

(2008) 02 CAL CK 0013**Calcutta High Court****Case No:** G.A. No. 2775 of 2006, C.S. No. 71 of 2005

Unique International Pvt. Limited

APPELLANT

Vs

Dinesh Kumar Singhania

RESPONDENT

Date of Decision: Feb. 1, 2008**Acts Referred:**

- Limitation Act, 1963 - Section 19, 20, 3

Citation: 112 CWN 461**Hon'ble Judges:** Sanjib Banerjee, J**Bench:** Single Bench**Advocate:** Pratap Chatterjee, Jishnu Saha, Arindam Mukherjee and Ashis Kumar Mukherjee, for the Appellant; Ranjan Bachawat, Sabyasachi Chowdhury and Biswajit Kumar, for the Respondent**Judgement**

Sanjib Banerjee, J.

The plaintiff seeks judgment on admission on a document that the defendant questions, but the plaintiff relies on the affidavit filed by the defendant to suggest that admission of the plaintiffs claim is writ large in such affidavit and the matters recorded in the questioned document have been corroborated by the defendant. The plaintiff claims that in March, 2000 the defendant sought a short-term temporary accommodation loan of Rs. 2 crore and offered to pay interest at 15% per annum thereon. The plaintiff agreed to provide the loan and between July 20, 2000 and February 23, 2001 made over four cheques of Rs. 50 lakh each which the defendant encashed. According to the plaintiff, the defendant agreed to secure the loan by transfer of shares in dematerialized form in the plaintiffs account, but ultimately failed to furnish the security. The plaintiff claims that it demanded repayment on January 5, 2005 of the sum Rs. 3,11,00,000/- as at December 31, 2004 which the defendant failed to pay.

2. The plaintiff has given the defendant credit for a sum of Rs. 14,88,869.20/- which the plaintiff claims the defendant paid by cheques. The plaintiff says that the last four payments were by cheques of Rs. 1 lakh each, the first two bearing the date July 4, 2002, the third of December 27, 2002 and the last of December 30, 2004. The suit was instituted on March 21, 2005.

3. The plaintiff relies on a writing of March 14, 2001 issued on the letterhead of the proprietorship firm of which the defendant is the proprietor, signed on behalf of the firm by a person that the plaintiff says was authorized to acknowledge the debt. The writing reads as follows :

" We confirm having received a Loan of Rs. 200 Lacs (Rs. Two Crores only) in four equal instalments of Rs. 50 lacs on different dates from you. As discussed with you, we will also be transferring Shares in Demat from to be held with you as security."

4. The defendant resists the application on two major counts. The defendant denies having issued the last two cheques, those of December 27 and December 30, 2004, and says that the suit is barred by the laws of limitation. The writing of March 14, 2001 is also disowned on the ground that the defendant did not execute the writing and judgement on admission may not be passed unless the admission is made by the defendant.

5. In the affidavit used by the defendant, the defendant suggests that the plaintiff approached the defendant to make substantial investment in shares and the money was paid for such-purpose. The defendant asserts that the transaction was one where the parties recognized that the investment could not be shown as an investment in shares but would be reflected as a temporary loan. The defendant has not disputed that a sum of Rs. 2 crore was received by him from the plaintiff but has this to say as to the nature of the transaction at paragraph 3 of his affidavit:

"(f) In terms of the aforesaid agreement the plaintiff from time to time made investment of an aggregate sum of Rs. 2 crores.

(g) During the period between 2000 and 2002, the defendant made payment of return of investment for around Rs. 12 Lacs.

(h) Due to the adverse share market situation, prevalent at this time, the entire investment which had been made on behalf of the plaintiff suffered a loss and the plaintiff was well aware of the said fact. As such, it was not possible for the plaintiff to obtain any further return of investment made in the shares.

(i) With an oblique and ulterior motive to cause unjust enrichment to itself the plaintiff has filed the above suit attempting to recover its loss suffered from the defendant. The said attempt is wrongful, illegal and the said suit has been filed in a mischievous and misconceived manner by way of an afterthought."

6. The defendant claims that the writing of March 14, 2001 is a fabricated document and the plaintiff has wrongly utilized one of the blank letterheads that had been given to the plaintiff. As to the credits given by the plaintiff to the defendant on account part payments, the defendant has said (at paragraph 11 of his affidavit) as follows :

"In particular, it is denied that any payment was made in the year, 2002 as alleged or at all. It is pertinent to point out that two alleged chaques allegedly dated 27th December 2004 and 30th December 2004 for Rs. 1 Lacs each drawn on ICICI Bank as reflected in annexure "B(II)" of the plaint have never been issued by the defendant and I call upon the plaintiff to furnish further particulars in respect thereof, inter-alia, disclosing the branch from which the said cheque has been issued."

7. It is submitted on behalf of the defendant that despite the payments shown to have been received by the plaintiff in July 2002 not having been specifically denied, once the document on which judgment on admission is sought is questioned and the enforceability of the claim hangs on the thin thread of the two payments of July, 2002, the court should be hesitant to sign judgment on admission on the basis of the document cited as the admission.

8. The defendant asserts that mere part payment would not keep the creditor's claim alive. It is submitted that Section 19 of the Limitation Act, 1963 requires a further act, in addition to the part payment, for a fresh period to be counted therefrom. The defendant proceeds on the basis that the plaintiffs claim is for refund of a deposit made under an agreement covered by Art. 22 of the schedule to the Limitation Act. The defendant submits that for the period of three years recognized by Art. 22 to be enlarged, the creditor has to demonstrate that the payment was accompanied by an acknowledgement of the payment in the handwriting of, or in a writing signed by, the person making the payment. It is the proviso to Section 19 of the Limitation Act to which the defendant draws the attention of the court.

9. Section 19, indeed, requires the twin acts of payment and appropriate acknowledgement, for a fresh period of limitation to be computed from the time when the payment was made :

"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 authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, save in the case of payment of interest made before the 1st day of January 1928, an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

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."

10. The defendant relies on a judgement reported at [Sant Lal Mahton Vs. Kamala Prasad](#), In such case, one of the earlier matters before the Supreme Court which was originally taken to the Judicial Committee on special leave but stood transferred on the abolition of the jurisdiction of the Privy Council, the appeal arose from a judgement of the Patna High Court affirming, on appeal, a decision of a Subordinate Judge in a mortgage suit. The plaintiff sought enforcement of a simple mortgage bond by sale of the mortgage property. The Trial Judge decided all other issues in favour of the plaintiffs but found that the bond sued upon was not legally attested and could not rank as a mortgage bond. On such finding, the Trial Judge refused to make a decree for sale of the mortgage property but passed a money decree, for the amount due on the bond. The liability of the defendant was found upon noticing several payments made by the defendant which attracted the operation of Section 20 of the Limitation Act, 1908 (which is in pari materia with Section 19 of the later Limitation Act). The defendant carried the decree in appeal where no cross-objection or appeal was preferred by the plaintiff. The Patna High Court held that the document was a duly executed mortgage bond but since the plaintiff was not aggrieved by such part of the decree, did not pass a mortgage decree and only affirmed the decree made by the Trial Court.

11. The Supreme Court held that for Section 20 of the old Limitation Act (equivalent to Section 19 of the present Act) to apply, two conditions were essential that 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 or signed by the payer. A mere payment without an acknowledgement, was held to be of no avail. It was also held that while the section requires that the payment should be made within the period of limitation, it does not require that the acknowledgement should also be made within that period. Since the plaint in that case did not refer to the acknowledgements, the appeal was allowed.

12. It is true, as the defendant asserts, that the plaint merely refers to the payments being made by the defendant without any reference to any accompanying acknowledgement But the plaint talks of the payments having been made by cheques issued by the defendant. Cheques are acknowledgements within the meaning of Section 19 of the Limitation Act. In fact, deposits made into a plaintiffs account have been regarded as acknowledgements if the attendant deposit-slips are signed by the defendant. The payments by cheques of July 4, 2002 have not been specifically denied though the two later payments have been. Also, the denial at paragraph 11 of the defendant's affidavit is contrary to the positive assertion made

earlier in that affidavit at paragraph 3(g). In all applications of such nature, where a decree is sought against the defendant, a bald assertion without reference to the cheques would not be taken seriously by court. The quality or the denial at paragraph 11 of the defendant's affidavit in respect of the two cheques of 2002 has to be tested against the denial relating to the two later cheques contained in the same passage. The denial as to the payments of 2002, for which the plaintiff gave credit to the defendant, is evasive. The denial relating to the two later cheques is assertive with a positive case having been made out that the two cheques of December 2004 were not issued by the defendant.

13. Though the defendant has referred to Article 22 of the schedule to the Limitation Act, even if the plaintiff's case is seen to be covered by Article 21, the plaintiff can have benefit of Section 19 by virtue of the payments it shows to have received by cheques from the defendant prior to the disputed cheques of December 2004. The plaintiff has sued for money lent under an agreement that the loan was repayable on demand. The loan was made in tranches between the July, 2000 and February, 2001, Part payments by cheques have been credited to the defendant in 2000, 2001 and July, 2002. The suit was instituted in March, 2005 after the plaintiff claims that it demanded repayment in January, 2005. Whether a suit is time-barred or not has to be determined exclusively with reference to the date on which the plaint is filed and the allegations made therein. Such is the express intent of Section 3 of the Limitation Act, that whether a defence of limitation is taken or not, the court is bound to dismiss a suit which is brought after the period provided for the claim in the schedule to the Limitation Act. If a plaintiff's right of action is apparently barred under the statute of limitation, Order 7 Rule 6 enjoins on him to state specifically in the plaint the grounds of exemption allowed by the Limitation Act.

14. In the narration of events in the plaint, there is reference to the part payments and of such part payments being by cheques as would appear from Annexure B (ii) to the plaint. It would be harsh to condemn the plaintiff merely on the ground that it has said that part payments had been made by cheques but has not specifically averred the same in the plaint though the relevant annexures to the plaint record the same. The claim does not appear to be time-barred on the plaintiff's showing in the plaint. The arguable issue as to limitation that the defendant seeks to raise to resist the present application is without merit, particularly in the defendant's equivocal stand in respect of the payments of July, 2002. The defendant has claimed to have made payment of "around Rs. 12 lacs" between 2000 and 2002. If the payments of December, 2004 are not taken into account, the other payments for which the plaintiff has given the defendant credit, amount to about Rs. 12 lakh. The defendant's assertion at paragraph 3 (g) of its affidavit is contrary to its denial at paragraph 11 of any payment being made by him in the year 2002.

15. Rule 6 of the sixth Order in the first schedule to the Code of Civil Procedure, 1908 recognizes that where admissions of fact have been made in pleading or otherwise,

whether orally or in writing, the court may give such judgment as it may deem fit, having regard to such admissions. The rule permits the court to give such judgment on its own accord without waiting for a party to apply therefor and without waiting for the determination of any other question between the parties. The object of the rule is to enable a party to obtain speedy judgment to the extent of the admission and court does not unduly narrow down the meaning of the rule.

16. A court lessens the matters that need to survive the robust tenure of a suit going to trial upon satisfaction that there is a clear, unequivocal and unambiguous admission. In so assessing, the court has to conclude that there can be no quarrel over the issue, such that it may not be viewed as a matter in dispute. The relief is discretionary and the court accommodates a defendant seeking to explain away an apparent admission. This defendant casts doubt on the document which is cited for the judgement on admission to be obtained. It is possible that the defendant may be seen to have an arguable case as to the authenticity of the document. But even if the document is not accepted as sacrosanct, the substance of the writing in the document has been corroborated in the defendant's affidavit filed in these proceedings. However, while accepting that a sum of Rs. 2 crore was received from the plaintiff, the defendant claims that such payment was by way of investment in the share market and not a loan. If the document of March 14, 2001 is to be disregarded for the purpose of admission, the plaintiff is robbed of the apparent acknowledgement in the document that, it was a loan transaction.

17. Even though the plaintiff cannot seek a decree on the basis of the document of March 14, 2001 after it has been questioned, the defence does not inspire any confidence. It also appears from the ledger accounts relied upon by the plaintiff that a sum of Rs. 1,58,219.20/- was the interest at 15%, per annum for the period upto September 14, 2000 against the payments made on July 20 and July 27, 2000 of sums of Rs. 50 lakh each.

18. In the accounts relied upon by the plaintiff, interest has been debited for the sum of Rs. 1 crore till then made available to the defendant on monthly basis in the months of October, November and December, 2000. It is also evident that payments were made of Rs. 1,25,000/- by the defendant to the plaintiff in the months of October, November and December, 2000. A principal of Rs. 1 crore at 15 % per annum interest fetches Rs. 1.25 lakh per month.

19. There is further corroboration. In December, 2000 the plaintiff made the next payment of Rs. 50 lakh to the defendant. In January, 2001 the plaintiff shows a debit of Rs. 1,68,150/- on account of interest and, sure enough, it is such sum of Rs. 1,68,150/- that the defendant paid on January 11, 2001, a month after receiving the third instalment of Rs. 50 lakh on December 11, 2000. Such odd sum would reflect calculation of interest on the principal amount over an odd period. The next payment made by the defendant to the plaintiff makes the matter clearer. On February 8, 2001 the defendant paid Rs. 1,87,500/- to the plaintiff. A sum of Rs.

1,50,00,000/- would fetch a monthly interest of Rs. 1,87,500/- per month at 15% interest per annum.

20. The accounts have been annexed to the plaint and the plaint was annexed to the application for judgment on admission. The statements contained in the plaint have been referred to at paragraph 11 of the application and dealt with at paragraph 10 of the affidavit. Apart from the bald and evasive denial, the only affirmative statement at paragraph 10 of the defendant's affidavit is that the suit is barred by limitation. No attempt is made by the defendant to deal with the accounts referred to and forming part of the plaint, though the defendant has dealt with Annexure B (ii) to the plaint elsewhere in his affidavit.

21. There is admission of receipt of money by the defendant from the plaintiff, there is acceptance of repayment upto the year 2002 and there is denial of the document of March 21, 2001. True, the defendant has not admitted the transaction to be a loan and with the writing of March 14, 2001 being questioned, there is no apparent admission of a loan transaction on which the plaintiff can rely.

22. But the defence is so meagre and the story of investment is so unbelievable, particularly in the accounts not being dealt with, that the plaintiff cannot be refused altogether. The accounts relied upon by the plaintiff support the case run by the plaintiff and remain uncontroverted. Yet for the plaintiff to obtain judgment on admission, there must be a clear admission and not an inferred admission on the basis of the defendant's non-traverse.

23. The manner in which the document of March 14, 2001 has been challenged, also leaves a lot to be desired. The defendant has said that such document was forged and fabricated and had been "brought into existence by utilizing some of the blank letterheads which had been earlier given by the defendant to the plaintiff in the facts" and circumstances stated hereinbefore". The facts and circumstances that the defendant refers to do not appear in that affidavit, thereinbefore or thereinafter. Such unsubstantiated assertion detracts from the merit thereof.

24. It would, thus, be appropriate that this defendant be allowed to carry his questioning of the document and his dispute as to the nature of the transaction to trial but only on condition of his securing the principal claim of the petitioner of Rs. 1,85,11,130/- (Rs. 2,00,00,000/-less Rs. 14,88,870/-). The defendant is directed to furnish such security in cash in favour of the Registrar, Original Side within a period of four weeks from date. In default, there will be a decree for such amount in favour of the plaintiff. The balance of the plaintiffs claim has to be taken to trial. G. A. No. 2775 of 2006 is disposed of on the above basis. The plaintiff will be entitled to the costs of this application in the suit, Urgent photostat certified copy of the order may be supplied to the parties applying for it upon compliance with all requisite formalities.