Before Gurvinder Singh Gill, J.

SUMIT SINGLA — *Petitioner*

versus

KALA MANDIR SAREE AND JEWELLERS — *Respondent*

CRM-M No. 34617 of 2022 (O&M)

August 17, 2022

Negotiable Instruments Act, S. 138, Limitation Act, S. 18—Quashing of complaint and the summoning orders—Cheque issued beyond 3 years of taking loan acknowledgment debt—Limitation for recovery of debt—A complaint need not be encyclopeadic to include finer details and evidence to substantiate allegation—Inherent powers of High Court cannot be invoked for quashing of complaint at the threshold on grounds which require evidence to be led.

There is distinction between acknowledgments under S. 18 of the Limitation act and the promise within the meaning of Sec. 25 of the Contract Act—The provision of Sec. 25 will have the effect of renewing limitation —Petition dismissed.

Held, inherent powers of High Court cannot be invoked for quashing of complaint at the threshold on grounds which would require evidence to be led.

(Para 7)

Further held, that the distinction that can be discerned between an acknowledgment under Section 18 of the Limitation Act 1963 and a 'promise' within the meaning of Section 25(3) of the Contract Act is of great significance.

(Para 14)

Further held, that both the said provisions highlight that a right of lender to receive payment and an obligation of borrower to repay never dies with lapse of time but it is the remedy which dies. But under certain circumstances such remedy may get a fresh lease of life. Section 25(3) of the Indian Contract resuscitates a time-barred remedy to enforce payment by way of suit, consequent upon a promise made by debtor to pay off the debt or liablity. In such a case, where the payment could be enforced by a suit, it means that it still has the character of legally enforceable debt as contemplated by 'Explanation' to Section 138 of the Act.

(Para 15)

Further held, that the provisions of Section 25 of Contract Act having been insulated, its application in appropriate circumstances will have the effect of renewing limitation.

(Para 24)

R.S. Rai, Senior Advocate with Arun Luthra, Advocate and Kamal Bahl, Advocate, *for the petitioner*.

GURVINDER SINGH GILL, J.

(1) The petitioner seeks quashing of complaint dated 26.9.2018 (Annexure P-2) as well as order dated 13.11.2019 (Annexure P-3) vide which he has been ordered to be summoned so as to face trial for offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

(2) The respondent/complainant Kala Mandir Sarees and Jewellers, through its proprietor Smt. Madhu Bala, instituted a complaint against SGM Steel Private Limited and its Directors Sumit Singla (petitioner) and Tina Singla wherein it is alleged that the complainant, upon being requested by the accused to advance loan, had transferred an amount of Rs.25 lacs by way of two different bank transactions made on 14.12.2011, as the complainant was having family relations with the accused. It is alleged that the accused had assured that interest on the said amount @ 12% per annum would be paid till return of the principal amount. It has specifically been stated therein that the accused had been paying interest, as had been agreed upon and finally on 6.7.2018, a cheque bearing No. 015973 dated 6.7.2018 drawn on Union Bank of India, Karnal, for an amount of Rs.25 lacs was issued by accused from bank account No. 309201010035144, but the same upon its presentation, was returned back upaid with the remarks 'account closed' vide memo dated 18.7.2018. The complainant, thereafter, issued requisite notice and since no payment was made by the accused despite the said notice, the complainant instituted the complaint against the accused.

(3) The complainant led preliminary evidence on the basis of which the accused were summoned by learned Judicial Magistrate First Class, Hisar vide order dated 13.11.2019 (Annexure P-3).

(4) The learned counsel for the petitioner assails the complaint dated 26.9.2018 (Annexure P-2) as well as the summoning order dated 13.11.2019 (Annexure P-3) mainly on the following grounds :-

(i) that the loan having been advanced in the year 2011, the

recovery of the same became time barred after 3 years and that since the cheque in question i.e. cheque dated 6.7.2018 was issued after more than 6 years of advancement of loan, the same cannot be said to have been issued for discharge of a 'legally enforceable liability' so as to attract provisions of Section 138 of the Act;

(ii) that the words "legally enforceable" as existing in explanation to Section 138 of the Act have to be interpreted in context of availability of civil remedy for recovery of debt etc. and that too subject to rules of limitation;

(iii) that mere issuance of cheque cannot be treated to be an 'acknowledgment' of debt in terms of Section 18 of Limitation Act 1963, so as to extend limitation for recovery of debt and that, in any case, since even the cheque had been issued beyond three years of taking loan, the complainant can not even plead 'acknowledgment' of debt as Section 18 of Limitation Act, specifically prescribes that 'acknowledgment', if any, has to be made before expiry of prescribed limitation, which in the instant case expired much before issuance of cheque.

(5) The learned counsel, in order to hammer forth his aforesaid submissions, places reliance upon two judgements of Delhi High Court i.e. ***Prajan Kumar Jain*** *versus* ***Ravi Malhotra***[1] and ***M/s Vijay Polymers Pvt. Ltd.*** *versus* ***M/s Vinnay Aggarwal***[2]. The learned counsel has further submitted that co-ordinate Benches are already seized of the legal issue in hand inasmuch as notice of motion has been issued in identical matters i.e. CRM-M-34658-2022 and CRM-M- 31440-2022.

(6) I have heard the learned counsel for the petitioner. Since the petitioner has raised an issue as regards his liability in respect of the dishonoured cheque, it needs to be mentioned at the outset that Section 118 and 139 of the Act, embody some presumptions in favour of holder of cheque particularly as regards existence of debt or liability. However, needless to mention such presumptions are rebuttable and which may be rebutted by way of leading some evidence to demolish such presumptions. It would obviously before trial Court that one may be able to lead evidence and not before High Court. Hon'ble Supreme Court in ***S. Natarajan*** *versus* ***Sama Dharman, Criminal Appeal*** *No.*

[1] 2009 (21)RCR (Crl.) 141
[2] 2010 (5) RCR (Crl.) 728

1524 of 2014 while reversing a decision of High Court which had quashed the complaint, being barred by the limitation, held as follows :-

> "7.In our opinion, the High Court erred in quashing the complaint on the ground that the debt or liability was barred by limitation and, therefore, there was no legally enforceable debt or liability against the accused. The case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage. Whether the debt was time barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact."
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> (emphasis supplied)

(7) A complaint, though expected to state all such facts which attract criminal liability of accused, need not be encyclopaedic so as to include all the finer details and evidence which would be required to substantiate the allegations. It would be at appropriate stage that evidence would be led to substantiate allegations. There can be no dispute that question as regards limitation is a mixed question of law and facts particularly when there could be an issue of extension of limitation. As such, inherent powers of High Court cannot be invoked for quashing of complaint at the threshold on grounds which would require evidence to be led.

(8) Before proceeding further, it is apposite to bear in mind the provisions of Section 138 of the Negotiable Instruments Act, which read as under :-

> **138. Dishonour of cheque for insufficiency, etc., of funds in the account. —**
>
> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two

years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" ***means a legally enforceable debt or other liability****."*

(emphasis supplied)

(9) While Section 138 of the Act refers to dishonour of a cheque issued in discharge of a debt or liability, the explanation to the same defines that such debt or liability has to be a legally enforceable liability. The question before this Court would be as to whether as on the day when the cheque in question was issued i.e. on 6.7.2018, can it be said that liability to pay off debt still existed and that recovery of the same could have been enforced in Court of law. In order to determine the same, one would have to look into the terms and conditions under which the loan had been advanced, particularly as regards the fixation of any period for its return or as to whether it was an open ended loan. The relevant averments made in the complaint in this regard are reproduced hereinunder :-

"2. That the accused persons were having family relations with the complainant and they approached the complainant and requested the complainant to advance Rs.25 Lacs to them because were in dire need of money. The complainant keeping in view the family relations and dire need of the

accused, transferred Rs. 5,00,000/- through HDFC Bank and Rs.20,00,000/- through Bank of India, on 14.12.2011 in the account of the accused. The accused assured that they will pay the interest @12 % per annum till return of principal amount.

3. That the accused paid the interest as agreed upon and finally on 06.07.2018 for discharging of an existing outstanding and legally enforceable above stated liability, the accused in favour of the complainant, issued a cheque bearing no. 015973 dated 6.7.2018 for Rs.25,00,000/- drawn on Union Bank of India, Karnal from their account no. 309201010035144."

(10) A perusal of the aforesaid averments would indicate that the loan amount was to carry an interest @ 12% till return of the principal amount. No time frame having been prescribed therein and the petitioner having paid the agreed annual interest continuously on the same and the petitioner subsequently having issued a cheque for payment of dues, a debate could be raised as regards "acknowledgment of liability" in terms of Section 18 of Limitation Act 1963. Section 18 reads as under:

18. Effect of acknowledgment 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 has 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 acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.

For the purposes of this section,

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that

the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set- off, or is addressed to a person other than a person entitled to the property or right;

(b) the word signed means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

(emphasis supplied)

(11) Section 18 of Limitation Act 1963 leaves no manner of doubt that it is only if an acknowledgment of liability or debt is made during subsistence of limitation for filing suit that fresh period of limitation will be computed from date of such acknowledgment.

(12) Somewhat similar provisions pertaining to extension of limitation are found in Section 25(3) of Indian Contract Act, 1872, which is reproduced herein- under:

25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.

An agreement made without consideration is void, unless

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) ***it is a promise***, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, ***to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits***.

In any of these cases, such an agreement is a contract.

Explanation 1. Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2. An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

(emphasis supplied)

(13) Juxtaposing the relevant provisions pertaining to extension of limitation under the above referred two Acts would reveal a conspicious difference between the two:

Section 18 of Limitation Act	Section 25(3) of Contract Act
18. Effect of acknowledgment in writing	**25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.** **An agreement made without consideration is void, unless**
(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 has 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	(1) x x x (2) x x x (3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, **to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation** of suits.

limitation shall be computed from the time when the acknowledgment was so signed.	In any of these cases, such an agreement is a contract.

(14) The distinction that can be discerned between an acknowledgment under Section 18 of the Limitation Act 1963 and a 'promise' within the meaning of Section 25(3) of the Contract Act is of great significance. While both have the effect of creating a fresh starting point of limitation, an 'acknowledgment' under the Limitation Act in order extend limitation must be made before expiry of period of limitation, whereas a 'promise' under Section 25(3) of the Contract Act to pay a debt even though barred by limitation would renew limitation.

(15) In any case, both the said provisions highlight that a right of lender to receive payment and an obligation of borrower to repay never dies with lapse of time but it is the remedy which dies. But under certain circumstances such remedy may get a fresh lease of life. Section 25(3) of the Indian Contract resuscitates a time-barred remedy to enforce payment by way of suit, consequent upon a promise made by debtor to pay off the debt or liablity. In such a case, where the payment could be enforced by a suit, it means that it still has the character of legally enforceable debt as contemplated by 'Explanation' to Section 138 of the Act.

(16) A Division Bench of Kerala High Court in ***Dr. K.K. Ramakrishnan*** *versus* ***Dr. K.K. Parthasarthy***[3] **,** while considering the question as regards enforceability of liability upon dishonour of a cheque held as under:

> "9.The primary question that arises for consideration is - Does the delivery of a cheque in favour of a drawee not create a legally enforceable liability?
>
> 10 to 14 x x x x x
>
> 15. For the purpose of the present case, it does not appear to be necessary to go into this matter in detail. It may, however, be mentioned that under Section 25(3), a promise can be made even in a case where the limitation for recovery of the amount has already expired. Such a promise has to be in writing. It can be in the form of a cheque. When a cheque is delivered to the payee, the person is entitled to present the

[3] 2003 (3) RCR (Crl.) 711 (DB)

> cheque to the bank and seek payment. In such an event, if the cheque is dishonoured, the liability under Section 138 would arise. It would not be permissible for the accused to contend that the liability was not legally enforceable.
>
> 15 to 24 x x x x x
>
> 25. In view of the above, the question as posed at the outset is answered in the negative. It is held that :
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> **(1) When a person issues a cheque, he acknowledges his liability to pay. In the event of the cheque being dishonoured on account of insufficiency of funds he will not be entitled to claim that the debt had become barred by limitation and that the liability was not thus legally enforceable. He would be liable for penalty in case the charge is proved against him.**
>
> (emphasis supplied)

(17) In a subsequent matter before Kerala High Court in ***P.N. Gopinathan*** *versus* ***Sivadasan and another***[4], the counsel representing the accused, while expressing doubts as regards correctness of the view taken by Division Bench in ***K.K. Ramakrishnan's*** *case (supra)* had submitted that the matter be referred to a larger Bench. However, the said submission was turned down while observing as under:

> "8. I shall, for the purpose of arguments in this case, assume that the liability is time barred. I say so because no such specific plea is raised before the courts below. Even assuming it to be time barred, when the cheque is written and signed, there is a promise to pay the amount to the payee, through the drawee of course. Such promise, even if the liability is barred, is valid and enforceable under law in view of Section 25(3) of the Contract Act. Thereafter when the delivery takes place, the drawal is completed. Such cheque drawn is issued for the discharge of a liability, which is promised under the cheque itself. That being so, I do not find any reason to refer the matter to a Division Bench for further consideration. The argument of the learned counsel for the petitioner that there must be another agreement - other than the cheque - in order to reckon the promise in the cheque to be a valid agreement for the purpose of Section

[4] 2007 (1) RCR (Crl.) 577

> 25(3) cannot obviously be accepted. The promise made in the cheque is an enforceable agreement as is declared in Section 25(3) of the Contract Act. The cheque issued (delivered) for the discharge of the said promise/liability is thus perfectly within the sweep of Section 138."

(18) This Court, in a recent case ***Sultan Singh*** *versus* ***Tej Partap***[5], dealt with, in detail, an identical matter wherein the following issue were formulated for adjudication:

> "i) Whether issuance of a cheque for repayment of a time barred debt would amount to a written promise to pay the said debt within the meaning of section 25(3) of the Indian Contract Act, 1872?
>
> ii) In case, answer to the first question is in favour of the person in whose favour the cheque has been issued, then would the said promise, by itself, create any "legally enforceable debt", as stated in section 138 of the Negotiable Instruments Act, 1881?
>
> iii) Whether in the facts and circumstances of the present case, the present petition under section 482 CrPC, 1973 would be maintainable?
>
> iv) Whether in the present case, the petitioner has been able to prove as to what would be the starting point of the period of limitation, so as to establish that the cheque was issued after the expiry of the period of limitation?"

(19) While referring to case law extensively, issue no. (i) and (ii), as reproduced above, have been decided as under:

> "29. Thus, after considering the relevant provisions as well as the judgments of various Courts on issue no. (i) and (ii), this Court conclusively holds that the issuance of a cheque in repayment of a time barred debt amounts to a written promise to pay the said debt within the meaning of section 25(3) of the Contract Act and the said promise by itself would create a legally enforceable debt or liability, as contemplated by section 138 of the Negotiable Instruments Act. Thus, issue no. (i) and (ii) are hereby answered in favour of the person in whose favour the cheque has been

[5] 2022 (1) RCR (Crl.) 712

> issued. Thus, on the said finding alone, the first argument of the learned counsel for the petitioner stands rejected."

(20) Even issue no.(iii) was answered against the petitioner. While leaving issue no.(iv) unanswered being unnecessary, the petition was dismissed.

(21) While considering acknowledgement" or "promise", another important aspect would be as regards the quality and kind of evidence required to establish such "acknowledgement" or "promise". Hon'ble the Supreme Court, in ***Shapoor Freedom Mazda*** *versus* ***Durga Prosad Chamaria***[6], while discussing 'acknowledgement' of debt in terms of section 19 of Limitation Act, held that an admission as regards liability may be in any form and may be 'express' or 'implied,' and that acknowledgment requires to be construed liberally.

(22) While relying upon ***Shapoor's*** *case (supra),* Karnataka High Court in ***Adivelu*** *versus* ***Narayanachari***[7], held as under:

> "16. But, when the word 'promise,' defined in Section 2(b) besides Section 9 of the Act are kept in mind with the decision of the Supreme Court in the case of Shapoor Freedom Mazda (AIR 1961 Supreme Court 1236) (supra) wherein it is held that an admission could be 'express' or 'implied, "promise' covered by Section 25(3) of the Act, need not be 'express.' If the legislature had intended that such promise should be an 'express promise' only, it would have indicated so, but the word 'express' is not found in Section 25(3) of the Act. So, it would not be proper to read so and restrict the scope of Section 25(3) of the Act to "express promise" only. In the above view, I do not agree with the view taken by the Delhi High Court in the case of Tulsiram (AIR 1981 Delhi 165) (supra) and also of the Madras High Court in the case of N.E. Ethirajulu Naidu v. K.R. Chinnakrishnan Chettiyar, (AIR 1975 Madras 333)."

(23) And last, but not the least, Section 29(1) of the Limitation Act specifically provides that nothing in the Limitation Act shall affect Section 25 of the Contract Act. Section 29(1) of the Limitation Act is reproduced hereinbelow:

> **"29. <u>Savings</u> - (1) Nothing in this Act shall affect section**

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[6] AIR 1961 SC 1236

[7] AIR 2005 Karnataka 236

25 of the Indian Contract Act, 1872 (9 of 1872)."

(24) The provisions of Section 25 of Contract Act having been insulated, its application in appropriate circumstances will have the effect of renewing limitation.

(25) In view of judgment of this Court in ***Sultan Singh's*** *case (supra),* wherein the issue in hand has been dealt with directly and also in light of judgment of Division Bench of Kerala High Court in ***K.K. Ramakrishnan's*** *case (supra)* coupled with Supreme Court's judgement in ***Shapoor Freedom Mazda's*** *case (supra),* the judgments of Delhi High Court pressed into service on behalf of petitioner i.e. *Prajan Kumar Jain's case* (*supra)* and ***Vijay Polymers's*** *case (supra)* do not hold any ground and are not being referred to in detail in order to maintain brevity.

(26) Consequently, in light of ratio of judgments rendered in ***Sultan Singh's*** *case (supra),* ***K.K. Ramakrishnan's*** *case (supra)* and ***Shapoor Freedom Mazda's*** *case (supra*), the contentions put forth on behalf of petitioner regarding debt being time-barred and that dishonour of a cheque issued after more than 6 years of advancement of loan would not attract provisions of Section 138 of the Act, having been issued qua a debt not enforceable by law, cannot be accepted. Rather, it can safely be held that as on 6.7.2018 when the cheque was issued by the petitioner for paying off the loan advanced on 14.12.2011, the same was issued in acknowledgment of a debt, and upon its dishonour would make the drawer liable to be proceeded against under Section 138 of the Act. This Court does not find the present case to be such where inherent powers under Section 482 Cr.P.C. should be invoked for quashing the complaint or for setting aside the summoning order.

(27) The petition is sans merit and is hereby dismissed.

Dr. Payel Mehta