**(2008) 02 BOM CK 0017**

**In the Bombay High Court**

**Case No :** Second Appeal No. 8 of 2008

Raiba Shamba Desai APPELLANT

Vs

Shila M. Vernekar alias and Sudha Manjunath Vernekar RESPONDENT

**Date of Decision :** 22-02-2008

**Acts Referred:**

Contract Act, 1872 — Section 25, 25(3)
Limitation Act, 1963 — Section 18, 20

**Citation :** (2008) 02 BOM CK 0017

**Hon'ble Judges :** N.A. Britto, J

**Bench :** Single Bench

**Advocate :** Sudin Usgaonkar, for the Appellant;

## Judgement

N.A. Britto, J.—Heard Shri Usgaonkar, the learned Counsel on behalf of the appellant. The appellant was plaintiff in RCS No. 11/2005. The suit was filed for the recovery of the sum of Rs. 60,000/-, which according to the plaintiff was lent to the defendant in the beginning of the year 2001. The suit was filed on 25/04/2005. As per the allegation of the plaintiff, after one year of lending the said money of Rs. 60,000/-, the plaintiff demanded the money and the defendant issued a cheque dated 26/04/2002 for Rs. 60,000/-, drawn on State Bank of India, which was returned dishonoured for insufficient funds. The suit was decreed by the trial Court but has been dismissed by the first appellate Court on the ground of limitation.

2. There can be no dispute that a suit for recovery of money payable for money lent has to be filed within a period of three years from the date when the money was paid. As rightly noted by the first appellate Court, the money was advanced in the beginning of the year 2001 but the suit was filed on 25/04/2005 i.e. beyond the period of limitation. Counsel on behalf of the appellant submitted that giving of the said cheque was an acknowledgment in writing, which extended the period of limitation in terms of Section 18 of the Limitation Act, 1963 and in support of the said submission, learned Counsel relied upon Rajpati Prasad Vs.

 

Kaushalya Kuer and Others, and the Hindustan Apparel Industries Vs. Fair Deal Corporation, , the latter being a full bench decision of that Court.

3. It appears that there is more than one view on the subject whether a cheque would extend the period of limitation in terms of Section 18 of the Limitation Act, 1963 but what matters for the sake of judicial discipline, is the view held by this Court. The above two views held by the learned Single Judge of Patna High Court and the full bench decision of Gujarat High Court have been rendered by distinguishing and/or dissenting from the view held by this Court. However, what matters is the view held by this Court in Chintaman Dhundiraj V/s. Sadguru Narayan Maharaj Datta Sansthan and Ors. (1956 Bom 553), wherein the Division Bench of this Court observed thus:

There is in our view no acknowledgment of liability merely by giving a cheque which is dishonoured, and a cheque which is dishonoured cannot be regarded as part payment within the meaning of Section 20 of the Limitation Act.

4. This Court has also held in the case of Mr. Narendra V. Kanekar V/s. The Bardez Taluka Co-op. Housing Society Mortgage Society Ltd., & anr. (unreported decision dated 20/04/2006 in Criminal Revision Application No. 3 of 2006) that:

Mere giving a cheque, without anything more, will not revive a barred debt, because cheque has to be given, as contemplated by the explanation in discharge of a legally enforceable debt. There is no doubt that in terms of the Indian Limitation Act, 1963, a signed acknowledgment of liability made in writing before the expiration of the period of limitation, is enough to start a fresh period of limitation. Likewise, when a debt has become barred by limitation, there is also Section 25(3) of the Contract Act, by which, a written promise to pay, furnishes a fresh cause of action. In other words, what clause (3) of Section 25 of the Indian Contract Act in substance does is not to revive a dead right, for the right is never dead at any time, but to resuscitate the remedy to enforce payment by suit, and if the payment could be enforced by a suit, it means that it still has the character of legally enforceable debt as contemplated by the explanation below Section 138 of the Act.

In view of the above, the dismissal of the suit as barred by limitation, could not be faulted.