

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 1100 of 1994

Sham Fakir alias Shamlal Shah Fakir being dead
his legal heirs 1(a) Anyal Shah Fakir and others

...Petitioners

-Versus-

Ershad Ali Shikder

... Opposite Party

Mr. M M Zulfikar Ali Hyder, Advocate

... for the petitioners

Hearing concluded on 20.11.2024

Judgment delivered on 25.11.2024

This rule was issued challenging the legality of judgment and decree dated 23.09.1993 (decree signed on 16.11.1993) passed by the Additional District Judge, Sixth Court, Dhaka in Money Appeal Number 6 of 1990 allowing the appeal on reversing those dated 25.02.1990 passed by the Assistant Judge, First Court, Dhaka in Money Suit Number 20 of 1986 dismissing the suit.

The opposite party, Ershad Ali Shikder as plaintiff instituted the suit on 30.09.1986 for realization of Taka 36,000/-, which he had allegedly given to the sole defendant Sham Fakir, predecessor of the substituted petitioners for sending his son aboard within 2/3 months with a condition that if he failed to do so, would return the money. Subsequently, the petitioner failed to send his son abroad, but denied

to repay the money in a salish. In that event, the plaintiff had filed a petition of complaint against the defendant-petitioner on 21.07.1983 and he was convicted and sentenced therein. On a criminal appeal, the conviction was affirmed. Thereafter, the defendant approached the plaintiff for negotiation and promised to repay the money, but ultimately denied to repay the money in another salish held on 25.04.1986. The cause of action for institution of the suit thus arose.

The petitioner being the sole defendant contested the suit by filing a written statement denying the material allegations of the plaint. The defendant cross-examined the plaintiff's witnesses, but did not examine any witness and adduce any document in evidence.

The trial court framed issues and proceeded with the trial, in course of which, the plaintiff examined 3 witnesses including himself and adduced in evidence the petition of complaint in CR Case Number 56 of 1983, judgment and order of conviction and sentence dated 02.11.1983 passed therein, and that of the appellate court, which were marked as Exhibit-1 series.

On conclusion of trial, learned Assistant Judge, First Court, Dhaka dismissed the suit as being barred by limitation. Being aggrieved, the plaintiff preferred Money Appeal Number 6 of 1990 in the Court of District Judge, Dhaka. Learned Additional District Judge, Sixth Court, Dhaka ultimately heard the appeal and allowed the same reversing the issue of limitation as decided by the trial court. In so doing, learned Additional District Judge held that the

cause of action as pleaded in the plaint has been proved by the plaintiff's witnesses.

Mr. M M Zulfikar Ali Hyder, learned advocate for the substituted petitioners submits that in a suit for realization of money, the limitation would be computed from the date of failure in repayment of the money. From the admitted documents, namely, the petition of complaint and judgment and order of conviction and sentence [vide Exhibits-1 and 1 (ka)], it clearly appears that the defendant denied the repayment before filing of the complaint case on 21.07.1983, but the present suit was instituted on 30.09.1986. Mr. Zulfikar refers to Article 97 to the First Schedule of the Limitation Act and Section 19 thereof, and strenuously argues that if there is no written acknowledgment of liability extending the time of repayment, limitation cannot be extended by way of pleading of oral promise. Learned Additional District Judge without considering the essence of Section 19 read with Article 97 to the First Schedule of the Limitation Act reversed the findings of the trial court on the point of limitation and thereby committed error of law.

I have considered the submissions of the learned advocate and gone through the record. Apart from the denial made by the defendant in his written statement as well as by his suggestions put to the plaintiff's witnesses in course of cross-examination, it appears that the criminal case was lodged on 21.07.1983 on the allegation of misappropriation of money and failure in repayment. In that criminal

case, the petitioner was convicted and on a criminal appeal, the conviction was affirmed. In such a case, the plaintiff pleaded oral promise of repayment and denial of the same on 25.04.1986. I do not find any written acknowledgement of liability of repayment of the money on the part of the defendant. On a careful reading of Article 97 to the First Schedule read with Section 19 of the Limitation Act, I am of the view that without any written acknowledgment, the period of limitation for institution of money suit cannot be extended beyond three years. I thus find substance in the submission of the learned advocate for the petitioner.

Accordingly, the rule is made absolute. The impugned judgment and decree is set aside.

Send down the records.