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JUDGMENT SHEET

LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

R.F.A. No.31378 of 2022

Ghulam Nabi **Versus** **Kabir Khan**

J U D G M E N T

Date of Hearing:	16.03.2023
Appellant by:	Mr. Muhammad Jamil Ashraf Chauhan, Advocate.
Respondent by:	Mian Subah Sadiq Klasson, Advocate.

Anwaar Hussain, J. This Regular First Appeal is directed against judgment and decree dated 25.03.2022, passed in suit instituted by the respondent, for recovery of Rs.1,200,000/-, on the basis of Demand Promissory Note dated 28.06.2016.

2. Learned counsel for the appellant while referring to Article 73 of the First Schedule to the Limitation Act, 1908 ('**the Act**') submits that the suit instituted by the respondent was time barred by one year and one month as the impugned *pro-note* was executed on 28.06.2016, whereas, the suit was instituted on 28.07.2020. Adds that this aspect has not been addressed by the learned Trial Court. On a pointed question by this Court as to whether question of limitation was raised before the learned Trial Court and issue was framed in this regard, it was frankly conceded that no such objection was raised, however, learned counsel for the appellant contends that the learned Trial Court was verbally requested to address the limitation issue but the needful has not been done. Further avers that question of limitation is legal in nature and can be raised at the appellate stage. Concludes that even otherwise, it is settled legal position that the Court itself is obligated to examine the question of limitation irrespective of the fact whether the same is raised or not.

3. Conversely, learned counsel for the respondent supports the impugned judgment and decree and while responding to the question of limitation submits that the loan given on the basis of impugned *pro-note* was payable on demand (عندالطلب) and the time limitation for institution of the suit is to be reckoned from the date when the demand was made, and the same was not met and not from the date of the *pro-note.*

4. Arguments heard. Record perused.

5. Before addressing the merits of the case in respect of which learned counsel for the appellant has only contended that the impugned *pro-note* alongwith a cheque was given, to the respondent, as surety in furtherance of a property-related transaction between the parties, it will be appropriate to first examine and opine as regards the question of limitation raised before this Court. In this regard, legal question boiling down for determination of this Court is to answer whether three years-time limitation period prescribed for institution of suit, under Order XXXVII of the Code of Civil Procedure, 1908 ('**the CPC**'), on the basis of negotiable instrument is to be reckoned from date of execution of the instrument in terms of Article 73 of the Act or from any other date such as date of demand of payment followed by the default thereof.

6. Article 73 of the Act contemplates as under:

	Description of suit	Period of limitation	Time from which period begins to run
73	On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years	The date of the bill or note.

Whereas Article 64-A, inserted through an amendment on 04.03.1961 in the Act, reads as under:

	Description of suit	Period of limitation	Time from which period begins to run
64-A	Under Order XXXVII of the Code of Civil Procedure	Three years	When the debt becomes payable

While Article 73 of the Act envisages the time to start running from the date of the negotiable instrument, Article 64-A contemplates that time begins to run when the debt becomes payable.

7. The term 'payable' in relation to a debt/loan means how and when an amount of money should be paid by the borrower to the lender. To determine this point, the contents of the Promissory Note are to be looked into. Learned counsel for the appellant could not deny that amount mentioned in the impugned *pro-note* was clearly stated to be payable on demand. In case of a Demand Promissory Note, payment would become due when the demand is made and not met. Therefore, the present matter is governed by Article 64-A of the Act and starting point is when the debt becomes payable. This Court is of the opinion that after insertion of Article 64-A of the Act, money lend on the basis of a Demand Promissory Note is truly a demand loan and it only becomes payable once demand is made and not met and not from the date when the loan is first made and/or the said Promissory Note is executed.

8. Keeping in view the observation that Article 64-A is applicable in the instant case, it will be in fitness of things to examine whether the appellant denied the assertion of the respondent regarding the time when the demand was raised by the latter. *Per* para 4 of the plaint, it is the case of the respondent that demand was made two days prior to the institution of the suit and upon refusal of the appellant, the suit was instituted. If the appellant had to dispute the fact that no such demand

was made, a plea in addition to the denial of the execution of the impugned *pro-note*, should have been categorically taken by responding to the relevant para of the plaint, on the basis of which, issue *qua* limitation should have been framed and in the absence of framing of such issue by the learned Trial Court, claim for framing of such issue should have been put forth and then proved accordingly. In the instant case, no such plea was taken regarding the time as to when the demand was raised by the respondent and only evasive denial had been put forth. The respondent was also not cross-examined on the point as to when the demand of payment was made, hence, the assertion of the respondent that the demand was made few days prior to the institution of the suit went unrebutted and accordingly proved. Therefore, the debt due under the impugned *pro-note* was payable from the date when the said demand was made and not met as mentioned in the plaint. Hence, this Court is of the opinion that objection that the suit was barred by limitation is misconceived and is accordingly discarded.

9. Having held that the suit instituted by the respondent was well within time in terms of Article 64-A of the Act, scanning of the record reveals that the appellant obtained leave to appear and defend the suit, which was allowed and thereafter written statement was filed in which the claim of the respondent was denied. Needless to mention that presumption of due execution of a negotiable instrument, for consideration, is attached to the impugned *pro-note* in terms of provisions of Negotiable Instruments Act, 1881 and it was obligatory on part of the appellant to rebut the same by leading evidence. In this regard, issue No.1 was specifically framed and is reproduced hereunder:

*"**ISSUE NO.1:***

1. *Whether the defendant borrowed suit amount of Rs.12,00,000/- from plaintiff and issued impugned promissory note and receipt for payment of said*

> *amount and the plaintiff is entitled to recover suit amount from defendant? OPP"*

Appellant appeared as DW-1 and produced one Ghulam Rasool as DW-2 and also produced an agreement to sell as Exh-D1, whereas, the respondent himself appeared as PW-1 and produced Muhammad Saleem as PW-2, Muhammad Ahmad as PW-3, Hasnaat Ahmad as PW-4, Inam Khan as PW-5 and Rao Shahzad Rauf as PW-6. He also produced *pro-note* as Exh.P-1 and receipt thereof as Exh.P-2.

10. The learned Trial Court after recording of evidence was persuaded to decree the suit, *inter alia*, on the ground that the appellant took contradictory rather destructive stance taken in the application for leave to appear and defend and the subsequent written statement that was filed after grant of the leave to defend. The learned Trial Court aptly encapsulated the entire controversy in the following terms:

> "8. ...***When the defendant filed the application for leave to appear and defend the suit in that application he narrated that actually the defendant had entered into the agreement with the plaintiff for the purchase of two acers land for amount Rs.10,00,000/- out of which he paid amount Rs.4,40,000/- and as a guarantee handed over to the plaintiff one cheque and the disputed pronote***. That the defendant has misused that pronote and has filed this suit. ***Contrary to this stance taken in the leave to appear and defend the suit the defendant in his written statement mentioned that neither he received any amount from the plaintiff, nor he issued the disputed pronote or made signature or thumb impression on the pronote.*** These two stances of the defendant first taken in the application for leave to appear and defend and second taken in his written statement are self-contradictory. In leave to appear and defend the defendant admitted handing over the pronote and his thumb impression on the pornote *(sic)* also, however, in written statement he denied all these facts straight way. ***As such handing over the disputed pronote by the defendant to the plaintiff is considered admitted and his thumb impression on the pronotes are also admitted.*** Original pronote and receipts pronote have been produced in the evidence by the plaintiff and the plaintiff has also produced marginal witnesses of the receipt pronote and scribe of the pronote also in his evidence. ***On the other hand defendant himself appeared as DW-1 and he produced his brother***

> ***Ghulam Rasool as DW-2. Ghulam Rasool DW-2 in his examination in chief stated that he has no knowledge that why the disputed pronote had been executed. It shows that the DW-2 is not aware of the facts of the dispute between the parties. In this way evidence of the plaintiff regarding due execution of the pronote is confidence inspiring at the defendant failed to rebut the evidence of the plaintiff***."

(Emphasis supplied)

Learned counsel for the appellant was confronted with the operative part of the impugned judgment, however, he was unable to put forth any plausible reason and justify contradictory and mutually destructive stances taken by the appellant, referred in the impugned judgment. The appellant's case clearly falls under the clutches of latin maxim *'**Allegans Contraria Non-Est Audiendus**'* (A person adducing to the contrary is not to be heard) and his stance regarding denial of receipt of any amount cannot be extended any weightage.

11. Despite arguing the case at full length, learned counsel for the appellant side could not point out any misreading or non-reading of evidence, substantial error, illegality, infirmity or jurisdictional error in the impugned judgment passed by the learned Additional District Judge, Depalpur. The judgment impugned herein is well reasoned and based on the evidence available on record, therefore, this Court is of considered opinion that the same does not call for any interference. Hence, the present Regular First Appeal, being devoid of any force, is **dismissed**. No order as to costs.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood