

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 04.02.2010
% *Judgment Delivered on: 15.02.2010*

+ **CS(OS) No.2532/2000**

M/S HANSA VISION PVT. LTD.

.....Plaintiff
Through: Mr.N.B.N. Swamy with
Mr.I.C.Kumar, Advocates.

Versus

M/S DABUR (INDIA) LIMITED & ORS.

.....Defendants
Through: Mr.Sudhir K.Makkar and
Ms.Meenakshi Singh,
Advocates for defendant
nos.1 & 2.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. Plaintiff M/s Hansa Vision Private Limited is a company duly incorporated under Indian Companies Act 1956. The suit has been

filed through Subhash Gulati, Finance Manager of the plaintiff duly authorized to do so vide a Board Resolution of the company dated 18.10.2000.

2. Defendant no.1 is a limited company having its office at 3, Factory Road, Adj.Safdarjung Hospital, Ring Road, New Delhi-110029.

3. Defendant no.2 is also a private limited company having its office at the same address.

4. Defendant no.3 is a proprietorship firm having its office at 107-A, Bhandari House, 91, Nehru Place, New Delhi-110019.

5. Plaintiff is a well established and reputed company carrying on business in the marketing of T.V. serials/advertising on the Doordarshan channel, other private channels and other allied activities.

6. Defendant no.1 appointed defendant no.2 as its agent to carry out advertisements of its company's products such as Dabur Amla Hair Oil, Dabur Dental Care and Dabur Hajmola Candy over the Doordarshan National Network, DD Metro, DD Madras I and II, DD Hyderabad and Sun TV Channel.

7. Defendant no.2 in turn appointed defendant no.3 as its sub-agent to carry out the said advertisements of the defendant no.1 over the Doordarshan Kendras and Sun TV Channel.

8. Defendant no.3 as sub-agent of defendant no.1 approached the plaintiff to advertise the products of the defendant no.1. Vide

release order dated 6.4.1995, 26.4.1995 and dated nil the details of the telecasting of the commercials were confirmed.

9. The aforestated commercials carried out by the plaintiff were for a gross amount of Rs.47,13,897/- which amount became due and payable by the defendants on the last date of the telecasting of the commercial serials. These commercials had been duly beamed by the plaintiff as per the instructions of defendant no.3; telecasting certificates have confirmed this fact.

10. The defendants have admitted and acknowledged their due liabilities towards the plaintiff for the services rendered but till date the legitimate and outstanding amount of Rs.23,39,177/- has not been paid.

11. Plaintiff approached defendant no.2 in October, 1997 demanding his balance payment. Defendant no.2 by communication dated 12.11.1997 informed the plaintiff that they have paid a sum of Rs.32,34,250/- to defendant no.3 during 1995-96 in full and final settlement of all bills and no amount is due from them.

12. Plaintiff sought for the particulars of the payment made to defendant no.3; defendant no.2 sent their ledger extract on 24.12.1998 which did not co-relate to the billed amounts raised by the plaintiff.

13. In spite of repeated reminders and thereafter legal notice dated 23.7.1999, the defendants have failed to pay the said

amounts. In reply to the legal notice, defendant no.1 and 2 vide reply dated 14.8.1999 denied their relationship of principal-agency and sub-agent relationship.

14. Plaintiff in its rejoinder notice dated 11.1.2000 reiterated that the payments made by defendant no.2 to defendant no.3 clearly showed that it was the products of defendant no.1 which had been advertised through defendant no.3; defendant no.2 was an in-house agency of defendant no.1; the assignment had been performed by the plaintiff for the benefit of defendant no.1. Defendant no.2 is an advertising agency and has been classified as an accredited advertising agency and they exercise their rights and responsibilities as per the terms of the Indian Newspaper Society; its name finds mention in the list of accredited agencies of Doordarshan at Delhi. It is, thus, clear that defendant no.1 and 2 cannot have a principal to principal relationship; defendant no.1 routes all its advertisements through defendant no.2 and consequently defendant no.2 is the advertising agent of defendant no.1; defendant no.1 is the principal who is ultimately responsible for the failure of its agencies who have not paid for the actual services rendered by the plaintiff. The agents or the sub-agents i.e defendant no.2 and defendant no.3's failure to pay the dues of the plaintiff does not absolve the principal i.e. defendant no.1 of his liability to pay the dues of the plaintiff.

15. Plaintiff has accordingly prayed for a decree of Rs.23,39,177/- along with interest at the rate of 18% per annum.

16. Written statement has been filed by defendant no.1 and 2. Preliminary objection is that the suit has not been filed through a duly authorized person. Bar of limitation, there being no privity of contract between the answering defendants and the plaintiff has also been raised.

17. On merits it is submitted that defendant no.1 had entrusted defendant no.2 with the job of carrying out the advertisements of its company's products over the Doordarshan channel network and other TV channels. This was an internal arrangement between defendant no.1 and 2. It had no concern with the plaintiff. Neither of the answering defendants had any dealing with the plaintiff. It is denied that the answering defendants had appointed defendant no.3 as its agent. The relationship between defendant no.2 and 3 was of principal to principal and not one of agency.

18. It is stated that the answering defendants had not issued any release order in favour of the plaintiff; defendant no.2 was dealing with defendant no.3 on principal to principal basis. Defendant no.1 had entrusted the job of airing/beaming its commercials to defendant no.2 who in turn had engaged the services of defendant no.3 on a principal to principal basis. The fact that defendant no.3 had entrusted this job to the plaintiff did not give rise to any liability of the answering defendants qua the plaintiff. It is not

denied that the products of the various commercials of defendant no.1 were being aired on various channels in pursuance of the release orders issued by the answering defendants in favour of defendant no.3.

19. Plaintiff may have a cause of action against defendant no.3 but no liability can be fastened on defendant no.1 or defendant no.2. Defendant no.2 vide its communication dated 12.11.1997 had informed the plaintiff that defendant no.2 has made a payment of Rs.32,34,250/- to defendant no.3 and all dues stood cleared. The answering defendants had dealings only with defendant no.3; it was only as an act of kindness that defendant no.2 had provided a copy of the ledger payments made by defendant no.2 to defendant no.3 for the advertisements that had been telecast. No cause of action is made out against the said defendants. Suit is liable to be dismissed.

20. Defendant no.3 had been served but none had appeared for him. On 11.2.2003 he had been proceeded ex-parte.

21. Replication had been filed by the plaintiff to the written statement filed by the defendants reiterating the averments made in the plaint while denying the submissions and the defence as set up by the defendants.

22. On 27.1.2004 on the pleadings of the parties the following issues were framed.

1. Whether the suit is within time? OPP
 2. Whether the plaint has been signed, verified and filed by a duly authorized person? OPP
 3. Whether the written statement filed on behalf of defendants no.1 and 2 has been signed, verified and filed by a duly authorized person? OPD
 4. Whether the defendants no.1 and 2 have no privity of contract with the plaintiff as averred in the written statement? OPD
 5. Whether there is no cause of action against the defendants no.1 and 2? OPD
 6. Whether the plaintiff is entitled to recover the suit amount from defendants no.1 and 2 on the grounds mentioned in the plaint? OPP
 7. Whether the plaintiff is entitled to interest, as prayed? If so, on what amount and for which period? OPP
 8. Relief.
23. Plaintiff in support of his case has examined two witnesses PW-1 Subhash Gulati is the Senior Finance Manager and PW-2 R.Jagan Nath is Senior Accounts Officer of the plaintiff company. In defence, defendants have examined two witnesses DW-1 M.L.Wadhwa is the Senior Executive (Accounts) in the company of defendant no.2 and DW-2 A.K.Sharma is the Managar (Legal) in the company of defendant no.1.
24. Arguments have been heard. Record has been perused.
25. Issue-wise findings are as follows:

ISSUE NO.2:

26. Onus to discharge this issue is on the plaintiff. Plaintiff company had vide its Board Resolution dated 18.10.2000 Ex.PW-1/2 authorised R.K.Swami, the Director of the plaintiff company to execute and sign power of attorney for and on behalf of company. Ex.PW-1/1 is the power of attorney dated 8.11.2000 executed by R.K.Swami appointing Subhash Gulati as its lawful attorney to file suits and sign pleadings on its behalf. This has been corroborated by PW-1 on oath. In his cross-examination, it has been elicited that the board resolution Ex.PW-1/2 was not passed in his presence; the power of attorney was not drafted in his presence. These elicitations do not affect the veracity or genuineness of Ex.PW-1/1 and Ex.PW-1/2 which stands proved. It has been established that the plaint has been signed and verified by Subhash Gulati who was duly authorized to do so on behalf of the plaintiff company.

27. Issue no.2 is accordingly decided in favour of the plaintiff and against the defendant.

ISSUE NO.3

28. Onus to discharge this issue was on the defendant. This is combined written statement filed by defendants no.1 and 2. It has been signed and verified by A.K.Sharma, Manager (Legal) of

defendant no.1 company. On oath, DW-2 A.K.Sharma has stated that the written statement has been filed by him on behalf of defendants no.1 and 2. The power of attorney executed by defendant no.1 in his favour is Ex.DW-1/A which categorically recites that in terms of the board resolution dated 20.10.1986 G.C.Burman, Managing Director of defendant no.1 company had power to execute this power of attorney in favour of A.K.Sharma authorizing him to institute, verify, file civil/criminal proceedings on behalf of the company.

29. DW-1 M.L.Wadhwa, Senior Executive of defendant no.2 company has on oath deposed that A.K.Sharma, who has signed/filed the written statement was duly authorized to do so on behalf of defendant no.2; the board resolution dated 6.2.02 passed by the Board of Directors of defendant no.2 authorizing A.K.Sharma to sign and verify the written statement on behalf of defendant no.2 is Ex.DW-2/1.

30. Nothing has been elicited in the cross-examination of either DW-1 or DW-2 to dislodge this averment. It has been established that A.K.Sharma was duly authorized to sign and verify the written statement on behalf of defendants no.1 and 2.

31. Issue no.3 is accordingly decided in favour of the defendants and against the plaintiff.

ISSUE NO.4

32. Defence of defendants no.1 and 2 reiterated on oath is that there was no privity of contract of the answering defendants with the plaintiff. At best, if the plaintiff has any claim, it is against defendant no.3. Defendant no.1 i.e. M/s Dabur (India) Limited had entrusted the second defendant no. i.e. M/s Adbur Private Limited with the job of carrying advertisement of its company products over Doordarshan National Network and other T.V.Channels. This was an internal arrangement between defendants no.1 and 2 and had no concern whatsoever with the plaintiff. The answering defendants no.1 and 2 did not have any contract or transaction with the plaintiff. Defendant no.2 had thereafter on a principal to principal relation with the third defendant namely M/s. A.V. Communications entrusted him the job of telecasting advertisements which was to be done on various T.V.Channels in the television network. Defendants no.1 and 2 had never appointed defendant o.3 as their agent or sub-agent. Relations of defendants no.2 and 3 was of principal to principal and not of an agency. The contract evidenced by the release orders Ex.P-1/3 to Ex.P-1/6 was a transaction between the plaintiff and defendant no.3.

33. Ex.P-1/3 to Ex.P-1/6 are the release orders which have been issued by defendant no.3 to the plaintiff. They are dated 6.4.1995, dated nil, dated 26.4.1995 and dated nil. These documents

evidence that defendant no.3 had pursuant to discussions with the plaintiff regarding co-sponsorship over the various T.V.channels mentioned therein had confirmed the booking with the plaintiff on behalf of their client M/s Dabur (India) Limited for advertisements to be effected by the plaintiff at the rates mentioned therein. The duration of the advertisements, the channel on which they were to be aired and details of the products were contained therein. Price of the confirmed booking was also mentioned. Ex.P-1/3 to Ex.P-1/6 were admittedly an exchange of communication between defendant no.3 and the plaintiff; name of defendant no.1 found mention as the product which was to be beamed on the TV channels by the plaintiff were of defendant no.1 company. There was no mention of defendant no.2.

34. Ex.P-1/3 to Ex.P-1/6 are admittedly the only written communications exchanged between the plaintiff and defendant no.3 on the basis of which the plaintiff is now endeavoring to foisten liability on all the defendants i.e. defendants no.1 to 3 jointly.

35. Onus to discharge this issue is on the defendants. Question first to be answered is whether defendant no.1 and defendant no.2 had a principal-agent relation; further if defendant no.3 was a sub-agent of defendant no.2.

36. Defendant no.2 is the advertising agency of defendant no.1. This position stands admitted by both the defendants. DW-1 in his

cross-examination has admitted that business of defendant no.2 is the handling of the advertisement campaign of defendant no.1 as also of other companies; advertisement bill is raised by a third party on defendant no.2; essential documents would be the bills of the said party i.e. the release orders as also the telecast certificates. Rates would be negotiated between defendants no.2 and 3; defendant no.3 would raise a bill directly on defendant no.2. The Media Manager of defendant no.2 would prepare two sets of bills; one to be forwarded to defendant no.1 and the second to its accounts branch for payment to defendant no.3. Defendant no.2 would then pay the bill.

37. Defendant no.2 in his cross-examination has reiterated the stand of DW-1. It has been admitted that the advertisement order placed on behalf of defendant no.1 with defendant no.2 was by the marketing department of defendant no.1. Plaintiff was never notified by defendants no.1 and 2 that bonus spots in the southern area being free spots would not be entitled for payment of advertisements. Defendants no.1 and 2 did not have any dealings with the plaintiff.

38. In Lakshminarayan Ram Gopal and Son, Ltd. v. Government of Hyderabad, through the Commissioner, Excess Profits Tax AIR 1954 SC 364 while expounding the relations vis a vis a master-servant and principal-agent, it was held that the principal has a right to direct what work the agent has to do, but a master has a

further right to direct as to how the work is to be done; the agent is bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal.

39. DW-2 was admittedly the inhouse advertising agency of defendant no.1 which had entrusted this job of its advertisements to defendant no.2. Both are located at the same address. Defendant no.2 could release payment to a third party only after one copy of the bill was sent by it to defendant no.1 and the second copy was to be retained by its account branch. Further the marketing division of defendant no.1 had placed the order of the advertisement on defendant no.2 which was doing no other work except being an accredited advertising agency. Their relationship as principal-agent stands established. Defendant no.2 is liable for the acts of its principal i.e. of defendant no.1.

40. The relations of defendants no.2 and 3 however do not establish a sub-agent relationship. Defendant no.2 being an advertising agency was placing orders of advertisement on defendant no.3. Defendant no.3 is a proprietorship firm; it was receiving orders for advertising from various persons. This position is not in dispute. Defendant no.3 was not doing the job of defendant no.2 alone. Rates were negotiated between defendant no.2 and defendant no.3 independent of any interference by defendant no.1; defendant no.3 would raise the bill directly on

defendant no.2 and was getting its payment from defendant no.2 directly and independently of defendant no.1. Dealings between defendant no.2 and defendant no.3 were essentially on a principal to principal basis.

41. The submission of the counsel for the plaintiff that in para 8 of the written statement the defendants have admitted that defendant no.2 and defendant no.3 were sub-agent of one another is not borne out from the record; the written statement as also the averments on oath of both the witnesses of the defendants i.e. DW-1 and DW-2 is that defendant no.3 had an independent relation with defendant no.2. PW-2 in his cross-examination has also admitted that his averment in his affidavit that defendant no.3 was a sub-agent of defendant no.2 is based on the documents which are the release orders only.

42. Evidence has failed to establish that defendant no.3 was an agent of defendant no. 2. It has however been established that defendant no.2 was an inhouse advertising agency of defendant no.1.

43. Defendant no.3 had approached the plaintiff to advertise certain products which included the products of defendant no.1. This contract is evidenced by the release orders Ex.P-1/3 to Ex.P-1/6. Defendant no.3 in his independent capacity entered into this contract with the plaintiff. Defendant no.1 has been referred to as 'client' in these release orders; there is no mention of defendant

no.2; PW-1 in his cross-examination has admitted that he had not raised any bill upon defendants no.1 and 2; no release order was issued by defendants no.1 and 2 to the plaintiff. PW-2 has also admitted that he had not dealt with defendant no.1 or defendant no.2 at any point of time; defendants no.1 and 2 had never entrusted any work to the plaintiff. This evidence on record has established that there was no privity of contract between the plaintiff and defendants no.1 and 2.

44. Issue no.4 is answered in favour of the defendants and against the plaintiff.

ISSUE NO.5

45. Preceding issue has answered that the plaintiff and defendants no.1 and 2 had no privity of contract.

46. Plaintiff has submitted that even in the absence of privity of contract, he is entitled to his dues i.e. the compensation as envisaged in Section 70 of the Contract Act, 1970. Section 70 of the Contract Act inter alia reads as follows: -

“Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered”

47. In *State of West Bengal vs. M/s B.K. Mondal and Sons* AIR 1962 SC 779 the pre-conditions for the application of the provisions of the Section 70 of the Contract Act have been

discussed. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied Section 70 imposes upon the latter person, the liability to make compensation to the former in respect of or to restore, the thing so done or delivered. In the facts of the said case plaintiff/respondent had constructed a warehouse; the benefit of which was enjoyed by the defendant/appellant; defendant/appellant could have called upon the plaintiff/respondent to demolish the said warehouse and take away the materials used by it in constructing it; but if the defendant/appellant accepted the said ware house and used it and enjoyed its benefit then different considerations come into a play and Section 70 could be invoked.

48. Section 70 which occurs in Chapter V of the Contract Act deals with certain relations resembling those created by contract. In such cases which are filed under Section 70 a person doing something for another cannot sue for specific performance of the contract nor ask for damages for the breach of contract for the simple reason that there is no contract between him and the other persons for whom he does something or for whom he delivers

something. Section 70 provides if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus, where a claim for compensation is made by one person against another under Section 70, it is not on the basis of any subsisting contract between the parties but it is on the basis of the fact that something was done by the party for another and the said work so done has been voluntarily accepted by the other party.

49. These principles have been reiterated by the Supreme Court in the subsequent judgment i.e. New Marine Coal Company Pvt. Ltd. vs. The Union of India AIR 1964 SC 152. In this case it had been held that Section 70 of the Contract Act would be applicable even when a Contract Act had been held void; in view of the provisions of Section 173(5) of the Govt. of India Act 1935, the contract had been declared to be void; since A had performed his part of the contract and the Govt. of India had received the benefit of the performance of the said Act, provisions of Section 70 of the Contract Act were held applicable and the Govt. of India was made to pay compensation for the benefit received by it.

50. In V. R. Subramanyam vs. B. Thayappa & Ors AIR 1966 SC 1034, it has been held that if a party to the contract has rendered service to the other not intending to do so gratuitously and the other person has obtained some other benefit, the former is

entitled to compensation for the value of the services rendered by him.

51. In Aries Advertising Bureau vs. C.T. Devaraj AIR 1995 in SC 2251 this principle was reiterated. This was the case where the plaintiff had advertised certain products of the respondent; Section 70 was held inapplicable as no benefit has been derived by the respondent pursuant to the advertisement made by the appellant.

52. In Food Corporation of India & Ors. vs. Vikas Majdoor Kamdar Sahkari Mandli Limited (2007) SCC 544 it was held that the provisions of Section 70 of the Contract Act are more liberal interpretation of the doctrine of quantum merit. This principle has no application where there is a specific agreement in operation. This section also prevents an unjust enrichment; being a principle of equity.

53. Applying this principle as enunciated hereinabove the plaintiff has been able to establish the three pre-conditions essential for the applicability of this provision of law. Plaintiff had lawfully advertised the products of M/s Dabur (India) Ltd. i.e defendant no. 1; plaintiff had not performed this job gratuitously; it was for consideration and which was his lawful expectation; the said 'other' person i.e defendant no. 1 had fully enjoyed the benefits of this act performed by the plaintiff; the advertisements had been beamed by the plaintiff on the various T.V. Channels

which were the products of defendant no.1. This not being a gratuitous act of the plaintiff; he had his legal right to claim his compensation.

54. This provision is attracted on all those cases where there is no privity of contract. Where it is established that the acts which are performed by A are for the benefit of B and even if there is no contract or express agreement between A and B the fact that B has benefited from this act of A, the act of A being a lawful act, not being gratuitous for the benefit of B, B is liable to make good the payment to A. B cannot also unjustly enrich himself. The principle enshrined in Section 70 of the Contract Act is squarely applicable to the facts of the instant case.

55. Cause of action has accrued in favour of the plaintiff and against defendant no.1. Defendant no.2 being an agent of its principal i.e. defendant no.1; cause of action has arisen against him as well.

56. Issue no.5 is decided in favour of the plaintiff and against the defendants.

ISSUE NOS. 6 & 7

57. The plaintiff has claimed Rs. 43,85,605/-. Rs. 23,39,177/- is the principal amount; interest has been calculated at the rate of 18 % per annum from 07.01.1996 till the date of the suit at Rs.2046428/- totaling a sum of Rs.43,85,605/-. Future interest has

also been claimed. Plaintiff in his legal notice dated 12.11.1999 has clearly stated that the ledger extract Ex.PW-1/37 sent by defendant no.2 evidencing payments to defendant no.3 did not match the bills. This was not answered by the defendants' in their reply dated 12.12.1999. In his evidence by way of affidavit defendant No. 2 on oath has admitted that the question of compensation points on the southern programmes was an arrangement between defendant no. 2 and 3 and the plaintiff has no role to play in the said arrangement.

58. In *South Eastern Coalfields Ltd. vs. State of M.P. & Ors.* AIR SC 2003 4482 it has been held that once the doctrine of restitution is attracted the interest is often a normal relief given in such a restitution. Such interest is not controlled by the provisions of the Interest Act.

59. Plaintiff is accordingly entitled to the sum of Rs.43,85,605/- with future interest at the rate of 12% per annum.

60. Issues no. 6 and 7 are decided in favour of the plaintiff and against the defendants.

ISSUE NO.1

61. Plaintiff has established a cause of action against defendant no.1 and defendant no.2 on the principle of Section 70 of the Contract Act. Dues recoverable would be 'compensation'.

62. Submission of the learned counsel for the defendant is that in such a case Section 23 of the Limitation Act is applicable. Section 23 of the Limitation Act computes the period of limitation for suits for compensation for acts not actionable without special damage. This relates to suits for tort and other like suits where a specific injury has resulted.

63. Article 113 of the Limitation Act, 1963 which is contained in Part X has prescribed the period of limitation for suits for which there is no prescribed period; limitation is of three years which is to be computed from the date when the right to sue accrues. Article 113 is the new provision substituting Article 120 of the old Indian Limitation Act, 1908. This article is applicable to the case in hand.

64. This court finds support from the judgment reported in Union of India vs. Kamal Kumar Goswami and Ors. AIR 1974 Calcutta 231. In this case the claim of the plaintiff had been recognized under Section 70 of the Contract Act. Such a claim was held governed by the Article 120 of the Limitation Act, 1908. This has also been reiterated in Keshab Kishore v. State, AIR 1971 pat.99; Great Eastern Shipping Co. v. Union of India AIR 1971 Cal.150, and S.A.S.S. Firm v. M.S.H.V. Sangh AIR 1977 Bom.431.

65. Bills Ex.PW-2/1 to Ex.PW-2/23 raised by the plaintiff were from 20.4.1995 to 31.10.1995. The right to sue accrued to the plaintiff when he advertised the products of defendant no.1, which

benefit accrued to defendant no.1; last advertisement was effected on 13.10.1995. Suit was filed in November, 2000. Plaintiff has relied upon an acknowledgment dated 12.11.1997 Ex.PW.1/35 for extending his period of limitation. This is a letter sent by defendant no. 2 to the plaintiff. In this letter, defendant no. 2 has confirmed that they have paid a sum of Rs. 32,34,256/- to M/s A. V. Communications i.e. defendant no. 3 in full and final settlement of their bills; further the spots which have been aired for the Southern Programmes were bonus spots. The plaintiff has also relied upon the ledger extract dated 24.12.1998 Ex.1/36 which have been sent by defendant no. 2 alongwith a letter of even date evidencing payment made by defendant no. 2 to defendant no. 3 during the financial year 1995-1996 totalling Rs.32,34,250/-. Question to be answered is whether Ex.PW1/35 amounts to a valid acknowledgment or not.

66. In Shapoor Freedom Mazda vs. Durga Prasad Chamaria AIR 1961 SC 1236 while discussing the essentials of a valid acknowledgement it was held that the said document must necessarily admit of a jurial relationship of a debtor and a creditor; even if the admission may be implied; the surroundings circumstances have to be considered to construe the document. It need not necessarily be accompanied by a promise to pay either expressly or even by an implication. Further, the Courts should lean in favour of a liberal construction of all such statements

though it does not mean that where no admission is made one should infer without intending to admit the existence of a jurial relationship. Such an intention cannot be fastened on the maker of the statement by a far fetched process of reasoning. These principles have been reiterated time and again by the Supreme Court in AIR 1967 SC 935 in Tilak Ram vs. Nathu & Ors., and in subsequent judgments AIR 1971 SC 1482 M/s Laxmiratan Cotton Mills Co. Ltd Vs. Aluminium Corporation of India. In AIR 1953 SCC 225 Hira Lal vs Badkulal and Ors it had been held that an unqualified acknowledgment contained in the entry and the statement of accounts under which the entry was made, were sufficient to furnish a cause of action to the plaintiff for maintaining the suit.

67. Ex.PW1/35 dated 12.11.1997 is a letter sent by defendant no. 2 to the plaintiff. A perusal of this letter confirms that the defendant no. 2 has admitted his jurial relationship with the plaintiff; it confirms that, in fact, an outstanding was due but the said outstanding of Rs. 32,34,250/- has been finally settled and paid to on defendant no. 3. This is further substantiated by the entry in the ledger account of defendant no. 2 which is PW1/36. Ex.PW-1/36 was sent by defendant no.2 to the plaintiff on 24.12.1998 in response to the plaintiff's claim for payment. Ex.PW-1/35 is a valid acknowledgment for all purposes and falls within the parameters of Section 18 of the Limitation Act. The explanation of

Section 18 is also relevant in this regard. The acknowledgment is sufficient even if it omits to specify the exact nature of the property or right or avers that the time for payment, delivery performance or enjoyment has not yet come or is accompanied by a refusal to pay delivery period or permit to enjoy or is coupled with a claim to a set-off or is addressed to a person other than the person entitled to the property or right. Ex.1/35 being a valid acknowledgment, suit filed on 10.11.2000 was within time.

68. This was an acknowledgement by defendant no.2 who is the agent of defendant no.1; as such binding on its principal defendant no.1 as well.

69. Case of the plaintiff is that defendant no.3 had made part payments of Rs.16,67,625/-; date of this part payment by defendant no.3 has however not been mentioned; i.e. neither in the legal notice sent by the plaintiff and nor in his pleadings. Plaintiff's claim against defendant no.3 is for recovery of money. Under Article 18 of the Limitation Act the limitation for recovery of this amount would be three years to be computed from the date when the amount became due i.e. when the last bill was raised. This amount thus became due on 31.10.1995. Suit filed in November, 2000 is barred by limitation qua defendant no.3.

70. The suit of the plaintiff qua defendant no.1 and 2 is within limitation. It is barred by limitation qua defendant no.3.

71. Issue no.1 is decided accordingly.

ISSUE NO.8: RELIEF

72. Suit of the plaintiff is decreed in favour of the plaintiff in the sum of Rs.43,85,605/- against defendants no.1 & 2 with future interest at the rate of 12% per annum from the date of decree till realization. Cost be awarded. Suit qua defendant no.3 stands dismissed. Decree sheet be prepared. File be consigned to record room.

JANUARY 15, 2010
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(INDERMEET KAUR)
JUDGE