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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.356/2007

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Date of decision: 10th September, 2008

INDERJEET SINGH

...Appellant

Through: Mr. Som Dutt Sharma, Adv.

Versus

BRIJPAL SINGH @ BIJROO

...Respondent

Through: Mr. Vipin Kr. Anand, Adv.

CORAM :-

THE HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J.R. MIDHA, J. (Oral)

1. The appellant has assailed the judgment and decree dated 28th February, 2007 passed by the learned Additional District Judge, Delhi whereby the suit filed by the appellant for recovery of Rs.4,18,848/- was dismissed as barred by limitation.
2. The appellant was running the business of Milk Dairy in the name and style of 'Bharat Dairy'. The respondent, a milkman, used to supply milk to the appellant for which the payment was made by the appellant to the respondent on

weekly basis as per the quality and quantity of the milk supplied. According to the appellant, he had made advance payments to the respondent due to which there was a debit balance of Rs.3,25,000/- in the books of account of the appellant on 20th April, 1998. The appellant made further cash payment of Rs.25,000/- to the respondent on 20th April, 1998 and thus, as on 21st April, 1995, the respondent owed a sum of Rs.3,50,000/- to the appellant. After adjustment of cost of Rs. 61,139/- towards milk supplied by the respondent, a sum of Rs.2,88,861/- was claimed by the appellant from the respondent. It is the case of the appellant that the respondent acknowledged the liability of Rs.2,88,861/- on 26th May, 2000 and promised to pay the same. The appellant claimed 18% interest on the aforesaid amount of Rs.2,88,861/- and filed the suit for recovery of Rs.4,18,848/- on 28th November, 2002.

3. The respondent contested the suit of various grounds, inter alia, that the suit was barred by limitation. It was contended that no business was done between the parties after 24th April, 1998 when the appellant closed his dairy and ran away after usurping money of the respondent and other milkmen. It was denied that there was any debit balance on 20th April, 1998 as alleged by the appellant. The acknowledgement dated 26th May, 2000 was specifically denied by the respondent. According to the respondent, there

was no business after 24th April, 1998 and the respondent could not even locate the appellate after the said date. The respondent claimed a sum of Rs.1,71,002.78 from the appellant by way of counter claim. In the replication to the written statement, the appellant reiterated the contents of the plaint. However, the appellant did not deny that no business was done between the parties after 24th April, 1998.

4. The appellant appeared in the witness box as PW-1 and produced the books of accounts - Ex.PW-1/1. The appellant further stated in the evidence that he stopped his business for about 8-10 months without giving the specific dates. The appellant further stated that when he again started business, respondent did not supply the milk whereupon he demanded balance payment from the respondent who promised to pay and acknowledged the amount on 26th May, 2000. The acknowledgement on the books of account was marked as Ex.PW-1/2. In cross-examination, the appellant admitted that no milk was supplied by the respondent after 25th April, 1998. The appellant further admitted that no payment was made after 20th April, 1998. The appellant also produced Ramanand as PW-2 who is relation of the appellant. The appellant also produced a hand-writing expert, PW-3, who gave a report about the hand-writing of the respondent on the acknowledgement dated 26th May, 2000.

5. The respondent appeared in the witness box as DW-1 and stated that there was no debit balance of Rs. 3,25,000/- in the account of the appellant on 21st April, 1998. He further states that he never owed a sum of Rs. 2,88,861/- to the appellant. DW-3 stated that the defendant was in a marriage function from 25th May, 2000 to the morning of 27th May, 2000. He further stated that neither appellant nor Ramanand came at the venue of function to get the account book signed. The respondent also produced a handwriting expert, DW-5 who deposed that disputed signatures on the acknowledgment dated 26th May, 2000 were not in the handwriting of the respondent.

6. From the pleadings and the evidence on record it is clear that the respondent supplied the milk to the appellant till 24th April, 1998. No supply has been made after the said date. The appellant had to make the payment for the milk supplies made by the respondent. According to the appellant, he had purchased milk worth Rs.61,139/- from the respondent. According to the appellant, he had given an advance of Rs.3,50,000/- to the respondent and after adjusting the payment of Rs.61,139/- towards the milk purchased, the appellant is entitled to recover Rs.2,88,861/-. The appellant has neither pleaded nor proved as to when the advance of Rs.3,50,000/- was given by him to the respondent and, therefore, this fact has not been proved. The appellant

has based his case on page 97 of the account book – Ex.PW-1/1. We have perused the same. The said account book does not prove either the advance of Rs.3,50,000/- alleged to have been made by the appellant to the respondent or the milk supply of Rs.61,139/-. There has been no transaction between the parties after 24th April, 1998. The appellant has filed the suit on 28th November, 2002 which is clearly beyond the period of limitation.

7. The appellant has relied upon the acknowledgment dated 26th May, 2000 - Ex.PW-1/2 in the accounts book, Ex.PW-1/1. We have seen the said account book and compared the signatures on the said document with the admitted signatures of the respondent in the trial court record and we are of the opinion that the signatures on Ex.PW-1/2 are not of the respondent. We have also seen the reports of the hand-writing experts. The report of the hand-writing expert, PW-3 produced by the appellant is not correct and has been rightly rejected by the learned Trial Court. On the other hand, the report of DW-5 is correct and we agree with the findings of the learned Trial Court in this regard. That apart, the document Ex.PW-1/2 does not constitute a valid acknowledgment in the eyes of law.

8. The learned Trial Court has rightly dismissed the appellant's suit as time barred. We are of the view that the suit as well as the present appeal amounts to gross abuse and

misuse of the process of law. The respondent is an illiterate and poor milkman who supplied the milk to the appellant. There is no document whatsoever to show that the appellant advanced a sum of Rs.2,88,861/- to the respondent over and above the cost of the milk supplied. No particulars as to the date and mode of payment have been furnished by the appellant either in the suit or even in the appeal. The appellant closed the business on 24th April, 1998 and no supplies were made by the respondent thereafter. The parties never dealt with each other thereafter. There was no occasion for the respondent to acknowledge the liability on 26th May, 2000. The appellant has clearly forged the signatures of the respondent on the document Ex.PW-1/2 in order to file a false case against the respondent. We are, therefore, constrained to impose cost of Rs. 25,000/- on the appellant.

9. There is no merit or substance in the appeal. We, therefore, dismiss the same with cost of Rs. 25,000/- to be paid by the appellant to the respondent.

(J.R. MIDHA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

September 10, 2008
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