Section 19(1) says, inter alia, that where before the expiration of the period prescribed for a suit in respect of any right, an acknowledgment of liability in respect such right has been made in writings signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. It would be noticed that some of the relevant essential requirements of a valid acknowledgment are that it must be made before the relevant period of limitation has expired, it must be in regard to the liability in respect of the right in question and it must be made in writing and must be signed by the party against whom such right is claimed. Section 19(2) provides that

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where the writing containing the acknowledgment is undated, oral evidence may be given about the time when it was signed but it prescribed that subject to the provisions of the Evidence Act, 1872, oral evidence of its contents shall not be received; in other words, though oral evidence may be given about the date, oral evidence about the contents of the document is excluded. Explanation 1 is also relevant. It provides, inter alia, that for the purpose of Section 19, an acknowledgment may be sufficient, though it omits to specify the exact nature of the right or avers that the time for payment has not yet come, or is accompanied by a refusal to pay, or is coupled with a claim to a set off, or is addressed to a person other than person entitled to the right.

6. It is thus clear that acknowledgment as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgment is based 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. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the Court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statement made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered.....”

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21. Similar question also arose before this Court in ***Punjab National Bank v. M/s K.L. Malhotra & Brothers (supra)***. In that case, Punjab National Bank was seeking recovery. Suit was dismissed on the ground of limitation by the Courts below. Matter went in Regular Second Appeal before this Court, where acknowledgment of debt by way of part payment; and balance-sheet of the defendant company were relied so as to extend the period of limitation. This Court, by referring to Section 18 of the Limitation Act, besides ***“Lakshmiratan Cotton Mills Co. Ltd. v. Aluminium Corporation of India Ltd.” AIR 1971 Supreme Court 1482***; and ***“Shapoor Fredoom Mazda v. Durga Prosad Chamaria” AIR 1961 Supreme Court 1236***, held as under:-

“9. [Section 18](#) of the Limitation Act deals with the effect of acknowledgement in writing. According to [section 18](#), where, before the expiration of the prescribed period for a suit, 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, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. According to this Section, an acknowledgement to give fresh starting point of limitation is to be before the expiration of period of limitation for the suit, appeal or application. The acknowledgement is to be clear and unambiguous acknowledgement admitting the liability. It is to be signed by the parties or his authorised agent and lastly it is to be of a subsisting liability.

10. In the present case, the dispute between the parties only relate whether the acknowledgement is in respect of a subsisting liability or not. The basis of the claim of the plaintiff is documents Exhibit P-6, P-7 and P-33. Exhibit P-33 is a document duly signed by the defendant admitting his liability for a sum of Rs. 1,16,507-18 as on 30.12.1980. Confirmation by the defendant is dated 2.2.1981. Vide Exhibit P-7, defendant confirmed the balance amount of Rs. 78,669.78 as on 31.12.1981. This acknowledgement is dated 8.3.1982. Similarly, vide Exhibit P-6, defendant admitted amount

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due i.e. a sum of Rs. 77,496.21 as on 31.12.1982. The acknowledgement is dated 9.8.1983. The suit was filed on 15.2.1984. It is the case of the appellant that vide all the above noted documents, the defendant acknowledged the liability to pay the amount due along with interest and so these documents are valid acknowledgements in terms of [section 18](#) of the Act. Both the Courts have erred in misconstruing the validly executed acknowledgements thereby denying the plaintiff the benefit of the extended period of limitation. The counsel further urged that even the decision of the apex Court supports the case of the appellant. Elaborating the counsel urged that as per banking practice, the accounts are finalised in the end of the Year and so in all these documents balance amount due towards the defendants as on 30.12.1980, 31.12.1981 and 31.12.1982 was duly reflected which was also confirmed by the defendants. The acknowledgements made by the defendants in respect of these amounts were clearly within the period of limitation. Examined so, the suit in respect of the amount due as on 30.12.1980 could validly be brought by the plaintiff within a period of three years from the date of acknowledgement. Since a part of the amount has been paid to the plaintiff during the subsequent period the amount due as on 31.12.1981 was again acknowledged by the defendants on 8.3.1982, Exhibit P-7, and finally on the balance amount of Rs. 77,496.21 (Exhibit P-6) acknowledgement was made by the defendants on 9.8.1983. Thus, the last acknowledgement in respect of the amount due as on-31.12.1982 was within the limitation as the suit was instituted on 15.2.1984. According to the counsel, both the Courts have misconstrued the decisions of the apex court in [Lakshmiratan Cotton Mills case \(Supra\)](#) and [Shapoor Freedom Mazda's case \(Supra\)](#).

11. The apex Court in [Lakshmiratan Cotton Mills case \(Supra\)](#) has held that the statement on which the plea of acknowledgement is founded need not amount to promise and need not indicate the exact nature or the specific character of the liability. It must, however, relate to a present subsisting liability. Subsisting liability in common parlance mean the

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existing liability. Identical expression has been used in *Shapoor Freedom Mazda's case (supra)*. A perusal of the aforesaid two judgments of the apex Court makes it abundantly clear that acknowledgement so made renews the debt. The apex Court further held, "stated generally, courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning."

22. This Court in the above cited case i.e. ***Punjab National Bank v. M/s K.L. Malhotra & Brothers*** also referred to a similar case, which had come up before Division Bench of Calcutta High Court titled as "***Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff***", ***AIR 1962 Calcutta 115***. In that case, the balance-sheet showed the amount in the suit as debt owed by the company to the plaintiff. However plea was raised that the same was not sufficient acknowledgment within the meaning of Section 19 of the Limitation Act (*of 1908 - similar to Section 18 of Limitation Act, 1963*) and that same could not be deemed to be admission of liability as existing on the day on which the admission was made. Repelling the contention, the Court had held as under:

"... In my opinion the balance sheets satisfy the test of an acknowledgement under section 19. Each of them contains an admission that balances have been struck at the end of the previous year and that a definite sum has been found to be the balance then due to the creditor. The natural inference to be drawn from the balance sheets is that the closing balance due to the creditor at the end of the previous year will be carried forward as the opening balance due to him at the beginning of the next year. In each balance sheet there is thus an admission of a subsisting liability to continue the relation of debtor and creditor, and a definite representation of a present intention to keep the liability alive until it is

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lawfully determined by payment or otherwise. There is necessarily a time lag between the date of the signing of the balance-sheet and the end of the previous year. The balance sheet contain no admission of the amount due on the date of the signature. That amount may be and often is 'different from the amount shown as due at the end of the previous year, but that fact alone does not take the amount out of the purview of [Section 19](#). Take the case of a banker and its depositor. Suppose the banker sends to the depositor a monthly statement of account made for the month of February, 1961 and signed on March 15, 1961. The statement gives the balance due on February 28, 1961. The amount due on March 15 may be quite different; the banker might have been made payments for the customer; nevertheless the statement amounts to a sufficient acknowledgement under [section 19](#). I am therefore unable to agree with the decision in AIR 1957 All 143."

23. Having noticed the above legal position as explained by Hon'ble Supreme Court in ***Shapoor Fredoom Mazda v. Durga Prosad Chamaria case***; and ***Lakshmiratan Cotton Mills Co. Ltd. v. Aluminium Corporation of India Ltd.*** and also by this Court in ***Punjab National Bank v. M/s K.L. Malhotra & Brothers***, this Court has no hesitation to hold that the balance-sheet filed by the defendant company (copy Annexure P-5) on 20.10.2000 along with the list of sundry creditors in its Income Tax Return, showing the balance of ₹9,84,342.31/- outstanding towards the plaintiff, amounts to acknowledgment of liability within the meaning of Section 18 of the Limitation Act, 1963 and as such, suit filed on 24.10.2002 (within 3 years from the date of above acknowledgement) was well within limitation. Both the Courts below have clearly erred in holding the suit to be barred by limitation by ignoring the legal position in this regard.

24. Consequently, the present appeal is hereby allowed with costs. The impugned judgments passed by the Courts below are hereby set aside. Suit of the plaintiff-appellant firm for recovery of ₹9,84,342.31/- is hereby

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decreed along with pendente lite interest from the date of filing of the suit till date of this decision @ 7.5 % per annum; and future interest from the date of this decision till actual realization @ 6% per annum. Plaintiff-appellant shall also be entitled to the cost throughout. Decree-sheet be prepared accordingly.

(DEEPAK GUPTA)
JUDGE

February 03, 2025

Neetika Tuteja

Whether Speaking/reasoned	Yes
Whether Reportable	Yes