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**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

AD-COM/1/2026
WITH CS-COM/29/2025
IA NO: GA-COM/2/2025
STARLITE VYAPAAR PVT LTD
VS
SNG FASHIONS PVT LIMITED

BEFORE:
HON'BLE JUSTICE DEBANGSU BASAK
-A N D-
HON'BLE JUSTICE MD. SHABBAR RASHIDI

DATE: -April 06, 2026.

For the Appellant : *Mr. Shuvasish Sengupta, Adv.*
Mr. Soumyajit Mishra, Adv.

For the Respondent : *Mr. Varun Kothari, Adv.*
Mr. Dhruv Surana, Adv.

HEARD ON : 06.04.2026
DELIVERED ON : 06.04.2026

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment and decree dated April 3, 2025 passed in CS-COM/29/2025. By the impugned judgment and decree the learned Trial Judge dismissed the claim of the petitioner.

2. Learned advocate appearing for the appellant submits that, the suit was tried as an undefended suit. Therefore, there was no pleadings before the learned Trial Judge for the respondent/defendant to lead evidence. He draws the attention of the Court to the impugned judgment and decree. He submits that, learned Trial Judge relied upon Exhibit 1, being a cheque introduced in cross-examination of the witness of the plaintiff, by the defendant. He submits, Exhibit 1 was marked subject to objection. The objection raised as treating the letter as an Exhibit was not decided by the learned Trial Judge. Nonetheless learned Trial Judge relied upon such document to doubt the claim of the appellant.
3. Learned advocate appearing for the appellant submits that, the claim of the appellant is within the period of limitation prescribed. He submits that, the last acknowledgement of liability was in 2017 by a cheque being issued by the defendant. Suit was filed in 2018. Therefore, the issue of limitation was required to be answered in the affirmative in favour of the appellant. Learned Trial Judge erred in not doing so.
4. Learned advocate appearing for the appellant relies upon **2024 INSC 542 (Kaushik Narsinhbhai Patel & Ors. vs. M/s. S.J.R. Prime Corporation Private Limited & Ors.)** and submits that, no evidence can be led without a foundation therein being laid down in pleadings.
5. Learned advocate appearing for the respondent relied upon **(2024) 2 Supreme Court Cases 144 (Mohammed Abdul Wahid vs. Nilofer and Another)** and submits that, an evidence can be introduced in cross-

examination of any witness in order to refresh the memory of such witness or to confront such witness. In the facts and circumstances of the present case, Exhibit 1 was introduced by the respondent in order to confront the witness of the appellant as to the veracity of the cheque issued. He refers to exhibit E which is the cheque concerned. He submits that such cheque contains two inks. According to him, such cheque was subsequently filled up and therefore, the claim of the plaintiff was not within the period of limitation prescribed.

6. Appellant filed suit for recovery of money lent and advanced. Despite service of the writ of summons, the respondent therefore did not file written statement. Suit was taken up for trial as an undefended suit.
7. In an undefended suit there is a right of the defendant to cross-examine the witness of the plaintiff limited to the pleadings of the plaintiff.
8. In order to establish its claim plaintiff examined one witness. Several documents were tendered in evidence and marked as exhibits from Exhibit A to Exhibit P.
9. The witness of the plaintiff was cross-examined by the defendant. In cross-examination in question no. 203 a document was sought to be introduced in evidence by the defendant. Document was marked as Exhibit 1 subject to objection. Objection to the document being marked as an exhibit was recorded by the learned Trial Judge. However the validity of the objection was not decided upon by the learned Trial Judge, prior to the impugned judgment or in the impugned judgment and decree. Nonetheless

the learned Trial Judge proceeded to rely on Exhibit 1 as if such document was tendered in evidence and marked as an exhibit without any objection.

10. With the deepest of respect we are of the view that, until and unless a decision is taken on the objection raised, learned Trial Judge erred in relying upon such document as a document which was exhibited at the trial and deciding on the evidentiary value of such document.

11. In the facts and circumstances of the present case, the defendant approached the plaintiff for financial accommodation for a sum of Rs. 50,00,000/- with an assurance to pay interest at the rate of 9% per annum. Appellant lent and advanced a sum of Rs. 50,00,000/- to the respondent on March 30, 2011 as will appear from exhibit C. Respondent acknowledged receipt of the sum of Rs. 50,00,000/- and promised to pay the sum on demand which will appear from exhibit D. From time to time, respondent paid agreed interest to the appellant which will appear from exhibit J. Such payment of interest was till March 31, 2012. Respondent paid a sum of Rs. 10,000/- on account of interest by exhibit E on July 11, 2014. Appellant issued a money receipt in favour of the respondent in this regard. Again, respondent paid lump sum of Rs. 12,000/- and Rs. 15,000/- on September 9, 2015 and September 20, 2016 as will appear from exhibit E. Appellant issued money receipts in this regard to the respondent.

12. Respondent issued a cheque bearing no. 231670 drawn on ICICI Bank, Park Street Branch towards discharge of the principal amount which

will appear from exhibit F on March 23, 2017. Such cheque was presented for encashment on March 27, 2017 as will appear from exhibit G. Such cheque was dishonored on presentation on March 27, 2017 as will appear from exhibit G/1, with the remark 'Debit Account Closed'.

13. Significantly, the cheque was not dishonoured on the ground of manipulation or overwriting or it stood vitiated due to use of two colours of ink.
14. Appellant initiated criminal proceeding against the respondent which will appear from exhibit P. Thereafter, the appellant filed the instant suit for recovery on June 7, 2018.
15. Under Section 3 of the Limitation Act, 1963, the Court in seisin of a suit is required to pronounce on the limitation if there be any. In the facts and circumstances of the case, the money lent and advanced was on March 30, 2011 as appears from exhibit C. From time to time respondent acknowledged liability and made part payments as will appear from exhibits D, E, J and F. In fact exhibit F is a cheque for sum of Rs. 50,00,000/- which was dishonored on presentation on March 27, 2017. The suit being filed on June 6, 2018, the suit cannot be said to be barred by limitation.
16. Learned Trial Judge, doubted the veracity of the claim of the appellant on the ground of exhibit 1. As noted above, exhibit 1 was tendered in evidence subject to objection, which, learned Trial Judge, did not decide finally prior to passing the impugned judgment and decree. In

any event, such document was sought to be introduced dehors the pleadings. As noted above, the suit was tried as an undefended suit as, respondent did not file any written statement.

17. **Kaushik Narsinhbhai Patel (supra)** is of the view that, a party cannot make out the case in evidence for which no foundation was laid in the pleadings. No amount of evidence can prove a case of the party which did not set up the same in the pleadings. In the facts and circumstances of the present case, the tenor of the defence sought to be raised by exhibit 1 was not laid by the respondent, in its pleadings.
18. **Mohammed Abdul Wahid (supra)** is of the view that the witness can be confronted with a document in order to refresh his memory or to contradict him. Such authority pre-supposes that there was pleadings to lay the foundations basis thereof.
19. In view of the discussions above, we set aside the impugned judgment and decree of the dismissal. We decree the suit for the sum of Rs. 50,00,000/- along with the interest at the rate of 9% per annum calculated on and from the last date of payment of interest being September 20, 2016 till realization. Such period of interest is taken into consideration in view of the fact, no better particulars with regard to the interest due is provided by the appellant in the plaint or in the evidence.

20. A.D-COM 1 of 2026 along with connected application stand disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

21. I agree.

(MD. SHABBAR RASHIDI, J.)

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