CASE NO.:
Appeal (civil) 6894 of 1997

PETITIONER:
Syndicate Bank

RESPONDENT:
Channaveerappa Beleri & Ors.

DATE OF JUDGMENT: 10/04/2006

BENCH:
Arun Kumar & R V Raveendran

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

This appeal by special leave, is by the plaintiff Bank against the judgment dated 6.3.1997 of the High Court of Karnataka dismissing R.F.A. No. 107 of 1993 filed by it against the judgment and decree dated 29.10.1992 of the Civil Judge, Gadag in O.S. No. 29 of 1990, dismissing its suit on the ground of limitation.

2. The appellant Bank filed Original Suit No. 29 of 1990 against Respondents 1 to 7 herein for recovery of Rs.19,77,478/60 (the liability of Respondents 2 & 3 being restricted to Rs.15,75,960 and liability of Respondents 6 & 7 being restricted to 17,56,070.60) together with interest @18.5% per annum compounded quarterly from the date of suit till the date of realization. The plaint averments in brief are as under.

2.1) The Bank had extended credit facilities by way of overdraft, goods loan, and demand loan against supply Bills to a company known as Gadag Forge Fits (India) Pvt. Ltd., ('company' for short). Respondent 1 was its Managing Director and Respondents 2 to 7 were its Directors. The credit facilities were renewed and enhanced from time to time. Respondents 1 to 7 executed the following guarantee bonds in favour of the Bank, personally agreeing and undertaking to pay and satisfy the Bank on demand all sums which may be due on account of the credit facilities granted to the company subject to the limits mentioned therein :

i) Guarantee Bond dated 17.9.1983/20.8.1983/29.8.1983 executed by Respondents 1, 2 and 3, the limit of liability being Rs. 10.50 lakhs (a single deed executed by Respondents 1, 2 and 3 on different dates).
ii) Guarantee bond dated 4.4.1984 executed by respondents 4 & 5, the limit of liability being Rs. 10.50 lakhs.
iii) Guarantee bond dated 10.9.1985 executed by Respondents 1, 4, 5, 6 & 7, the limit of liability being Rs.11.70 lakhs.

Thus the limit of total liability undertaken exclusive of interest was Rs.22.20 lakhs in the case of Respondents 1, 4 & 5, Rs. 10.50 lakhs in the case of Respondents 2 & 3 and Rs.11.70 lakhs in the case of Resondents 6 & 7. Their liability was joint and several with the company.

2.2) On account of the company allegedly incurring losses and stopping its activities, operations in the accounts of the company with the Bank stopped in the middle of 1986. In view of the failure on the

part of the company (principal debtor) in paying the amounts due, the Bank sent a letter dated 12.10.1987 to the company and its 7 Directors (Respondents 1 to 7) informing that the following amounts were outstanding in the accounts of the company as on 30.9.1987 and calling upon the company as principal debtor and respondents 1 to 7 as guarantors to pay the said amounts aggregating to Rs.13,48,264.79 with interest @ 18.5% per annum from 1.10.87 within 15 days :-

Account No.	Date of Advance	Limit/Amount Advanced	Balance as on 30.9.1987
Over Draft			
27/85	10.9.85	2,50,000/-	3,32,116.04
1/86	7.1.86	2,50,000/-	3,39,719.54
14/86	29.4.86	1,50,000/-	1,99,105.35
Goods Loan			
49/84	23.7.84	1,61,000/-	1,91,654.00
48/85	12.10.85	27,450/-	35,894.85
Demand Loan against Supply Bills			
229/85			
232/85			
233/85			
234/85			
235/85			
237/85			
2/86			
3/86			
5/86			
8/86			
10/86			
12/86			
14/86			

15/86			
16/86			
18/86			
20/86			
2.12.85	5,000/-	318.60	
6.12.85	5,000/-	6,936.65	
6.12.85	2,500/-	3,469.40	
11.12.85	16,900/-	23,356.15	
20.12.85	1,500/-	2,071.85	
26.12.85	6,100/-	8,366.90	
1.1.86	2,900/-	3,966.95	
1.1.86	5,100/-	3,425.75	
13.1.86	32,970/-	44,819.30	
3.2.86	3,700/-	444.05	
10.2.86	31,600/-	26,274.85	
13.2.86	13,700/-	18.424.20	
11.3.86	8,800/-	11,685.45	
20.3.86	10,230/-	13,518.25	
21.3.86	36,000/-	47,534.00	
25.3.86	20,300/-	26,750.10	
26.4.86	6,400/-	8,412.60	
		TOTAL	

13,48,264.79

2.3) The company and its Directors (Respondents 1 to 7) sent a reply dated 31.10.1987 through counsel stating that the company was passing though a financial crisis and the Bank had failed to assist the company by making further advances by way of working capital. They further alleged that in view of the failure to advance further funds, the company sustained heavy loss and the company was reserving liberty to file a suit for damages for an amount which would be more than the amount claimed by the Bank. They also alleged that the bank ought to have given a moratorium on interest to rehabilitate the company. They also stated that without prejudice to their rights and contentions, they were willing to discuss the matter with the Bank, to arrive at an amicable solution. A formal notice through counsel was sent by the Bank on 17.12.1987 demanding payment which elicited a reply dated 30.12.1987 denying the demand.

2.4) The Bank initiated proceedings for winding up against the company on account of its inability to pay its dues, on 11.10.1988 and the High Court ordered winding up of the company on 17.3.1989. Therefore, the suit was filed by the Bank on 16.3.1990 only against the Guarantors (Respondents 1 to 7) for recovery of Rs.19,77,478.60 (that is, the amount demanded in the notice dated 12.10.1987 with interest up to date of suit). The Bank restricted the claim to Rs.10.50 lakhs with interest at 18.5% P.A. from 17.12.87 to the date of suit against Respondents 2 and 3 and to Rs.11.70 lakhs with interest at 18.5% P.A. from 17.12.1987 to date of suit against respondents 6 and 7. The Bank contended that the respondents were jointly and severally liable to pay the amounts due by the company, as aforesaid. It was alleged that the cause of action for the suit against the guarantors (respondents 1 to 7) arose on 17.12.1987 when the demand was made and on 30.12.1987 when they denied the liability by notice. The statements of account showing the particulars of amount due as on 31.12.1989 were annexed to the plaint.

3. Respondents 4 and 7 remained ex parte. Respondents 1, 5 and 6 filed a common written statement which was adopted by 2nd respondent. Respondent No. 3 filed a separate written statement. They resisted the suit inter alia on the following grounds :-

a) The suit was not maintainable only against the Guarantors and was liable to be rejected for non-joinder of the principal debtor.
b) The Bank cannot proceed against the guarantors without first exhausting of remedies against the principal debtor.

c) The guarantee bonds were executed in the years 1983, 1984 and 1985. As the suit was not filed within three years from the respective dates of the guarantee bonds, in the absence of renewals or acknowledgement by them, the suit was barred by limitation.

4. The trial court framed as many as 16 issues. We are concerned with the issue no.4, that is, : 'Is the suit not in time?'. The Bank examined its manager and respondents 1, 2 and 3 gave evidence on behalf of the defence. Ex. P-1 to P-35 and Ex. D-1 to D5 were marked. The trial court by an exhaustive judgment answered all the issues, except the issue regarding limitation in favour of the Bank. It held that the Bank had established the correctness of the amounts claimed and the rate of interest. It, however, held that the suit was barred by time and consequently, dismissed the suit. The appeal filed by the Bank was also dismissed by the High Court. The said dismissal is challenged in this appeal by special leave. The only question that was argued and that arises for consideration in this appeal is whether

the decision of the courts below that the suit was barred by limitation is correct in law.

5. To appreciate the rival contentions, it is necessary to refer to the relevant statutory provisions, the terms of the guarantee and the decision of this Court relied on by both parties.

5.1) Section 126, 128, 129 and 130 of Contract Act, 1872 are extracted below :

"Section 126. 'Contract of guarantee,' 'surety,' 'principal-debtor' and 'creditor' \026 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."

"Section 128. Surety's liability \026 The liability of the surety is co-extensive with that of the principal-debtor, unless it is otherwise provided by the contract."

"Section 129. 'Continuing guarantee' \026 A guarantee which extends to a series of transactions is called a 'continuing guarantee."

"Section 130. Revocation of continuing guarantee \026 A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor."

5.2) The relevant Articles in the Schedule to the Limitation Act, 1963 are extracted below :

Article No.	Description of Suit	Period of Limitation	Time from which period begins to run
55	For compensation for the breach of any contract, express of implied not herein specially provided for.	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.
113	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	

When the right to sue
accrues.
19
For money payable for money
lent.
Three years
When the loan is made.
21
For money lent under an
agreement that it shall be
payable on demand.
Three years
When the loan is made.

5.3) The guarantee bonds have been executed in the standard Form of the Bank. The relevant portions from the Guarantee bond dated 10.8.1985 (the Bonds are similarly worded) are extracted below :

"In consideration of SYNDICATE BANK, here-in/after called the "Syndicate"\005\005\005\005. making, or continuing to make advances or otherwise giving credit or financial accommodation or affording banking facilities for as long as the Syndicate may think fit to M/s. Godrej Forge Fits (I) Pvt. Ltd. Hirakoppa village, Gadag taluk here-after called the "Borrower"\005\005\005\005.., the undersigned (1) C. M. Beleri, (2) I. M. Beleri, (3) K. M. Chhadda, (4) Mrs. Shailaja Beleri and (5) T. Parthasarathy (hereinafter referred to as the "Guarantor") hereby agrees to pay and satisfy to the Syndicate on demand all and every sum and sums of money which are now or shall at any time be owing to the Syndicate in any of its offices on any account whatsoever,\005\005.\005"

"PROVIDED ALWAYS that the total liability ultimately enforceable against the Guarantor under this guarantee shall not exceed the sum of Rs.11,70,000/- together with interest thereon at the rate stipulated by the bank from date of demand by the Syndicate upon the Guarantor for payment."

"NOTWITHSTANDING the Borrower’s Account or Accounts with the Syndicate may be brought to credit or the credit given to the Borrower fully exhausted or exceeded or howsoever the said financial accommodation varied or changed from time to time; notwithstanding any payments from time to time or any settlement of Account, this guarantee shall be a continuing guarantee for payment of the ultimate balance to become due to the Syndicate by the Borrower not exceeding Rs.11,70,000/- as aforesaid."

"NOTWITHSTANDING the discontinuance of this Guarantee as to one or more of the Guarantors or the death of any one of them, the Guarantee is to remain a continuing Guarantee, as to the other or others or the representatives and estates of the deceased and where there is more than one Guarantor, their liability under these presents being construed as joint and several."

"ANY ACCOUNT SETTLED or stated by or between the Syndicate and the Borrower or admitted by him or on his behalf may be adduced by the Syndicate and shall in that case be accepted by the guarantors and each of them and

their respective representatives as conclusive evidence that the balance or amount thereby appearing is due from to the Syndicate."
[Emphasis supplied]

5.4) MARGARET LALITA SAMUEL vs. INDO COMMERCIAL BANK LTD (AIR 1979 SC 102) relied on both sides dealt with the question of limitation with reference to a continuing guarantee. In that case the guarantor sought to avoid liability by contending that every item of an overdraft account was an independent loan and the limitation would start from the date of each loan, and that with reference to such dates, the suit was barred by limitation. While negativing the said contention, this Court observed :

"In our view it is unnecessary for the purposes of the present case, to go into the question of the nature of an overdraft account. The present suit is in substance and truth one to enforce the guarantee bond executed by the defendant. In order to ascertain the nature of the liability of the defendant, it is necessary to refer to the precise terms of the guarantee bond rather than embark into an enquiry as to the nature of an overdraft account.

After referring to the terms of the guarantee bond, this Court held :

"The guarantee is seen to be a continuing guarantee and the undertaking by the defendant is to pay any amount that may be due by the company at the foot of the general balance of its account or any other account whatever. In the case of such a continuing guarantee, so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantor to carry out the obligation, we do not see how the period of limitation could be said to have commenced running. Limitation would only run from the date of breach under Art. 115 of the schedule to the Limitation Act, 1908. When the Bombay High Court considered the matter in the first instance and held that the suit was not barred by limitation. J.C. Shah, J. speaking for the Court said :

On the plain words of the letters of guarantee it is clear that the defendant undertook to pay any amount which may be due by the Company at the foot of the general balance of its account or any other account whatever \005. We are not concerned in this case with the period of limitation for the amount repayable by the Company to the bank. We are concerned with the period of limitation for enforcing the liability of the defendant under the surety bond \005 We hold that the suit to enforce the liability is governed by Art. 115 and the cause of action arises when the contract of continuing guarantee is broken, and in the present case we are of the view that so long as the account remained live account, and there was no refusal on the part of defendant to carry out her obligation, the period of limitation did not commence to run.
(Emphasis supplied)

After expressing agreement with the above view expressed by Shah,

J., this Court also agreed with the view expressed by the Privy Council in Wright v. New Zealand Farmers Co-operative Association of Canterbury Ltd. (1939 AC 439), and the Court of Appeal in Bradford Old Bank Ltd. v. Sutcliffe [1918 (2) KB 833] that limitation against a guarantor under a continuing guarantee (which specified that the liability of the guarantor is to pay on demand) would not run from the date of each advance, but only run from the time when the balance (payment of which is guaranteed) was constituted and a demand was made for payment thereof. This Court also referred to a passage from Paget's Law of Banking, with approval, though not extracted. The said passage from Paget reads thus :

"In Bradford Old Bank Ltd v Sutcliffe - (1918) 2 KB 833, it was pointed out that the contract of the surety was a collateral, not a direct, one and that in such case demand was necessary to complete a cause of action and set the statute running. Moreover, bank guarantees invariably specify that the liability of the surety is to pay on demand, and in this connection the words are not devoid of meaning or effect, even with reference to this statute, as is the case with a promissory note payable on demand, but make the demand a condition precedent to suing the surety, so that the statute does not begin to run till such demand has been made and not complied with."

(Emphasis supplied)

5.5) Bradford (supra), in turn, relied on Hartland v. Jukes (1863) 1 H&C 667, wherein in the context of a continuing guarantee, it was contended that the period of limitation would begin to run as soon as the principal debtor becomes indebted to the Bank. The contention was negatived by stating :

"It was contended before us that the statute began to run from the 31st of December, 1855, by reason of the debt of Pound 179:1:11 then due to the bank; but no balance was then struck, and certainly no claim was made by the bank upon the defendant's testator (the Guarantor) in respect of that debt; and we think the mere existence of the debt, unaccompanied by any claim from the bank, would not have the effect of making the statute run from that date."

6. The trial court held that the accounts of the company with the Bank became dormant and inoperative from 1986 and, therefore, they ceased to be 'live accounts'. It held that a 'live account' was one which was currently being operated at the relevant time by the borrower/customer. The trial court further held that in view of such cessation of operation of the accounts, it should be deemed that the company and consequently the guarantors had refused to discharge their obligations; that once there was such refusal by stopping operation of the accounts, the limitation would start to run immediately; that time which begins to run, cannot be stopped; and that the mere fact that the demand was made by the bank much later, that is in the year 1987, will not postpone the commencement of running of the period of limitation. The trial court refused to accept the contention that the limitation will start to run only when a notice was issued by the creditor Bank, demanding payment of the amount from the guarantors and a refusal thereof by the guarantors. The trial court was of the view that if Bank's contention was to be accepted,

then it would mean that the Bank, by postponing issue of a notice making a demand, can postpone the commencement of the running of limitation. The trial court purported to test the validity of the Bank's contention, by reference to a hypothetical situation, where the Bank, by not making a demand for, say 20 or 30 years, or postponing the demand indefinitely, could postpone the commencement of limitation indefinitely, and held that such a situation was impermissible. It, therefore, held that the period of limitation commenced to run from the middle of 1986 when the operation of the accounts was stopped, and the suit filed in 1990 beyond 3 years from the stoppage of operation of accounts was barred by time.

7. The High Court affirmed the said finding. It held that the words 'on demand' had a specific connotation in legal parlance; and that when an amount is payable on demand, it means 'always payable' and a 'demand' is not a condition precedent for the amount to be paid. The High Court held that when the guarantee stated that the guarantors were liable to pay on demand by the Bank, it meant that the amount was payable from the moment of execution of the guarantee and, consequently, no actual demand is necessary to make the amount due under the guarantees. It was held that the money became payable under the guarantee bond as soon as the guarantee was executed. The High Court also held that when the accounts became dormant in the middle of 1986 by non-operation and non-payment, it should be deemed that there was a refusal to pay the amount under the guarantees and, therefore, the suit filed on 16.3.1990 was barred by limitation, being beyond 3 years. The High Court held that the decision in Samuel (supra) will not apply to the Bank's suit, as this Court had stated that the limitation will not run only if the account was a 'live account' and there was no refusal on the part of the guarantor to carry out the obligations. It held that the word 'live' meant that account should be operating and when an account became dormant and inoperative, it was not a live account. The High Court also distinguished the decision in Samuel on facts.

8. The appellant-Bank contended that the guarantees executed by the respondents were continuing guarantees; that the guarantors had agreed to pay the amount/s on demand by the Bank; that such a demand was made by the Bank on the guarantors on 12.10.1987 and 17.12.1987; and that the guarantors' refusal to pay the amount demanded is contained in their reply-letters dated 31.10.1987 and 30.12.1987; and that, therefore, the suit filed on 16.3.1990, within three years from 31.10.1987 was in time. Reliance is placed on Article 55 of the Limitation Act, 1963 and the decision of the Supreme Court in Samuel (supra).

9. A guarantor's liability depends upon the terms of his contract. A 'continuing guarantee' is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may be even time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. We have referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract.

10. Samuel (supra), no doubt, dealt with a continuing guarantee. But the continuing guarantee considered by it, did not provide that the guarantor shall make payment on demand by the Bank. The continuing guarantee considered by it merely recited that the surety guaranteed to the Bank, the repayment of all money which shall at any time be due to the Bank from the borrower on the general balance of their accounts with the Bank, and that the guarantee shall be a continuing guarantee to an extent of Rs.10 lakhs. Interpreting the said continuing guarantee, this Court held that so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantor to carry out the obligation, the period of limitation could not be said to have commenced running.

11. But in the case on hand, the guarantee deeds specifically state that the guarantors agree to pay and satisfy the bank on demand and interest will be payable by the guarantors only from the date of demand. In a case where the guarantee is payable on demand, as held in the case of Bradford (supra) and Hartland (supra), the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand.

12. We will examine the meaning of the words 'on demand'. As noticed above, the High Court was of the view that the words 'on demand' in law have a special meaning and when an agreement states that an amount is payable on demand, it implies that it is always payable, that is payable forthwith and a demand is not a condition precedent for the amount to become payable. The meaning attached to the expression 'on demand' as 'always payable' or 'payable forthwith without demand' is not one of universal application. The said meaning applies only in certain circumstances. The said meaning is normally applied to promissory notes or bills of exchange payable on demand. We may refer to Articles 21 and 22 in this behalf. Article 21 provides that for money lent under an agreement that it shall be payable on demand, the period of limitation (3 years) begins to run when the loan is made. On the other hand, the very same words 'payable on demand' have a different meaning in Article 22 which provides that for money deposited under an agreement that it shall be payable on demand, the period of limitation (3 years) will begin to run when the demand is made. Thus, the words 'payable on demand' have been given different meaning when applied with reference to 'money lent' and 'money deposited'. In the context of Article 21, the meaning and effect of those words is 'always payable' or payable from the moment when the loan is made, whereas in the context of Article 22, the meaning is 'payable when actually a demand for payment is made'.

13. What then is the meaning of the said words used in the guarantee bonds in question? The guarantee bond states that the guarantors agree to pay and satisfy the Bank 'on demand'. It specifically provides that the liability to pay interest would arise upon the guarantor only from the date of demand by the Bank for payment. It also provides that the guarantee shall be a continuing guarantee for payment of the ultimate balance to become due to the Bank by the borrower. The terms of guarantee, thus, make it clear that the liability to pay would arise on the guarantors only when a demand is made. Article 55 provides that the time will begin to run when the contract is 'broken'. Even if Article 113 is to be applied, the time begins to run only when the right to sue accrues. In this case, the contract was broken and the right to sue accrued only when a demand for payment was made by the Bank and it was refused by the guarantors. When a demand is made requiring payment within a

stipulated period, say 15 days, the breach occurs or right to sue accrues, if payment is not made or is refused within 15 days. If while making the demand for payment, no period is stipulated within which the payment should be made, the breach occurs or right to sue accrues, when the demand is served on the guarantor.

14. We have to, however, enter a caveat here. When the demand is made by the creditor on the guarantor, under a guarantee which requires a demand, as a condition precedent for the liability of the guarantor, such demand should be for payment of a sum which is legally due and recoverable from the principal debtor. If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time-barred. To clarify the above, the following illustration may be useful :

Let us say that a creditor makes some advances to a borrower between 10.4.1991 and 1.6.1991 and the repayment thereof is guaranteed by the guarantor undertaking to pay on demand by the creditor, under a continuing guarantee dated 1.4.1991. Let us further say a demand is made by the creditor against the guarantor for payment on 1.3.1993. Though the limitation against the principal debtor may expire on 1.6.1994, as the demand was made on 1.3.1993 when the claim was 'live' against the principal debtor, the limitation as against the guarantor would be 3 years from 1.3.1993. On the other hand, if the creditor does not make a demand at all against the guarantor till 1.6.1994 when the claims against the principal debtor get time-barred, any demand against the guarantor made thereafter say on 15.9.1994 would not be valid or enforceable.

Be that as it may.

15. The respondents have tried to contend that when the operations ceased and the accounts became dormant, the very cessation of operation of accounts should be treated as a refusal to pay by the principal debtor, as also by the guarantors and, therefore the limitation would begin to run, not when there is a refusal to meet the demand, but when the accounts became dormant. By no logical process, we can hold that ceasing of operation of accounts by the borrower for some reason, would amount to a demand by the Bank on the guarantor to pay the amount due in the account or refusal by the principal debtor and guarantor to pay the amount due in the accounts.

16. In view of the above, we hold that the time began to run not when the operations ceased in the accounts in mid-1986, but on the expiry of 15 days from 12.10.1987 when the demand was made by the Bank and there was refusal to pay by the guarantors. The suit filed within three years therefrom is, therefore, in time.

17. In the view we have taken, it is not necessary to consider the meaning of the words 'live account' used and referred to in Samuel (supra). Suffice it to say that the interpretation by the courts below placed on the words 'live account', that they refer to an account

which is operational and not dormant, may not be sound. This Court itself had indicated that 'live account' means an account that is not settled. The use of the term 'settled' gives an indication that a 'live account' refers to an account where the balance has not been struck by an "account stated" or "account settled". We may in this behalf, refer to the following observations in Bishun Chand v. Girdhari Lal & Anr. (AIR 1934 PC 147) :

"The essence of an account stated is not the character of the items on one side or the other but the fact that there are cross items of account and that the parties mutually agree the several amounts of each and, by treating the items so agreed on the one side as discharging the items on the other side pro tanto, go on to agree that the balance only is payable. Such a transaction is in truth bilateral, and creates a new debt and a new cause of action."

"There can be account stated although the balance of indebtedness is not throughout in favour of one side. It is irrelevant whether the debt in favour of the final creditor is created at the outset by one large payment or consists of several sums of principal and several sums of interest. Nor is it material whether the only payments made on the other side were simply payments in reduction of such indebtedness or were payments made in respect of other dealings. In any event items must be ascertained and agreed on each side before the balance can be struck and settled."

18. Some arguments were addressed about the Article of limitation that would apply in respect of a suit against the guarantors. Samuel (supra) held that in the case of refusal of a guarantor to pay the amount, the matter would be governed by Article 115 of the Schedule to the Limitation Act, 1908, which corresponds to Article 55 of the Limitation Act, 1963. One of the submissions made before us was that the term 'compensation for breach of contract' in Article 55 indicates to a claim for unliquidated damages and not to a claim for payment of sum certain (as to what is the difference between a claim for unliquidated damages and a claim for a sum certain or a sum presently due, reference can advantageously be made to the classic statement of Law by Chagla, CJ., in IRON AND HARDWARE (INDIA) LTD., vs. FIRM SHAMLAL & BROS \026 AIR 1954 Bom. 423). If Article 55 does not apply, then a claim against a Guarantor in such a situation may fall under the residuary Article 113 of the Limitation Act, 1963 corresponding to Article 120 of the old Act. The controversy about the appropriate Article applicable, when the claim is found to be not exactly for 'compensation' but ascertained sum due has been referred to as long back as 1916 in Tricomdas Cooverji Bhoja v. Gopinath Jin Thakur (AIR 1916 PC 183). Under the old Limitation Act (Act of 1908), the periods prescribed were different under Article 115 and 116. The periods prescribed were also different under Article 115 and 120. But under the 1963 Act, the period of limitation is the same (three years) both under Article 55 and 113. Having regard to the fact that the period of limitation is 3 years both under Article 55 and Article 113, and having regard to the binding decision in Samuel (supra), we do not propose to examine the controversy as to whether the appropriate Article is 55 or 113. Suffice it to note that even if the Article applicable is Article 113, the Bank's suit is in time.

19. In view of our finding that the suit is not barred by time, we allow this appeal and, consequently set aside the judgment and

decree of the High Court and that of the trial court. Consequently, the suit is decreed, as prayed for, with costs.