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

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*Date of Judgment: 24.05.2011*

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**R.S.A.No. 141/2009**

M/S PARRY ENGINEERING & EXPORTS LTD.

.....Appellant

Through: Mr. Sandeep Gupta, Advocate.

Versus

BHARDWAJ WELFARE TRUST

.....Respondent

Through: Mr. Rajesh Chhabra, Advocate.

**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.** (Oral)

1. This appeal has impugned the judgment and decree dated 04.08.2009 which has endorsed the finding of the trial Judge dated 12.12.2005 whereby the suit filed by the plaintiff M/s Parry Engineering & Exports Ltd. had been dismissed.

2. The plaintiff had filed a suit for recovery of ₹2,44,488/-; contention was that the defendant had placed an order for purchase of transformers; transformers had been supplied by the

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plaintiff to the defendant on 26.09.1995; bill of ₹20,19,069/- had been received; the defendant had promised to supply the 'C' form but he did not do so; liability under Section 6 (2)(b) of the Central Sales Tax Act, 1975 (CST) was calculated @ 12%; an amount of ₹2,42,288/- to which the plaintiff had been assessed to because of this non-supply of the 'C' form had to be paid by them. Present suit was filed for the aforementioned amount coupled with the amount of ₹2,200/- as notice charges.

3. The defendant had disputed the claim of the plaintiff. It was stated that the demand is illegal; the defendant had paid the amount @ 4% (CST) on the bill amount; this demand of 12% is without any basis; no detail had also been furnished.

4. On the pleadings of the parties, the following six were framed:-

1. Whether the suit is barred under Section 92 CPC? OPD
2. Whether the suit is without (sic) limitation? OPD
3. Whether this court has no territorial jurisdiction to entertain and try present suit? OPD
4. Whether the plaintiff is entitled to recovery of suit amount as claimed in the prayer para of the plaint? OPP
5. Whether the plaintiff is entitled to interest? If so at what rate and for what period? OPP
6. Relief.

5. Oral and documentary evidence was led. The trial Judge had examined the testimony of two witnesses of the plaintiff. Letter

dated 03.08.1999 written by the defendant to the plaintiff (Ex.P-3) was an admitted document. Trial Judge was of the view that the limitation would not commence from this letter; limitation commenced from the date of transaction which in this case was 26.09.1996; Ex.P-3 was transacted after a period of three years from the date of cause of action i.e. three years after 26.09.1995; it was not a valid acknowledgment; suit filed on 08.04.2002 was barred by limitation. Even on merits, the court was of the view that the evidence does not substantiate that the plaintiff was entitled to the aforementioned amount; document Ex.P-4 which was the assessment order and Ex. P-5 had been adverted to. Suit stood dismissed.

6. In appeal, this finding was endorsed.

7. This is a second appeal. It has been admitted and on 21.01.2011, the following substantial question of law was formulated:-

"Whether the construction of letter dated 03.08.1999 (Ex.P-3) in the impugned judgment was perverse and if so its effect".

8. On behalf of the appellant, it has been submitted that Ex.P-3 clearly states that the defendant was willing to reimburse the amount on the non-supply of 'C' forms on the production of the

assessment order; this is an admitted document; cause of action had to be counted from the date of receipt of this letter i.e. 03.08.1999; suit filed on 08.04.2002 was within limitation. It is further submitted that Ex.P-4 is the assessment order vide which the sale tax liability under Section 9 of the Central Sales Tax Act has been imposed upon the plaintiff; it is pointed out that this document was accompanied with Ex.P-5 which clearly shows that the transaction dated 26.09.1995 had been entered into with the defendant i.e. Bhardwaj Welfare Trust; bill is of ₹20,19,069/-. Sales Tax of 12% on the aforementioned amount which the plaintiff had to pay because of non-supply of the 'C' forms calculates to Rs.2,42,288/- and this is clear from the aforementioned document; the plaintiff is liable to be reimbursed.

9. Arguments have been refuted. It is pointed out that both the finding of two fact finding courts calls for non interference. The findings of the second appellate court can only be interfered with if there is perversity and on no other count. The impugned judgment had examined document Ex.P-3 dated 03.08.1999; the impugned judgment was of the view that it is not an acknowledgement under Section 18 of the Limitation Act. Admittedly, the transaction in this case is dated 26.09.1995. This

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is evident from the bill Ex.DW-1/2. Testimony of PW-1 is also relevant; he had deposed that on 26.09.1995 transformers were purchased and installed at Sunflage Hospital and Research Centre, Faridabad; PW-1 has further deposed that the sale tax @ 12% was not charged in this bill dated 26.09.1995. This deposition of PW-1 makes it clear that the case of the plaintiff is bordered on this transaction of 26.09.1995; he had not added sale tax @ 12% as the defendant had promised to give him the 'C' form which he had not done. Cause of action accrued on 26.09.1995. Letter dated 03.08.1999 of the defendant stating that 'C' forms cannot be delivered and the amount paid by the plaintiff will be reimbursed was much after the period of three years from the date of the cause of action which in this case was 26.09.1995. Ex.P-3 is dated 03.08.1999; to be a valid acknowledgement under Section 18 of the Limitation Act it had to be an acknowledgement within three years from the date of the cause of action which was not so in this case. The impugned judgment had correctly appreciated this fact and had held that the claim of the plaintiff is time barred. There is no perversity in this finding.

10. Even assuming the second argument of the learned counsel for the appellant is accepted and the cause of action is counted from 03.08.1999, even on merits, the plaintiff has not been able to

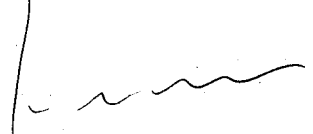
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substantiate his case. Attention has been drawn to Ex.P-4 which is the assessment order. This assessment order was admittedly a cumulative assessment; it does not in any manner substantiate this submission of the appellant that Ex.P-5 was a document which had accompanied Ex.P-4. This does not find mention either in Ex.P-4 and nor does it find mention in the testimony of either of the two witnesses of the plaintiff. The contention of the plaintiff is that Ex.P-4 (assessment order) had taxed the plaintiff @ 12%; thus 12% is payable by the defendant. This submission is again negated by the bill Ex.DW-1/2 which shows that on the bill amount of ₹20,19,069/- (dated 26.09.1995) Central Sales Tax of ₹76,104/- has been calculated. This was also the contention of the defendant in his written statement. The defence in the written statement was that the Central Sales Tax @ 4% had already been paid i.e. an amount of ₹1,55,000/-; demand of 12% is malafide. Thus even on merits the plaintiff had failed to establish that this amount of ₹2,44,288/- was part of the assessment order (Ex.P-4) which was because of the non-supply of the 'C' forms by the defendant. Ex.P-4 in fact makes a reference to the non-production of 'E' form and not a 'C' form.

11. The judgments relied upon by learned counsel for the

appellant reported in AIR 1956 Bombay 106 Khetarpal Amarnath Vs. Madhukar Pictures, AIR (30) 1943 Madras 360 Ghulam Asadulldh Khan & others Vs. Mohamed Ali Khan and others and AIR (31) 1944 Patna 185 Chunibhai Patel and others Vs. Natha Bhai Patel are wholly inapplicable. Before a loss can be indemnified, it is incumbent upon a party alleging the loss to establish it; the plaintiff had failed to prove that this claim of ₹2,44,288/- charged by him was on account of the non-supply of the 'C' form which liability was actually the liability of the defendant. The finding of the two fact finding courts below call for no interference.

12. Substantial question of law is accordingly answered in favour of the respondent and against the appellant. There is no merit in this appeal. Dismissed.



**INDERMEET KAUR, J.**

**MAY 24, 2011**

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