HIGH COURT OF TRIPURA
AGARTALA

RSA No. 48 of 2018

Shri Sekhar Banik
son of late Nityananda Banik,
care of Shri Pradip Sengupta,
resident of Melarmath,
P.O. : Agartala, P. S. West Agartala,
District: West Tripura, PIN-799001

-----Appellant(s)

Versus

Shri Keshab Banik
son of late Nityananda Banik
resident of 226/A, Office Lane, Agartala
P.O. Agartala, P.S. West Agartala,
District: West Tripura, PIN-799001

-----Respondent(s)

For Appellant (s)	:	Mr. H Laskar, Advocate
For Respondent(s)	:	Mr. DC Roy, Advocate
Date of hearing	:	26.04.2021
Date of pronouncement	:	31.05.2021
Whether fit for reporting	:	**NO**

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

The judgment dated 31.08.2018 delivered in Money Appeal No. 02/2016 by the District Judge, West Tripura, Judicial District, Agartala has been challenged in this appeal filed under Section 100 of the CPC.

2. At the time of admitting this appeal the following substantial question of law was framed:

> ***"Whether learned lower appellate court committed error of law by decree the time bared suit?"***

3. It is strange that again a substantial question of law was formulated by the order dated 22.05.2019 being oblivious of the order dated 15.03.2019. By the order dated 22.05.2019 the following substantial question of law was framed:

> ***"Whether the learned first appellate court has committed error in determining the question of limitation under Article 19 of the Limitation Act?"***

4. Simultaneously, leave was granted by the order dated 22.05.2019 to raise any other substantial question of law at the time of hearing. In this regard it will be appropriate for us to refer first to sub-section 4 of Section 100 of the CPC which reads as follows:

> ***"100. Second appeal***
>
> ***(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question."***

5. Sub section 5 of Section 100 of that CPC further provides as follows:

> ***"(5) The appeal shall be heard on the question as formulated and the respondent shall, at the hearing of appeal, allowed to argue that the case does not involve such question."***

6. It has been provided by a proviso just below sub-section (5) of Section 100 of the CPC that nothing in this sub section shall be deemed to have taken away or have abridged the power of the court to hear, for reason to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied in the case such question is involved. Therefore, substantial questions are to be formulated for purpose of admission. In the course of formulating the substantial question, if an error creeps in, the High Court has the power to correct the error.

7. In the present case, however, such exercise becomes easy inasmuch as both the substantial questions are in core, identical in nature. Therefore, the substantial question that will be considered in this appeal is rephrased as under:

> ***"Whether the first appellate court while passing the impugned judgment has by not considering the bar created under Article 19 of the schedule of the Limitation Act, 1963 committed substantive failure of justice?"***

8. Section 3 of the Limitation Act creates bar of limitation, however, subject to the provisions contained in Sections 4 -24 (inclusive). But in the suit under reference, the provisions of Sections 4 to 24 will not help the plaintiff to get out of the rigours of the Limitation Act. In the context of the suit, no

discount will entail. Section 3 has categorically provided that every suit instituted after the prescribed period of limitation shall be dismissed even if the defence of limitation has not been set up. For further reference, Article 19 of the schedule of the Limitation Act is reproduced hereunder:

19.	**Description of suit**	**Period of Limitation**	**Time for which period begins to run**
	For money payable for money lent	**Three years**	**When the loan is made**

9. For determining the appeal, the basic facts, based on which the suit has been instituted may be introduced at the outset. The suit is between two full blood brothers. The respondent herein filed the suit for realizing a sum of Rupees One lac which he had lent to the appellant [the defendant in the suit]. The plaintiff [the respondent herein] lent the said sum on 22.11.2011 so that the defendant might defray the expenses of his marriage on assurance that the defendant shall return the money within the month of March, 2005.

10. In accordance with the said assurrance, in the month of March, 2012 the plaintiff asked for return of the money, but the defendant took some more time for making the payment. Finally on 02.09.2005, the defendant issued a cheque on Punjab and Sind Bank and requested the plaintiff not to deposit the said

cheque in the month of September. The plaintiff did not deposit the cheque expecting that the money will be returned to him. But no money was returned.

11. Finally, on 10.02.2006, the plaintiff had deposited the cheque for encashment in his account maintained in the UCO Bank, Agartala branch. The said cheque was returned by the drawer's bank on 11.02.2006. As consequence of such unexpected development, the plaintiff sent a notice to the defendant on 22.02.2006 claiming payment of the said amount as reflected in the said cheque i.e. Rupees One lac. But the defendant did not make the payment within the stipulated period and hence, the plaintiff took subsequent legal action.

12. It has been stated by the defendant in his written statement that the claim that the defendant had taken loan from the plaintiff and he did not make the re-payment are untrue and hence, the defendant has denied the said claim of the plaintiff. That apart, the defendant has stated that the plaintiff had filed a complaint under Section 138 of Negotiable Instruments Act and at the time of institution of the suit, the said proceeding was pending.

13. According to the defendant, it is the plaintiff who had requested the defendant to provide some fund for his business and he had agreed to make provision for the fund. Thus, the defendant issued a cheque of Rupees One lac in favour of the plaintiff. The defendant signed the cheque, but the bank did not honour the cheque. The defendant has also stated that he did not complete the writing on the cheque. The defendant has denied to have handed over the cheque to the plaintiff. But somehow, the plaintiff had taken out the said cheque surreptitiously without his knowledge and put the said cheque for enchashment.

14. According to the defendant, the said non-payment cannot be the subject matter of the complaint under Section 138 of the Negotiable Instrument Act. On the basis of the rival pleadings, the following issues were framed by the court of the Civil Judge for adjudication of the suit:

i. **Whether the suit is maintainable in law and form?**

ii. **Whether the plaintiff is entitled to realization of Rs.1,00,000/- from the defendant?**

iii. **Whether the plaintiff is entitled to the decree as prayed for in this suit or any other relief or reliefs?**

15. After recording the evidence, the suit was decreed pursuant to the judgment dated 31.05.2011 delivered in Money Suit No. 09/2008. The said judgment was challenged in Money Appeal No. 10/2011 in the court of the District Judge, West Tripura, Agartala by the defendant. Having been transferred, the appeal was heard by the Additional District Judge, West Tripura, Agartala, Court No.4 and the appeal has been dismissed by the judgment dated 17.03.2012.

16. The said judgment was again challenged by the defendant in the second appeal being RSA 13/2012 in this court. The appeal was admitted on the substantial question, *whether the plaintiff is entitled to a decree in absence of evidence relating to the amount of dishonoured cheque allegedly borrowed by the defendant from the plaintiff*, but during inquiry it appeared before this court that both the civil judge and the first appellate court did not consider the question of limitation alongside the other issues. Thus, the said appeal was allowed by remanding the suit for fresh trial after framing a preliminary issue on the question of limitation.

17. In terms of the said judgment dated 07.01.2016 passed in RSA 13/2012 the suit was re-heard and decided by the

judgment dated 16.04.2019 clearly holding that the suit is barred by limitation. The civil judge in his judgment dated 16.04.2016 has observed on the question of limitation as follows:

> ***"8. It is admitted position from the assertion the plaintiff that the loan was advanced to the defendant for the purpose of his marriage to be solemnization 22-11-2004. No specific date is given by the plaintiff for such transaction. However, since the loan was for the purpose of marriage of the defendant it is very clear that the loan was advanced not later than 22-11-2004. This is the most acceptable conclusion from the given factual scenario. The cheque was issued by the defendant on 02-09-2005 and the same was presented by the plaintiff in his bank on 10-02-2006 which was returned by his banker on the following day i.e. on 11-02-2006.***
>
> ***9. This is a suit for recovery of money payable by the defendant for money lent by the plaintiff.***
>
> ***10. Now the question is the period of limitation and it starting point. I cannot subscribe the view of the learned counsel of the plaintiff that the same will be governed by the Article 22 or 23 of the Limitation, 1963. Article 23 provides for a suit for money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of the his banker so payable: whereas the Article 23 applies at the suit for money payable to the plaintiff for money paid for the defendant.***
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> ***11. Abundantly, Article 23 has no application in our present case since admittedly it is not the case of the plaintiff that he made any payment to any third person for the defendant, i.e. for discharge of the liability of the defendant to any other person.***
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> ***Similarly, Article 22 of the Act, in my considered opinion, has no application in this case first since there is not act of deposit of money by the plaintiff to the defendant, secondly, admitted case of the plaintiff is that the money was to be returned by the defendant within a specified time, precisely within the month of March, 2005, thirdly, according to the plaintiff himself the condition of***

such loan was not that the defendant would return the money lent on demand by the plaintiff.

12. Here, the case of the plaintiff clearly comes under the Article 19 of the Limitation Act since the suit was nothing but only a suit for money payable for money lent. So, as per the Art. 19 the period of limitation is three years and the limitation period begins to run from the time when the load was made. The loan was admittedly made on 22-11.2004 and so the starting point of limitation for the suit of the plaintiff would be from 22-11-2004. Accordingly the plaintiff is required to institute the suit within three years from 2-11-2004 i.e. the suit should have been instituted on or before 21-11-2007. The present suit was instituted on 27-08-208 which is clearly beyond the limitation period of three years. In this way we clearly find that the suit is barred by limitation."

18. It has been further observed by the civil judge that the plaintiff is not entitled to discount as provided by Section 14 of the Limitation Act. Thus, he dismissed the suit with a direction to release the fixed deposit in favour of the defendant on observing the required formalities.

19. The said judgment was challenged by the plaintiff in the court of the District Judge, West Tripura, Agartala by filing an appeal under Section 96 of the CPC. According to the plaintiff, the said finding of the Civil Judge is unsustainable for adopting a perverse interpretation of the Limitation Act. The District Judge allowed the said appeal being Money Appeal No. 02/2016 by the judgment dated 31.08.2018. While reversing the finding of the

civil judge on the issue of limitation, the District Judge has observed as under:

> ***"13. Let us now discuss the matter of limitation. The Plaintiff in para No.8 of his plaint asserted that the cause of action for this suit has arisen from 2.9.2005 (date of issuing of the cheque) and also on 11-02-2006 (date of dishonour of the same) and the suit has been filed on 27-8-2008. According to him, the loan was given for the purpose of the marriage ceremony of defendant held on 22-11-2004. The actual date of given of loan is not mentioned in the plaint. However, ld. Trial court treated said date to be on 22-11-2004 and applying Art. 19 of the Limitation Act held the suit to be time barred reckoning the period of 3 years from that date. However, as it appears, Ld. Trial Court lost the sight of the provision of Sections 18, 19 and 20 of the said Act. Interpreting Section 19 of the Limitation Act, in Arjunlal Dhanji Rathod v. Dayaram Premji Padhiar, AIR 1971 Patna 278, Hon'ble Patna High Court held that when a post dated cheque was handed over to the plaintiff by the loanee-defendant and said cheque was dishonoured on presentation of the same in the Bank on the date which was written in said cheque, practically there was no payment on that date and thus period of limitation will run from the date when the loan was advanced in Dharam Singh v. Khan Chand, AIR 219566 Allahabad 137, Hon'ble High Court also held that where a cheque is dishonoured, the handing over of the cheque does not amount to payment of debt, in whole or in part, within the meaning of S.20 of the Act and the issue of the cheque would not give a fresh start to the period of limitation. Similar view was also expressed by Hon'ble Punjab and Haryana High Court in Northern India Finance Corporation Ltd v. R.L. Soni, AIR 1973 P & H 35. However, while interpreting section 18 of the said Act, in Rajpati Prasad vs Kaushalya Kuer and Ors (decided on 8 August, 1980) (Equivalent citation – AIR 1981 pat 187), Honible patna High Court again held as follows:***
>
> > ***"13. Now, can it be said that merely because the cheque is subsequently dishonoured, there is no admission of the liability of the debt in satisfaction of which the cheque***

purports to have been issued? In my opinion, it is impossible to accept the proposition that in no circumstances, issuing of a cheque which is subsequently dishonoured in settlement of certain debt can amount to an admission or acknowledgment of that debt. Whether there is an admission of the debt has to be determined with reference to the point of time at which the purported admission was made, that is to say, when the cheque was issued. An admission does not cease to be an admission merely because it is subsequently retracted. It may well be presumed that by issuing the post dated cheque which was subsequently dishonoured towards the payment of a debt, the drawer intended to make that payment and on account of certain supervening circumstances, the cheque was dishonoured. It may be that the drawer had not the necessary balance in the account even thought at the time of issuing the cheque he had expected that he would have the necessary balance at the time the cheque would be presented for encashment or it may be that though he initially admitted the liability and intended to discharge that liability by making the payment by means of the cheque in the drawer subsequently decided not to make the payment and as n this case stopped payment of the cheque.

At least, in those cases where he did not have at the time of issuing the cheque an intention to deceive the person in whose favour the cheque was issued the issue of a cheque towards the payment of a debt operates as admission of the liability to pay that debt even through the cheque is dishonoured subsequently. The case in which even at the time of issuing the cheque, the drawer had no intention to make the payment presents more difficulty. In such a case it may be argued that by issuing the cheque was not making an admission of liability to pay the debt but was resorting to a subterfuge to get rid of an inconvenient creditor. But even in such a case, by issuing the cheque which he had no intention should be honoured, the drawer represented to the person to whom the cheque was issued that the cheque would be honoured on presentation and thus, intimated to him his admission of his liability to pay the

debt in satisfaction of which the cheque was issued."

Hon'ble Bombay High Court similarly in Vijay Ganesh Gondhlekar Vs. Indranil Jairaj Damale (decided on 4 October, 2007) (Equivalent citations: 2008 Cri LJ 657), held the following:

> ***"Thus when a drawer revalidates cheque from time to time which is permissible, it would be said that on each occasion there was a fresh promise as envisaged by section 25 of the contract Act as well as an acknowledgement within the meaning of Section 18 of the Limitation Act if such revalidation is made within the period of limitation. In the instant case admittedly the accused – appellant had extended the date of cheque from time to time under his own signature and had validated the cheques. As said earlier such validation amounts to a fresh promise and therefore, he has revived a barred debt. The proceedings have been filed within 3 years from the last such revalidation and in view of this it could not be said that under the cheque the application sought to recover a barred debt. In view of this, I find no substance in the application. It is dismissed."***

Hon'ble Madras High Court also in Palaniyappa Rice Mill and Ors Vs. P.A.A. Malayandi Chettiar, (decided on 23 Febraury, 1998) held at para 17 that where a debtor writes the cheque by himself, that itself would amount to the acknowledgement of the debt as per Section 29 of the Limitation Act.

14. In view of the above proposition of law, the fresh period of limitation will start from the date of issuance of the cheque, i.e. from 2.9.2005 and the suit was filed within 3 years therefrom. Thus, it is held that the suit was well within time. Though Ld. Counsel, Mr. Debesh Ch. Roy argued that the plaintiff is also entitled to get benefit of Section 14 of the Limitation Act, but said provision has no application in this case, for, pendency of a criminal case cannot be ground for extension of time in any civil proceeding."

20. Thus, according to the first appellate court, starting point of limitation will start from the date of issuance of cheque, i.e. from 29.09.2005 and the suit, therefore, would have been considered filed within three years therefrom. The suit was filed on 27.08.2008. According to the first appellate court, the suit was filed within the period of limitation meaning within three years from the day of issue of the cheque.

21. According to the first appellate court, it is not Article 19 but Article 20 that will apply in the suit. Article 20 of the Schedule of the Limitation Act provides that when the 'lender' has given a cheque for the money, three years would be the period of limitation from the date when the cheque is paid.

22. In this regard, the first appellate court has relied on some decisions of the various high courts, as reproduced before. It is apparent that the Patna High Court has discarded that from the date when the cheque is issued or on which date the cheque was dishonoured cannot be taken as a starting point of limitation but the effective date would be when the loan was advanced. Even the Allahabad High Court has subscribed the similar view that issuance of cheque would not give fresh cause for purpose of limitation.

23. In the other decisions of the Patna High Court as referred, it has been observed that issuance of the post dated cheque which was subsequently dishonoured, the time of issuing the cheque would be the admission of the liability. The decision of the Bombay High Court is completely in a different context. But the decision of the Madras High Court that where a debtor writes the cheque by himself that itself would amount to acknowledgement of the debt as per Section 20 of the Limitation Act.

24. Section 20 of the Limitation Act is not material as regards the present suit. Section 20 of the Limitation Act deals with the fact of acknowledgement or payment by another person. That apart, the cheque as referred therein, is the cheque issued by the lender. This section has been incorporated to obviate any confusion on the day of lending whether it would be the day of encashment or the day of issuance of the cheque. The plaintiff did not raise the issue of acknowledgement of the debt in the plaint. Thus, the first appellate court wrongly applied the provision of Section 20 of the Limitation Act. In Para 8 of the plaint the facts constituting the cause of action has been pleaded in the following manner:

> ***"8. That, the cause of action of this suit arisen on 02-09-2005 i.e. the date of issuing the cheque, 11-02-2006 i.e. the date of dishonour of cheque by the bank and subsequent dates and till now the cause of action is in existence."***

25. But the basic pleadings that the plaintiff made are available at paras 2 and 3 where it has been asserted that the defendant requested the plaintiff to give him Rs.1,00,000/- for purpose of his marriage on 22.11.2004. The defendant assured that he would return the money by March, 2005. It was an unilateral assurance made by the defendant. The plaintiff demanded the said money from the defendant but on some pretext, the time was extended and on 02.09.2005 the defendant issued a cheque in favour of the plaintiff.

26. Whether it is a clear case of suit for money payable for money lent? Article 19 of the Schedule of the Limitation Act is applicable to the loans payable on demand. It applies to the cases where no time is fixed for repayment of the loans. If there an agreement fixing a certain date for repayment and the agreement is in writing, Article 28 or Article 55 of the schedule of the Limitation Act would apply. But if the agreement is verbal, the case falls under Article 55.

27. As regards, the nature of transaction, the plaintiff's version can be availed from para 3 of the plaint. It has been stated in para 3 of the plaint that the plaintiff paid Rupees One lac which was made at the request of the defendant [see para 2] to the plaintiff and the defendant assured return of the money within the month of March, 2005. Though the assurance was unilateral but after the said deadline of payment, the plaintiff demanded the repayment, but the defendant was dillydallying the repayment. Suddenly, he issued a cheque, as stated before, but it was not honoured by the Bank as it was beyond the arrangement. The question, therefore, is whether the suit is for money payable for money lent or not? In this regard, without any amount of confusion it can bestated and observed that the nature of the suit is for money payable for money lent. Hence, the considered view of this court is that Article 19 of the schedule of the Limitation Act would apply for purpose of determining the period of limitation.

28. Mr. H Laskar, learned counsel appearing for the appellant has produced a Note but the decisions of the apex court as relied are not relevant in the context and this court has failed to understand why the appellant has placed reliance on those reports. This is not a case of whether the contractual

obligation has been breached or not. This is not even a case for breach of any contract, express or implied, not physically provided under the schedule of Limitation Act so as to invoke Article 55 of the Limitation Act. This is also not a case of an agreement specifying fixed time for repayment of installment and a suit is instituted for breach of contract. Hence, Article 55 of the schedule of Limitation Act will not apply. Even, it is not a refusal on the part of the defendant in performing the contractual obligation, inasmuch as, the time as proposed by the defendant, according to the plaintiff, was unilateral and there was no agreement. The core of the assurance is the repayment on demand. Thus, the decision in ***Sakuntala Vs. Narayan*** reported in ***(1999) 8 SCC 587*** does not have any relevance. This is not a case of discounting the time spent on issuing the notice under of Section 15 of the Limitation Act.

29. According to Mr. Laskar, learned counsel in this case only Article 19 will apply as it is not a case where no time was fixed for repayment of loan. As it is already noted, the assurance made was unilateral and did not form any agreement. There is no agreement in writing regarding the time frame of repayment.

30. According to Mr. Laskar, the first appellate court has failed to appreciate the law and given an interpretation that the fresh period of limitation will start from the date of issuance of cheque i.e. from 02.29.2005 and the suit was filed within three years therefrom. However, the plea of the plaintiff that some period was entitled to him under Section 14 of the Limitation Act has been discarded by the first appellate court.

31. Mr. Laskar, learned counsel has quite emphatically submitted that the civil judge has correctly observed that the suit is time barred as Article 19 of the schedule of the Limitation Act would apply in the suit and thus, the civil judge has appropriately decided the issue as on limitation, framed in terms of the judgment dated 07.01.2016 [RSA 13/2012].

32. Mr. DC Roy, learned counsel appearing for the respondent has submitted that the assurance is time bound. Hence, it cannot be treated as a case of payment on demand. Mr. Roy, learned counsel has strenuously argued that the first appellate court has rightly decided the point of limitation.

33. Having appreciated the rival contentions as noted, this court is of the view that the view taken by the first appellate court primarily on the basis of ***Vijay Ganesh Gondhlekar Vs.***

Indranil Jairaj Damale, reported in ***2008 Cri. L. J 657***. With all humility, this court is of the view that the fact of the said case is divergent to the context of this case. In ***Vijay Ganesh Gondhlekar*** the Bombay High Court observed that when a drawer revalidates the cheque from time to time, which is permissible, it can be said that on each occasion there was fresh promise as envisaged by Section 25 of the Contract Act as well as it conveys acknowledgement within the meaning of Section 18 of the Limitation Act, if such revalidation is made within the period of limitation.

34. In that case, the cheque was validated time to time and according to the Bombay High Court, such validation means a fresh promise and, therefore, he has revived the time to sue for recovery of the debt. The present case does not at all tally with these facts.

35. This Court has observed already that it is the case of the plaintiff that the assurance was unilaterally made by the defendant and there was no agreement. He lent the money to be recovered on demand. However, since a request was made that he would be paying by March, 2005 and that was not paid then he made his demand for payment. All on a sudden, a cheque

was issued by the defendant for repayment of the money, but that cheque was dishonoured. It is not a case of extension of time. It is the fulfilling of the demand of the plaintiff and nothing else and nothing more.

36. In the circumstances, at noted above, the limitation would start to be counted from the day when the money was lent and as such taking that day when the money was lent, i.e. before 22.11.2004 and thus the suit ought to have been instituted on or before 21.11.2007 but the present suit was instituted on 27.08.2008. Hence, it was instituted clearly beyond the period of limitation, as provided by Article 19 of the schedule of Limitation Act.

37. The finding of the civil judge is in accordance with law as discussed above. Hence, there was no ground to disturb that finding. The finding of the first appellate court is not based on the law appreciable in the fact, relevant for deciding that point of limitation. This Court, therefore, affirms the judgment of the civil judge dated 16.04.2016 delivered in Money Suit No. 09/2008. As consequence thereof, the judgment dated 31.08.2008 delivered in Money Appeal No. 02 of 2016 stands set aside and quashed. That finding of dismissal of the suit stands affirmed.

The fixed deposit certificates of the appellant, as lying with the records, be released to him forthwith.

In the result, the appeal stands allowed.

Draw the decree in terms thereof.

Send down the LCRs thereafter.

JUDGE

lodh