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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.421/2002

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14th November, 2011

D.C. SAHAI

..... Appellant
Through: Mr. Aditya Madan, Advocate.

versus

INDIAN AIRLINES

..... Respondent
Through: Mr. Rahul Malhotra, Advocate.

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 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 23.1.2002. The trial Court by the impugned judgment dismissed the suit of the appellant/plaintiff for recovery of ₹ 26,240/- being the claim for conveyance allowance w.e.f. 1.9.1975 to 31.3.1980. The trial Court held the suit to be barred by limitation as the same was filed on 6.3.1989 for the claim of

conveyance allowance from 1.9.1975 to 31.3.1980.

2. The trial Court has given the following reasoning to dismiss the suit as being barred by limitation:-

“11. On 15.12.89 issue No.1 was framed in respect of the limitation i.e. “Whether the suit was within time”, and at the same time on 17.1.95 issue in that regard was also framed to the effect that “Whether the suit is barred by time.” Both these issues are taken up together for the determination since both issues are relating to the same subject matter. The issue framed on 15.12.89 cast obligation to prove the same on the plaintiff whereas the issue framed on 17.1.95 case obligation to prove the same on the defendant, but by reason of Section 3 of the Limitation Act, hereinafter referred as the Act, it is always the burden of the plaintiff to prove the institution of the suit within the prescribed period of limitation and in case the suit is not instituted within the prescribed period of limitation, then in those circumstances, by reason of that provision the Court has been left with no option, but to dismiss the suit even if no such defence has been taken by the defendant. Accordingly, the issue framed on 17.1.95 casting the burden on the defendant cannot be taken as issue properly framed and prior issue is correct issue in that regard. However, in view of the Section 3 of the Act, it is burden of the plaintiff to prove the institution of the suit before the expiry of the period of limitation. To discharge that onus the plaintiff has examined himself as PW-1 and in his statement he has deposed on all the material facts consistent to the claim pleaded in the plaint and in addition to that he has proved the document Ex.PW-1/1 to 1/26 in all. On cross-examination the plaintiff himself has admitted to be correct that he has received the conveyance allowance @ ₹300/- per month w.e.f. 1.4.80 till his retirement upto 31.5.86; that the present suit was for the period of 1.9.75 to 31.3.80 and that he has filed the present suit in the month of March, 1989. The plaintiff also contains the pleadings regarding the period of the claim w.e.f. 1.9.75 to 31.3.80. Therefore, in view of this statement made by the plaintiff it is established beyond all disputes that the claim of the plaintiff for arrears of

conveyance allowance is related to the period w.e.f. 1.9.75 to 31.3.80. The limitation for filing the suit for claiming any amount on account of conveyance was three years from the date the said amount has become due and payable or claimable. Conveyance allowance are paid every month and the plaintiff himself has pleaded and proved that by the Circular issued in 1975 and pleaded in the suit he was entitled to claim the conveyance allowance @ ₹300/- per month w.e.f. the date of the circular or w.e.f. 1.9.75. Accordingly, the plaintiff was entitled to make the claim within three years in respect of the arrears of conveyance only from the date of due and such arrears were due in the month for which he has spent the conveyance. Admittedly the present suit has been filed on 6.3.89 substantially on the ground that the cause of action had accrued by a letter dt. 11.3.87. This plea of the plaintiff is not admissible since the law does not permit benefit of fresh period of limitation either on the ground of rejection or on the ground of admission made beyond the expiry of period of limitation. Even before rejection of the claim by that letter the claim of the arrears of the conveyance was hopelessly barred by limitation since for that purpose the claim could be entertained within three years respectively for the conveyance of every month because it was due and payable for the month for which he was entitled to claim. Once the suit has been filed in 1989, I find that the suit of the plaintiff for arrears of the conveyance for the period w.e.f. 1.9.75 till 31.5.80, is hopelessly barred by limitation. Section 3 of the Limitation Act provides that subject to the provisions contained in Section 4 to 24, every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. In view of this provision which is mandatory in nature the suit must be instituted within three years and that provision is subject to the provisions contained u/s 4 to 24 CPC, under which the plaintiff can prove its case within the period of limitation by taking benefit of fresh period of limitation permitted under those provisions. In the pleadings nothing such has been pleaded and the plaintiff has not claimed any ground for benefit of fresh period of limitation falling under any of the provisions of Section 4 to 24 of the CPC. Therefore, in view of no ground proved for benefit of

fresh period of limitation, I find that the plaintiff bitterly failed to prove its case within the prescribed period of limitation as contemplated u/s 3 of the Act. The cause of action cannot be taken as accrued in favour of the plaintiff by that letter allegedly or admittedly written in 1987 because the claim of the plaintiff had already been barred by limitation and therefore, that rejection or even admission could not have any bearing in respect of the period of limitation that had started to run w.e.f. the year 1980 or much before it. Therefore, I find that the plaintiff bitterly failed to prove its case well-within the period of limitation. So, this issue stands decided in favour of the defendant and against the plaintiff.” (underlining added)

3. Learned counsel for the appellant argued that the suit was not barred by limitation inasmuch as the rejection letter of the respondent/defendant is dated 19.8.1987 and therefore the suit filed on 6.3.1989 is within limitation. It is also argued that the appellant/plaintiff could not have filed the suit against the respondent during the period of service by virtue of a particular standing order. Attention of this Court has also been invited to the internal notes dated 25.10.1979 (Ex.PW1/8) and 27.12.1978 (Ex.PW1/7) which recommended the payment of the conveyance allowance to the appropriate authority by one Capt. S.S. Grewal who was manager of the Flight Safety. It is argued that since the claim of the appellant/plaintiff was never rejected, limitation did not commence till the respondent issued its letter dated 19.8.1987, Ex.PW1/22, and consequently the suit filed within three years thereafter on 6.3.1989 is

within limitation.

4. I cannot agree with the contention as raised on behalf of the counsel for the appellant/plaintiff. Firstly, the recommendations Ex.PW1/7 dated 27.12.1978 and Ex.PW1/8 dated 25.10.1979 were recommendations to the appropriate authority and the same are not the orders sanctioning the payment of conveyance allowance. Thus it is not as if the claims were admitted to be payable at any point of time by the respondent. Further, the counsel for the respondent has drawn the attention of this Court to para 10 of the plaint and the response thereto in the written statement to show that there was no standing order of which averment was made by the appellant/plaintiff in the plaint that a suit could not be filed during the period of employment by the appellant. Admittedly, no alleged standing order was filed/proved that the appellant/plaintiff could not have claimed the conveyance allowance during his services with the respondent/defendant. I may note that the trial Court has also held that though there was a claim of conveyance allowance from 1.9.1975 to 31.3.1980, the appellant/plaintiff had in fact been paid the conveyance allowance for the subsequent years w.e.f. 1.4.1980 till the date of his retirement on 31.5.1986. Clearly therefore no conveyance allowance would have been payable to the appellant/plaintiff and therefore he did not file any

suit within the period of limitation for conveyance allowance from 1.9.1975 to 31.3.1980. Merely because the respondent has written one letter rejecting the claim on 19.8.87 cannot mean that the limitation will start afresh though the same expired definitely by 1.4.1983. Not granting the conveyance allowance is a refusal to grant the same especially when nothing has been proved to show that the same was admitted to be payable at one point of time earlier but rejected only vide letter dated 19.8.1987.

5. A civil case is decided on balance of probabilities. The appellant/plaintiff failed to prove that he was entitled to the conveyance allowance inasmuch as no order has been shown of the competent authority sanctioning the conveyance allowance for this period. The letters Ex.PW1/7 and Ex.PW1/8 are only recommendations and not sanctioning orders of the appropriate authority. The suit has rightly been held to be barred by limitation for claiming the conveyance allowance for the period from 1.9.1975 to 31.3.1980. A suit could not have been filed on 6.3.1989 i.e. after about eleven years, or at least six years after arising of the cause of action, more so when for the subsequent period from 1.4.1980 till retirement upto 31.5.1986 the appellant/plaintiff was paid the conveyance allowance.

6. In view of the above, the appeal is accordingly dismissed,

leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA,J

NOVEMBER 14, 2011
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