

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

+ **RFA No.756/2002**

% **10th January, 2012**

M/S. DISCOVER PRINTS INDIA PVT. LTD. Appellant
Through Mr. N. Safaya, Advocate.
versus

M/S. ASHU CHEMICALS Respondent
Through None.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial court dated 27.8.2002 decreeing the suit of the respondent / plaintiff for ₹2,44,655/- along with pendente lite and future interest @ 16% p.a.

2. The facts of the case are that the respondent / plaintiff filed a suit against the appellant for recovery of ₹4,95,000/- claiming that the said amount was due on the basis of a running account. The goods in this case

which were said to be supplied to the appellant / defendant were colours and chemicals. The respondent / plaintiff further claimed in the plaint that the appellant / defendant had issued two cheques, one dated 29.8.1995 for ₹35,000/- and another dated 10.6.1995 for ₹50,000/- both of which were dishonoured. The suit was filed claiming the amount of the bills with interest @ 12% per month. The suit was originally filed under Order 37, but was subsequently treated as an ordinary suit.

3. The appellant / defendant contested the suit mainly on the ground of limitation. It was pleaded that the bills which have been proved and exhibited before the trial court being PW1/6 to PW1/28 are for the period from 20.7.1993 till 18.4.1995, and since the suit was filed on 26.8.1998, the same was barred by limitation. It was also argued that the suit could not be based on Article 1 of the Limitation Act, 1963 inasmuch as the statement of account Ex.PW-1/5 cannot be said to be a mutual, open and current account as per Article 1 of the Limitation Act, 1963.

4. With respect to the plea of limitation, the trial court had framed issue No.2 and the finding with respect to which reads as under:

“ISSUE NO.2:

Whether the suit is time barred? OPD

9. The onus to prove this issue is upon the defendant. Ld. counsel for the defendant submitted that the suit of the plaintiff is time barred Ld. counsel for the defendant has relied upon the Judgments reported in AIR 1971 Patna 278, AIR 1966 Allahabad 137, AIR 1956 Bombay 553, AIR 1973 Punjab And Haryana 35, AIR (38) 1951 Supreme Court 477, AIR 2000 Delhi 336. On the other hand ld. counsel for the plaintiff submitted that there has been a running account between the parties and this fact has been admitted by the defendant in reply to notice Ex.PW1/36. He further submitted that the last payment was made by the defendant vide cheques Ex.PW1/31 dated 29.8.95 which was later on dishonoured. Hence in view of section 19 of the Limitation Act, the suit filed by the plaintiff on 26.8.98 is well within time. Ld. counsel for the defdt., on the other hand, in rebuttal submitted that the cheques Ex.PW1/30 dated 10.6.95 and the cheque Ex.PW1/31 dated 29.8.95 were dishonoured, hence, in view of the law laid down by the Hon’ble Patna and Bombay High Court in the judgment reported in AIR 1971 Patna 278 and AIR 1956 Bombay 553 the suit is time barred since the cheque in case is dishonoured, the handing over of the cheque does not amount to payment of the debt in whole or in part within the meaning of S.18 or Sec.19 of the Limitation Act. However, ld. counsel for the plaintiff has relied upon the judgment reported in AIR 1981 Patna 187 and AIR 2000 Gujarat 261.

10. The full bench of the Hon’ble Gujarat High Court has discussed the judgment reported in AIR 1956 Bombay 553 and dissented from the same and held as follow:-

“The payment by cheque which is dishonoured would amount to acknowledgment of a debt and a liability. By necessary consequence there will be saving of limitation as envisaged by S.18 of the Act. A cheque would prima facie amount to an admission of debt unless a contrary intention has been

expressed by the person issuing the cheque. Such an admission of payment of debt is to be determined with reference to the point of time at which the purported admission was made that is to say, when the cheque was issued. Merely because subsequently such a cheque is dishonoured and the admission is retracted the admission or the acknowledgement can hardly, be said to cease as an admission / acknowledgment of liability. To hold otherwise would be contrary to fair play between the parties and justice and equity. AIR 1956 Bombay 553, Dissented from.

11. Similarly, in the matter of Rajpati Prasad Vs. Kaushalaya Kuer and others reported in AIR 1981 Patna 187 it is held that action based on posed dated cheques which were subsequently dishonoured cannot be held time barred if instituted within the time period computed from the date of issuance of the cheques. In this case the judgment reported in AIR 1971 Patna 278 was discussed and the judgment reported in AIR 1956 Bombay 553 was also discussed and dissented. I am of the opinion that the suit, taking into consideration that there had been a running account between the parties which fact has been admitted by the defendant vide Ex.PW1/36 dated 29.8.95 which was though subsequently dishonoured, is within time. Rest of the judgments cited by the defendant are not applicable to the facts and circumstances of the present case. This issue is accordingly, decided in favour of the plaintiff and against the defendant.”

5. The issue of limitation is the only point argued before this Court. Learned counsel for the appellant drew my attention to the statement of account, Ex.PW1/5 to show that there were no reciprocal demands between the parties, and which is a sine-qua-non for making the account an open,

mutual and current account. It was argued that an account can be said to be a mutual, open and current account in terms of Article 1 of the Limitation Act, 1963 only if there exist reciprocal demands i.e. there must be either shifting balances or each of the party should claim from the other amounts with respect to their independent transactions/obligations. It is argued that if there is only one set of relationship between the parties to the suit i.e. of appellant / defendant as a buyer and the respondent / plaintiff as a seller, there cannot be reciprocal demands unless on occasions, there are credit balances in favour of the appellant / defendant in the account which is maintained by the respondent / plaintiff with respect to transactions with the appellant / defendant. Reliance is placed upon *Hindustan Forest Company v. Lal Chand & Ors.*, AIR 1959 SC 1349, and paras 7 to 9 thereto which read as under:

“(7) The question what is a mutual account, has been considered by the courts frequently and the test to determine it is well settled. The case of the Tea Financing Syndicate Ltd. v. Chandrakamal, ILR 58 Cal 649 : (AIR 1931 Cal 359), may be referred to. There a company had been advancing monies by way of loans to the proprietor of a tea estate and the proprietor had been sending tea to the company for sale and realization of the price. In a suit brought by the company against the proprietor of the tea estate for recovery of the balance of the advances made after giving credit for the price realized from the

sale of tea, the question arose as to whether the case was one of reciprocal demands, resulting in the account between the parties being mutual so as to be governed by Art.85 of the Indian Limitation Act. Ranking C. J. laid down at p.668 (of ILR Cal): (at p.368 of AIR), the test to be applied for deciding the question in these words:

“There can, I think, be no doubt that the requirement of reciprocal demands involves, as all the Indian cases have decided following Halloway A.C.J., transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side, those on the other being merely complete or partial discharges of such obligations. It is further clear that goods as well as money may be sent by way of payment. We have therefore to see whether under the deed the tea, sent by the defendant to the plaintiff for sale, was sent merely by way of discharge of the defendant’s debt or whether it was sent in the course of dealings designed to create a credit to the defendant as the owner of the tea sold, which credit when brought into the account would operate by way of set-off to reduce the defendant’s liability.”

(8) The observation of Rankin C.J. has never been dissented from in our courts and we think it lays down the law correctly. The learned Judges of the appellate bench of the High Court also appear to have applied the same test as that laid down by Rankin C.J. They however came to the conclusion that the account between the parties was mutual for the following reasons:

“The point then reduces itself to the fact that the defendant company had advanced a certain amount of money to the plaintiffs for the supply of grains. This excludes the question of monthly payments being made to the plaintiffs. The plaintiffs having received a certain amount of money, they became debtors to the defendant

company to this extent, and when the supplies exceeded ₹13,000/- the defendant company became debtors to the plaintiff and later on when again the plaintiff's supplies exceeded the amount paid to them, the defendants again became the debtors. This would show that there were reciprocity of dealings and transactions on each side creating independent obligation on the other.

(9) This reasoning is clearly erroneous. On the facts stated by the learned Judges there was no reciprocity of dealings; there were no independent obligations. What in fact had happened was that the sellers had undertaken to make delivery of goods and the buyer had agreed to pay for them and had in part made the payment in advance. There can be no question that in so far as the payments had been made after the goods had been delivered, they had been made towards the price due. Such payments were in discharge of the obligation created in the buyer by the deliveries made to it to pay the price of the goods delivered and did not create any obligation on the sellers in favour of the buyer. The learned Judges do not appear to have taken a contrary view of the result of these payments.”

6. Learned counsel for the appellant, however, fairly concedes that the suit can be decreed for an amount of ₹35,000/-, being the amount of cheque dated 29.8.1995, inasmuch as the suit was filed on 26.8.1998.

7. I agree with the arguments as raised on behalf of the appellant inasmuch as a reading of the statement of account, Ex.PW1/5 shows that the account always showed a debit balance against the appellant / defendant, and at no point of time there are credit balances existing in favour of the

appellant / defendant and against the respondent / plaintiff. Therefore, there are no reciprocal demands between the parties. There are also no reciprocal demands inasmuch as there is only a single relationship of buyer and seller and there were no independent demands/obligations because of want of existence of other independent relations whereby appellant / defendant had to claim monies from the respondent / plaintiff. Accordingly, the suit cannot be treated as one under Article 1 of the Limitation Act, 1963, and the suit will have to be treated for the purposes of limitation under Article 14 of the Limitation Act, 1963 with respect to the claim of each bill where each bill represents the price of the goods which were sold and delivered and qua each bill no fixed period of credit was agreed upon. As already stated above, if period of three years is taken from the date of each of the bill, the limitation would have expired with respect to the last bill on 18.4.1998. Obviously, with respect to bills earlier thereto, from 20.7.1993 till 18.4.1995, will in any case be barred by limitation. The suit was filed on 26.8.1998 and I therefore hold that since the suit is governed by Article 14 of the Limitation Act, and not by Article 1 of the Limitation Act, the suit so far as the claim with respect to the amounts under the bills is concerned is barred by time.

8. As already stated above, counsel for the appellant agrees that the suit having been filed within three years from the dishonour of the cheque dated 29.8.1995 for ₹35,000/-, suit can be decreed for the said amount.

9. Accordingly, the appeal is partly accepted. Impugned judgment and decree is set aside. The suit against the appellant / defendant will now be decreed in favour of the respondent / plaintiff for ₹35,000/- along with interest @ 18% p.a. from 29.8.1995 till the date of payment. I am granting interest @ 18% p.a. simple in view of the provisions of Section 80 of the Negotiable Instruments Act, 1881. I am also empowered to pass such a decree in view of the Order 41 Rule 33 CPC. Parties are left to bear their own costs. Trial court record be sent back.

VALMIKI J. MEHTA, J.

JANUARY 10, 2012

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