IN THE HIGH COURT OF SIKKIM AT GANGTOK

(CIVIL APPELLATE JURISDICTION)

DATED : 3rd AUGUST, 2012

CORAM
THE HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

R.F.A.NO. 03 OF 2012

SHRI CHABILAL KHATIWADA,
S/O LATE TIKARAM KHATIWADA,
R/O MAMCHEY,
P.O.PACHAK & P.S.RANGPO,
EAST SIKKIM. ... **Appellant**

Versus

1. SHRI DURGA PRASAD RAI,
S/O LATE BHARAT RAJ RAI,
R/O PACHAK,
P.O. PACHAK & P.S. RANGPO,
EAST SIKKIM.

2. SHRI ADEN LEPCHA,
S/O LATE AJAY LEPCHA,
R/O PACHAK,
P.O. PACHAK & P.S. RANGPO,
EAST SIKKIM.

3. SHRI NORBU BHUTIA,
S/O LATE THENDUP BHUTIA,
R/O PACHAK,
P.O. PACHAK & P.S. RANGPO,
EAST SIKKIM. ... **Respondents**

FOR THE APPELLANT : MR. N. B. KHATIWADA, SENIOR ADVOCATE WITH MR. RAJEN UPRETI AND MS. GITA BISTA, ADVOCATES.

FOR THE RESPONDENT NO.1 : MS. (DR.) DOMA T. BHUTIA, ADVOCATE.

FOR THE RESPONDENT NOS. 2 & 3 : MR. S. P. BHUTIA, ADVOCATE.

JUDGMENT

Wangdi, J.

Being aggrieved by the judgment and decree dated 24.11.2011 passed by the learned District Judge, Special Division-I, Sikkim at Gangtok, in money suit No.03 of 2010, (hereinafter referred to as the impugned judgment) the Appellant has preferred this Appeal.

2. In the original suit, the Appellant was the Principal Defendant, the Respondent No.1 the Plaintiff and the Respondents No.2 and 3 the Proforma Defendants.

3. Without going much into the details of the warring contentions, it is sufficient for the purpose of this Appeal to note that in the Civil Suit the Respondent No.1 herein, had in substance sought for recovery of

Rs.3,44,225/- from the Appellant against a contract work awarded to the Respondent No.1, but that had been sub-let to the Appellant in November, 1998 on the condition that the investments made by the Respondent No.1 would be repaid by the Appellant with 10% of the value as premium.

4. It was pleaded by the Respondent No.1 that he had executed the contract work by engaging the Respondents No.2 and 3 as Supervisors by incurring the cost towards the construction and that during the progress of the construction, Appellant had paid him a sum of Rs.1 lakh but later the Appellant had again borrowed from him a sum of Rs.50,000/- with the promise to repay it on receipt of the next bill. That no further payment was received from the Appellant even when the Respondent No.1 had received Rs.1,41,000/- against the contract work. That when later the Respondent No.1 made a request to the Appellant to pay him the dues showing him the detailed accounts, the latter sought for time till the receipt of the next bill and under such promise, the Respondent No.1 continued investing in the contract work. When the

work was completed, the Respondent No.1 on 11.3.2002 handed over the building to the concerned Department even when the Appellant was yet to make the necessary payments to him inspite of the fact that an additional sum of Rs.1,32,000/- had been received by him for a supplementary work relating to the original contract. The Respondent No.1 was then perforce made to approach the local Panchayat for resolution of the dispute and when it was unable to settle it, it was referred to the SDM, Pakyong, who in turn forwarded it to the District Collector, East. The District Collector, East, then referred the matter to the Lok Adalat, where too the parties failed to come to a settlement, resulting in the matter being referred back to the District Collector, East, who then through the ADC, East advised the parties to approach the Panchayat. That this culminated in the Respondent No.1 approaching the Pachak Gram Panchayat but the meeting convened by it for the purpose did not bear any fruit leading the Respondent No.1 to issue a legal notice upon the Appellant on 26.11.2004. Without going further into other questions, it is sufficient to

note that on 16.3.2005, the Respondent No.1 submitted a representation to the Chief Minister for his intervention which was forwarded to the Labour Department and the Department through the Deputy Director (ENF) vide letter dated 9.5.2005 directed the Respondent No.1 to seek redressal in a Court of law. Then a meeting of the Respondent No.1 and the Appellant held on 16.9.2006 at the Padamsey Panchayat Bhawan in presence of the Presidents, Zilla Panchayat and Pachak Gram Panchayat respectively, resulted in the Appellant agreeing to repay to the Respondent No.1 Rs.2,00,000/- within March, 2007, failing which it was promised that he would be entitled to repayment of the entire amount with interest @12.5%. The Appellant's failure to fulfill this promise led the Respondent No.1 to file the suit.

5. The suit was resisted by the Appellant by denying the claims on all accounts and had asserted that the suit was barred by the law of limitation. The learned trial Court framed as many as 9 issues which are as follows: -

(i) Whether the Principal Defendant sub-let the contract work of construction of Pachak School Building to the Plaintiff?

(ii) Whether the Principal defendant appointed Proforma defendant nos. 2 and 3 as supervisor to look after the construction work of the Pachak school building?

(iii) Whether the plaintiff incurred the expenditure of Rs.3,91,580/- to carry out the construction of Pachak school building?

(iv) Whether the matter involving payment of money by Principal defendant to the plaintiff was heard by Panchayat and other authorities and if so what was the outcome of such hearing?

(v) Whether the principal defendant is liable to pay Rs.3,44,225/- along with interest calculated @ 12.5% on Principal amount of Rs.2,75,380/- to the plaintiff.

(vi) Whether the money amounting to Rs.2,75,380/- has actually been received from plaintiff by the defendant no.1 or not?

(vii) Whether the suit of plaintiff is barred by Limitation or not?

(viii) Whether the defendant no.1 instructed the defendants nos. 2 and 3 to take the necessary fund to be used for construction of the school building from the plaintiff?

(ix) Whether the defendant nos. 2 and 3 are liable to pay the amount to the plaintiff or not?

6. From the records, it appears that during proceedings of the suit, the Appellant had filed an application under Order VII Rule 2 of the Civil Procedure Code for rejection of the plaint on that very ground, but had been rejected by the learned trial

Court relying upon Order XIV Rule 2 of the Civil Procedure Code.

7. Before this Court also, the Appeal has been preferred primarily stressing upon the question of limitation.

8. Having considered the submissions made by the learned Counsels for the parties, the records and the provisions of the Limitation Act, 1963, this Court is of the view that the question of limitation which is being seriously pursued by the Appellant, requires consideration at the thresh-hold.

9. The principle underlying Section 3 of the Limitation Act is that, the Court shall not entertain a suit which is barred by limitation even if limitation has not been set up as a defence. For better appreciation, the relevant portion of Section 3 of the Limitation Act, 1963 is reproduced as under :-

> "**3. Bar of limitation** – (1) Subject to the provisions contained in Secs. 4 to 24 (inclusive), <u>every Suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed</u>, <u>although limitation has not been set up as a defence</u>.
>
> (2) For the purposes of this Act, -
>
> (a) a Suit is instituted, -

> (i) in an ordinary case, when the plaint is presented to the proper officer;
>
> (ii) in the case of a pauper, when his application for leave to sue as a pauper is made, and
>
> (iii) in the case of a claim against a company which is being wound up the Court, when the claimant first sends in his claim to the official liquidator."
>
> (underlining mine)

10. As can be seen from the above, Section 3 of the Limitation Act is pre-emptory and a duty is cast upon the Court to take notice of this provision and give effect to it even if not set out in the pleadings. The reason for this obviously is not far to fetch. The first of it being that a suit not brought within the period prescribed under law would oust the jurisdiction of this Court to go into the merits of the controversies in a suit and, the next being that a *lis* requires to be given a quietus after reasonable time, i.e., the time prescribed under the Limitation Act.

11. In ***Pandurang Dhondi Chougule and Ors.*** v. ***Maruti Hari Jadhav and Others*** : ***AIR 1966 Supreme Court 153,*** it has been held that :

> ".....A plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding of these pleas in favour of the party which

raises them would oust the jurisdiction of the Court. ....."

12. In ***Mahboob Pasha*** v. ***Syed Zaheeruddin : AIR 1988 Karnataka 83***, the Division Bench of the Karnataka High Court has held that:-

> "6. We are of the view that the approach made by the learned trial Judge is on the face of it erroneous. It is the duty of the Court to decide the question as to when the limitation commences, depending upon the nature of the suit. The decision on such question shall have to be of the court. It cannot be founded on the submission made by the counsel for the parties. Limitation affects the jurisdiction of the Court. If the suit is barred by limitation, the Court has no jurisdiction to entertain it. Therefore, as the parties cannot confer jurisdiction on the Court by consent, the question of limitation as to the original cause of action cannot be decided on the concession made by the parties. S.5 of the Limitation Act does not apply to the original cause of action so as to extend the period of limitation by concession made by the parties. The expression 'prescribed period' as per cl. (j) of S.2 of the Act means, the period of limitation computed in accordance with the provisions of the Act. Sub-sec.(1) of S. 3 of the Act further provides that subject to the provisions contained in Ss. 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. Therefore, it is the duty of the Court to decide the question of limitation."

13. Similarly, in ***Punjab National Bank*** v. ***Surendra Prasad Sinha : AIR 1992 Supreme Court 1815,*** it has been held that:

> ".....Though the right to enforce the debt by judicial process is barred under Sec.3 read with the relevant Article in the Schedule, the right to debt remains. The time barred debt does not cease to exist by reason of S.3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed....."

14. On the anvil of the above, we may now proceed to examine the facts of the case so far as the question of limitation is concerned. From the list of dates and events appearing in the pleadings, the admitted position is as under: -

(i) On 6.12.1997, the questioned contract work was awarded to the Principle Respondent by the Department of Education (now the Human Resource Development Department).

(ii) In November 1998, the Respondent No.1 sub-let the contract work to the Appellant.

(iii) On 11.3.2002, the work having been completed was handed over to the department by the Appellant.

(iv) On 25.4.2009, when no payment was forthcoming from the Appellant, the Respondent No.1took up the matter with the Panchayat of the area which forwarded the matter to the Sub-Divisional Magistrate, Pakyong, East Sikkim.

(v) On 28.6.2003, the Sub-Divisional Magistrate referred the matter to the District Collector, East Sikkim.

(vi) On 17.12.2003, the Additional District Magistrate referred the dispute to the State Legal Services Authority for settlement in Lok Adalat.

(vii) On 20.3.2004, the Judge, Lok Adalat, recorded a finding that since the matter could not be settled, the record be returned to the Additional District Magistrate directing the parties to appear before him.

(viii) On 20.3.2004, the Peshkar, Lok Adalat, East, in compliance to the order of the Judge, Lok Adalat, returned the file to the Additional District Magistrate for further action from his end.

(x) On 26.11.2004, a legal notice was issued on behalf of the Respondent No.1 to the Appellant for payment of the dues.

(x) On 16.3.2005, a representation was submitted by the Respondent No.1 to the Chief Minister who in turn endorsed it to the Deputy Director, Labour Department.

(xi) On 9.5.2005, the Deputy Director, Labour Department, Government of Sikkim, wrote to the Respondent No.1 asking him to seek remedy in a Court of law as the matter fell outside the purview of the department.

(xii) On 7.5.2007, the Respondent No.1 filed a suit for recovery of Rs.3,44,225/- which is presently under consideration.

14.1 There are other dates and incidents also that fall within the above but, having found them to be inconsequential for the purpose of the discussions we are presently engaged in, those have been discarded.

15. Mr. N. B. Khatiwada, the learned Senior Counsel appearing for the Appellant, submitted that the present case is governed by Section 18 of the Limitation Act, 1963 which prescribes 3 years as the period for seeking remedy in a Court. This is an undisputed position which appears to have been endorsed by the learned trial Court and this Court also finds no reason to differ with that. Section 18 is reproduced below for convenience: -

> "18. **Effect of acknowledgement in writing** – (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right had been made in writing signed by the party against whom such property or right is claimed or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed."

16. It is the submission of Mr. Khatiwada that since the work was completed and handed over on 11.3.2002, the period of limitation would commence from that day onwards, and, therefore, the suit ought to have been filed on or before 10.3.2005, but it was not done so. It is further submitted that even assuming that the period spent by the Respondent No.1

in pursuing the matter before the Panchayat, the Sub-Divisional Magistrate, the Additional District Collector and the Lok Adalat, East Sikkim, and even the time taken to pursue before the Chief Minister and the Labour Court, the Appellant would only be entitled to additional period of 10 months and 24 days, i.e., 28.6.2003 to 23.3.2004 and 16.3.2005 to 9.5.2005 respectively, taking into consideration Section 14 of the Limitation Act. Under these circumstances, as per the Learned Counsel, the Respondent No.1 ought to have filed the suit on or before 31.1.2006, but he chose to do so only on 7.5.2007, which is beyond 1 year and 4 months in excess of the time prescribed under the law. Therefore, it is the submission of the learned Senior Counsel that the suit being clearly barred by the law of limitation, the learned trial Court ought to have dismissed the suit on that ground alone.

17. Dr. Doma T. Bhutia, learned Counsel for the Respondent No.1, on the other hand, submitted that the Appellant while placing the above facts has failed to take into consideration the meeting held by the Panchayat on 16.9.2006 in which all the parties

including the Appellant and the Respondent No.1 had participated and that, by a document Exhibit 6 executed on that day, the Appellant had clearly conceded and acknowledged the dues payable by him to the Respondent No.1 and that by application of Section 18 of the Limitation Act, 1963, the Respondent No.1's right to recovery gets a fresh lease thereunder.

18. Dr. Doma most vehemently argued that while considering a statute of this kind a liberal approach ought to be adopted by the Court and not be hyper-technical and pedantic. It is submitted that although the document Exbt. 6 dated 16.9.2006 has not been executed, acknowledged and signed by the Respondent No.1, in substance it would fall within the purview of Section 18 of the Limitation Act, since the contents therein were acknowledged by the Appellant, and that both the Appellant and the Respondent No.1 were present during the time when the document was prepared.

19. Dr. Doma referred to the evidence of PW3, Puspa Kumari Gurung and DW3, K. N. Sharma, in support of her contentions.

19.1 Relying upon the decision of ***Smt. Tara Wanti*** v. ***State of Haryana AIR 1995 Punjab & Haryana 32***, it was submitted that the object of the Law of Limitation is to compel a litigant to be diligent and that in the present case, the Respondent No.1 had remained vigilant in seeking his claims by making repeated efforts by approaching various authorities which finally culminated in filing of the present suit. It, therefore, could not be held that the suit was barred by the Law of Limitation.

20. Upon giving anxious consideration to the the rival submissions of the Learned Counsels for the parties, pleadings, and the evidence on record, I am of the view that the learned trial Court has fallen in error in holding that the suit is not barred by the Law of Limitation. I may reproduce below the relevant portions of the impugned judgment:-

> "71. The instant suit was instituted on 7.5.2007. That as per the evidence and as admitted

by defendant no.1 the order for the contract work was issued to defendant no.1 in 6.12.1997 and that in November, 1998 the defendant no.1 admittedly offered to sub let the contract work to the plaintiff. Thereafter, the plaintiff funded the construction of the work of the school at Pachak which was completed admittedly in the year 2002 and handed over to the Education Department by all the parties on 11.3.2002.

72. As contended by the ld. Sr. counsel Shri N. B. Khatiwada for the purposes of calculating the limitation period in view of Article 18 of the Limitation Act, the date on which the work of the school was completed and handed over to the Education Department i.e. 11.3.2002 may be taken as the relevant period in which event the suit ought to have been filed by the plaintiff on or before 12.3.2005. However, the plaintiff's plea is that as the defendant no.1 requested for further time, plaintiff therefore allowed him time since they were well known to each other as such the cause of action continued thereafter. It is in the record that the plaintiff did issue a legal notice to defendant no.1 on 26.11.2004 (Exbt.9) clearly demanding his claims therein and continued to make his demands which is evident from the copy of the Lok Adalat Order passed on 20.3.2004 when the matter could not be settled. The parties were thereafter directed to appear before the ADC. It is also evident from the records that ever since the school was handed over and the plaintiff's plea for recovery of his dues was not heeded by defendant no.1 and the plaintiff has since been running from pillar to post and all the authorities seeking redressel. Exbt.7 which is a copy of the forwarding letter of the Panchayat of Pachak Ward clearly indicates that even in the year 2003 they tried to settle the matter between the parties but as it could not be settled, it was forwarded to SDM, Pakyong on 25.4.2003. This it must be noted is within a year and two weeks after the work was completed and handed over to the authorities. Similarly the evidence indicates that on 16.9.2006 a meeting was called for between the plaintiff and defendant no.1 in presence of the Zilla Panchayat and other members where the dispute could not be settled. However, as also discussed hereinbefore PW 3- the concerned Panchayat President has clearly stated in her affidavit that "***In the said meeting the Principal defendant no.1 after several round of discussion agreed to pay a sum of ₹ 2,00,000/- (Two lakh) only out of my demand***

of ₹ 2,75,000/- (Two lakh seventy five thousand) only. In that meeting, the plaintiff categorically told the Principal defendant no.1 that if he failed to make payment within the month of March, 2007 he shall be entitled to recover the entire amount with interest @12.5% from the principal defendant no.1 by initiating appropriate proceeding against him. And in front (sic) ***me the Principal defendant agreed to pay amount of rupees fifty thousand only to Shri Durga Psd Rai hence the same was not accepted by the plaintiff Shri Durga Psd Rai."*** Thereafter the matter was sent to the SDM Pakyong who was unable to settle the matter and forwarded it (sic) Lok Adalat for settlement on 17.12.2003 vide his letter bearing memo no.1230/DCE. Exbt.8 which is the copy of the order passed by the Lok Adalat on 20.3.2004 indicates the matter could not be settled in the Lok Adalat also. That as per Exbt.11 the plaintiff had even approached the Labour Department but when the matter could not be settled he was finally advised to seek remedy in a Court of law. It is after this that the plaintiff appears to have finally approached the Court.

73. Therefore, in the instant case the series of events- indicates that the plaintiff, who it must be borne in mind despite being an aged and illiterate villager, nonetheless has always remained vigilant in seeking his claims. The plaintiff, I find has repeatedly sought repayment of his debts through the various for a which was available to him and it was only finally he was advised to approach a Court of law (vide Exbt.11) and after the defendant failed to heed his legal notice dated 26.11.2004 (Exbt.9) – that he has come before this Court.

74. Therefore, as observed in Smt. Tarawanti's case, since the law assists the vigilant and not those who sleep over their rights, it cannot be said in the instant case that the plaintiff has been found to be sleeping over his rights in all this time. Infact he has been constant in his efforts to seek repayment of his debts and I am therefore of the opinion that since his demand of debts was constantly raised by the plaintiff (which was acknowledged by defendant no.1 in the meeting before the Panchayat dated 16.9.2006) uptill filing of this suit, I am therefore of the view that the cause of action although it first found to have arisen in 11.3.2002 when the construction of the school was

> completed, thereafter continued each time the plaintiff raised his demands and the defendant no.1 therefore acknowledged the dues and sought time for repayment as already discussed. In the end result therefore and based on the facts and circumstances of the case and in the interest of justice, equity and fair play, I find issue, therefore stands decided in favour of plaintiff and against the defendant."

21. In support of her finding, the learned trial Court has referred to the decision of ***Smt. Tara Wanti (supra)*** more particularly the following portion:-

> "70. The object of limitation law is to compel a litigant to be diligent in seeking remedies in a Court of law and put a bar on the state claims. The interest of the society requires that the party should be put to litigation keeping in view its nature. The law assists the vigilant and not those who sleep over their rights. It is also acknowledged position of law that law of limitation only bars a remedy and does not take away the rights of the Court to adjudicate the list (sic) according to law and do not revive the rights of the parties unless permitted under a particular statute."

22. While arriving at the above findings, the learned trial Court most apparently has misconstrued the various provisions of the Limitation Act, 1963. While dealing with the question, it appears to have taken cognizance of the various steps taken by the Respondent No.1 in his efforts to get his money recovered that culminated in the meeting held on 16.9.2006 between the Respondent No.1 and the

Appellant in presence of the Zilla Panchayat, Gram Panchayat and other members which resulted in failure to bring about any settlement in the dispute

23. While arriving at the conclusion, the learned trial Court appears to have relied upon the sole provision of Article 18 of the Limitation Act, 1963, and overlooked the provisions of Sections 3, 14 and 18 of the Act, the first and the last of which have been reproduced earlier and principles underlying those discussed. The facts narrated in paragraphs 71 and 72 of the impugned judgment appear to be more an explanation for the delay in filing the suit rather than setting up causes of action. Such explanation would have been permissible if an application under Section 5 of the Limitation Act, 1963 had also accompanied the plaint for condonation of the delay. It is an admitted position that no such application was filed, the Plaintiff/Respondent No.1 having proceeded in the premises that the suit was within time prescribed under the law.

24. From the narration of facts set out earlier, there is no manner of doubt that the suit ought to have

been filed on or before 31.1.2006 as asserted on behalf of the Appellant. In pursuance of Section 18 of the Limitation Act, 1963, the cause of action for filing the suit first arose on 11.3.2002 when the contract work was completed and handed over by the Appellant to the concerned department, since admittedly no time had been fixed for payment in the present case. The suit, therefore, ought to have been filed on or before 10.3.2005, but the Respondent No.1 chose not to do so. Instead, he preferred to approach the Panchayat, the District Authorities and the Lok Adalat between 28.6.2003 to 23.3.2004 and, the Chief Minister and the Labour Court between 16.3.2005 to 9.5.2005, i.e.,which in all took 10 months and 24 days. Even on taking a magnanimous view by overlooking the fact that no application had been filed for condonation of delay for having approached the wrong forums by invocation of Section 14 of the Limitation Act, 1963, the Respondent No.1 ought to have filed the suit on 31.1.2006, but did so only on 7.5.2007, i.e., after 1 year and 4 months when the suit already stood barred by the Law of Limitation. Even the proceeding before

the Zilla Panchayat held on 16.9.2006, notwithstanding the fact that the Zilla Panchayat cannot be construed as a 'Court' contemplated under Section 14 of the Limitation Act, was delayed by over 7 months.

25. The assertion on behalf of the Respondent that Exbt. 6 scribed by DW3, K. N. Sharma, is an acknowledgment by the Appellant of the dues payable by him to the Respondent No.1 and, therefore, a fresh period of limitation commenced from that day onwards in favour of the Respondent No.1, does not appear to be sound for the reasons that follow.

26. From a perusal of document Exbt. 6 there is no manner of doubt that it only reflects expenditure incurred by the Respondent No.1 as would appear from the extracts of its English translation reproduced below: -

> "Contractor, Chabilall Khatiwara, Mamzay, East Sikkim
>
> Tender is of the year 1997
>
> In Pachak School work money was invested by Durga Prasad Rai and Adhan Lepcha of Pachak.
>
> 1. Shawaka (40) Cft. @ 280 cost 11200
> 2. Shries 200 Cft @ 150 30000
> 3. Shimbal 150 .... 2150 12500
> 4. Toneey 78 Cft@240 18760

5. Payment of Mason (Thika)	63320
6. Labour Payment	42800
7. Sand 25 Tata @1200	30000
8. Binding Wire 20 kg	280
9. Nail 100 kg	450
10. Bricks 2 Tata	17500
11. Stone carriage	16000
12. Expenditure incurred While going Gangtok	15000
13. Goods carriage fair	16500
14. Cements 400 bags	63800
15. Rod	41400
Total :	3,91,580/-

As per the report given by Durga Pd Rai of Pachak, his expenditure for construction of Pachak is Rs. 3,91,580 (Rs. Three lakhs ninety one thousand, five hundred eight only).

Sd/-	Sd/-
Puspa Kumari Gurung	Mr. K. N. Sharma
President 04 East Pandam	Panchayat Member
G.P.ward No.03 Pachak.	04 East Pandam
	Mamzay ward No.01"

27. The above document obviously has not been signed by the Appellant but by the President and Panchayat Member, PW3, Puspa Kumari Gurung and DW3, Mr. K. N. Sharma respectively. Further, that it was prepared as per the report given by Durga Prasad Rai, i.e., the Respondent No.1.

28. As already noted above, the document was prepared on 16.9.2006 when the period of Limitation had already expired on 31.1.2006. For all the aforesaid reasons, Exbt. 6 would certainly not fall within the purview of Section 18 of the Limitation Act, 1963 which prescribes that the liability must be existing on the date of acknowledgment. It must be in writing and signed by the person against whom the claim is being made and that the acknowledge must be before the expiry of the period prescribed for a suit or application in respect of such claim.

29. Even the legal notice on behalf of the Respondent was issued only on 26.11.2004 which is beyond more than 9 months after period of limitation, i.e., 31.1.2006.

30. In the above facts and circumstances, the learned trial Court ought to have dismissed the suit solely on the ground of it being barred by the law of limitation when the very case of ***Smt. Tara Wanti (supra)*** referred to by it has, inter alia, held that the object of the law of limitation is to compel a litigant to be diligent in seeking remedies in a Court of law. It

was further necessary for the learned trial Court to have taken up the question of limitation before embarking upon the merits of the suit as it is the duty of the Court to give effect to the Limitation Act as the plea of limitation is the plea of law which concerns the very jurisdiction of the Court. As observed earlier, it is a settled law that the right to enforce a debt beyond the period prescribed by the Law of Limitation Act, 1963 by judicial process is expressly barred under Section 3 thereof read with the relevant Article in the schedule appended thereto although the right to debt remains. In other words, the remedy may be barred in a judicial process but it subsists otherwise.

31. In the above facts and circumstances, I have no hesitation to hold that the impugned judgment and decree deserves to be set aside as the suit is clearly barred by the law of limitation.

32. In the result, the Appeal is allowed. Resultantly the suit filed by the Respondent No.1 stands dismissed. Decree in Appeal be drawn accordingly.

33. No order as to costs. Records of the learned trial Court be returned forthwith.

(S. P. Wangdi)
Judge
03.08.2012

Approved for Reporting : Yes /~~No~~

Internet : Yes/~~No~~

at