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

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RSA NO. 39/2009 & CM No.4224/2009

Date of Decision: February 26, 2010

GLAZE ADVERTISING & ANR. Appellants

Through: Mr.Sudershan Rajan,
Advocate.

versus

MAHINDER KUMAR GANDHI Respondent

Through: Mr.Varun Goswami
Advocate.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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 U D G M E N T

ARUNA SURESH, J. (Oral)

1. Respondent filed a suit for recovery of Rs.2,03,000/- against the appellants on the grounds that there were business dealings between the parties and an account was maintained by the respondent for the said business transactions. Appellants had been making payment in account on different dates. After adjusting part

payments, a sum of Rs.1,35,785/- remained payable, which appellants failed to pay despite repeated requests. Appellants had been issuing various cheques of different amount which on presentation were dishonoured. Appellants contested the suit and one of the defence raised by the appellants was that the suit was barred by period of limitation. Trial Court framed following issue beside others:-

“Whether the suit is barred by the law of limitation? OPD”

2. After appreciating evidence of the parties and statement of accounts filed by respondent's counsel, Trial Court concluded that the suit was filed on 20th May, 2005 and sales made by the respondent to the appellants within three years prior to filing of the suit were within period of limitation and the sales made prior to said three years were barred by period of limitation. In view of this, Trial Court passed a decree for Rs.9,962/- only with interest.

3. Appellate Court vide impugned judgment and decree dated 24th January, 2009 reversed the findings of the Trial Court on the said issue and concluded that suit of the respondent was within the period of limitation as payments were made from time to time and respondent was within his right to adjust the payments against

previous dues, which he did as reflected in statement of accounts and passed a decree for the amount claimed in the suit with interest.

4. Aggrieved by the said judgment and decree of the Appellate Court, this second appeal has been filed invoking Section 100 CPC.

5. Learned counsel for the appellants has submitted that Appellate Court went wrong in holding that the suit was within period of limitation specially when respondent failed to prove that account is on a running basis, he was not entitled to seek recourse to the provisions of Section 60 of the Indian Contract Act (hereinafter referred to as 'Act') by-passing the provisions of Section 59 of the Act. He further argued that Appellate Court did not consider that Section 19 of the Limitation Act was not attracted to the facts and circumstances of the case whereas Article 14 of the Limitation Act has application in the present case as payment was made on 2nd August, 2002 against a specific debt amount amongst many distinct debts and therefore, payment made on 2nd August, 2002 did not extend the period of limitation.

6. Learned counsel for the appellants also urged that appellants have been making payment against specific bills and therefore, under the circumstances a substantial question of

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law arises for consideration '*whether this suit falls within the ambit of provisions of Section 59 of the Indian Contract Act or under Section 60 of the Indian Contract Act read with Section 19 of the Limitation Act.*'

7. Learned counsel for the respondent while refuting submission of the learned counsel for the appellants has argued that respondent was maintaining a running account and payments were being received in account and not against any specific bill. Some of the cheques were dishonoured against which payments were made by the appellants specifically whereas some of the dishonoured cheques were still lying with the respondent against which no payment was made by the appellants, he submitted that therefore Appellate Court rightly held that suit was within period of limitation and passed a decree in favour of the respondent. He emphasized that under the facts and circumstances of the case, no substantial question of law need formulation when the appellate court had decided the question of limitation on facts of the case.

8. There is no dispute that parties were having business transactions for quite some time and appellants had been purchasing goods from respondent against various invoices and bills and used to make payment from time to time. Appellate Court while deciding

the question of limitation placed reliance on "*FCC Projects Pvt. Ltd.*

Vs. Ashish Bhardwaj", 145 (2007) DLT 457 (DB), and observed:-

".....It was also a suit for recovery of the amount wherein the statement of accounts was showing 'balance due.' The plea of limitation was raised and was rejected by the trial court. In this case the case set up was that the respondent had supplied the shuttering material to the appellant from time to time for some project through invoices and challans. The payments given by the appellant from time to time were also given due credit. The balance of the suit amount was outstanding for which a claim was made.

The facts of the present case under appeal is close by to the facts of the aforesaid case decided by the Hon'ble High Court (Supra). In the entire evidence nowhere it has been disputed that part payment of Rs.12,250/- was not made by the respondent. This payment was made by the respondent on 2.8.2002. The suit was filed on 20.5.2005 and was within three years from the date of this part payment.

The suit is to be considered not bill wise as sought to have been made by the trial court. Document Ex.PW1/4 rather negativate this aspect that respondents were dealing with the appellant on 'bill wise' transactions. It was more like a running account where payment made by the respondents from time to time were being adjusted and the appellant was maintaining account of balance outstanding amount.

Accordingly in view of this position the dismissal of the claim of the appellant by the trial court with respect to the bills falling before three years from the date of filing of the suit

was not legally correct. Article 14 of the Limitation Act, 1963 dealing with a suit of price of the goods sold and delivered where no fixed period of credit has agreed upon giving limitation of three years from the date of delivery of the goods would have no application in the facts of the present case. The period of limitation in the present case would commence from 2.8.2002 when the respondent admittedly had made this payment to the appellant and suit since has been filed within three years thereafter on 20.5.2005, the claim of the appellant cannot be dismissed on the ground of the same being barred by time.”

9. Appellant has annexed his statement of accounts to the appeal. Perusal of this statement for the period from 1st April, 2001 to 31st March, 2003, shows that appellants have been making payment in account from time to time and not against any specific bill. True that, some of the payments made by the appellants tally with a particular bill amount but then the payments made are not shown against particular bills in the statement of accounts against any bill to any account. For example, first entry regarding sales is dated 31st October, 2001 for Rs.49,300.00 but appellants could not substantiate payment of a specified amount as having been made against the bill only. There is another entry dated 16th February 2002, whereby sales of Rs.31,400.00 were made. According to appellants, said sum of Rs.31,400.00 was paid in two installments. First

payment of Rs.15,400.00 was made in cash on 14th March, 2002 and balance amount of Rs.16,000.00 was paid vide cheque dated 16th March, 2002. In between there have been various transactions between the parties and appellants have been purchasing goods from time to time and making payment in account from time to time. Respondent, therefore, was within its right to adjust the payments made on 14th March, 2002 and 16th March, 2002 in account against previous sales. After 16th February 2002, I find two entries in the account dated 18th February, 2002 and 20th February 2002, according to which Rs.50,000/- was paid against the amount of Rs.49,300/-. Fact remains that one of the cheques for Rs.25,000/- dated 20th February 2002 was dishonoured on presentation. Payment of dishonoured cheque was made on 26th February, 2002 against which bill is not known. On 20th February 2002, there is an entry of sales of Rs.36,100/- vide bill No.3690. There is another entry of sales of Rs.19,350/- vide bill No.3896 dated 22nd February, 2002. Payments against these bills were not made as per the bill amount. There is another entry of sales of Rs.19,349/- on 26th February, 2002. Appellants had purchased goods from the respondent on 27th February, 2002, 4th March, 2002, 5th March, 2002 and thereafter some payments were made. Some of the cheques were dishonoured

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on presentation, against which subsequent payments were made in cash. Many of the amounts paid do not tally with the bill amount. Thus, it is clear that appellants were making payment in account from time to time. Appellate Court, therefore, was right when on appreciation of evidence of the parties and documents placed on record, it held that payments were being made by the appellants in account and not against any specific bill.

10. As per Schedule First Division Article 1, period of limitation for filing a suit relating to accounts for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties, period of limitation is three years and this period starts running from the close of the year in which the last item admitted or proved is entered in the account and such year is to be computed as in the account. Therefore, period of limitation for filing the suit started running against the appellant on closing of the year in which the last item admitted or proved was entered in the account.

11. In this case, the last item entered into and admitted in the account by the appellant is dated 13th November, 2002 vide cheque No.5291. This dishonoured cheque was issued by the appellants on 11th November, 2002 for Rs.7,785.00. The statement

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of account placed on record by the appellants is for the year from 1st April 2002 to 31st March 2003. Present suit was filed on 20th May, 2005.

12. Article 14 of Schedule First Division is not applicable.

13. Section 19 of the Limitation Act extends the period of limitation on account of a debt made before expiration of the prescribed period by the person liable to pay the debt. In this case, even if it is presumed that Article 1 cannot be invoked, every payment made in account by the appellants against the due amount of various bills extended the period of limitation. Last payment was admittedly made on 13th August, 2002. Last payment, in no manner, can be accepted as a payment made against a particular bill. Specifically vide bill No.4024 dated 27th May, 2002, sales were for Rs.7,785/- and not Rs.7,875/-. It is pertinent that learned counsel for the appellants was asked to relate the entries on payments made against specific bills; but he miserably failed to assist the Court.

14. Under these circumstances, I conclude that question of limitation involved appreciation of facts and evidence adduced on record and does not raise any substantial question of law. Hence, I find no merits in this appeal and the same is accordingly dismissed.

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CM No.4224/2009 (for delay)

15. Since appeal has been dismissed, this application has become infructuous. The same is accordingly dismissed.



ARUNA SURESH, J.

FEBRUARY 26, 2010
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