MHCC010013932015	Presented on	:	05.02.2015
	Registered on	:	04.04.2015
	Decided on	:	20.12.2025
	Duration	**:**	**10 Y : 10 M : 15 D**
	Exhibit	:	**27**

IN THE BOMBAY CITY CIVIL COURT AT MAZGAON

SUIT NO.384 OF 2015

Mrs. Priti Mukesh Tejura, **Age : 62 years, Occ. : Business,** R/a. : 43, Dev Chhaya Co-operative Housing Society Limited, Tardeo, Mumbai – 400 003.	**...Plaintiff.**
VERSUS	
~~**1. Mr. Mahesh H. Mehta,**~~ ~~Age : 60 years, Occ. : Business.~~	**...(Deleted)**
2. Mr. Rohan Mahesh Mehta, Age : 26 years, Occ. : Not known, **3. Mrs. Varsha Mahesh Mehta,** Age : 59 years, Occ. : Housewife, All residing at Vrindavan Bagol Road, Next to Nikunj Resort, Nathdwara, Dist. Rajasmand, Rajasthan – 313301.	**...Defendant.**

Appearances:		
Adv. D. J. Jani	:	for Plaintiff.
Ex-parte.	:	for Defendant.

CORAM : HIS HONOUR JUDGE **N. B. LAVTE, (C.R.No.83)**
DATE : 20th December, 2025

JUDGMENT

The suit is filed for recovery of Rs.56,42,500/- (principal amount of Rs.37,00,000/-) with 18% p.a based on cheuqes.

2. **The brief facts of the plaintiff case is that:**

The defendant No.1 is in textile business in the name of Mahalaxmi Enterprises. The defendant Nos. 2 and 3 are his son and wife. The defendant No.1 was introduced to her by her husband Mukesh in the year 2007. Th defendant No.1 was in need of financial help and requested for a short term friendly loan. She advanced a sum of Rs.37,00,000/- from her account between 2007-08. It was to be repaid within one year.

3. It is her further case that, the defendant No.1 executed a writing before the notary public at Nathdwara, Rajasthan on 27.02.2012 admitting the liability and the defendant Nos.2 and 3 stood as guarantors. However, the defendant No.1 failed and neglected to pay the amount as agreed on the pretext of financial difficulty. In 2010-11 she came to know that defendant No.1 sold is flat at Vile Parle and shop at Kalbadevi and other immovable properties and shifted to Nathdwara, Rajasthan. She also came to know that defendant No.1 defrauded many person in Mumbai and fled. Hence, a complaint was filed at V. P. Road Police Station wherein defendant No.1 was arrested even defendant No.1 has separate transaction with her husband. During the pendency of proceeding u/Sec.138 of the NI Act in Nathdwara at Rajasthan, defendant Nos.1 to 3 executed the writing on 26.02.2012 before notary public on 27.02.2012 and agreed to pay Rs.55,00,000/- within one and half year.

4. It is her further case that in pursuant to the writing, defendant No.1 issued following 3 cheques.

Cheque No.	Date	Amount
657898	20.10.2014	Rs.32,00,000/-
657899	20.10.2014	Rs.4,00,000/-
657900	20.10.2014	Rs.1,00,000/-

5. However, when deposited for encashment the cheques returned unpaid on 21.10.2014 with reasons 'account closed.' On 11.11.2014 statutory notice was issued to defendant No.1 which was falsely replied. Again rejoinder dated 11.12.2014 was issued. The defendants are jointly and severally liable to pay an amount of Rs.56,42,500/- with future interest of 18% p.a. Hence, suit.

6. During the pendency of suit, defendant No.1 died and his name was deleted. The defendant Nos. 2 and 3 appeared through Adv. S. E. Patel, however, in view of no instruction pursis filed by him, an order below Exh.01 was passed on 04.07.2025 wherein direction was given to serve defendant Nos.2 and 3. In compliance of it, substituted service by way of paper publication in Dainik Bhaskar, Rajasthan was published. However, defendant Nos.2 and 3 failed to appeared. Hence, suit was directed to proceed ex-parte.

7. In view of the pleadings following point arise for my consideration and determination on which I have given my findings alongwith reasons as under:

Sr	Points	Findings
1.	Is plaintiff is entitled for recovery of an amount of Rs.56,42,500/- with interest 18% p.a on principal amount of Rs.37,00,000/-?	Partly affirmative
2.	What order?	As per final order.

REASONS

8. In order to prove the suit claim, plaintiff filed his evidence affidavit vide Exh.09. The plaintiff placed reliance on following documents namely, original notarized writing dated 27.02.2012 (Exh.11), office copy of the letter dated 09.09.2014 (Exh.12), Certificate dated 22.09.2014 (Exh.13), original cheque No.657898 dated 20.10.2014 (Exh.14), original cheque No.657899 dated 20.10.2014 (Exh.15), original cheque No.657900 dated 20.10.2014 (Exh.16), original dishonour memo (Exh.17), original dishonour memo dated 25.10.2014 (Exh.18), original dishonour memo dated 25.10.2014 (Exh.19), original dishonour memo dated 25.10.2014 (Exh.20), office copy of notice dated 11.11.2014 (Exh.21) and courier receipt (Exh.22).

AS TO POINT NO.1:

9. Heard Adv. Jain for plaintiff who submitted that an amount of Rs.37,00,000/- was advanced as an friendly loan to defendant No.1 and in view of the receipt of the amount all the defendants executed writing dated 26.02.2012. However, the amount was not paid inspite of repeated requests and thereafter defendant No.1 issued 3 cheques on 20.10.2014 which on presentation bounced with remark 'account closed.' He further submitted that as the suit proceed ex-parte, therefore, the contents of the plaint as well as the evidence affidavit of plaintiff has gone unchallenged, therefore, it is deemed to be admitted. Hence, prayed for decreeing the suit.

10. The plaintiff filed her evidence affidavit vide Exh.09 and reiterated the contents of the plaint in verbatim. In support of her claim the original notarized writing Exh.11 the 3 cheques worth Rs.37,00,000/- Exh.14 to Exh.16, Bank Memos Exh.17 to Exh.20 are filed on record. From the notarized writing, the defendants undertook to pay the amount. The certificate issued by Central Bank of India,

Kandivali Branch shows the cheques issued by the plaintiff to defendants were honoured. Whereas, the 3 original cheques issued by defendant No.1 to discharge the legally enforceable debt bounced when presented for encashment with remark 'account closed.' Thus, advancement of friendly loan, execution of notarized undertaking by all the defendants proves that an amount of Rs.37,00,000/- was advanced by plaintiff by way of cheques.

11. Thus, defendants failed to honour the cheque which were given towards the discharge of legally enforceable debt. Even statutory notice Exh.21 was issued. All the contents of the plaint and the evidence affidavit in absence of cross-examination have gone unchallenged, therefore, the same is accepted. As regards the query whether the suit is within limitation, Adv. Jani placed reliance on the authority of ***Mr. Dinesh B. Choukshi vs. Rahul Vasudeo Bhatt & Anr.. 2012 ALL MR (Cri) 3656***. According to Adv. Jani though the amount was advanced in the year 2007 and 2008 and execution of the writing on 27.02.2012, however, the issuance of cheque on 20.10.2014 brings the suit within limitation. In ***Priti (supra)*** the Hon'ble Division Bench in para 15 held that a cheque is a promise within the meaning of sub-section (3) of Sec. 25 of the Contract Act and if drawn to pay wholly or in part a debt which is not enforceable only by reason of bar of limitation, therefore, the promise to pay time barred debt becomes a valid contract. Even reference to the authority of Hon'ble Apex Court in the case of ***A.V. Murthy vs. B. S. Nagabasavanna, 2002 ALL MR (Cri) 709 (SC)*** was placed.

12. Similar is the case in hand and the observations of ***Priti (supra)*** are perfectly applicable to the present case in hand. Hence, the suit is within limitation. Therefore, plaintiff is entitled for recovery of Rs.56,42,500/- with 7% p.a on the principal amount of Rs.37,00,000/-

from date of filing of the suit till realization of the amount from defendant Nos.2 and 3. Hence, **point No.1 is answered partly in the affirmative**.

AS TO POINT NO.2 :

13. In view of my finding to point No.1, I proceed to pass following order.

ORDER

1.	The Sum Su No.384/2015 is decreed with cost.
2.	The defendant No.2 and 3 are jointly and severally directed to pay to plaintiff an amount of Rs.56,42,500/- (Rs. Fifty Six Lakh Forty Two Thousand Five Hundred only) with 18% p.a on the principal amount of Rs.37,00,000/- (Thirty Seven lakh Only) to plaintiff from the date of filing of the suit till realization.
3.	The NM No.4089/2016 is disposed of accordingly.
4.	The SJ No.265/2019 is disposed of accordingly.
5.	The decree be drawn up accordingly.
6.	The R and P be sent to record department.

(N. B. Lavte)
Judge, (C.R.No.83)
City Civil Court, Mazgaon,
MUMBAI

Dt.:20.12.2025

Dictated on : 20.12.2025
Transcribed on : 22.12.2025
checked on : 22.12.2025
Signed on : 22.12.2025

(N. B. Lavte)
Judge, (C.R.No.83)
City Civil Court, Mazgaon,
MUMBAI.

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"	
22.12.2025 at 5.45p.m. UPLOAD DATE AND TIME	(MANISHA SRINATH) NAME OF STENOGRAPHER

Name of the Judge	H.H.J.Shri. N. B. Lavte (COURT ROOM NO.83)
Date of pronouncement of judgment/order	20.12.2025
Judgment/order signed by P.O. on	22.12.2025
Judgment/order uploaded	22.12.2025