

# Phoenix Asset Reconstruction Pvt. Ltd. v. Mr. Ketan Ashwinkumar Vaidya

Phoenix Asset Reconstruction Pvt. Ltd.

...Appellant

Mr. Ketan Ashwinkumar Vaidya

...Respondent

Case No: Appeal No. 57/2022

Date of Judgement: 11/12/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Vinay Deshpande, i/b M/s V. Deshpande & Co., Advocate.

For Respondent: None.

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**Facts:**

The case revolves around a personal loan of ₹5,50,500 taken by Mr. Ketan Ashwinkumar Vaidya (Respondent) from ABN AMRO Bank NV. The loan was to be repaid in 60 instalments of ₹13,681 each, commencing from 01/04/2008 and ending on 02/03/2013. The Respondent executed an agreement concerning the loan apart from a Demand Promissory Note. On 02/12/2010, the Respondent issued three cheques totaling ₹41,043 towards defaulted instalments. On 04/08/2013, another cheque for ₹13,681 was issued by the Respondent towards the outstanding dues, which was dishonored on 30/08/2013 due to insufficient funds. ABN AMRO Bank was substituted with the Royal Bank of Scotland NV vide a notification from the Reserve Bank of India dated 19/03/2010. The debt

was assigned to Phoenix Asset Reconstruction Pvt. Ltd. (Appellant) on 30/04/2012. The Appellant recalled the debt on 25/10/2013 by issuing a notice demanding repayment. However, the Respondent failed to respond. The Appellant filed an Original Application (O.A.) No. 650 of 2016 with the Debts Recovery Tribunal-I, Mumbai (D.R.T.) for the recovery of ₹10,17,537, along with future interest at 2% per month from the date of filing the O.A. till realization. The Respondent remained ex parte, and the Ld. Presiding Officer dismissed the O.A., stating that the claim was barred by limitation and that the cheques relied upon by the Applicant were issued in the name of ABN AMRO when the said bank was not in existence from 19/03/2010. The Ld. Presiding Officer also observed that the cheques were filled up at a later date, which attracts offenses under the Indian Penal Code, and intended to initiate criminal proceedings against the officer of the Appellant institution.

#### **Arguments by the Parties:**

##### **Appellant's Arguments:**

The Appellant contended that the claim was not barred by limitation, as the terms of the agreement gave discretion to the bank to decide when to trigger the recall of the loan upon the occurrence of an 'event of default'. The Appellant argued that the commencement of the period of limitation would be triggered once a notice was issued, giving the liberty to the Appellant to choose when to sue. Regarding the dishonouring of the cheque, the Appellant argued that the Ld. Presiding Officer erred in finding the officer of the bank responsible for committing a crime, as there was no rebuttal evidence forthcoming from the drawer of the cheque.

##### **Respondent's Arguments:**

The Respondent remained ex parte and did not present any arguments.

##### **Court's Elaborate Opinions:**

On the issue of limitation, the court referred to the decision of the Hon'ble Supreme Court in M/s Sundaram Finance Ltd. v/s Noorjahan Biwi

& Ano. (2016) 13 SCC 1, which held that the limitation period under Article 55 of the Limitation Act, 1963, begins to run when the contract is broken or when the default is committed in payment of the instalment. However, the court distinguished the present case from the Sundaram Finance Ltd. decision, stating that the terms of the agreement gave discretion to the bank to decide when to trigger the recall of the loan upon the occurrence of an 'event of default'. The court found support for its view in the decision of Kotak Mahindra Bank Ltd. vs. Anuj Kumar Tyagi 2015 SCC OnLine Del 14130. Regarding the dishonouring of the cheque, the court referred to the Hon'ble Supreme Court's decision in Bir Singh vs. Mukesh Kumar (2019) 4 SCC 197, which held that the onus to rebut the presumption under Section 139 of the Negotiable Instruments Act, 1881, that the cheque has been issued in discharge of the debt or liability, is on the accused. The court stated that the Ld. Presiding Officer jumped to a hasty conclusion that the cheques handed over by the borrower to the creditor were misused by the creditor, as there was a specific undertaking given by the borrower that the cheques could be utilized, and the borrower also made himself responsible for the dishonouring of the cheque.

**Cases Cited:**

M/s Sundaram Finance Ltd. v/s Noorjahan Biwi & Ano. (2016) 13 SCC 1

Kotak Mahindra Bank Ltd. vs. Anuj Kumar Tyagi 2015 SCC OnLine Del 14130

Bir Singh vs. Mukesh Kumar (2019) 4 SCC 197

**Sections and Laws Referred:**

Article 55 of the Limitation Act, 1963

Section 139 of the Negotiable Instruments Act, 1881

Indian Penal Code (referred to but not explicitly mentioned)

The court allowed the appeal and set aside the impugned judgment/order of the D.R.T. in O.A. No. 650 of 2016. The court directed the

Respondent/Defendant to pay the Appellant/Applicant a sum of ₹10,17,537, together with future interest at the rate of 2% per month from the date of filing the O.A. till realization, and ordered the issuance of a Recovery Certificate accordingly.