KADK050001922025

Presented on : 09-02-2021
Registered on : 10-02-2021
Decided on : 03-08-2026
Duration : 05 years 05 months 24 days

IN THE COURT OF THE PRESIDING OFFICER,
LABOUR COURT, D.K., MANGALURU.

Present:

Sri Patil Veeranagouda S

B.com, LL.M.

Presiding Officer, Labour Court,
D.K. Mangaluru.

Dated this the 3rd day of August, 2026

R.A. No.14/2021

Appellant : Mr. Oswald Veigas,
S/o. Late Inthru Veigas,
Aged about 70 years,
R/at. Inthru Veigas Compound,
Hoige Bazaar, Mangaluru.

(By Sri. K.S. Nambiar, Adv)

-Vs-

Respondents : 1. Bank Of Baroda,
Mangalore Branch,
Milagres Centre,
Hampankatta, Mangaluru.

2. M/s. Ozma Shipping Company,
A Registered Partnership,
Inthru Veigas Compound,
Hoige Bazaar, Mangaluru,
represented by Its
Authorised Signatory,
Mrs. Henrieta Veigas.

3. Mrs. Henrieta Veigas,
W/o. Oswald Veigas, Adult,

4. Bharath Mendon,
S/o. Late Laxman Mendon, Adult,

5. **Herald D'Souza, dead by LR's**

a). Jacintha D'Souza,

b). Hithesh D'Souza,

c). Henver D'Souza,

No.5(a) is the wife and No.5(b) & (c) are the children of late Herald D'Souza and all are R/at. 11-9, Ullal Hoige, Permanur, Mangaluru.

6. Smt. Asha,
W/o. Late B. Prabhakar, Adult,

7. Puneeth,
S/o. Late B. Prabhakar, Adult,

8. Veneeth,
S/o. Late B. Prabhakar, Adult,

9. Sharath,
S/o. Late B. Prabhakar, Adult,

10. Mr. V Thimmappa Shetty,

11. Mrs. Lathamani,
W/o. Ganesh M,
Aged about 64 years,

R3 to R11 are the Partners of
M/s. Ozma Shipping Company,
Inthru Veigas Compound,
Hoige Bazaar, Mangaluru.

(R1: By Sri. P. Chidananda Rao, Adv)
(R2, 5(a) to 5(c) : Absent)
(R3, R6 to R9: By Sri. V. P. Shetty, Adv)
(R4 & R10: By Sri. K. Premanath, Adv)
(R11: Dispensed)

JUDGMENT

The appellant being aggrieved against the judgment and decree passed by the IV Additional Civil Judge & JMFC, Mangaluru, in O.S.No.1196/2015 dated 11.06.2020 preferred this appeal under Section 96 r/w Order 41 Rule 1 and 2 of CPC.

2. For the sake of convenience parties hereinafter will be referred to with their ranking assigned before the trial Court. The appellant was the plaintiff and the respondents were the defendants.

3. The brief facts leading rise to filing of this appeal is that the defendant No.2 is a registered partnership firm carrying on shipping business and had obtained a loan of ₹8,00,000/- from the defendant No.1. The plaintiff and one Smt. Nelly Jane Pinto had stood as Guarantors for the said loan. In the year 1986, the ship MSV Ozma belonging to the defendant No.2 met with an accident in the open sea and drowned near Kavarathi island. Hence, the defendant No.2 had filed Original Petition No.79/1995 before the National Consumer Disputes Redressal Forum against Oriental Insurance Company and the said forum directed the Insurance Company to pay ₹21,50,000/- with interest @ 12% p.a. from 23.04.1988 till the date of payment. That in the year 2001 the defendant No.2 offered to pay a sum of ₹23,36,000/- as full and final settlement to the defendant No.1 and the defendant No.1 accepted the said offer. In pursuance of the same, the plaintiff paid a sum of ₹4,34,629/- to the defendant No.1.

4. Meanwhile the Oriental Insurance Company had filed Civil Appeal No.6289/2001 before the Hon'ble Supreme Court as against the Award passed in O.P. No.79/1995 by making defendant No.1 as party. The Hon'ble Supreme Court in its order dated 24.09.2001 has directed the Oriental Insurance Company to deposit the entire amount of ₹48,82,617/- in the branch of the defendant No.1 giving liberty to the defendant No.1 to adjust 50% of the aforesaid amount to the loan account of the defendant No.2. Accordingly, the defendant No.1 has adjusted 50% of amount i.e., ₹24,41,309/- to the loan account of defendant No.2 and has issued confirmation letter dated 29.10.2001.

5. The settlement amount arrived at between the defendants was for ₹23,36,000/-, the loan account of the defendant No.2 was settled in view of the fact that, the amount was adjusted to the loan account. The defendant No.1 has also issued a loan clearance certificate to the defendant No.2. Since, the entire settlement amount was recovered from the Principal Debtor/defendant No.2, the plaintiff sought for refund of amount of ₹4,34,629/- which was paid by him. But, the defendant No.1 postponing the same on the ground that, Civil Appeal is pending. But, the Hon'ble Supreme Court has dismissed the said appeal by confirming the order passed in O.P. No.79/1995 vide its order dated 29.08.2009. Therefore, the plaintiff has issued a notice dated 15.10.2009 to the defendant No.1 calling upon to make payment of the said amount.

6. Inspite of several reminders and notice, the defendant No.1 has failed to pay the amount to the plaintiff. Hence, the plaintiff had filed a complaint before the Consumer Forum, Mangaluru in Complaint No.25/2010. The said Forum in its order dated 30.04.2011 has held that, the claim has to be made against the defendants in a civil suit as the payment is due from the defendant No.2 even though, the amount is with the defendant No.1. Inspite of said order, no payment has been made by the defendants to the plaintiff. In the meeting held between the plaintiff and the partners of the defendant No.2, though the partners decided and undertook to make repayment of the aforesaid amount to the plaintiff, they expressed their inability to make the payment saying that the amount has not been released by the defendant No.1. Hence the plaintiff has filed the suit for recovery of money before the trial Court.

7. In pursuance of summons, the defendant No.1, 5 and 10 have have appeared before the trial Court through their counsels and filed their separate written statements.

8. The defendant No.1 in its written statement denied all the plaint averments and submitted that the suit is false, frivolous and unsustainable under law and facts. The suit is bad for mis-joinder of necessary parties. It is an interse dispute between the plaintiff and the defendant No.2 to 10, hence the defendant No.1 is not liable to pay any amount to the plaintiff as alleged. That in the year 1982 the partners of the defendant No.2 firm namely V. Thimappa Shetty, Herald D'Souza, Bharath Mendon, Prabhakar, Smt. Latha Mani and Smt. Henrita Veigas had availed loan from the defendant No.1 on the security of the Cargo Vessel and mortgage of the landed property. The plaintiff, N.J. Pinto and K.K. Prabhakaran were guarantors to the said loan.

9. That as the loan amount was not paid by the partners, the bank filed a suit in O.S No.192/1987 on 24.02.1987 against the firm and its partners as well as guarantors for recovery of ₹16,97,811.57 with interest, which has been subsequently transferred to D.R.T. at Bengaluru and was renumbered as O.A.158/1996. The said suit was allowed on 24.07.1998 and a Recovery Certificate dated 02.09.1998 was issued in favour of the Bank, quantifying the amount due to it as ₹51,37,000/- plus interest from 25.07.1998.

10. That during the trial of the aforesaid recovery suit, the hypothecated vessel along with Cargo sank on 23.04.1988, which was insured with M/s Oriental Insurance Company for ₹21,50,000/-. When firm claimed for the insurance amount, the insurance company offered to pay ₹15,00,000/- disputing the value of the vessel and firm being dissatisfied with the same, filed a complaint before the National Consumer Commission, New Delhi, which has directed the Insurance Company to pay ₹21,50,000/- with interest at 12% p.a. from 04.04.1991. As against the said order, the Insurance Company has preferred Civil Appeal No.6289/2001 before the Hon’ble Supreme Court and the Hon'ble Court directed the Insurance Company to deposit the amount ordered by National Commission with the defendant No.1 and directed the Bank to adjust the 50% of the amount deposited against the dues of the defendant No.2 and to invest the remaining amount in F.D in the name of borrower firm for one year, renewable for similar terms until further orders.

11. Accordingly, the Insurance Company deposited a sum of ₹48,82,617/- with the defendant No.1 and it has adjusted ₹24,41,309/- towards the dues of the defendant No.2. Prior to the aforesaid deposit, the matter was settled between the defendants for ₹23,46,000/- subject to payment of the same within 12 months from the date of settlement and same was accepted by the firm and its partners. Therefore, being a guarantor, the plaintiff herein paid a sum of ₹2,35,000/- on different dates and one Mr.Dinesh Pai paid a sum of ₹2,00,000/- in total sum of ₹4,34,629/- was remitted to the current account of the defendant No.2. By virtue of the said payment, the total amount received by the Bank is ₹28,75,938/-. Hence, the bank is liable to refund a sum of ₹29,71,247/- with up to date interest to the defendant No.2 and defendant No.1 is ready to pay the same. Mr. V.T. Shetty got issued lawyer notice on several dates to the defendant No.1 stating that, the amount of ₹4,34,629/- was paid by him through the plaintiff and one Sri. Dinesh Pai and he objected the defendant No.1 for payment to the plaintiff of the aforesaid amount and also informed the defendant No.1 that, one of the partner namely Sri. B. Prabhakar died on 02.01.2010 leaving behind his wife Smt. Asha and children namely

Sharath, Punith and Vineeth and they are entitled to the share of Sri. B. Prabhakar.

12. That in view of the same, the defendant No.1 has rejected the claim of the plaintiff and requested the plaintiff by letter dated 05.01.2010 to come with request letter signed by all the partners. That since there is a dispute between the partners of the firm, the defendant No.1 not in a position to refund the amount lying in the account of the firm to individual partner without an order of the competent Court. The complaint filed in No.25/2010 by the plaintiff before the Consumer Forum also dismissed, as such all the attempts of the plaintiff to grab the funds of the firm became failure. The frame of the suit itself is bad in law, there is no cause of action, suit is not properly valued for the purpose of Court fee and jurisdiction. Hence prayed to dismiss the suit with compensatory costs.

13. That the defendant No.5 and 10 filed written statement contending that a sum of ₹4,34,629/- paid by the defendant No.10 and out of said amount, the plaintiff has given a sum of ₹2,34,629/- and remaining amount of ₹2,00,000/- paid by the defendant No.10 through one Mr.Dinesh Pai by way of Cheque bearing No.0162124 dated 25.07.2001 from his account No.10333. The excess amount paid to the bank is payable to the defendant No.2 and all the partners of the said firm and the plaintiff's wife being the one of the partner is entitled to the said amount. The plaintiff is not a partner hence, is not entitled to get back the amount.

14. That the case filed by the plaintiff seeking the same relief, which is dismissed by the Consumer Forum holding that the plaintiff is not entitled to the amount and that the amount is payable to the firm and all its partners. The defendant has given GPA to the plaintiff on 20.03.2007 to receive the firm's amount. Since, he has misused the power, the defendant has cancelled the said GPA by issuing notice. Hence they prayed to dismiss the suit with cost.

15. From the rival pleadings of the parties the trial Court has framed the following issues;

1. Whether the plaintiff proves that, the defendants are jointly and severally liable to pay a sum of Rs.4,34,629/- to the plaintiff as contended in the plaint?

2. Whether the plaintiff proves that, the defendants are liable to pay interest at 18% p.a. from the date of payment till the date of realization?

3. Whether the defendant No.1 proves that, the suit is bad for mis-joinder of parties?

4. Whether the plaintiff is entitle for the relief as sought for in the plaint?

5. What order or decree?

16. In order to prove his case, the plaintiff was examined as PW.1 and got marked ten documents as per Ex.P1 to

Ex.P10. Four documents were got marked by confronting to PW.1 during his cross examination as per Ex.D1 to Ex.D4.

17. The trial Court after considering the entire evidence on record answered issue No.1, 2 and 4 in the negative, issue No.3 in the affirmative and dismissed the suit with costs.

18. Being aggrieved by the judgment and decree, the plaintiff has preferred this appeal on the grounds that the judgment and decree of the trial Court is against law and on facts. That the trial Court has not properly appreciated the pleadings and evidence placed by the parties and arrived at incorrect conclusion. That the reasons given by the trial Court to arrive at its findings are incorrect. It has not framed proper issues. It has wrongly held that the suit is bad for misjoinder of parties. That the amount claimed by the plaintiff is held by the bank, hence it is necessary party.

19. That the trial Court ought to have held that the entire amount claimed by the plaintiff was deposited by him before the defendant No.1 bank and that the same was held by the bank as a trust acting in fiduciary capacity. It has failed to appreciate the scope of the various decided cases of the Hon'ble Supreme Court and High Court which were placed before it. It ought to have held that since the bank was acting in a fiduciary capacity and as a trust, the suit would not be barred by limitation.

20. The trial Court appears to have been swayed by the fact that the defendant No.1 is bank and whatever statements are made by it has been taken as gospel truth. The approach of the trial Court is biased and prejudiced. It has wrongly interpreted the law of limitation. Hence, appellant prayed to allow the appeal by setting aside the impugned judgment.

21. In pursuance of the notice respondent No.1 and 3 to 10 have appeared through their respective counsels. However, despite service of notice the respondent No.2 remained absent and issuance of notice to respondent No.11 is dispensed with.

22. Trial Court records secured.

23. As per office order No.Admn/8787/2025 dated 24.07.2025 of Hon'ble Principal District & Sessions Judge, Mangaluru this case was transferred from the Court of II Additional Senior Civil Judge, Mangaluru.

24. Meanwhile, the respondent No.5 reported to be dead and respondent No.5(a) to (c) being his legal heirs were brought on record, despite service of notice they remained absent.

25. Heard arguments from either side.

26. On the basis of the submission made by counsel for the appellant and material available on record, the points that would emerge for my consideration are;

1. Whether the trial Court is wrong in dismissing the suit without appreciating the evidence in proper manner?

2. Whether the judgment of the trial Court is erroneous which calls for interference by this Court?

3. What order or decree?

27. My findings on the above points are as under:

Point No.1: In the negative

Point No.2: In the negative

Point No.3: As per final order for the following:

R E A S O N S

28. **Point No.1:** The case of the plaintiff is that defendant No.2 being the partnership firm carrying on shipping business had obtained loan of ₹8,00,000/- from defendant

No.1 bank for that the plaintiff and one Smt. Nelly Jane Pinto stood as guarantors. That in the year 1986 the ship belongs to defendant No.2 sunk near Kavarathi island for that there is a dispute in between the defendant No.2 and the insurance company. Meanwhile in the year 2001 the defendant No.2 offered ₹23,36,000/- to the defendant No.1 towards full and final settlement for which he stood as a guarantor of defendant No.2 and paid ₹4,34,629/- to the defendant No.1. Meanwhile, Oriental Insurance Company has approached the Hon'ble Supreme Court wherein the Hon'ble Court has confirmed the order passed by National Consumer Forum and directed the insurance company to deposit entire amount of ₹48,82,617/- before the defendant No.1 giving liberty to defendant No.1 to adjust 50% of the said amount to the loan account of defendant No.2 and deposit the remaining amount in the name of defendant No.2 as FD. Accordingly, the defendant No.1 has adjusted

50% of it amounting to ₹24,41,309/- and issued confirmation letter. So, the plaintiff has issued notice to defendant No.1 for refund of amount of ₹4,34,629/- but the defendant No.1 has not complied, so he approached Consumer Forum Mangaluru by filing Complaint No.25/2010 but on 30.04.2011 the said complaint has dismissed holding that the claim has to be made against the defendants in civil suit, so he approached the trial Court for recovery of his amount.

29. The contention of the defendant No.1 is that the suit is bad for misjoinder of party because the dispute is between the plaintiff and defendant No.2 to 10, so the bank is not a necessary party. It has also stated that after disposal of the case filed before the Hon'ble Supreme Court it has followed the order of the Hon'ble Supreme Court and as there is dispute among the partners, it has deposited the remaining amount as FD in the name of defendant No.2.

30. The case of the defendant No.5 and 10 being the partners of defendant No.2 that a sum of ₹4,34,629/- is paid by defendant No.10 out of which plaintiff has paid ₹2,34,629/- given by defendant No.10 and remaining amount of ₹2,00,000/- paid by defendant No.10 through one Dinesh Pai by way of cheque dated 25.07.2001 from his account No. 10333. So, case of the plaintiff is not at all tenable. The defendant No.1 has given GPA to the plaintiff on 20.03.2007 to receive the amount of firm but the plaintiff has misused the said power, as such he has cancelled the said GPA by issuing notice, so there is no cause of action to file the suit to the plaintiff.

31. This being the rival claim of the parties, so in order to fortify his case the plaintiff was examined as PW.1 and reiterated the averments made in the plaint and produced 10 documents as per Ex.P1 to Ex.P10. During his cross examination four documents were confronted as per Ex.D1 to Ex.D4. However, the defendants have not led their oral evidence before the Court.

32. Based on the rival pleadings and evidence placed before it the trial Court has discussed while answering to the issue No.1 that the plaintiff has issued notice on 15.10.2009 to defendant No.1 calling upon it to make payment of ₹4,34,629/- to the plaintiff, which is as per Ex.P7. But the plaintiff has not issued said notice to any other defendants except defendant No.1. So, it has raised the question that whether the plaintiff can make claim against the defendants other than the defendant No.1? If that is the case how the plaintiff can file a suit in the year 2015 whether the law of limitation is applicable?

33. It has further observed that except Ex.P7 no notice was issued to other defendants and the suit is filed in the year 2015 whereas he pleaded that he has requested to defendant No.2 to repay the amount and the partners of defendant No.2 have promised him to repay. The cause of action shown by the plaintiff is in the month of December 2017 when the meeting was held between the plaintiff and partners of defendant No.2. So, the trial Court has expressed that the burden is on the plaintiff to prove his case.

34. Apart from Ex.P7 the reply issued by defendant No.1 as per Ex.P6 dated 21.10.2009 stating that the entire due has been cleared and it has also issued loan clearance certificate to defendant No.2. But the plaintiff has not issued either any rejoinder to Ex.P6 or replied to it claiming refund of said amount except filing complaint before Consumer Forum, which was ordered as per Ex.D4.

35. Admittedly the plaintiff has not challenged the order passed in Ex.D4 and during cross examination he stated that he has paid the amount to the loan account of defendant No.2 on its behalf. He also admitted that ₹2,34,000/- has been paid by him and remaining amount of ₹2,00,000/- has been paid by way of cheque issued by Dinesh Pai, so the copy of which is marked at Ex.D2. The said amount of ₹2,00,000/- was transferred from the account of Dinesh Pai, who has also issued notice to the bank not to disburse said amount to the plaintiff, so also all the partners of defendant No.2 has also issued notice to the bank. He also admitted that the defendant No.1 bank has also issued a letter to him which is as per Ex.D3, wherein it is mentioned that refund of ₹4,34,629/- can be made only to defendant No.2.

36. By referring all these admissions and the pleadings of the plaintiff and dismissal of his complaint No.25/2010 by the Consumer Court as per Ex.D4, by suppressing all these facts the plaintiff has approached the Court with unclean hands against the bank, who is not at all a necessary party. So, the trial Court has non suited the plaintiff on all these aspects.

37. Apart from that it has rightly discussed by referring to Section 3 of Limitation Act stating that the predecessor of the office has not framed issue relating to the applicability of the law of limitation but as per Section 3 of the Limitation Act it is obligatory on the part of the Court to decide the question of limitation even though it has not been set up as a defense by the defendants. So, the trial Court not accepting the decision relied upon by the counsel for the plaintiff to draw adverse inference as the defendants have not chosen to step into witness box as reported in **(2010) 10 SCC 512 Man Kaur by LR's Vs. Harthar Singh Sangha.**

38. The plaintiff in this appeal also contending the same aspect that the bank has kept his amount under trust and in fiduciary capacity and there is no question of limitation, so the trial Court is wrong in holding that the suit is barred by law of limitation and non suiting him on the other aspect also. In support of his contention he has relied upon the following decisions;

i. AIR 1962 SC 1003 New Bank of India Vs. Pearey Lal

ii. AIR 1990 SC 1329 Union Co-operative Bank Vs. Hem Chandra Sarkar

iii. AIR 1979 SC 1144 Madras Port Trust Vs. Hymanshu International

iv. AIR 2004 SC 5123 Canbank Financial Services Ltd Vs. Custodian

39. In all these decisions the dispute between the banker and its customer, therefore it has been discussed that the liability of banker to customer in such a case is absolute even if no negligence is proved. It is also not in dispute that the bank should keep the amount of the customer under trust and act in fiduciary capacity. Absolutely there is no dispute with regard to the ratio held therein, the above decisions relied upon by the counsel for the plaintiff. But the moot question arose here is whether the plaintiff is the customer of the bank.

40. The main contention of the plaintiff is that he stood as guarantor to the loan account of defendant No.2. In order to prove the same there is no document from the side of the plaintiff except Ex.P10 or Ex.D1. On meticulous perusal of Ex.D1 which contains four counterfoils, wherein the name of the plaintiff is not at all mentioned, they bears the name of the defendant No.2 firm not the plaintiff. Even assuming that the plaintiff has stood the guarantor to the defendant No.2 firm it is the privity of contract between the plaintiff and defendant No.2 but not with the defendant No.1.

Hence, the trial Court has rightly held that the defendant No.1 is not necessary party, as such the suit is bad for misjoinder of parties.

41. Though the trial Court has not mentioned the provisions which deals with the contract of guarantee but Section 126 of Contract Act deals with the same which reads thus;

> ***126. 'Contract of guarantee', 'surety', 'principal debtor' and 'creditor'*** -
> *A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written.*

42. The above provision makes it crystal clear that the guarantor is a third person who acts as a surety between the creditor and the principal debtor. Therefore, there is a privity of contract between the guarantor with the principal debtor but not with the creditor. So, here there is no document placed on record by the plaintiff showing that in his individual capacity he has paid the said sum to the defendant No.1, though his signature appearing on Ex.D1 but the name of the account holder is mentioned as defendant No.2 . Therefore, even though it is presumed that he has paid the said amount but it is contract between plaintiff and defendant No.2, he has to ask the defendant No.2 but not the bank subject to the limitation as provided under the Limitation Act.

43. Admittedly as per Ex.D1 he has deposited the said sum before defendant No.1 on behalf of defendant No.2 on various dates during March 2001 but he has not made any demand for repayment of said sum to the defendant No.2 but directly gave notice to defendant No.1 as per Ex.P7 dated 15.10.2009 which was suitably replied by the bank as per Ex.D3 dated 05.01.2010. Thereafter it appears that he rushed to the Consumer Forum on 23.01.2010 but it was dismissed on 30.04.2011 holding that ***“No doubt the complainant stood a guarantor to the Opposite Party No.2 firm. If at all any payment made by the Complainant shall be claimed with the partners of the firm and not before the Opposite Party No.1 Bank.”***

44. When the Consumer Court in simplest language holding that the plaintiff has to claim against the firm and not against the bank has dismissed his complaint, the plaintiff has not bothered either to challenge the said order to take action against the defendant No.2 or its partners. The plaintiff once again filed the suit for recovery of money against the bank without issuing any notice arrayed the defendant No.2 and its partners and sought for refund of money jointly and severally. Absolutely there is no evidence for demanding either defendant No.2 or its partners by the plaintiff. Therefore, the trial Court has rightly comes to the conclusion that the suit is not at all filed within the limitation as prescribed under law.

45. I have gone through the entire judgment wherein the trial Court has rightly discussed the pleadings as well as evidence placed on record by both the parties. Though no issue was framed by the trial Court in respect of limitation has rightly arrived at the conclusion that the limitation point has to be considered by the Court even though the defendants have not set up limitation as their defense. In this regard, it is pertinent to mention the decision of our own Hon'ble High Court reported in **ILR 2024 Kar 2941 Narasimhegowda & Ors Vs. Puttalakshmamma & Ors**, wherein it is held that;

> *"Even if the plea of limitation was not raised as defence power of the Court to dismiss any suit, appeal or application*

> *filed after the prescribed period of limitation."*

46. The finding of the trial Court by invoking Section 3 of Limitation Act is completely in consonance with the ratio which cannot be find fault with. The attitude of the plaintiff in suing against the defendant No.1 bank is appears to only to overcome the limitation, based on several decisions which are not at all applicable to the facts of the present case. By way of repetition this Court opines that there is no privity of contract between the plaintiff and the bank and the banker is not a necessary party nor the plaintiff can seek any relief against the bank. His remedy is always with the defendant No.2 firm as he stood guarantor on behalf of defendant No.2. Therefore, if at all he has any claim that is only with the defendant No.2 but that is also subject to the law of limitation. Here the plaintiff has not at all shown any proper averments or evidence to prove his case against the defendant No.1 who is misjoinder of the party.

47. Apart from that knowingfully well that he is guarantor to the defendant No.2 has not made any demand to the defendant No.2 nor he has sued against defendant No.2 and its partners within the law of Limitation. The claim made by the plaintiff against the defendant No.2 and its partners is hopelessly barred by time. At this juncture it is pertinent to mention the Latin legal maxim **"*vigilantibus, non dormientibus, jura subveniunt*"** which means "the law assists those who are vigilant, not those who sleep upon their rights".

48. The above maxim literally applies to the plaintiff in this case because he has not made any claim against the defendant No.2 and its partners though he was fighting for the same cause before other forum since 2010, which has no jurisdiction. Even after dismissal of the said complaint as per Ex.D4 on 30.04.2011 the plaintiff has not approached the Court within three years as per Article 21 of the Limitation Act. Even as per Article 42 of the Limitation Act when the plaintiff being a surety against the principal debtor he has to recover the amount within three years from he made the payment to the creditor. That was also not did by the plaintiff for the reason best known to him. Therefore, viewed from any angle the suit of the plaintiff is time barred.

49. Here the counsel for the defendant No.1 bank contending that the plaintiff unnecessarily dragging him to the Court and he has suffered lot. So, also the counsel for the defendant No.4 and 10 being the partners of defendant No.2 have also contended that the suit is not at all maintainable and justified the judgment of the trial Court. When this being so strangely the counsel for respondent

No.3 and 6 to 9 filed memo stating that they have no objection to allow the appeal and decree the suit of the plaintiff as prayed for. Among them respondent No.3 is none other than the wife of the plaintiff and respondent No.6 to 9 are the legal heirs of B. Prabhakar the another partner. This memo shows that they are colluding with the plaintiff and also strengthens the observation of the trial Court that the conduct of the plaintiff shows that he approached the trial Court with unclean hands. Hence, I have not find any flaws from the trial Court in dismissing the suit of the plaintiff. Therefore, I answer the above point in the negative.

50. **Point No.2:** I have gone through the judgment passed by the trial Court, which has considered all the submissions made by both the parties in detail. The reasoning given by the trial Court is proper and is in right perspective, looking to the material placed on record. The trial Court has rightly given its findings and non suited the plaintiff. The judgment of the trial Court is not perverse, capricious and arbitrary as contended by the plaintiff. On the other hand, it has passed well merited judgment. Viewed from any angle, I have find no fault in the impugned judgment, as such the question of interference from this Court does not arise and the appeal is devoid of merits. Hence, I answer this point in the negative.

51. Point No.3: For the foregoing reasons and my findings to the above points, I proceed to pass the following:

ORDER

The appeal filed by the appellant under Section 96 r/w Order 41 Rule 1 & 2 of CPC is hereby dismissed with cost.

Consequently, the Judgment and Decree passed by the IV Additional Civil Judge & JMFC, Mangaluru in O.S. No. 1196/2015 dated 11.06.2020 is hereby confirmed.

Draw decree accordingly.

The records of the trial Court are to be consigned to it along with copy of this judgment forthwith.

(Dictated to the stenographer-Grade III directly on the computer, verified, corrected and then pronounced by me, on this 3rd day of August, 2026.)

(Patil Veeranagouda S)
Presiding Officer,
Labour Court, D.K., Mangaluru.

PATIL VEERANAGOUDA S

Digitally signed by PATIL VEERANAGOUDA S
Date: 2026.08.03 12:08:15 +0530