# M/S. Shakti Bhog Food Industries Ltd. vs The Central Bank Of India on 5 June, 2020

## Equivalent citations: AIR 2020 SUPREME COURT 2721, AIRONLINE 2020 SC 576

## Author: A.M. Khanwilkar

## Bench: Dinesh Maheshwari, Indira Banerjee, A.M. Khanwilkar

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2514 OF 2020
(Arising out of SLP (C) No. 30209/2017)

Shakti Bhog Food Industries Ltd. ...Appellant(s)

Versus

The Central Bank of India & Anr. ...Respondent(s)

With

CIVIL APPEAL NO. 2515 OF 2020
(Arising out of SLP (C) No. 30210/2017)

JUDGMENT

A.M. Khanwilkar, J.

CIVIL APPEAL NO. 2514 OF 2020 (Arising out of SLP (C) No. 30209/2017)

1. Leave granted.

2. This appeal takes exception to the judgment and order dated 2.1.2017 passed by the High Court of Delhi at New Delhi (for short, "the High Court") in R.S.A. No. 391/2016, whereby the High Court affirmed the decision of the Court of Civil Judge–05, Central District, Tis Hazari Courts, Delhi,

dated 6.1.2016 in C.S. No. 950/2014 allowing the application filed by the respondents/defendants for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, "the CPC"), instituted by the appellant/plaintiff. The Additional District & Sessions Judge, Central, Tis Hazari Courts, Delhi, vide order dated 23.7.2016 in R.C.A. No. 61794/2016 had also affirmed the order of rejecting the plaint. The appellant had filed the stated suit on 23.2.2005 for a decree for rendition of true and correct accounts in respect of the interest/commission charged and deducted by the respondent□Bank relating to current account No. CCM 20225 of the appellant for the period between 1.4.1997 and 31.12.2000 and also for recovery of the excess amount charged by the respondent□Bank consequent to rendition of accounts with interest at the rate of 18% per annum from the date of deduction including interest pendente lite realization of the amount and future interest.

3. The plaint came to be rejected by the trial Court under Order VII Rule 11(d) of the CPC on the ground that it was barred by law of limitation, as it was filed beyond the period of three years prescribed in Article 113 of the Limitation Act, 1963 (for short, "the 1963 Act"), as applicable to the present case, from the date when the right to sue accrued to the appellant in October, 2000. The entire discussion of the trial Court in that regard can be traced to paragraphs 10 and 11, which read thus: □"10. As stated above the plaintiff by way of present suit has sought two reliefs i.e. rendition of account and repayment of excess money. Limitation Act, 1963 does not provide any specific article with regard to time period within which accounts can be sought by party from its bank. As such, Article 113 of Limitation Act came into picture which provides a limitation period of three years for suits for which no limitation period is provided, from the date when right to sue accrues.

11. In the present case in hand, as per averments made by the plaintiff in his plaint, the facility was availed by the plaintiff from the defendants till October 2000. Further as per averments made in the plaint the alleged amount so charged by the defendant from the plaintiff, in excess from agreed amount, was till October, 2000. As such, at best can be said right to sue accrues in favour of the plaintiff in October, 2000. Considering the law as stated in above paragraph, plaintiff could have filed the present suit i.e. for rendition of account and repayment of excess amount till October 2003. ..." After so observing, the trial Court considered the submission of the appellant that the cause of action had accrued to the appellant only upon rejection of the representation by the respondent□ Bank entailing in refusal or denial of liability, communicated to the appellant vide letters dated 19.9.2002 and 3.6.2003 and after the final legal notice was served upon the respondents on 7.1.2005. That contention has been rejected by adverting to the decision of the same High Court in C.P. Kapur vs. The Chairman & Ors.1, wherein it is held that exchange of correspondence between the parties cannot extend the limitation period for institution of a suit, once the right to sue had accrued, which in this case had accrued in October, 2000, as has been asserted even in the plaint. Whereas, the suit was filed in February, 2005 beyond the period of three years from the date on which right to sue accrued to the appellant, as prescribed in Article 113 of the 1963 Act. The view so taken by the trial Court commended to the District Court in first appeal and also the High Court in second appeal, which judgment is the subject matter of challenge in the present appeal.

4. We have heard Mr. Nischal Kumar Neeraj, learned counsel for the appellant and Mr. Anuj Jain, learned counsel for the respondents.

5. Be it noted that the appellant had relied on Articles 2, 3 and 22 of the 1963 Act to urge that the suit filed in February, 2005 was within limitation. This plea, however, did not impress the trial Court, the first appellate Court or the High Court. The 1 (2013) 198 DLT 56 Courts proceeded on the basis that Article 113 is attracted in the facts of the present case, as the reliefs claimed by the appellant were not covered under any specific Article with regard to time period within which accounts can be sought by party from its bank, as noted by the trial Court in paragraph 10 of its judgment reproduced above.

6. The central question is: whether the plaint as filed by the appellant could have been rejected by invoking Order VII Rule 11(d) of the CPC? Indeed, Order VII Rule 11 of the CPC gives ample power to the Court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation. This position is no more res integra. We may usefully refer to the decision of this Court in Ram Prakash Gupta vs. Rajiv Kumar Gupta & Ors.2. In paragraph Nos. 13 to 20 of the reported decision, the Court observed as follows: □"13. As per Order 7 Rule 11, the plaint is liable to be rejected in the following cases:

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   "(a)     where it does not disclose a cause of
action;
    (b)     where the relief claimed is undervalued,
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and the plaintiff, on being required by the court to correct the valuation within a 2 (2007) 10 SCC 59 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."

14. In Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code that "9. ... the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power ... at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage,..." (SCC p. 560, para 9).

15. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. “The trial court must remember that if on a meaningful—no formal—reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, [it has to be nipped] in the bud at the first hearing by examining the party searchingly under Order 10 CPC.” (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467], SCC p. 468.).

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487], only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order 7 was applicable.

19. In Sopan Sukhdeo Sable v. Asstt. Charity Commr. [(2004) 3 SCC 137] this Court held thus:

> (SCC pp. 146□47, para 15) “15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair□splitting technicalities.”

20. For our purpose, Clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Order 7 Rule 12 mandates where a plaint is rejected, the court has to record the order to that effect with the reasons for such order.” On the same lines, this Court in Church of Christ Charitable Trust & Educational Charitable Society vs. Ponniamman Educational Trust3, observed as follows: □“10 ... It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either

before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. This position was explained by this Court in Saleem Bhai vs. State of Maharashtra, (2003) 1 SCC 557, in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9) "9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the 3 (2012) 8 SCC 706 averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court." It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property, (1998) 7 SCC 184 and Mayar (H.K.) Ltd. vs. Vessel M.V. Fortune Express, (2006) 3 SCC 100.

12. It is also useful to refer the judgment in T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC 467, wherein while considering the very same provision i.e. Order 7 Rule 11 and the duty of the trial court in considering such application, this Court has reminded the trial Judges with the following observation: (SCC p. 470, para 5) "5. ... The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them." It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code." We may also advert to the exposition of this Court in Madanuri Sri Rama Chandra Murthy vs. Syed Jalal4. In paragraph 7 of the said decision, this Court has succinctly restated the legal position as follows: ☐"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the

averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of 4 (2017) 13 SCC 174 power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage." Keeping in mind the well settled legal position, we may now proceed to analyse the averments in the plaint, as filed by the appellant, to discern whether it was a fit case for rejection of the plaint under Order VII Rule 11(d) of the CPC. As noticed from the trial Court judgment, it is evident that the trial Court did not make any attempt to analyse the plaint in the manner predicated in the aforesaid decisions. Even the District Court dealing with first appeal and the High Court with second appeal omitted to do so. It is the bounden duty of the Court to examine the plaint as a whole and not selected averments therein. For that, we need to advert to the averments in the plaint. Paragraphs 8 to 15 of the plaint, which according to us, are the relevant averments, read as follows:□"8. That the facility as referred to in the foregoing paras was extended with effect from 01.04.1997 and somewhere in the month of July, 2000 it was noticed by the Plaintiff that the Defendants were charging interest/commission @ Rs.4/□per thousand rupees on local cheques and drafts in an arbitrary manner in violation of the assurance given to the Plaintiff.

9. That after the detection of the above overcharging of interest/commission the Plaintiff sent a letter to the Defendants on 21.07.2000 complaining about the overcharging and thereafter the interest/commission was charged as per assurance given.

10. That the amount overcharged as commission/interest was not refunded to the Plaintiff and the Plaintiff sent the following letters addressed to the Bank i.e. General Manager and Senior Manager indicating therein that amount overcharged should be refunded to the Plaintiff with interest thereon: □Letter dated 12.10.2000, 24.10.2000, 30.10.2000, 7.11.2000, 24.12.2000, 01.03.2001, 28.03.2001, 22.5.2001 and 20.06.2001. In all the above letters requests were made to clarify as to how the commission were calculated and deducted from the Plaintiff.

11. That the Assistant General Manager, Sh. P.S. Bawa of Regional Office□B, Delhi vide letter dated 9.7.2001 informed the Plaintiff that the comments of the Branch Office have been invited on the representation of the Plaintiff in respect of the local cheques/DDs discounted during the relevant period and the matter will be decided as early as possible. No progress was made in the matter and the Plaintiff had to submit letter dated 31.10.2001 to the Hon'ble Finance Minister, Govt. of India,

New Delhi.

12. That the Defendants have charged interest for some time for the actual number of days for the Defendants remained out of funds.

13. That vide letter dated 08.05.2002, the Senior Manager informed the Plaintiff that the cheques were being purchased at the prevailing rates. That reply was given to sidetrack the real issue in respect of which letter dated 09.07.2001 was received from Shri P.S. Bawa, Assistant General Manager of Regional Office as referred to in the foregoing paras.

14. That, thereafter, the Plaintiff sent letters dated 12.07.2002, 22.09.2002, 24.3.2003 alongwith which the details of the proposed/estimated excess amount charged were given and it was requested that a sum of Rs.31,57,484/□approximately appears to have been charged in excess of what should have been actually charged and the exact amount should be calculated and refunded to the Plaintiff. No reply was given by the Bank to these letters.

vide letter dated 19.09.2002 had informed that everything was done according to rules and the matters need not to be pursued any further and thereafter the Plaintiff sent another letter dated 03.06.2003." (emphasis supplied) Again, in paragraph 28 of the plaint, it is stated as follows: □"28. That the cause of action to file the suit accrued in favour of the Plaintiff and against the Defendants when the illegal recoveries were noticed and letter dated 21.07.2000 was sent to the Defendants to clarify as to how the interest was being calculated and recovered and on various other dates when the letters were sent to the Defendants with request for refund of the excess amounts charged and on 9.7.2001 when assurance for proper calculation and refund was conveyed to the Plaintiff and on 8.5.2002, 12.7.2002 and 22.9.2002 when requests were again made to settle the matter on 19.9.2002, 3.6.2003 and the cause of action arose on 23.12.2003 when the legal notice was served upon the Defendant and on 28.12.2003 when the reply to the notice was received and finally on 07.01.2005. When the legal notice for rendition of accounts was served upon the Defendants and the cause of action still subsists as the accounts have not been rendered so far nor the excess amount charged has been refunded by the Defendants." From the averments in the plaint, if read as a whole, it would appear that the assertion of the appellant is that the respondents had extended financial facility with effect from 1.4.1997 till October, 2007, but somewhere in the month of July, 2000, the appellant noticed that the respondents were unilaterally charging interest/commission at the rate of Rs.4 per thousand rupees on local cheques and drafts in an arbitrary manner in violation of the assurance given to the appellant. Immediately thereafter, the appellant wrote to the respondent□ Bank vide letter dated 21.7.2000 for taking corrective steps in the matter. Then correspondence ensued between the parties in that regard and the appellant was assured by the Regional Office of the respondent□Bank that an appropriate decision will be taken at the earliest. The relevant assertion in that regard is found in paragraph 11 of the plaint, wherein it is mentioned that the Assistant General Manager □Shri P.S. Bawa of Regional Office□B, Delhi, vide letter dated 9.7.2001 informed the appellant that comments from the concerned Branch Office have been invited and appropriate decision will be taken on its representation as early as possible. Thereafter, on 8.5.2002, the Senior Manager of the respondent□Bank informed the appellant that the cheques were being purchased at the prevailing rates; which plea, according to the appellant, was to deviate from the

position stated by the Assistant General Manager of Regional Office in his letter dated 9.7.2001 referred to earlier. Resultantly, the appellant wrote to the officials of the respondent-Bank vide letters dated 12.7.2002, 22.9.2002 and 24.3.2003. Notably, it is averred in paragraph 15 of the plaint that the Senior Manager of the respondent-Bank vide letter dated 19.9.2002 had informed the appellant that everything was being done in accordance with the rules and the appellant need not pursue the matter any further. It is asserted that despite this intimation, the appellant continued to correspond with the respondent-Bank with a sanguine hope that the issue will be resolved at the appropriate level by the Bank and finally issued a legal notice on 28.11.2003, which was duly responded to by the respondent-Bank vide Advocate's letter dated 23.12.2003. Nevertheless, the appellant gave another legal notice on 7.1.2005 and thereafter, proceeded to file the subject suit in February, 2005.

7. All these events have been reiterated in paragraph 28 of the plaint, dealing with the cause of action for filing of the suit. Indeed, the said paragraph opens with the expression "the cause of action to file the suit accrued in favour of the plaintiff and against the defendants when the illegal recoveries were noticed and letter dated 21.7.2000 was sent to the defendants to clarify as to how the interest was being calculated." This averment cannot be read in isolation. As aforesaid, on reading the plaint as a whole, it is seen that the gravamen of the case made out in the plaint is that the appellant noticed the discrepancy in July, 2000 and immediately took up the matter with the officials of the respondent-Bank at different levels and in response, the Assistant General Manager of Regional Office of the Bank had communicated in writing to the appellant vide letter dated 9.7.2001 that its representation was being examined and comments of the Branch Office have been invited and after receipt thereof the matter will be decided as early as possible. As no further communication was received by the appellant, it had to make a representation to the Finance Minister, Government of India, vide letter dated 31.10.2001 and presumably because of that, the appellant received a communication from the Senior Manager vide letter dated 8.5.2002 informing the appellant that the cheques were being purchased at the prevailing rates. This stand taken by the Senior Manager was to side-track the issue pending consideration before the Assistant General Manager, Regional Office referred to in his letter dated 9.7.2001. The case made out by the appellant is that no communication was received by the appellant from the Assistant General Manager, Regional Office and instead, for the first time it was informed vide letter dated 19.9.2002 sent by the Senior Manager of the respondent-Bank, that all actions taken by the Bank are as per the rules and, therefore, the appellant need not correspond in this regard any further. This response of the Bank could also be regarded as a firm denial or refusal by the authorised official of the Bank, giving rise to cause of action to sue the Bank.

8. Thus understood, the letter dated 8.5.2002 sent by the Senior Manager of the respondent-Bank, at best, be reckoned as accrual of the cause of action to the appellant to sue the respondent-Bank. It is then stated that the appellant received a communication dated 19.9.2002, informing the appellant that it should not carry on any further correspondence with the Bank relating to the subject matter. Until then, the appellant was having a sanguine hope of favourable resolution of its claim including by the Regional Office of the respondents. The appellant, therefore, had to send a legal notice on 28.11.2003, to which the Bank responded on 23.12.2003. Reckoning these dates, the plaint filed on 23.2.2005 was within limitation, as stated in paragraph 28 of the plaint. Resultantly, the question of

rejecting such a plaint under Order VII Rule 11(d) of the CPC did not arise.

9. The expression used in Article 113 of the 1963 Act is "when the right to sue accrues", which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three Courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.

10. Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue "first" accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him) and Article 104 (when the plaintiff is "first" refused the enjoyment of the right). The view taken by the trial Court, which commended to the first appellate Court and the High Court in second appeal, would inevitably entail in reading the expression in Article 113 as – when the right to sue (first) accrues. This would be re□ writing of that provision and doing violence to the legislative intent. We must assume that the Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression "when the right to sue accrues" in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts.

11. We may usefully refer to the dictum of a three□Judge Bench of this Court in Union of India & Ors. vs. West Coast Paper Mills Ltd. & Anr.5, which has had an occasion to examine the expression used in Article 58 in contradistinction to Article 113 of 5 (2004) 2 SCC 747 the 1963 Act. We may advert to paragraphs 19 to 21 of the said decision, which read thus: □"19. Articles 58 and 113 of the Limitation Act read thus:

| | Description of suit | Period of limitation | Time from which limitation period begins to run |
|---|---|---|---|
| 58. | To obtain any other declaration. | Three years | When the right to sue first accrues. |
| | * | * | * |
| 113. | Any suit for which no period of limitation is provided elsewhere in this Schedule. | Three years | When the right to sue accrues. |

20. It was not a case where the respondents prayed for a declaration of their rights. The declaration sought for by them as regards unreasonableness in the levy of freight was granted by the Tribunal.

> 21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when "the right to sue first accrues", in terms of Article 113 thereof, the period of limitation would be counted from the date "when the right to sue accrues". The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose." (emphasis supplied)
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> 12. Similarly, in Khatri Hotels Private Limited & Anr. Vs. Union of India & Anr.6, this Court considered the expression

6 (2011) 9 SCC 126 used in Article 58 in contradistinction to Article 120 of the old Limitation Act (the Indian Limitation Act, 1908). In paragraph 24, the Court noted thus: □"24. The Limitation Act, 1963 (for short "the 1963 Act") prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule." (emphasis supplied) The distinction between the two Articles (Article 58 and Article

120) has been expounded in paragraphs 27 to 30 of the reported decision, which read thus: □"27. The differences which are discernible from the language of the above reproduced two articles are:

> (i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,
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> (ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in Bolo v. Koklan [(1929□ 30) 57 IA 325: AIR 1930 PC 270] and it was held: (IA p. 331) "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted." The same view was reiterated in Annamalai Chettiar v. Muthukaruppan Chettiar [ILR (1930) 8 Rang 645] and Gobinda Narayan Singh v. Sham Lal Singh [(1930□31) 58 IA 125] .

29. In Rukhmabai v. Lala Laxminarayan (AIR 1960 SC

335), the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (Rukhmabai case [AIR 1960 SC 335, AIR p. 349, para 33) "33. ... The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued." (emphasis supplied) Notably, the expression used in Article 113 is similar to that in Article 120, namely, "when the right to sue accrues". Hence, the principle underlying this dictum must apply proprio vigore to Article 113.

13. It is well established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order VII Rule 11 of the CPC is ruled out. In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the Regional Office and the Regional Office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8.5.2002 followed by another letter dated 19.9.2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent-Bank could trigger the right of the appellant to sue the respondent-Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28.11.2003 and again on 7.1.2005 and then filed the suit on 23.2.2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.

14. Reverting to the argument that exchange of letters or correspondence between the parties cannot be the basis to extend the period of limitation, in our opinion, for the view taken by us hitherto, the same need not be dilated further. Inasmuch as, having noticed from the averments in the plaint that the right to sue accrued to the appellant on receiving letter from the Senior Manager, dated 8.5.2002, and in particular letter dated 19.9.2002, and again on firm refusal by the respondents vide Advocate's letter dated 23.12.2003 in response to the legal notice sent by the appellant on 28.11.2003; and once again on the follow up legal notice on 7.1.2005, the plaint filed in February, 2005 would be well within limitation. Considering the former events of firm response by the respondents on 8.5.2002 and in particular, 19.9.2002, the correspondence ensued thereafter including the two legal notices sent by the appellant, even if disregarded, the plaint/suit filed on 23.2.2005 would be within limitation in terms of Article 113.

15. The respondents had relied on the exposition of this Court in Boota Mal vs. Union of India 7, S.S. Rathore vs. State of Madhya Pradesh8, Venkappa Gurappa Hosur vs. Kasawwa C/o Rangappa Kulgod9, and Kandimalla Raghavaiah & Company vs. National Insurance Company & Anr.10 and of Delhi High Court in C.P. Kapur (supra), to buttress the above argument, which, as aforesaid, is unavailable in light of the averments in the plaint under consideration. Suffice it to observe that going by the averments in the plaint, the argument of the respondents that the appellant had placed reliance on the correspondence to get extension of the limitation period, is untenable. The averments in the plaint, however, are very explicit to the effect that the grievance of the appellant about unilateral charging of interest/commission by the respondent□Bank was firmly denied or refused by the Senior Manager of the respondent□Bank vide letter dated 8.5.2002 and in particular letter dated 19.9.2002 and again by Advocate's letter on 23.12.2003, giving rise to cause of action and accrual of right to sue.

7 AIR 1962 SC 1716 8 (1989) 4 SCC 582 9 (1997) 10 SCC 66 10 (2009) 7 SCC 768

16. The respondents had also relied on the dictum of this Court in Fatehji And Company & Anr. vs. L.M. Nagpal & Ors. 11. Indeed, in that case, this Court upheld the order of rejection of plaint on the finding that the suit was barred by limitation under Article 54 of the 1963 Act, in the fact situation of that case. The Court was dealing with a suit for specific performance of a written agreement of sale dated 2.7.1973 and as per the terms, the performance of the contract was fixed for 2.12.1973. In that background, the Court noted that the subsequent letters exchanged between the parties cannot be the basis to extend the period of limitation. Moreover, the Court dealt with the case governed by Article 54 of the 1963 Act, which stipulates the timeline for commencement of period of limitation, being the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. In cases governed by Article 113 of the 1963 Act, such as the present case, however, what is required to be noted is – "when the right to sue accrues" (and not when the right to sue "first" accrues). 11 (2015) 8 SCC 390

17. Similarly, in the case of Hardesh Ores (P) Ltd. vs. Hede and Company12, this Court upheld the order of rejection of plaint under Order VII Rule 11 of the CPC concerning a suit for injunction in reference to Article 58, which expressly postulates that time from which period begins to run is when the right to sue "first" accrues. The argument of the appellant therein to apply Article 113 of the 1963 Act has been noted in paragraph 33 and rejected. In that view of the matter, the exposition in this decision will be of no avail to the respondents.

18. Reverting to the decision in Kandimalla Raghavaiah (supra), the Court interpreted Section 24A of the Consumer Protection Act, 1986, which defines the period of limitation to be within two years from the date on which the cause of action had arisen. In light of that provision, the Court noted that the cause of action in respect of subject insurance policy arose on 22/23.3.1988, when fire in the godown took place, damaging the tobacco stocks hypothecated with the Bank in whose account the policy had been taken by the appellant therein. In other words, the stipulation in Section 24A of the Consumer Protection Act, 1986 is analogous to the time frame specified in other Articles 12 (2007) 5 SCC 614 covered under First Division of the Schedule to the 1963 Act regarding suits relating to accounts; and not similar to Article 113, which envisages three years' time from the period when the

right to sue accrues (and not when the right to sue "first" accrues).

19. As regards Boota Mal (supra) and The East and West Steamship, Georgetown, Madras vs. S.K. Ramalingam Chettiar13, the Court was dealing with a case relating to Article 31 of the old Limitation Act, which provided that the time from which period begins to run, is when the goods sought to be delivered. Even these decisions will be of no avail to the fact situation of the present case, which is governed by Article 113 of the 1963 Act and for the reasons already recorded hereinbefore.

20. Similarly, in S.S. Rathore (supra), the Court was dealing with a case governed by Article 58 of the 1963 Act, which specifically provides that time begins to run when the right to sue "first" accrues. In Ram Prakash Gupta (supra), the Court dealt with a case governed by Article 59 of the 1963 Act, which provides that the suit could be filed when the facts entitling the 13 AIR 1960 SC 1058 plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him. The Court opined that the knowledge mentioned in the concerned plaint could not be termed as inadequate and incomplete. The Court reversed the judgment of the Civil Judge and the High Court rejecting the plaint. This Court also noted that while deciding the application under Order VII Rule 11 of the CPC, few lines or passage from the plaint should not be read in isolation and the pleadings ought to be read as a whole to ascertain its true import. Even in that case, the trial Court and the High Court had failed to advert to the relevant averments, as stated in the plaint, which approach was disapproved by this Court. In the present case, as noticed earlier, the trial Court had failed to advert to and analyse the averments in the plaint, but selectively took notice of the assertion in the plaint in question that the appellant became aware about the discrepancies in July, 2000, and then proceeded to reject the plaint being barred by law of limitation having been filed in February, 2005.

21. Taking overall view of the matter, therefore, we are of the considered opinion that the decisions of the trial Court, the first appellate Court and the High Court in the fact situation of the present case, rejecting the plaint in question under Order VII Rule 11(d) of the CPC, cannot be sustained. As a result, the same are quashed and set aside.

22. In view of the above, this appeal succeeds and the plaint stands restored to the file of the trial Court to its original number for being proceeded in accordance with law. All contentions available to both parties are kept open including the issue of limitation to be decided alongwith other issues on the basis of plea taken in the written statement and the evidence produced by the parties in that behalf uninfluenced by the observations made in the present judgment on factual matters. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

CIVIL APPEAL NO. 2515 OF 2020 (Arising out of SLP (C) No. 30210/2017)

1. Leave granted.

2. In the present appeal, the factual narration in the plaint is similar in material respects, if not identical to the plaint in the companion appeal arising from SLP(C) No. 30209/2017. To wit, it is apposite to reproduce relevant averments from the plaint in question, which read as follows: □"8.

That the facility as referred to in the foregoing paras was extended with effect from the month of November, 1997 to December, 1999 and somewhere in the month of July, 2000 it was noticed by the plaintiff that the defendants were charging interest/commission @ Rs.4/□per thousand rupees on local cheques and drafts in an arbitrary manner in violation of the assurance given to the plaintiff.

9. That after the detection of the above overcharging the interest/commission the plaintiff sent a letter to the defendants on 21.7.2000 complaining about the overcharging and thereafter the interest/commission was charged as per assurance given.

10. That the amount overcharged as commission/interest was not refunded to the plaintiff and the plaintiff sent the following letters addressed to the Bank i.e. General Manager and Senior Manager indicating therein that the amount overcharged should be refunded to the plaintiff with interest thereon: □Letter dated 12.10.2000, 24.10.2000, 30.10.2000, 7.11.2000, 24.12.2000, 01.03.2001, 28.03.2001, 22.05.2001 and 20.06.2001.

In all the above letters requests were made to clarify as to how the commission was calculated and deducted from the plaintiff.

11. That the Assistant General Manager, Sh. P.S. Bawa of Regional Office□B, Delhi vide letter dated 9.7.2001 informed the plaintiff that the comments of the Branch Office have been invited on the representation of the plaintiff in respect of the local cheques/DDs discounted during the relevant period and the matter will be decided as early as possible. No progress was made in the matter and the plaintiff had to submit letter dated 31.10.2001 to the Hon'ble Finance Minister, Govt. of India, New Delhi.

12. That the defendants have charged interest for some time for the actual number of days for the defendants remained out of funds.

13. That vide letter dated 08.05.2002, the Senior Manager informed the plaintiff that the cheques were being purchased at the prevailing rates. That reply was given to sidetrack the real issue in respect of which letter dated 09.07.2001 was received from Sh. P.S. Bawa, Assistant General Manager of Regional Office as referred to in the foregoing paras.

14. That, thereafter, the plaintiff sent letters dated 12.07.2002, 22.07.2002, 24.03.2003 along with which the details of the proposed/estimated excess amount charged were given and it was requested that a sum of Rs.5,39,902/□approximately appears to have been charged in excess of what should have been actually charged and the exact amount should be calculated and refunded to the plaintiff. No reply was given by the bank to these letters.

15. That Senior Manager of the defendant No.2 vide letter dated 19.09.2002 had informed that everything was done according to rules and the matters need not to be pursued any further and thereafter the plaintiff sent another letter dated 3.06.2003.

16. That the excess amounts have been recovered/charged from the plaintiff in an arbitrary manner, in utter violation of the assurances, rules, regulations and established cannons of business dealings; and inspite of the protracted correspondence made from 21.07.2000 to 03.06.2003, the defendants have failed to account for or to justify the recovery of amounts made in an arbitrary manner by citing any rules, regulations or any other authority.

xxx xxx xxx

18. That thereafter, the plaintiff got a legal notice served upon the defendant vide registered letter No.6672 dated 03.12.2003 containing all the details relating to the transactions as could be gathered from the books of accounts of the plaintiff.

19. That reply to the above noted notice was sent by the defendants through Sh. Sanjeev Kumar Gupta, Advocate, vide letter dated 23.12.2003 wherein averments relating to the excess charges were denied and it was stated that the interest was charged on DD/cheques as per Central Officer Circular No. C094□95; 233 upto 01.12.1999 and thereafter as per Circular No. CO/OPR/SCHGS/CIR/LET/2000□2001 dated 18.08.2000." (emphasis supplied) Again, in paragraph 28, it is stated as follows: □"28. That the cause of action to file the suit accrued in favour of the plaintiff and against the defendants when the illegal recoveries were noticed and letter dated 21.07.2000 was sent to the defendants to clarify as to how the interest was being calculated and recovered and on various other dates when the letters were sent to the defendants with request for refund of the excess amounts charged and on 9.7.2001 when assurance for proper calculation and refund was conveyed to the plaintiff and on 8.5.2002, 12.7.2002 and 22.9.2002 when requests were again made to settle the matter on 19.9.2002, 3.6.2003 and their cause of action arose on 28.12.2003 where the legal notice was served upon the defendant and on 23.12.2003 when the reply to the notice was received and finally on 08.01.2005 when the legal notice for rendition of accounts was served upon the defendants and the cause of action still subsists as the accounts have not been rendered so far nor the excess amount charged has been refunded by the Defendants."

3. We have considered the factual position in the present case, which is similar to the facts in the companion appeal. Therefore, for the reasons stated in the judgment in companion appeal arising from SLP(C) No. 30209/2017, even this appeal should succeed on the same terms. Accordingly, this appeal is also allowed and the impugned judgment and order of the trial Court, the first appellate Court and the High Court in second appeal are set aside and the plaint is restored to the file of the trial Court to be disposed of on the same terms as indicated in the companion appeal (arising from SLP(C) No. 30209/2017). There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

.....J. (A.M. Khanwilkar) .....J. (Indira Banerjee) .....J. (Dinesh Maheshwari) New Delhi;

June 05, 2020.