

**(1989) 09 GAU CK 0010**

**Gauhati High Court**

**Case No:** First Appeal No. 14 of 1980

State Bank of India

APPELLANT

Vs

Drugs and Scientific Distributors  
and Others

RESPONDENT

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**Date of Decision:** Sept. 11, 1989

**Acts Referred:**

- Limitation Act, 1963 - Article 1

**Citation:** (1992) 73 CompCas 352

**Hon'ble Judges:** J.M. Srivastava, J

**Bench:** Single Bench

**Advocate:** J.N. Sarma, D.R. Guha and K.P. Sarma, for the Appellant; None, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

J.M. Srivastava, J.

This is the plaintiff's appeal against the judgment and degree dated August 9, 1979, passed by the learned Assistant District Judge No. 1, Guwahati, whereby the plaintiff's suit was partly decreed for recovery of Rs. 7,593.28 only.

2. The plaintiff-appellant had filed the suit for recovery of Rs. 46,638.77 against the defendants on the allegations that, on the request of defendant No. 1 of which defendant No. 2 was the sole proprietor, a cash credit account was opened with the plaintiff bank on December 2, 1969, with the limit of Rs. 25,000, that defendant No. 3 had stood surety for defendants Nos. 1 and 2, and the necessary documents had been executed by defendants. On February 5, 1970, when the outstanding balance due to the plaintiff was Rs. 17,056.42, the cash credit balance limit was raised to Rs. 35,000 and, in order to facilitate accounting, the balance due on the old account dated December 2, 1969, was transferred to the new account opened on February 5, 1970, and the necessary documents had been executed by the defendants. On

March 31, 1974, the outstanding balance due from the defendants was Rs. 46,638.77, which had not been paid and, accordingly, the suit was filed,

3. Defendants Nos. 1 and 2 had resisted the claim on the ground that the amount due on the earlier account dated December 2, 1963, had become time-barred and that a new account was opened on February 5, 1970, and that it had nothing to do with the earlier account. It was further pleaded that the amount due to the plaintiff had not been calculated correctly and that there was mistake and after deduction of Rs. 17,066.42, the amount shown as due came to Rs. 29,572.35 which was also not the correct amount for not calculating the rate of interest correctly.

4. The learned trial court had framed the following issues :

1. Whether there is any cause of action ?

2. Whether the suit is maintainable ?

3. Whether the suit is barred by limitation ?

4. Whether the suit is bad for misjoinder of causes of action ?

5. Whether the transfer of outstanding from the earlier cash credit account with a limit of Rs. 25,000 to the enhanced cash credit account with a limit of Rs. 35,000 was validly done and can be treated to be a continuous one ?

6. Whether the plaintiff is entitled to any relief and, if so, to what amount ?

5. The learned trial court held that the account opened on December 2, 1969, was a separate account and that the amount shown therein could not be transferred to the new account opened on February 5, 1970, that the suit was not governed by Article 1 of the Limitation Act, 1963, and that the amount taken by the defendants was by way of overdraft and only a sum of Rs. 7,593.28 was due and recoverable. As noted earlier, the suit was partly decreed.

6. Aggrieved, the plaintiff has come in appeal, and Shri J. N. Sarma, learned counsel appearing on its behalf, has submitted that the view taken by the learned trial court below on limitation and about the nature of the account and also of the evidence produced by the plaintiff was erroneous and could not be sustained. The respondents have not put in appearance in this court.

7. The plaintiff in support of his case had examined PW-1, Ranendra Chakravarty, an officer of the bank who had deposed about the transaction which the defendants had in connection with the cash credit account of defendants, PW-2, Lambodar Nath, of the credit branch of the plaintiff-bank, PW-3, Anjan Barua, field officer of the bank, who deposed about the amount due to the plaintiff, and PW-4, Dwijen Ch. Baidya, office peon of the plaintiff-bank who deposed about having handed over some papers to the defendants, after obtaining the signature of the defendants in the dak book. The plaintiff had also produced the relevant documents in connection

with the account of the defendants with the bank, in particular the agreements dated December 2, 1969, (exhibit 3) and February 5, 1970, (exhibit 6), the cash credit account (exhibit 4) and the cash credit account (exhibit 11) and revival letter Forms I and II (exhibits 9 and 10) besides other documents. The defendants had not examined any witness and had not produced any document.

8. The agreements between the parties dated December 2, 1969, and February 5, 1970, clearly show that the defendants had opened the account to obtain cash credit facilities from the plaintiff-bank, which clearly implies that the defendants could draw money from the plaintiff bank and also deposit money in the said account which was obviously a mutual, open and current account. The view taken by the trial court to the contrary is clearly erroneous, and cannot be sustained. The fact that a promissory note had been executed does not, in any manner, alter the nature of the account because the promissory note was only by way of additional security. The opening words of the agreement are that "in consideration of the State Bank of India, having agreed at our/my request to grant to Drugs and Scientific Distributors. . . . accommodation by way of cash credit to such an amount from time to time as the said bank in its discretion shall think proper and to be operated upon either at the ... on condition that the said cash credit shall to the extent of Rs. 35,000 (rupees thirty-five thousand) and interest be secured by the promissory note . . . .". It further said that "we further agree that the said cash credit account shall be made up with interest on the daily balance thereof and otherwise in accordance with the practice of the said bank and that interest payable under the said promissory note shall be applicable to the payment and satisfaction of interest . . . .". As a matter of fact, a cash credit account is a facility which a person obtains from the bank in order to draw money up to the limit agreed to and makes deposit at his convenience in the account of which the balance is made, as agreed to between the parties or as may be the bank's practice. It is difficult to see how the learned trial court has taken the view that it was a case of an overdraft because even the defendants had not taken such a plea in the written statement and obviously the learned trial court has gone beyond the pleadings of the parties to make a third case of overdraft, which was not permissible. Besides, the plaintiff's witnesses have deposed in support of the plaintiff's version which was borne out by the documents on record and the same had not been controverted by any evidence for the defendants. I, therefore, hold that the finding of the trial court that the cash credit account was not mutual, open and current and that Article 1 of the Limitation Act, 1963, was not attracted is erroneous and cannot be sustained.

9. In so far as the account opened on December 2, 1969, and that opened on February 5, 1970, are concerned, the plaintiff's evidence satisfactorily and clearly established that even though the fresh account dated February 5, 1970, was opened, it was only in continuation of the account dated December 2, 1969, in that the defendants had requested for enhancement of the limit of the cash credit to Rs. 35,000, that it was considered proper or appropriate to have a fresh account and

close the earlier account and transfer the balance in the old account to the new account, I find nothing inherently improbable in the plaintiffs' version which seems to be quite reasonable, and which is borne out by the evidence on record, and not controverted by any evidence. Exhibit 4, the cash credit account, has been disbelieved by the trial court because, in the date column, "1974" was mentioned, and even in the same column later, the year 1970 was mentioned. PW-1, Ramendra Chakravarty, had in his statement testified that "1974" was typed by mistake. The learned trial court has not considered it so. However, on consideration of the evidence on record, I think the learned trial court was in error in not considering the year "1974" as a typing mistake. It was clearly a typing mistake because otherwise later in the same column "1970" could not be noted. Moreover, the plaintiff's version and evidence in support was that the amount due on that account on February 5, 1970, was Rs. 17,066.42. Even the defendant, in his written statement, had admitted that Rs. 17,066.42 was the amount, but the plea was that it was time-barred. The amount outstanding in favour of the plaintiff-bank when the earlier account was closed was Rs. 17,056.42. This itself, indicated that "1974" typed earlier was a mistake. Moreover, the figure "17,056.42" was shown as the opening balance on February 5, 1970, in the new account, a copy of which is exhibit 11. The plaintiff had led evidence that as was the banking practice, a copy of this account had been furnished to the defendants every month. There is nothing on record to show that the defendants had raised any objection to the accounts furnished by the plaintiff in respect of their said cash credit account (opened on February 5, 1970). While it does appear that the defendants had not given anything in writing on February 5, 1970, yet the fact that the new account had been opened on February 5, 1970, and therein the opening balance was shown as Rs. 17,056.42, which was the closing balance of the old account itself, in my opinion, shows that this was in all probability done with the consent or at least with the knowledge of the defendants, more so considering that this account had been furnished to the defendants as required and no objection was ever taken or raised. The defendants should not be heard to say that it was done without their knowledge. The balance due to the plaintiff was Rs. 46,638.77 as per exhibit 11 up to March, 1974. There was no evidence for the defendants to show that the said account was not correct.

10. For the aforesaid reasons, the plaintiff's entire claim was correct and should have been allowed. The judgment and decree of the trial court to that extent are erroneous and require to be set aside.

11. This appeal is allowed. The plaintiff's entire claim for Rs. 46,638.77 is decreed together with pendente lite and future interest at the rate of 12% and with costs throughout.