

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7<sup>TH</sup> DAY OF JANUARY, 2016

BEFORE

THE HON'BLE MR.JUSTICE PRADEEP D. WAINGANKAR

R.F.A.NO.1899 OF 2010

BETWEEN:-

R. RAJASHEKHAR  
S/O MR. H. RUDRAPPA  
AGED ABOUT 58 YEARS  
R/AT. No.58, RBI LAYOUT  
J.P. NAGAR, 7<sup>TH</sup> PHASE  
BANGALORE – 560078.

... APPELLANT

(BY SRI: R. RAJASHEKAR, ADV.,)

AND:-

1. DEEPAK APPARELS PVT, LTD.,  
No.62, 6<sup>TH</sup> CROSS, N.S. PALYA  
BANNERGHATTA ROAD  
BANGALORE-560076.
2. MR. K. KOTRABASAPPA  
S/O MR. G. KOTRAPPA  
AGED ABOUT 45 YEARS  
MANAGING DIRECTOR  
DEEPAK APPARELS PVT. LTD.,  
No.62, 6<sup>TH</sup> CROSS, N.S. PALYA  
BANNERGHATTA ROAD  
BANGALORE-560076.
3. MRS. G.S. KUMARI  
AGED ABOUT 40 YEARS  
W/O MR. K. KOTRABASAPPA

DIRECTOR, DEEPAK APPARELS PVT. LTD.,  
No.62, 6<sup>TH</sup> CROSS, N.S. PALYA  
BANNERGHATTA ROAD  
BANGALORE-560076.

BOTH ARE RESIDING AT:

MR. K. KOTRABASAPPA  
No.526, III MAIN, 6<sup>TH</sup> BLOCK  
2<sup>ND</sup> PHASE, BSK III STAGE  
BANGALORE – 560 085.

MRS. G.S. KUMARI  
No.526, III MAIN, 6<sup>TH</sup> BLOCK  
2<sup>ND</sup> PHASE, BSK III STAGE  
BANGALORE – 560 085.

... RESPONDENTS

(BY SRI: R. SRINIVAS, ADV., FOR R1 TO R3)

THIS RFA IS FILED UNDER SEC.96, O-XLI, R-1 OF  
CPC, AGAINST THE JUDGMENT AND DECREE  
DATED:08.09.2010 PASSED IN O.S.2349/2009 ON THE  
FILE OF THE XXXI-ADDL. CITY CIVIL JUDGE, BANGALORE  
CITY, DISMISSING THE SUIT FOR RECOVERY OF MONEY.

THIS R.F.A COMING ON FOR ADMISSION THIS DAY,  
THE COURT DELIVERED THE FOLLOWING:-

### JUDGMENT

The appellant is present. Counsel for respondent  
Nos.1 to 3 absent. No representation.

This is an appeal preferred against the judgment and decree dated 8.9.2010 in O.S.No.2349/2009 on the file of XXXI Addl. City Civil Judge, Bangalore.

2. The brief facts which gave rise to this appeal are as under:-

The plaintiff had advanced a sum of Rs.3.00 lakhs to the defendant Nos.1 to 3 on 1.3.2006 in cash. Towards the repayment, the defendants issued a cheque for Rs.3.00 lakhs dated 3.3.2006. The plaintiff presented the cheque for collection through his banker on 15.5.2006. The cheque was returned on 18.5.2006 for the reason 'account closed'. Therefore, the plaintiff instituted a suit for recovery of Rs.4,35,000/- in O.S.No.2349/2009 together with interest.

3. The suit was contested by the defendants. In order to prove his case, the plaintiff got himself examined as PW-1, Exs-P1 to P16 were marked. The defendants have not led evidence. The trial court on appreciation of the evidence dismissed the suit as barred by time by the

impugned judgment and decree. Therefore this appeal questioning the legality and correctness of the judgment and decree.

I have heard the plaintiff-appellant-in-person since the respondents and their counsel are absent.

4. On hearing the appellant and on perusal of the material on record, the point that would arise for consideration is:

“Whether the trial court is justified in dismissing the suit as barred by time?

7. It is not in dispute that the plaintiff advanced a sum of Rs.3.00 lakhs to the defendants in cash on 1.3.2006. Towards the repayment of the said amount, the defendant issued a cheque for Rs.3.00 lakhs marked as Ex-P1. The complainant presented the cheque for collection. The cheque came to be dishonoured for the reason the defendants closed the account, on which, cheque was issued. Within a period of three years from the date of receipt of intimation from the bank informing the

dishonour of the cheque, the plaintiff filed a suit on 2.4.2009 for recovery of Rs.4,35,000/-. The trial court dismissed the suit as barred by time. The reason assigned by the court below is that the cheque was issued by the defendants on 3.3.2006 and therefore the suit for recovery ought to have been filed on or before 2.3.2009 within a period of 3 years. Since the suit was filed on 2.4.2009, the trial court held that the suit is barred by limitation. The only question to be gone into is whether it is the date of issuance of cheque or date of knowledge of the dishonour of the cheque is the relevant date in order to compute the period of limitation. According to the plaintiff-appellant, it is the date of receipt of intimation from the bank as to the dishonour of the cheque. In other words, according to the appellant, time runs from 18.5.2006 on which date, the plaintiff was intimated by the bank as to the dishonour of the cheque due to closure of the account. To substantiate his contention, the plaintiff placed reliance on the decision of this Court in the case **SURENDRA -Vs- PADMA AND OTHERS** reported

in **ILR 2000 KAR 579**. In Head Note, it has been held as under:-

LIMITATION ACT, 1963(CENTRAL ACT NO.36 OF 1963) Sections 18 and 19 – and Article 19 – For recovering a loan given in 1991 suit was filed in 1995 treating the two cheques given in May 1992 for repayment of loan as acknowledgement of a debt even though the cheques were bounced and dishonoured by the Bank on presentation for encashment on 8<sup>th</sup> and 9<sup>th</sup> of September 1992. Contention of the defendant was that the suit is barred by time. Accepting the contention of the defendant the Trial Court rejected the plaint under Order VII. Rule 11(d). In revision by the plaintiff the High Court Held-Suit is not recovered by any of the Articles of Limitation Act. So Article 113 applies and not Article 19. Right to sue in such cases will accrue only after the cheques are dishonoured by the Bank and hence suit is not barred by time.”

8. In view of the aforesaid decision, the relevant article that is applicable for computation of limitation is Article 113 and not Article 19 as held by the court below. In that case, the time runs from the date of knowledge of the dishonour of the cheque. The knowledge of dishonour

of the cheque is on 18.5.2006. Three years period to file a suit runs from 18.5.2006. As such, the suit filed by the plaintiff on 2.4.2009 is well within the period of limitation. Hence, the judgment and decree passed by the court below are liable to be set-aside for the aforesaid reason.

9. Accordingly, the appeal is allowed. The judgment and decree dated 8.9.2010 in O.S.2349/2009 on the file of XXXI Addl. City Civil Judge, Bangalore is hereby set-aside. The Suit is remanded to the court below with a direction to dispose of the suit on merits.

Sd/-  
JUDGE

\*mn/-