2022 INSC 732

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2125 OF 2009

TOPLINE SHOES LIMITED
AND ANOTHER **APPELLANT(S)**

VERSUS

PUNJAB NATIONAL BANK **RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

1. The appeal challenges the judgment dated 7th July 2008 passed by the Division Bench of the High Court of Bombay thereby dismissing the Writ Petition Nos.207 and 1490 of 2005, filed by the present appellants arising out of the concurrent orders passed by the learned Mumbai Debts Recovery Tribunal-1 (for short "DRT") in O.A. No.948 of 2000 dated 31st October 2002 and the learned Debts Recovery Appellate Tribunal at Mumbai (for short "DRAT") in Appeal

Nos.152 of 2002 and 43 of 2004 dated 24th November 2004.

2. The respondent–Bank had filed an O.A. No.948 of 2000 against the present appellants raising certain claims. In the said proceedings, the appellants filed a counter-claim claiming therein that certain amount deposited in the current account opened by them with the respondent-Bank, was illegally withheld by the respondent–Bank. The learned DRT vide order dated 31st October 2002 dismissed both, the claim of the bank as well as the counter-claim of the appellants. Being aggrieved thereby, both the respondent-Bank as well as the appellants had preferred appeals before the learned DRAT. Both the appeals were dismissed. Being aggrieved thereby, two writ petitions were filed, one by the respondent-Bank and the other by the appellants. As far as the writ petition of the respondent-Bank is concerned, the same was disposed of as withdrawn since the respondent-Bank did not press the same. The writ petition of the appellants was, however, dismissed vide the impugned judgment. Being aggrieved thereby, the present appeal.

3. Mr. S. N. Bhat, learned Senior Counsel appearing on behalf of the appellants submitted that both the DRT and the

DRAT as well as the High Court have grossly erred in arriving at the conclusion that the claim of the present appellants was covered under Article 113 and not by Article 22 of the Schedule to the Limitation Act, 1963 (for short "the Limitation Act").

3.1. Mr. Bhat further submitted that though the amount deposited by the appellants was not a security or a fixed deposit, still it was an amount which belonged to the appellants and was illegally withheld by the respondent-Bank. He therefore submitted that in view of Article 22 of the Limitation Act, the cause of action to file a counter-claim would begin from the date on which a notice was sent by the appellants to the respondent-Bank, i.e., from September, 1999. He has submitted that since the counter-claim was filed in the year 2000, i.e., within a period of three years from the date of issuance of notice, the same was within limitation.

3.2. Mr. Bhat submitted that in the present case, a clear question of law has arisen as to whether in the facts of the present case, Article 22 or Article 113 of the Limitation Act

would be applicable for consideration. He submitted that the High Court, the DRT as well as the DRAT have erroneously held that in the present case Article 113 of the Limitation Act would be applicable and not Article 22 of the Limitation Act.

4. Mr. S. N. Bhat relies on the judgment of this Court in the case of ***Jammu and Kashmir Bank Ltd. v. Attar-Ul-Nissa & Others***[1].

5. Mr. Rajesh Kumar Gautam, learned counsel appearing on behalf of the respondent–Bank has submitted that no error could be noticed in the concurrent orders passed by the DRT, the DRAT and the High Court. He submitted that in the facts of the present case, the DRT, the DRAT as well as the High Court have rightly held that the counter-claim would be governed by Article 113 of the Limitation Act.

6. By now, it is a settled principle of law that the issue of limitation is a mixed question of law and fact. The issue of limitation cannot be decided by ignoring the factual scenario.

7. It will be relevant to refer to paragraph 41 of the order dated 31st October 2002 in O.A. No.948 of 2000 passed by the learned DRT:

> "**41.** It is not the case of the Defendants that they

1 **[1967] 1 SCR 792**

had paid the amount to the Applicants by way of deposit as securities till the account was finally settled. On the contrary it is their case that the Applicant Bank had extracted the amount from them by exerting undue influence etc. While narrating their case the Defendants have specifically pleaded that in the Board Meeting, the possibility of approaching the Court against the Applicant Bank was also contemplated and considered. However, they thought it better not to drag the Applicant Bank to the court to avoid adverse publicity and mar their chance of receiving the loan even from other Banks. It is thus obvious that a conscious decision was taken by Defendant No.1 Company to pay off whatever demanded by Applicant Bank without joining the issue and they had accordingly paid the amount maybe much against their wishes. Subsequently if the Defendants wanted to recover the said amount they ought to have taken out proper proceedings before proper forum within the statutory period of three years. This was admittedly not done. The said amount cannot be recovered by filing a counter claim after the period of six years."

8. It could thus clearly be seen that in the factual position as apparent in the present matter, the specific case of the defendants-appellants was that the respondent-Bank had extracted the amount from them by exerting undue influence. It could further be seen that the Board of Directors of the Appellant had contemplated and considered the possibility of approaching the Court against the respondent–Bank. However, it was thought fit not to drag the

respondent-Bank to the Court to avoid adverse publicity and mar their chances of receiving loans from other banks. It could thus be seen that the learned DRT has come to a finding of fact that it was the conscious decision of the appellants to pay off whatever amount was demanded by the respondent–Bank without joining the issue and they had accordingly paid the amount, may be much against their wishes.

9. Admittedly, the said amount, which according to the appellants, was paid under undue influence in the year 1994.

10. It appears that after waiting for a period of five years, the appellants woke up from their deep slumber and issued a notice on 22nd September 1999.

11. The DRT, the DRAT as well as the High Court have concurrently held that the counter-claim of the appellants was based upon the amount deposited in the year 1994, which according to the appellants was paid under undue influence. If that be so, no error could be noticed in the finding of the fact as recorded by the DRT, the DRAT and the High Court that the counter-claim was squarely covered under Article 113 and not under Article 22 of the Limitation

Act.

12. We, therefore, find no merit in the appeal. The appeal is dismissed.

.....J.
(B.R. GAVAI)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

NEW DELHI;
JULY 20, 2022.