

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

+ **RFA No.145/2001**

% 3rd February, 2011

FABRIC AID INDIA Appellant

Through: None.

VERSUS

COLTON INDIA LTD & ANR. Respondents

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. This case is on the 'Regular Board' of this court since 3.1.2011. Today, this case is effective item no.3 on the 'Regular Board'. It is 3.00 P.M. and no one has appeared for the parties. I have therefore perused the record, and after perusing the record am proceeding to dispose of the appeal.

2. The challenge by means of this regular first appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 5.8.2000 whereby the suit of the appellant/plaintiff was dismissed. The suit was dismissed on the ground that the claim was time barred. There

is also an additional finding with respect to the issue no.1 that the suit is not properly instituted as no power of attorney in favour of the attorney Sh. P.B.Jagtiani was proved.

3. The facts of the case are that the appellant/plaintiff alleged that cloth was supplied to the respondent/defendant vide invoice no.17531 dated 14.2.1994 for Rs.1,37,381.88. It was stated that since the respondent/defendant failed to pay the amount in spite of repeated letters, the suit had to be filed. These letters are dated 7.3.1996, 28.3.1996, 2.5.1996, 17.5.1996, 8.11.1996 and 5.12.1996. The suit was filed on 5.6.1997 i.e. 3 years after the invoice dated 14.2.1994 of which, payment was claimed.

4. The trial court dealt with this issue in para 7 of the impugned judgment which reads as under:-.

“7.The case of the plaintiff is that goods worth Rs.1,37,381.88 were supplied to the defendants on 14.2.1994 vide invoice no.17531. The defendant was asked to make payment of this bill on several occasions but the defendant took the plea that reconciliation of statement of account was prepared by the defendant on 27-6-94 and discrepancy of this bill was brought to the notice. Several letters were written to the defendants demanding the payment hence, the suit was filed. The defence is that the suit is barred by limitation as it was filed on 6-6-97. In the plaint, categorically it was stated that goods worth Rs.1,37,381.88 were supplied to the defendants on 14-2-97 vide invoice no.17531 but this payment was not received. The defendants denied to make the payment of this bill and reconciliation statement was

prepared in June 1994 where under the defendants categorically stated that it was not liable to make any payment. The entire statement of solitary witness of the plaintiff is that they had not received the payment of bill raised in February 1994. Bill of Rs.1,37,381.88 was duly received by the defendant. Goods were received vide challan Ex.PW-1/2. Bill is proved as Ex.PW-1/3. A categorical statement was made that no payment of goods supplied under this bill was received. Many letters were written to the defendants. Not even a single letter has been proved on record. The plaint as well as evidence led by the plaintiff is to the effect that payment of a particular bill was not being made by the defendant. In the replication and at the time of advancing arguments, an attempt was made to make out a case that parties were having mutual, open current account and as there was dealing in this account up to 30-10-96, hence, suit of the plaintiff was within time. Whether suit is based on mutual, open and running account or not is a question of fact. Merely, if parties are having several dealings and an account in the account books of the plaintiff is opened in the name of the defendant firm, it is not sufficient by itself to hold that suit is based on mutual, open and running account. This is a fact to be proved specifically by leading evidence. Though the plaintiff has proved statement of account Ex.PX but it has failed to prove that suit is filed on the basis of this statement of account only. The plaintiff is very specific in this regard. The case is that only payment of a particular bill raised on 14-2-94 was only made by the defendant. Evidence is also led only on this point. In the plaint, the relief claimed by the plaintiff makes it abundantly clear. Para 12 of the plaint is relevant in this regard which reads,

“That the defendants are liable to pay the following amounts

(a)Rs.1,37,381.88 towards the principal amount of invoice no.17531 dated 14-2-94,

(b)Rs.96,167.30 towards the interest w.e.f. 14-2-94 to 14-5-97 @ 24% p.a.”

There is no ambiguity in the case of the plaintiff that it is for recovery of goods supplied on 14-2-94. No reference is made in this par that as per statement of account maintained by the plaintiff in its books of account, this amount was due from the defendant on the date of filing of the suit. Hence, as the claim is based on a particular bill dated 14-2-94 and plaintiff has not proved on record that an acknowledgement of the liability by the defendant, the period of limitation does not stand extended. Even if, any reconciliation statement of account was prepared in June 1994, that does not extend the period of limitation because plaintiff has not proved on record that he reconciled the statement on the basis of which any extension in the period of limitation is claimed by the plaintiff. Even from the facts and circumstances, it is proved that even prior to preparation of reconciliation of statement of account in June 1994, the defendant was denying its liability to pay this amount. Hence, unless any demand and acknowledgement of any liability by the defendant is proved, limitation starts running against the plaintiff w.e.f 14-2-94 itself. The suit of the plaintiff is barred by limitation. Even if, it is presumed that parties were having mutual, current and open account the claim of the plaintiff fails, statement of account Ex.PX starts from 11-4-95 and entries showing the bill in dispute are not shown in the statement of account proved by the plaintiff. In the course of hearing arguments, a specific query was put to the Ld. Advocate that why entries prior to this period were not proved, his argument was that those entries were not necessary as opening balance as on 11-4-95 was shown in the statement of account. Hence, no reliance can be placed on this statement on account to hold that the parties were having any mutual open and current account. I hold that suit of the plaintiff is barred by time. Issue is decided against the plaintiff."

5. The conclusions and findings of the trial court are fully justified because the alleged statement of account was not a regular statement of account maintained in the normal course of business because it in fact starts

from 11.4.1995 i.e., after 14.2.1994 the date of the impugned bill. Further the suit of the appellant/plaintiff was found not to be under Article 1 of the Limitation Act,1963 based on the open mutual and current account because the suit was based only on one invoice. The trial court was therefore justified in arriving at a finding that the suit ought to have been filed within three years from the date of the invoice dated 14.2.1994 i.e., by 13.2.1997, and therefore, the suit when filed on 6.6.1997 was clearly barred by time.

6. This court is not entitled to interfere with the impugned judgment and decree unless the findings and conclusions contained in the same are illegal or perverse. Merely because two views are possible, this court would not interfere with one view which is taken by the trial court. I, therefore, do not find any merit in this appeal which is therefore dismissed leaving the parties to bear their own costs. Trial court record be sent back.

February 03, 2011
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VALMIKI J. MEHTA, J.