

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

+ **RFA No.85/2011**

% 8th February, 2011

SH. SUNIL DUTT Appellant
Through: Mr. N S Chechi, Advocate

VERSUS

SH. SHANKAR GUPTA Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the 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?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under section 96 Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 5.10.2010 whereby the suit of the respondent/plaintiff has been decreed for various hardware goods supplied by the respondent to the appellant.
2. The respondent/plaintiff filed a suit for recovery of Rs.4,64,045/- on 20.1.2007 stating that as per the account maintained by the respondent of the appellant in the books of accounts of the respondent, on payments of Rs.50,000/- and Rs.4,500/- made by the appellant being credited in the books of accounts on 10th April, 2006 and 28th September, 2006, the

balance outstanding that remained was the suit amount, and for recovery of which the suit was filed.

3. The appellant appeared in the case and contested the suit by stating that the cause of action did not arise in Delhi and that the account maintained between the parties was not an open mutual and current account and consequently the suit was barred by limitation.
4. During the course of the arguments before this court, the learned counsel for the appellant, very fairly admitted the following :
 - (i) There were continuous business relations between the parties for over 10 years before filing of the suit.
 - (ii) Various on account payments which were not necessarily the exact invoice amounts were made by the appellant to the respondent and the last two payments were of Rs.50,000/- on 10.4.06 and Rs.4500/- on 28.9.06.
 - (iii) The appellant was maintaining a statement of account, however, the appellant did not file his statement of account.
5. In view of the above, there are only two issues which call for adjudication the first being whether the statement of account maintained by the respondent showing the transaction between the parties is an open mutual and current account whereby the respondent/plaintiff is entitled to claim

the benefit of Article 1 of the Limitation Act, 1963. Secondly, it has to be seen whether the courts at Delhi had territorial jurisdiction to entertain the suit.

6. Learned counsel for the appellant relied upon a decision of the Division Bench of this court in the case of ***Manish Garg Vs. M/s East India Udyog Ltd. (2001) III AD (Delhi) 493*** to contend that before an account is considered to be a running account there has to be both credit balance and debit balance on different occasions in the statement of account. Learned counsel for the appellant stressed on the expression “reciprocal demands” as referred to in the judgment. The relevant paras of the aforesaid decision are paras 5 to 8 which read as under :

“5. Thus, merely because the suit is for balance due on the basis of an account would not bring the suit within the purview of Article 1. The nature of the account is specifically mentioned, namely, it has to be a mutual, open and current account and further that in such an account there have been reciprocal demands between the parties.

6. ‘Account current’ is an open account between two or more parties or an account which contains items between parties from which the balance due to one of them is, or can be, ascertained, from which it follows that such an account comes under the terms of an open account in so far as it is running, unsettled or unclosed. To this extent, there is no difficulty however, the theory upon which the doctrine as Mutual Account rests is that there is a mutual understanding between the parties, either expressed or implied, that they will continue to credit each other until one signifies a contrary intention, when the balance being ascertained, becomes due and payable. In ***Hindustan Forest Company Vs. Lalchand, reported in AIR 1959***

SC 1349 the Supreme Court defined Mutual Account as under :

“To be mutual there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligation”.

7. The instant case cannot be treated as a case of mutual accounts. ***Keshrichand Jaisukhalal Vs. Shillong Banking Corporation Ltd., Shillong (in liquidation)*** reported in AIR 1959 SC 1349 was a case of mutual account. In that case, the respondent bank gave loans on overdrafts, and the appellant made deposits. The loans by the respondent created obligations on the appellant to repay them. The respondent was under independent obligations on the appellant to repay the amount of the cash deposits and to account for the cheques, hundis and drafts deposited for collection. There were thus transactions on each side creating independent obligations on the other, and both sets of transactions were entered in the same account. The deposits made by the appellant were not merely complete or partial discharges of its obligations to the respondent. There was shifting balance; on many occasions the balance was in favour of the appellant and on many other occasions, the balance was in favour of the respondent. There were reciprocal demands between the parties, the account was mutual.

8. Thus for an account properly to be called Mutual Account there must be mutual dealing in the sense that both the parties come under liability under each other. In this case, this ingredient is not satisfied. It was simply a case of debtor and creditor only and not a case of mutual obligations which will in the ordinary way result in enforceable liabilities on each side. Mutual Account is when each has a demand or right of action against the other.” (Emphasis added)

A reference to the aforesaid paras shows that a mutual open and current account means that there has to be a mutuality of transactions

and the account must be open and current i.e. account must not be closed. The Division Bench has relied upon a decision of the Supreme Court in the case of ***Keshrichand Jaisukhalal Vs. Shillong Banking Corporation Ltd., Shillong (in liquidation), AIR 1959 Supreme Court 1349*** where the current account in which overdrafts were taken was held to be a mutual open and current account within the meaning of Article 1 of the Limitation Act. In fact, the Supreme Court has also thereafter held that where credit facilities are given by a bank, then, the accounts which are maintained by the bank fall within the expression “open mutual and current account” as per the meaning of the expression in Article 1 of the Limitation Act. In my opinion therefore, the judgment which is cited by the appellant does not go in favour of the appellant but in fact goes against the appellant because in the present case the parties had dealings over the last 10 years and the transactions showing mutuality were reflected in the statement of account and payments which were made by the appellant were on many occasions on account payments not covering the entire invoice amounts. Credits in favour of respective parties only means that there is both debits and credits of each of the parties. In the present case there are debits and credits of both the parties inasmuch as when the respondent supplied goods it debited the account and when the appellant made payments the account was credited, and this is the meaning of both parties coming into liability of each other. I therefore, reject the contention that the suit was barred by time inasmuch as the last admitted entries in

the account are dated 10.4.06 and 28.9.06 when payments of Rs.50,000/- and Rs.4500/- were made by the appellant to the respondent and therefore the suit in fact could have been filed as per the Article 1 of Limitation Act up to 1.4.2010, whereas the suit has been filed on 20.1.07.

7. So far as the issue of territorial jurisdiction is concerned there was only a feeble argument raised by the counsel for the appellant inasmuch as the trial court has found as a matter of fact that the appellant maintained two bank accounts in Delhi and from which the cheques were issued for making payment with respect to the dues of the respondent. The payments therefore having been made at Delhi, the Delhi courts would have the territorial jurisdiction.
8. The following portion of the impugned judgment and decree rightly holds that the appellant was liable to make payment of the amount due to the respondent.

“A bare perusal of the abovesaid deposition of defendant DW1 by itself shows that his such deposition is vague and evasive. Expressions like **generally** squaring the bills; **always tried to square up the bills/invoices** against the supply of goods; and **for all practical purposes**, the payments were made as per the receipt of bills and the account was settled timely, by itself do not suggest that the transactions between the parties were on the bill to bill basis. Perusal of the statement of A/c Ex.PW1/13 (colly), the entries whereof, have not been challenged by the defendant to any extent, would also show that the defendant was making on account payments and not on the basis of bill to bill settlement. As against that, the defendant has withheld his own books of accounts and did not produce the same before the court, despite having been called

for by the defendant. Needless to say, it is not the defendant's case that he did not maintain any books of account, in normal course of his business activities. Adverse inference is drawn, thereby. Bald and the vague statements of the defendant DW1, that there was no running A/c between the parties, is therefore, rejected. Also, bald deposition of DW1, that he had cleared the payment of Rs.3,38,854/- due and payable prior to 1.4.2002, is equally, inconsequential. Defendant on its part, has also not challenged even a single entry or the invoices proved on record. It implies admission of such transactions. I have therefore, no hesitation in concluding that the plaintiff was maintaining a mutual, open and running account, inasmuch as while in its books of accounts the plaintiff was debiting the entries for the goods supplied, the amounts received from the defendant, which were not on bill to bill basis but lump-sum payments, were duly credited for, against the total outstanding amounts, from time to time. Then, the defendant also admits having made payments on 10.4.2006 and 28.9.2006. In view of the foregoing, I have no hesitation in concluding that such payments were made towards the outstanding amounts in the mutual, open and running account of the defendant, maintained by the plaintiff. Suit has come to be filed on 22.1.2007. Suit is therefore, within limitation. In view of the foregoing, the reliance placed upon by the defendant on AIR 1996 H.P. 14 M/s Roshan Lal Kuthiala & Anr. Vs. Raja Rana Yogendra Chandra & Ors., is misconceived. In view of the foregoing, I have no hesitation in holding that the suit is not barred by limitation and the plaintiff is entitled to the suit amount. Both the issues are answered accordingly."

9. In view of the above, there is no need to call for the trial court record inasmuch as there are no disputed questions of fact requiring adjudication for payment of suit amount to the respondent. The appeal is accordingly, dismissed leaving the parties to bear their own costs.

February 08, 2011
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VALMIKI J. MEHTA, J.