JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No.48 of 2012.

Bank Alfalah Limited

Versus.

Samina Qazi

Appellant by	:	Raja Muqsit Nawaz Khan, Advocate.
Respondent	:	Ex-parte.
Date of hearing	:	06.06.2022

SAMAN RAFAT IMTIAZ, J.:- Through the instant Regular First Appeal, the Appellant has assailed the Judgment and Decree dated 19.06.2012 ("**Impugned Judgment & Decree**") passed by the learned Judge Banking Court, Rawalpindi, whereby the recovery suit of the Appellant Bank was dismissed.

2. The facts in brief, as per the Memo of Appeal, are that on the application of the Respondent, the Appellant Bank issued a visa card facility, bearing number 4025-8200-1475-4000 with the limit of Rs.176,913/-. Allegedly, the Respondent fully utilized the said card facility and the Appellant Bank regularly sent the monthly statements to the Respondent who never raised any objection in this respect. Subsequently, the Respondent failed to pay minimum payment of the liabilities and committed default, on the basis of default the Appellant Bank filed suit in the Banking Court for recovery of Rs.189,468.29/- against the Respondent on 23.05.2011, which was dismissed on 19.06.2012 on the ground of limitation as being barred by time, hence, this appeal.

3. The learned counsel for the Appellant submitted that the Impugned Judgment and Decree is against the facts of the case and is the result of misapplication of the relevant law. Learned counsel drew out attention to various entries in the statement of accounts, which reflects that the last utilization of credit card by the Respondent was made in September, 2006, whereas last payment made by the Respondent was on 26.01.2009. On the

basis of foregoing entries, the learned counsel for the Appellant submitted that the suit was well within the limitation period by relying upon *Muslim Commercial Bank Limited vs. Robert Francis*, 2019 CLD 996 [Lahore].

4. The Respondent did not appear before the Court, therefore, after completing the due process of law, he was proceeded against ex-parte on 30.03.2022.

5. We have heard learned counsel for the Appellant and perused the record.

6. The relevant portion of the Impugned Judgment is reproduced here-in-below:-

> *"Record reveals that finance amount was Rs.176,913.00. Finance was availed on 17.1.2004. Expiry of the finance was January, 2006. Suit has been filed on 23.5.2011 which is not filed within the prescribed limitation under the law. Learned counsel for plaintiff submitted that last payment was received on 26.1.2009 and as such the suit has been filed within the time. It is noted that documents as regards to the renewal or extension of the finance in question has not been produced on record. Learned counsel for plaintiff failed to point any provision in the agreement that in case of last payment received on 26.1.2009, finance in question had not expired. Suit has not been filed within the time. Therefore, the same is dismissed."*

7. The record shows that the Appellant had filed with the Plaint, the credit application form executed by the Respondent on 09.01.2004. The said application form does not have an expiry date and there is no copy of the credit card itself, which normally bears the expiry date of the card. However, the statement of accounts submitted by the Appellant Bank before the Banking Court shows that expiry was in January, 2006. It is unclear as to how such expiry has been determined given that as noted above, no such expiry has been stipulated in the account opening form, which constituted the finance agreement between the parties.

8. In view of above, the source of the purported date of expiry is not clear. It also conflicts with the statement of account appended with the plaint as such statement shows that the card was utilized by the Respondent till as late as September, 2006, which would not have been possible if the card had already expired in January, 2006.

9. Even if it is assumed that the card expired in the January, 2006, admittedly the Appellant had three years' time to institute a recovery suit pursuant to Article 57 of the Limitation Act 1908. Under Section 19 of the Limitation Act, a fresh period of limitation begins in case of acknowledgment of liability given within the prescribed period of limitation. In this regard section 19 of the Limitation Act is reproduced here-in-below:-

> *"19. Effect of acknowledgment in writing. (1)* ***Where, before the expiration of the period prescribed for a suit*** *or application in respect of any property or right,* ***an acknowledgement 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 same person through whom he derives 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 Evidence Act, 1872, oral evidence of its contents shall not be received."*

10. In view of the above, since the Respondent made the last payment in January, 2009, which was within three years of the initial limitation period (even if expiry of the card is assumed to be January, 2006), such payment would constitute an acknowledgment of liability giving rise to a fresh period of three years of limitation in favour of the Appellant. Hence, the suit instituted on 23.05.2011 would be within the limitation period. We are fortified in our view by various judgments whereby part-payment of debt has been held to be an acknowledgment for purposes of Section 19 of the Limitation Act, 1908 thereby extending the limitation period including *Zarai Taraqiati Bank Limited versus Inam*, 2021 CLD 1425; *Punjab Flour Milling Corporation versus N.H. Holding Limited*, 2002 YLR 1065; *State Life Insurance Corporation of Pakistan versus S.U. Durrani*, PLD 1987 Karachi 588; *Messrs Commerce Bank Limited, Karachi versus Messrs Crescent Paint Colour and Varnish Works Limited*, PLD 1975 Karachi 504; and *Pakistan versus Waliullah Sufyani*, PLD 1964 Dacca 1. Even otherwise limitation is a mixed question of law and fact.

11. For all the foregoing reasons, we find that dismissal of the Appellant's suit by the learned Banking Court vide Impugned Judgment

and decree dated 19.06.2012 was erroneous. Therefore, instant appeal is **allowed**. The Impugned Judgment and decree is **set aside**. As a result thereof, the suit shall be deemed pending and the application for leave to appear and defend the suit filed by the Respondent shall be heard and decided afresh by the learned Judge Banking Court Rawalpindi while keeping the above observations in view.

(AAMER FAROOQ)
JUDGE

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on_____

JUDGE **JUDGE**

R.ANJAM.