

A M/S SHANTI CONDUCTORS (P) LTD.

v.

ASSAM STATE ELECTRICITY BOARD AND ORS.

Review Petition (C) Nos. 786–787 of 2019

B In

(Civil Appeal Nos. 8442–8443 of 2016)

DECEMBER 18, 2019

**[ASHOK BHUSHAN, S. ABDUL NAZEER
AND NAVIN SINHA, JJ.]**

Code of Civil Procedure, 1908:

- Order 47 r. 1 – Review petition – Error apparent on record*
– On facts, review petition on the ground that there is an apparent
error in the judgment by this Court holding that suit was barred
D *by time – Petitioner's case that in money suit pertaining to interest*
on principal amount received by the petitioner, the last supply was
completed on 04.10.93 but the last payment was made on
05.03.1994, a fresh period of limitation would begin from
05.03.1994 on the basis of s. 19 of the Limitation Act – Held:
E *Exemption provided u/s. 4 to 20 of the Limitation Act, are based*
on certain facts and events – On facts, perusal of the plaint
indicates that there is no pleading as to exception of limitation by
running any fresh period of limitation as per s. 19 – There was no
occasion for defendants to raise any reply in reference to s. 19 –
Also, proviso to Order 7 r. 6 cannot come to the rescue of the
F *plaintiff since the plaintiffs specifically pleaded that the provisions*
of the Limitation Act are not applicable since Act, 1993 has
overriding effect – Furthermore, in the paragraph of cause of
action for the suit, the cause of action is not claimed from the date
05.03.1994, which was the date when the last payment was
G *received by the petitioner – Petitioner in the plaint has clearly not*
pleaded for benefit of s. 19 nor has brought necessary facts to
enable the Court to consider the claim under s. 19 – Thus, the
petitioner is not entitled for benefit of s. 19 and there is no error
in the judgment of this Court holding that the suit of the plaintiff
H *was barred by time – Furthermore, benefit of s. 14 of Limitation*

Act cannot be claimed by the plaintiff since writ petition, which was filed by the Association was by different entity – Issue of benefit of s. 14 was specifically considered and rejected by this Court in its judgment thus, there is no error apparent on the said ground – Limitation Act, 1963 – ss. 19, 14 – Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertakings Act, 1993.

A

B

Order 47 r. 1 – Review petitions – Error apparent on record – On facts, matter pertaining to interest on delayed payment to small scale industries – Review petition on the ground that there was error on face of record in observation of this Court – Some of the supplies made prior to commencement of the 1993 Act– 23.09.1992 and some of the supplies made after 23.09.1992 – Entitlement of petitioner to the benefit of interest under the 1993 Act – Held: The date of bill for the payment for supply of the materials by the plaintiffs was 29.09.1992 – This Court in the judgment rightly held that there was nothing on record to come to the conclusion that any supply was made after the enforcement of the Act so as to enable the appellant to claim interest u/s. 3 read with s. 4 of the 1993 Act, thus, the judgment of the High Court does not call for interference – Submission that there is error apparent on the face of record is rejected and the review petition is dismissed – Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertakings Act, 1993.

C

D

E

Order 47 r. 1 – Review petition – Error apparent on record – Review petition on the ground that this Court dismissed the appeal as not maintainable which is error apparent on record – Held: This Court considered the maintainability of appeal and found against the petitioner; thus, there is no ground to review the petition.

F

Order 47 r. 1 – Review petition – Scope of – Held: Scope of review is limited – Under the guise of review, petitioner cannot be permitted to reagitate and reargue the questions, which have already been addressed and decided.

G

Order 7 r. 6 – Grounds of exemption from limitation law – Applicability of – Held: When suit is instituted after expiration of period prescribed by law of limitation, the plaintiff should show the ground upon which exemption from such law is claimed – However,

H

- A *the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.*

Limitation Act, 1963: s. 19 – Benefit of – Held: Section 19 provide for a fresh period of limitation – Benefit under s. 19 is

- B *available when payment on account of debt or of interest on legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy and an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.*

- C **Dismissing the review petitions, the Court**

HELD:

Review Petition (C) Nos. 786–787 of 2019

1.1 Section 3 of the Limitation Act, 1963 makes it clear

- D **that in event, a suit is instituted after the prescribed period, it shall be dismissed although limitation has not been set up as a defence. The Court by mandate of law, is obliged to dismiss the suit, which is filed beyond limitation even though no pleading or arguments are raised to that effect. The provisions of Sections 4 to 20 are exceptions when suit beyond the period of limitation as prescribed in the Schedule shall not be dismissed as required by Section 3. Order VII Rule 6 C.P.C. uses the words “the plaint shall show the ground upon which exemption from such law is claimed”. The exemption provided under Sections 4 to 20 of the Limitation Act, 1963 are based on certain facts and events.**

- E **Section 19 provide for a fresh period of limitation, which is founded on certain facts, i.e., whether payment on account of debt or of interest on legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, whether an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. [Para 11 and 12] [263-C-D; G-H]**

1.2 A perusal of the plaint indicates that there is no pleading as to exception of limitation by running any fresh period of limitation as per Section 19. The details of delivery challans

- G **have been given, last challan being dated 04.10.1993 has been**

mentioned by which supply was made. The details of payments received have also been mentioned, in which last being made on 05.03.1994 has been mentioned, but for the last payment made on 05.03.1994, there was no pleading of an acknowledgment on the part of the respondents, which could result in start of fresh period of limitation. Further, it has been further specifically pleaded that provisions of Limitation Act do not apply in view of the provisions contained in the Act, 1993 as because the Act, 1993 is having overriding effect over the Limitation Act and all other Acts. There being no specific pleading by the plaintiffs claiming any start of fresh period of limitation, there was no occasion for defendants to raise any reply in reference to Section 19. [Para 13, 14] [265-C-E; 266-A]

A

B

C

1.3 The proviso of Order VII Rule 6 added by Act 104 of 1976, provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint. The proviso of Order VII Rule 6 cannot come to the rescue of the plaintiff, the plaintiffs have specifically pleaded in paragraph 21 that the provisions of the Limitation Act are not applicable since Act, 1993 has overriding effect. The trial court in decreeing the suit of the plaintiff has accepted the submission and has held that Limitation Act, 1963 is not applicable. [Para 18] [269-G-H]

D

E

F

1.4 Paragraph 24 of the plaint, which is a paragraph of cause of action for the suit, which refers to date beginning from 31.03.1992 till 05.10.1993, i.e., the beginning from the first supply order i.e., 31.03.1992 and date of last supply order, i.e., 05.10.1993, but cause of action is not claimed from the date 05.03.1994, which was the date when the last payment was received by the petitioner. The petitioner in the plaint has clearly not pleaded for benefit of Section 19 nor has brought necessary facts to enable the Court to consider the claim under Section 19. Thus, the petitioner is not entitled for benefit of Section 19 of the Limitation Act and there is no error in the judgment of this Court dated 23.01.2019 holding that the suit of the plaintiff was barred by time. [Para 19] [270-A-C]

G

H

- A **1.5** That benefit of Section 14 of Limitation Act cannot be claimed by the plaintiff since writ petition, which was filed by the Association was by different entity. The question of benefit of Section 14 having been specifically considered and rejected by this Court in its judgment dated 23.01.2019, there is no error apparent on the said ground. Moreover, instant is a case where writ petition filed by Association was dismissed on 28.08.1997 subsequent to filing of the suit by plaintiff on 10.01.1997. Furthermore, after the judgment of the Single Judge on 28.08.1997 Association filed a writ appeal challenging the said judgment, which facts also detracts from fulfilling the conditions as required for extending the benefit of Section 14 of the Limitation Act. [Para 20] [270-D-E]
- B **1.6** Insofar as other submissions that Act, 1993 is retroactive in nature and further amount due at the time of the commencement of the Act ought to attract interest of the Act, 1993, all these submissions have been elaborately considered in the judgment dated 23.01.2019, which have been considered on merits. The scope of review is limited and under the guise of review, petitioner cannot be permitted to reagitate and reargue the questions, which have already been addressed and decided. Thus, there is no merit in review petition (c) Nos. 786–787 of 2019. [Para 21, 22] [270-F-G; 271-C]

Review Petition (C) No.789 of 2019

- F 2. A perusal of the chart given in the judgment indicates that the date 29.09.1992 is a date of bill for the payment for supply of the materials by the plaintiffs. In the judgment dated 23.01.2019, it was observed that “there being nothing on record to come to the conclusion that any supply was made after the enforcement of the Act so as to enable the appellant to claim interest under Section 3 read with Section 4 of the Act, 1993, the judgment of the High Court does not need any interference in this appeal”. Thus, there is no merit in the submission of the counsel for the appellant that there is error apparent on the face of record in observation of the Court made in paragraph 85 of the judgment, the said submission is rejected. [Para 24, 25] [272-H D-E]

Review Petition (C) No.788 of 2019

A

3.1 A perusal of the judgment dated 19.03.2013 indicates that the grounds on which the petitioner prayed liberty to file review was not proved in the review petition. The High Court in the review judgment did not hold in favour of the petitioner that he was entitled for the benefit of Act, 1993 rather the High Court accepted the submission of the petitioner that plaintiffs are not debarred from claiming cost under Section 34 CPC, Section 61 of the Sale of Goods Act, 1930 or Section 3 of the Interest Act, 1978 or in equity only on the ground of principal amount. The High Court granted interest at the rate of 9% per annum. The Civil Appeal No. 8445 of 2016 has been filed against the review judgment but obviously the appeal is not against the 9% interest granted to the petitioner. Review judgment does not grant interest under Act, 1993 since the High Court in the review judgment did not interfere with the earlier finding that petitioner is not entitled for benefit under Act, 1993. The review on the ground on which liberty was sought was in essence not accepted by the High Court in its review judgment. Moreover, in judgment dated 23.01.2019, the maintainability of appeal having been considered and found against the petitioner, there is no ground to review the petition. [Para 28] [273-E-H; 274-A]

B

C

D

E

Sant Lal Mahton v. Kamla Prasad and Others, AIR 1951 SC 477 : [1952] SCR 116 ; Jiwanlal Achariya v. Rameshwarlal Agarwalla, AIR 1967 SC 1118 ; Kamla Devi and Others v. Pt. Mani Lal Tewari and Others, (1976) 4 SCC 818 ; Parsion Devi and Others v. Sumitri Devi and Others, (1997) 8 SCC 715 : [1997] Suppl. SCR 470 – referred to.

F

Case Law Reference

[1952] SCR 116	referred to	Para 12	G
AIR 1967 SC 1118	referred to	Para 14	
(1976) 4 SCC 818	referred to	Para 14	
[1997] 4 Suppl. SCR 470	referred to	Para 21	H

A CIVIL APPELLATE JURISDICTION : Review Petition (Civil) Nos. 786-787 of 2019 in Civil Appeal Nos. 8442-8443 of 2016.

From the Judgment and Order dated 23.01.2019 passed in Civil Appeal Nos. 8442-8443 of 2016

B With

Review Petition (C) Nos. 789, 788 of 2019.

Abhishek Manu Singhvi, Ajit Kumar Sinha, Basava S. Prabhu Patil, Vijay Hansaria, Sr. Advs., Devashish Bharuka, Ravi Bharuka,

C Ms. Sarvshree, Justine George, Ms. Srishti Agarwal, Narendra M. Sharma, Siddhartha Jain, Aditya Singh, Chinmay Desh Pande, Geet Ahuja, Rachitha H., Rajiv Shankar Dvivedi, Ms. Sneha Kalita, Ardhendumauli Prasad, Sanjeev Kumar Singh, Shighra Kumar, Rajlakshmi Singh, Ms. Sneha Kalita, Avnish Pandey, Abhinav Hansaria, Ms. Taruna A. Prasad, Advs. for the appearing parties.

D The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

E 1. These review petitions have been filed against the common judgment dated 23.01.2019 passed in Civil Appeal Nos. 8442-8443 of 2016, Civil Appeal No. 8450 of 2016 and Civil Appeal No. 8445 of 2016, by which all the Civil Appeals were dismissed, sought to be reviewed by these applications. All the review petitions filed have raised different grounds, which need to be considered separately.

F **Review Petition (C) Nos. 786-787 of 2019**

G 2. To consider the grounds raised in the review petition, few facts need to be noticed.

H 2.1 The Assam State Electricity Board, the respondent has issued two supply orders to the petitioner dated 31.03.1992 and 13.05.1992

G for supply of aluminium electrical conductors. Petitioner completed supply in pursuance of the above supply orders beginning from June, 1992 till 04.10.1993. The President of India to provide for and regulate payment of interest on delayed payment to small scale industries issued an Ordinance on 23.09.1992 namely "The interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Ordinance", which

subsequently became the Act namely “The interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 (hereinafter referred to as “Act, 1993”)” w.e.f. 23.09.1992. A

2.2 A Writ Petition (C) No. 1351 of 1993 was filed by Assam Conductors Manufacturers Association on behalf of its five members, which included M/s. Shanti Conductors Private Limited also for realisation of its dues and for seeking payment. An interim order was passed by the Guwahati High Court on 21.07.1993, in which the High Court observed that respondents may settle with the outstanding bills of the petitioners. The respondent paid an amount of approx. Rs.2.15 Crores in instalments to the petitioner and the last instalment of payment being made on 05.03.1994. A Money Suit No.21 of 1997 was filed by the petitioner in the Court of Civil Judge (Sr. Division) No.1 at Guwahati on 10.01.1997 for a decree of Rs.53,68,492.56 towards the interest only on the payment of the principal amount, which had already been received by the petitioner. B

2.3 On 28.08.1997, Writ Petition (C) No.1351 of 1993 was dismissed observing that writ petitioner may go to the Civil Court for realisation of its dues. C

2.4 The trial court on 02.02.2000 decreed the money suit of the petitioner for Rs.51,60,507.42 with future interest @ 23.75% on a monthly compounding basis. RFA No.66 of 2000 was filed by the petitioner against the judgment of the trial court. The Division Bench made a reference to the Full Bench for answering three points as raised by the counsel for the appellant. Three-Judge Bench answered the reference on 05.03.2002. The respondent filed Special Leave Petition (C) No. 24577 of 2002, which was subsequently converted in Civil Appeal No.2351 of 2003. This Court on 10.07.2012 dismissed the Civil Appeal No.2351 of 2003 [M/s. Assam State Electricity Board Vs. M/s. Shanti Conductors Pvt. Ltd.] alongwith another Civil Appeal No.2348 of 2003 [M/s. Purbanchal Cables and Conductors Pvt. Ltd. Vs. Assam State Electricity Board]. After dismissal of the above Civil Appeals, the Division Bench of the High Court allowed the RFA No.66 of 2000 filed by the respondents and dismissed the suit of the petitioner. E

2.5 Against the judgment of the Division Bench dated 20.11.2012, Civil appeal Nos.8442-8443 of 2016 was filed by M/s. Shanti Conductors (P) Ltd, the petitioner in the appeal. Two judgments were F

G

H

- A delivered by two Hon'ble Judges with two divergent opinion, which judgment is reported in (2016) 16 SCC Page 13. The matter was referred to Three Judge Bench, which heard all the appeals and vide its judgment dated 23.01.2019 dismissed the appeals.
- B 3. In the suit filed by the petitioners, one of the questions, which was framed was "Whether the suit filed by the appellants is barred by limitation?" In paragraph 27 of the judgment dated 23.01.2019, Seven question, which had arisen in these appeals have been noticed. Issue No.3 was "Whether money suit by M/s. Shanti Conductors was barred by limitation?
- C 4. Issue No.3 has been dealt from paragraphs 59 to 76 and we concluded in paragraph 76 that suit filed by M/s. Shanti Conductors (P) Ltd. was barred by time.
- D 5. Shri Abhishek Manu Singhvi, learned senior counsel appearing for petitioner submits that there is an apparent error in the judgment dated 23.01.2019 in holding that suit was barred by time. He submitted that according to admitted facts last payment made by the respondent was on 05.03.1994 and suit having been filed within three years, i.e., on 10.01.1997 was well within time. It is submitted that last supply having been completed on 04.10.1993 and even though three years period from 04.10.1993 had lapsed, but the payment having been made on 05.03.1994 by the respondents, a fresh period of limitation shall be available to the petitioner as per Section 19 of the Limitation Act, 1963. It is submitted that in the written submission, which was submitted on behalf of the petitioner, reliance was placed on Section 19 and further in earlier judgment of this Court reported in (2016) 15 SCC 13, in paragraph 53, Justice Gowda has answered the question of limitation in favour of the appellant relying on Section 13. It is submitted that Section 19 escaped the notice of this Court while answering the question of limitation, which is an error apparent, need to be corrected and it has to be held that suit was well within time. Dr. Singhvi further submits that petitioners were also entitled for benefit of Section 14 of the Limitation Act since Writ Petition No. 1351 of 1993 was filed in the High Court by Assam Conductors manufacturers Association, of which petitioner was one of the members, which writ petition came to be dismissed on 28.08.1997, the period during which the writ petition was pending consideration ought to have been excluded while computing the

limitation for money suit filed by the petitioner. Dr. Singhvi submits that although in the impugned judgment, this Court has considered claim of petitioner of exclusion of time under Section 14 of the Limitation Act but the benefit was erroneously denied on the ground that writ petition was filed by the Assam Conductors Manufacturers Association, which is a different entity than the petitioner. He submits that the said view is apparently erroneous and need to be corrected. In the review petition, apart from submissions of limitation, several other grounds have been urged touching on the issues, which have been considered and decided in the judgment dated 23.01.2019. He sought to contend that Act, 1993 is retroactive and further any outstanding amount at the time of commencement of the Act ought to attract interest under the Act, 1993.

6. Shri Vijay Hansaria, learned senior counsel appearing for the respondents refuted the contentions of the petitioner and submitted that there is no error apparent on record. The question on limitation of Suit has been specifically considered and this court held that suit is barred by time. Arguments made on the strength of Section 14 has been specifically considered and rejected. The petitioner was not entitled for any benefit of Section 14 of the Limitation Act since Section 14 contemplates exclusion of time of the proceeding, which the plaintiff has been prosecuting with due diligence. He submits that plaintiff in the suit in question is M/s. Shanti Conductors whereas petitioner in the writ petition, which was filed in the Guwahati High Court was association, which is a different entity and it cannot be said that plaintiff of suit was the same entity, which had filed the writ petition. Shri Hansaria further submits that against the dismissal of the writ petition, a writ appeal was filed by the Association, which writ appeal was also subsequently dismissed by the Division Bench, which fact has been concealed by the petitioner. When against the judgment of learned Single Judge, the appeal was filed, no question of bonafide prosecuting the earlier proceedings arises. Shri Hansaria further submits that for taking benefit under Section 19 of the Limitation Act, there has to be specific pleading and proof in the suit. Plaintiffs have neither pleaded any ground for claiming benefit under Section 19 nor proved the same in the suit, hence benefit of Section 19 cannot be extended. He further submits that for taking benefit of Section 19 of the Limitation Act, there has to be acknowledgment of the payment, which is a question of fact required to be pleaded and proved by the plaintiffs.

A

B

C

D

E

F

G

H

- A 7. Learned senior counsel for the parties have also placed reliance on various judgments of this Court, which shall be referred to while considering the submissions.
- B 8. We may first consider the grounds raised by the petitioner on Section 19 of the Limitation Act. Although, during oral submissions, no argument was raised on Section 19 of the Limitation Act, but the question being of limitation of the suit, we permitted the learned counsel for the parties to advance their submissions.
- C 9. Section 19 of the Limitation Act is as follows:-
“19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:
- D Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.
- E Explanation.—For the purposes of this section,—
(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;
(b) “debt” does not include money payable under a decree or order of a court.”
- F 10. In the judgment dated 23.01.2019, it has been held that the limitation of the suit filed by the petitioner shall be governed by Article 113 of the Limitation Act, 1963, which is three years from the date when the right to sue accrues. In paragraph 71 of the judgment, it has been held that last supply was completed on 04.10.1993, thus, amount became due on 04.11.1993 and the period of three years shall start running from 04.11.1993 and suit filed was beyond three years. The petitioners on the strength of Section 19 contends that since the last payment was made on 05.03.1994, a fresh period of limitation shall begin from the H fresh date, i.e., 05.03.1994 and the suit filed on 10.01.1997 was well

within time. Section 3 of the Limitation Act, 1963 deals with bar of limitation. Section 3(1) is as follows:- A

“3. Bar of limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. B
XXXXXXXXXXXXXXXXXXXX”

11. The above provision makes it clear that in event, a suit is instituted after the prescribed period, it shall be dismissed although limitation has not been set up as a defence. The Court by mandate of law, is obliged to dismiss the suit, which is filed beyond limitation even though no pleading or arguments are raised to that effect. The provisions of Sections 4 to 20 are exceptions when suit beyond the period of limitation as prescribed in the Schedule shall not be dismissed as required by Section 3. In this context, we need to refer to Order VII Rule 6 of the Civil Procedure Code. Order VII deals with plaint. Order VII Rule 6 contains a heading “Grounds of exemption from limitation law”. Order VII Rule 6 is as follows:- C

“6. Grounds of exemption from limitation law. - Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed: D

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.” E F

12. Order VII Rule 6 uses the words “the plaintiff shall show the ground upon which exemption from such law is claimed”. The exemption provided under Sections 4 to 20 of the Limitation Act, 1963 are based on certain facts and events. Section 19, with which we are concerned, provide for a fresh period of limitation, which is founded on certain facts, i.e., (i) whether payment on account of debt or of interest on legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, (ii) an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. We may notice the judgment of this G H

- A Court dealing with Section 20 of the Limitation Act, 1908, which was akin to present Section 19 of the Limitation Act, 1963. In **Sant Lal Mahton Vs. Kamla Prasad and Others, AIR 1951 SC 477**, this Court held that for applicability of Section 20 of the Limitation Act, 1908, two conditions were essential that the payment must be made within the prescribed period of limitation and it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. This Court further held that for claiming benefit of exemption under Section 20, there has to be pleading and proof. In paragraphs 9 and 10, following has been laid down:-
- C “**9.** It would be clear, we think, from the language of s. 20, Limitation Act, that to attract its operation two conditions are essential : first, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. We agree with the Subordinate Judge
- D that it is the payment which really extends the period of limitation under s. 20, Limitation Act; but the payment has got to be proved in a particular way and for reason of policy the legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony. Unless, therefore, there is acknowledgment in the required form, the payment by itself is of no avail. The Subordinate Judge, however, is right in holding that while the section requires that the payment should be made within the period of limitation, it does not require that the acknowledgment should also be made within that period. To interpret the proviso in that way would be to import into it certain words which do not occur there. This is the view taken by almost all the High Courts in India and to us it seems to be a proper view to take (See Md. Moizuddin v. Nalini Bala A.I.R. (24) 1937 Cal 284 : I.L.R. (1937) 2 Cal. 137; Lal Singh v. Gulab Rai 55 All 280, Venkata Subbhu v. Appu Sundaram 17 Mad. 92, Ram Prasad v. Mohan Lal A.I.R. (10) 1923 Nag 117 and Viswanath v. Mahadeo 57 Bom. 453.
- H **10.** If the plaintiff's right of action is apparently barred under the Statute of limitation, O. 7, R. 6, Civil P.C. makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act upon which he relies to exclude its operation; and if the plaintiff has

got to allege in his plaint the facts which entitle him to exemption, obviously these facts must be in existence at or before the time when the plaint is filed; facts which come into existence after the filing of the plaint cannot be called in aid to revive a right of action which was dead at the date of the suit. To claim exemption under s. 20. Limitation Act the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part payment of the principal, but that such payment had been acknowledged in writing in the manner contemplated by that section.....”

A

B

C

D

E

F

G

H

13. We need to notice as to whether the petitioners in plaint have pleaded any exclusion of time under Section 19 of the Act or not. The plaint is filed as Annexure P/2 in Civil Appeal Nos. 8442-8443 of 2016. A perusal of the plaint indicates that there is no pleading as to exception of limitation by running any fresh period of limitation as per Section 19. In paragraph 10, the details of delivery challans have been given, last challan being dated 04.10.1993 has been mentioned by which supply was made. In paragraph 12, details of payments received have also been mentioned, in which last being made on 05.03.1994 has been mentioned, but for the last payment made on 05.03.1994, there was no pleading of an acknowledgment on the part of the respondents, which could result in start of fresh period of limitation. Further in paragraph 21, it has been further specifically pleaded that provisions of Limitation Act do not apply in view of the provisions contained in the Act, 1993 as because the Act, 1993 is having overriding effect over the Limitation Act and all other Acts. Paragraph 21 of the plaint is referred to for ready reference:-

“**21.** That the transaction between the plaintiffs and the defendants are duly maintained by the plaintiffs in the Books of Accounts like ledger, Sale Register etc., which are kept in the usual course of the business of the plaintiffs and those accounts between the plaintiffs and the defendants are in continuity and the interest payable by the defendants to the plaintiffs are carried over till date. As such the suit of the plaintiffs is in within time. Apart from that the provisions of the Limitation Act do not apply in view of the provisions contained in the Act, 1993 as because the Act of 1993 is having overriding effect over the Limitation Act and all other Acts.”

- A 14. There being no specific pleading by the plaintiffs claiming any start of fresh period of limitation, there was no occasion for defendants to raise any reply in reference to Section 19. Shri Abhishek Manu Singhvi, learned senior counsel has relied on two judgments of this Court, which need to be noticed: (i) **Jiwanlal Achariya Vs. Rameshwarlal Agarwalla, AIR 1967 SC 1118**, and (ii) **Kamla Devi and Others Vs. Pt. Mani Lal Tewari and Others, (1976) 4 SCC 818**. In **Jiwanlal Achariya (supra)**, this Court had occasion to consider Section 20 of the Limitation Act, 1908, which was akin to present Section 19 of the Limitation Act, 1963. The Court was considering the question as to what shall be the date of a post-dated cheque, whether it shall be the date on which cheque bears or the date the cheque is handed over to compute the start of fresh period of limitation. The Court held that the date which post-dated cheque bears subject to payment by the bank shall be treated as a date for start of the fresh period of limitation. In paragraph 8 of the judgment, it was observed that the proviso to Section 20 shall be treated to be complied with for the cheque itself is an acknowledgment of the payment in the handwriting of the person giving the cheque. Paragraph 8 of the judgment is as follows:-
- E “**8.** This brings us to the question of limitation. The facts are not in dispute now. The promissory note was executed on February 4, 1954. On the same date a post-dated cheque bearing the date February 25, 1954 was given by the defendant-appellant to the plaintiff-respondent, the intention being that on being realised it would be credited towards part payment. It was realised sometime after February 25, 1954 and was credited towards part payment, the appellant himself having made an endorsement admitting this part payment. But it is contended on behalf of the appellant that as the post-dated cheque was given on February 4, 1954, that must be held to be the date on which part payment was made. It has been held by the High Court that the acceptance of the post-dated cheque on February 4, 1954 was not an unconditional acceptance. Where a bill or note, is given by way of payment, the payment may be absolute or conditional, the strong presumption being in favour of conditional payment. It followed from the finding of the High Court that the payment was conditional i.e. that the payment will be credited
- F
- G
- H

to the person giving the cheque in case the cheque is honoured. A
In the present case the cheque was realised and the question is what is the date of payment in the circumstances of this case for the purpose of Section 20 of the Limitation Act. Section 20 inter alia lays down that where payment on account of debt is made before the expiration of the prescribed period by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made. Where therefore the payment is by cheque and is conditional, the mere delivery of the cheque on a particular date does not mean that the payment was made on that date unless the cheque was accepted as unconditional payment. Where the cheque is not accepted as an unconditional payment, it can only be treated as a conditional payment. In such a case the payment for purposes of Section 20 would be the date on which the cheque would be actually payable at the earliest, assuming that it will be honoured. Thus if in the present case the cheque which was handed over on February 4, 1954 bore the date February 4, 1954 and was honoured when presented to the bank the payment must be held to have been made on February 4, 1954, namely, the date which the cheque bore. But if the cheque is post-dated as in the present case it is obvious that it could not be paid till February 25, 1954 which was the date it bore. As the payment was conditional it would only be good when the cheque is presented on the date it bears, namely, February 25, 1954 and is honoured. The earliest date therefore on which the respondent could have realised the cheque which he had received as conditional payment on February 4, 1954 was 25th February, 1954 if he had presented it on that date and it had been honoured. The fact that he presented it later and was then paid is immaterial for it is the earliest date on which the payment could be made that would be the date where the conditional acceptance of a post-dated cheque becomes actual payment when honoured. We are therefore of opinion that as a post-dated cheque was given on February 4, 1954 and it was dated February 25, 1954 and as this was not a case of unconditional acceptance, the payment for the purpose of Section 20 of the Limitation Act could only be on February 25, 1954 when the cheque could have been presented at the earliest for payment. As in the present case the cheque was B
C
D
E
F
G
H

- A honoured it must be held that the payment was made on February 25, 1954. It is not in dispute that the proviso to Section 20 is complied with in this case, for the cheque itself is an acknowledgment of the payment in the handwriting of the person giving the cheque. We are therefore of opinion that a fresh period of limitation began on February 25, 1954 which was the date of the post-dated cheque which was eventually honoured.”
- B

- C 15. In the above case, in the plaint itself it was noticed that although the promissory note was executed on 04.02.1954 and the suit was filed on 22.04.1957 but the plaintiff had relied on payment of a cheque on 25.02.1954 to bring the suit within time. Paragraph 1 of the judgment is to the following effect:-

- D “Two questions of law arise in this appeal by special leave against the judgment of the Patna High Court. The facts which have been found by the High Court and which are necessary for our purposes may be briefly narrated. The appellant was the defendant in a suit filed by the plaintiff-respondent for recovery of money on the basis of a promissory note for Rs 10,000 executed on February 4, 1954 by the defendant-appellant in favour of the plaintiff-respondent. 12 per cent per annum interest was to run on the promissory note which was payable on demand or to the order of the plaintiff-respondent. The suit was filed on February 22, 1957 and was thus obviously beyond time from February 4, 1954. The plaintiff-respondent relied on a payment by cheque on February 25, 1954 to bring the suit within time.”
- E
- F 16. The judgment of this Court in **Jiwanlal Achariya (supra)** does not lay down that even without pleading all facts for claiming start of fresh period of limitation, the plaintiff is entitled for the benefit of Section 19. The next judgment relied by Shri Singhvi is **Kamla Devi and Others (supra)**, in which case, this Court was considering Section 19 of the Limitation Act, 1963. This Court relied on an acknowledgement of payment for holding that from the date of acknowledgement of order period of limitation shall start. In paragraph 4 of the judgment following has been laid down:-
- G
- H “4. The last contention pressed was that the personal decree should not have been granted, because it was barred by limitation. The basis for this contention is that the payment of Rs 25, which

has been acknowledged on the registered mortgage deed, was not itself by a registered endorsement and, therefore, the plaintiff was entitled to a period of three years only, even if Section 19 may give an extension of limitation. We see no merit in this contention. The function of Section 19 is to provide a later date to count the period of limitation afresh, and that fresh period of limitation will be computed from the time when the acknowledgement is signed. Nothing turns on whether the acknowledgement is itself registered or not. The office of Section 19 being to postpone the date of reckoning limitation and not to create a different substantive period of limitation, the latter depends upon the appropriate article of the Limitation Act which applies to the suit. In this case, the mortgage document was registered and the personal covenant was contained in the registered deed. Therefore, Article 116, which gives a period of six years, applies. Thus, the fresh period of limitation will be six years and it has to be counted from the date of acknowledgement, namely, August 31, 1940. In this view, there is no merit in the plea of limitation either. This is obviously a case where the revisional court had missed a fact apparent upon the record and, therefore, thought it fit, in the exercise of its discretion to review its judgment. Justice has thereby been furthered rather than frustrated. We are not here concerned with an endorsement on the deed as constituting a cause of action.” A B C D E

17. The above judgment noticed the function of Section 19, which provides for a later date to count the period of limitation afresh. There cannot be any dispute to the preposition as laid down by this Court in above case. F

18. We may also notice the proviso of Order VII Rule 6, which has been added by Act 104 of 1976, which provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint. The proviso of Order VII Rule 6 cannot come to the rescue of the plaintiff since as noticed above, the plaintiffs have specifically pleaded in paragraph 21 that the provisions of the Limitation Act are not applicable since Act, 1993 has overriding effect. The trial court in decreeing the suit of the plaintiff has accepted the above submission and has held that Limitation Act, 1963 is not applicable. G H

- A 19. We may further notice that paragraph 24 of the plaint, which is a paragraph of cause of action for the suit, which refers to date beginning from 31.03.1992 till 05.10.1993, i.e., the beginning from the first supply order i.e., 31.03.1992 and date of last supply order, i.e., 05.10.1993, but cause of action is not claimed from the date 05.03.1994,
- B which was the date when the last payment was received by the petitioner. The petitioner in the plaint has clearly not pleaded for benefit of Section 19 nor has brought necessary facts to enable the Court to consider the claim under Section 19. We, thus, are of the view that petitioner is not entitled for benefit of Section 19 of the Limitation Act and there is no error in the judgment of this Court dated 23.01.2019
- C holding that the suit of the plaintiff was barred by time.
- D 20. We may also notice few submissions of Dr. Singhvi in support of his plea that the petitioner was entitled for benefit of Section 14. In our judgment dated 23.01.2019, we have already taken the view that benefit of Section 14 of Limitation Act cannot be claimed by the plaintiff since writ petition, which was filed by the Association was by different entity. The question of benefit of Section 14 having been specifically considered and rejected by this Court in its judgment dated 23.01.2019, we do not find any error apparent on the aforesaid ground. Moreover, present is a case where writ petition filed by Association was dismissed
- E on 28.08.1997 subsequent to filing of the suit by plaintiff on 10.01.1997. Furthermore, after the judgment of the learned Single Judge on 28.08.1997 Association has filed a writ appeal challenging the said judgment, which facts also detracts from fulfilling the conditions as required for extending the benefit of Section 14 of the Limitation Act.
- F 21. Insofar as other submissions of Dr. Singhvi that Act, 1993 is retroactive in nature and further amount due at the time of the commencement of the Act ought to attract interest of the Act, 1993, all these submissions have been elaborately considered in the judgment dated 23.01.2019, which have been considered on merits. The scope of review is limited and under the guise of review, petitioner cannot be permitted to reagitate and reargue the questions, which have already been addressed and decided. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer the judgment of this Court in **Parson Devi and Others Vs. Sumitri Devi and Others, (1997) 8 SCC 715**, wherein in paragraph 9 following has
- H been laid down:-

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.” A

22. We, thus, do not find any merit in Review Petition (C) Nos. 786-787 of 2019, which is accordingly dismissed. C

Review Petition (C) No.789 of 2019

23. Shri Ajit Kumar Sinha, learned senior counsel in support of the review petition contended that there is an error apparent on the face of record in observation of the Court made in paragraph 85 of the judgment. Some of the supplies have been made prior to the commencement of the Act, 1993, i.e., prior to 23.09.1992. It is submitted that some of the supplies were made after 23.09.1992, hence the petitioner was entitled for the benefit of interest under the Act, 1993. He submits that in ground (b), it has been mentioned that details of supply and reason of corresponding details have been noticed by the trial court in the judgment dated 30.09.2002 passed in Money Suit No.32 of 1996. Reference has been made to Annexure – P/3 at Page – 71 @ Page 88 of Civil Appeal No.8450 of 2016. We have perused Annexure P/3, the judgment of the trial court dated 30.09.2002, our attention has been invited to page 88 of the judgment, where reference of 12 bills have been made in the judgment, which is to the following effect:- D E F G

“Stated specifically, it is the plaintiff’s evidence that against the supply of poles to the defendants different divisions on receipt of orders from the defendants, the plaintiff submitted a number of twelve bills for the payment to the defendants to be reiterated as: H

A	Sl. No.	Bill No.	Date	Gross Amount of Bill
	1.	BCPI/31/91/92	20.3.92	Rs.5,02,545.92
	2.	BCPI/32/91/92	20.3.92	Rs.2,99,541.65
	3.	BCPI/33/91/92	20.3.92	Rs.2,98,344.48
	4.	BCPI/3/92/93	7.4.92	Rs.4,67,928.48
B	5.	BCPI/11/92-93	8.6.92	Rs.1,08,806.45
	6.	BCPI/12/92-93	8.6.92	Rs.2,48,459.90
	7.	BCPI/26/92-93	29.9.92	Rs.17,729.50
	8.	BCPI/27/92-93	-	Rs.79,699.77
	9.	BCPI/28/92-93	-	Rs.1,81,497.98
	10.	BCPI/29/92-93	-	Rs.87,249.81
C	11.	BCPI/30/92-93	-	Rs.12,782.45
	12.	5% Security Deposit Bill	-	Rs.23,738.00
		Total Outstanding Amount		Rs.23,28,324.39

24. A perusal of the above chart given in the judgment indicates that the date 29.09.1992 is a date of bill for the payment for supply of the materials by the plaintiffs. In the judgment dated 23.01.2019, we D had observed that “there being nothing on record to come to the conclusion that any supply was made after the enforcement of the Act so as to enable the appellant to claim interest under Section 3 read with Section 4 of the Act, 1993, we are of the view that judgment of the High Court does not need any interference in this appeal”.
- E 25. We, thus, do not find any merit in the submission of the learned counsel for the appellant that there is error apparent on the face of record in observation of the Court made in paragraph 85 of the judgment, the said submission is rejected and the Review Petition (C) No. 789 of 2019 is dismissed.
- F **Review Petition (C) No.788 of 2019**
- G 26. Shri Basava S. prabhu Patil, learned senior counsel appearing for the petitioner contends that this Court in the judgment dated 23.01.2019 has dismissed the appeal of the petitioner as not maintainable, which is an error apparent on record. He submits that the appeal filed by the petitioner being Civil Appeal No. 8445 of 2016 against the review judgment of the High Court dated 19.03.2013 was maintainable.
- H 27. Shri Patil submits that in the judgment dated 23.01.2019, the Issue No.6 was specifically framed regarding maintainability of the Civil Appeal No.8445 of 2016. The maintainability of the appeal was

specifically considered and answered in paragraphs 80, 81 and 82 of the impugned judgment. The submission of Shri Patil is that since the Civil Appeal No.8445 of 2016 was against the judgment of the High Court dated 19.03.2013 by which review petition was partly allowed by allowing interest @9% p.a., against which judgment, the appeal was maintainable and withdrawal of earlier appeal by the petitioner was not fatal. The appellants were issued two supply orders dated 17.02.1992 and 17.03.1992. The suit was filed on 16.05.1994 seeking decree with interest, which trial court decreed. Assam Electricity Board filed a first appeal, which was allowed by the High Court holding that bills raised by the appellants were cleared by the Assam Electricity Board prior to commencement of Act, 1993, hence the appellant was not entitled for benefit of Act, 1993. Special leave petition filed against the judgment of the High Court dated 05.04.2001 was permitted to be withdrawn by following order:-

“Learned counsel for the petitioner seeks leave to withdraw the special leave petition. He states that he will move the High Court in review stating that it has erred in recording that “all the bills were paid and cleared earlier to the commencement of the Act.” The special leave petition is dismissed as withdrawn accordingly.”

28. After the aforesaid judgment of this Court permitting the petitioner to withdraw the special leave petition, a review petition was filed, which was partly allowed on 19.03.2013. A perusal of the judgment dated 19.03.2013 indicates that the grounds on which the petitioner prayed liberty to file review was not proved in the review petition. The High Court in the review judgment did not hold in favour of the petitioner that he was entitled for the benefit of Act, 1993 rather the High Court accepted the submission of the petitioner that plaintiffs are not debarred from claiming cost under Section 34 CPC, Section 61 of the Sale of Goods Act, 1930 or Section 3 of the Interest Act, 1978 or in equity only on the ground of principal amount. The High Court granted interest at the rate of 9% per annum. The Civil Appeal No. 8445 of 2016 has been filed against the review judgment but obviously the appeal is not against the 9% interest granted to the petitioner. Review judgment does not grant interest under Act, 1993 since the High Court in the review judgment did not interfere with the earlier finding that petitioner is not entitled for benefit under Act, 1993. The review on the ground on which liberty was sought was in essence not accepted by the High Court in

A

B

C

D

E

F

G

H

A its review judgment. Moreover, in judgment dated 23.01.2019, the maintainability of appeal having been considered and found against the petitioner, we do not find any ground to review the petition.

29. In result, Review Petition (C) Nos. 786-787 of 2019, Review Petition (C) No. 789 of 2019 and Review Petition (C) No. 788 of 2019
B are dismissed.

Nidhi Jain

Review Petitions dismissed.