

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

+ **RFA 199/2003**

% **27th January, 2012**

M/S.FASHION EXPRESS & ORS. Appellants
Through : Mr. Chittaranjan Hati, Advocate.

versus

M/S.SHAKTI INDUSTRIES Respondent
Through : Mr. Anun Sharma, proxy Advocate
for Mr. C.M. Oberoi, Advocate.

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 (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 26.11.2002 decreeing the suit of the respondent/plaintiff for recovery of Rs.3,40,609/- with interest @ 18% per annum.

2. The subject suit came to be filed by the respondent/plaintiff for recovery of moneys on account of knitted fabric etc, supplied by it to the

appellants. Before the trial Court, the respondent/plaintiff proved the bills by which goods were supplied as Ex.PW1/2 to Ex.PW1/55. The corresponding orders placed by the appellant/defendant were exhibited as Ex.PW1/56 to PW1/61. The statement of accounts was proved and exhibited as Ex. PW1/62.

3. The trial Court has held the suit to be within limitation by giving following findings with respect to issue No. 3.

“ISSUE No. 3

Whether the suit of the plaintiffs is time barred ?
OPD

20. The counsel for the defendant has argued that although the plaintiff has relied upon the statement of account, but Article 1 of the Schedule of Limitation Act, 1963 does not apply and article 14 applies. The goods were supplied by the plaintiff to the defendants for the period upto Feb, 1995, while the present suit is filed in November, 1998 beyond prescribed period of three years as per Article 14 of Schedule 1 of Limitation Act and the suit is barred by time and only the suit regarding transaction made by the defendants in 1996 of the value of Rs.11940,50P is within time, so the suit may be dismissed being barred by time, but for the said transaction in the sum of Rs.11940.50P.

21. The Ld. counsel for the plaintiff on the other hand, has argued that Article 1 of Schedule 1 of Limitation Act applies because it is a suit filed on the basis of accounts and the period of limitation would commence from the

date of close of the year in which last transaction is admittedly proved i.e. of 1996 vide bill No. 3440 dt. 7.8.96, so the limitation period would commence from 1.4.97 and the suit is filed within prescribed period of limitation.

22. Article 1 of Schedule 1 of Limitation Act, 1963 applies only to the cases of mutual, open and current account between the parties. The mutual accounts are such as consist of reciprocity of dealings between the parties and are not those accounts having items on one side only, though made of debits and credits. There should be two sets of independent transactions-two parties and in one transaction one of the party should be debtor, and other creditor. The dealings should indicate independent obligation on both sides so that the balance shown sometime be on one side and at other time on the other.

23. Coming to the case in hand, the goods were supplied by the plaintiff only and on corresponding goods or material was supplied by the defendants, so despite the fact that payments made by the plaintiff to the defendants against supply of goods were credited to the accounts of the defendants in the record of the plaintiff, the account maintained by the plaintiff with regard to the transactions with the defendants and also payments received cannot be termed as 'mutual, open and current account' between the parties, as there was no reciprocal demands between the parties. I am in agreement with the Ld. counsel for the defendants that Article 14 of Schedule I of Limitation Act, 1963 applies and the period of Limitation is three years from the date of deliveries of goods supplied by the plaintiff to the defendants. But the case of the plaintiff with regard to transactions upto 23.2.95 cannot be thrown out being barred by limitation for the simple reason that the defendants have made part

payments of the amount due to the plaintiff from time to time as depicted in the statement of accounts filed by both the parties. Thus, by virtue of section 19 of Limitation Act, 1963, the period of limitation would expend from time to time from the date of making of part payment for another three years period. In view of the above, I hold that the suit is not barred by time. Issue is decided in favour of the plaintiff and against the defendants.”

4. Learned counsel for the appellant argued that the suit was hopelessly barred by limitation inasmuch as once the suit was not under Article 1 of the Limitation Act, 1963 and Article 14 of the Limitation Act, 1963 applied, the last admitted payment as per the statement of accounts Ex.PW1/62, being a sum of Rs.50,000/- on 21.8.1995 can extend the limitation only for three years upto 21.8.1998. But, since the suit was filed on 9.11.1998, the suit was clearly barred by time.

5. It is argued that the trial Court has rightly held the account not to be mutual, open and current account, in view of the judgment of the Supreme Court in *Hindustan Forest Company v. Lal Chand and Others AIR 1959 SC 1349*.

6. It is argued that after the bills which have been exhibited as Ex.PW1/2 to Ex.PW1/55 and which were of the year 1994-95, there was only one

transaction of the year 1996 being the bill No. 3440 dated 7.8.1996 for Rs.11,940.50/-. It is argued that the appellants/defendants are ready to pay the amount of this bill and which bill will be within limitation.

7. Learned counsel for the respondent could not dispute the proposition that even if acknowledgment of debt by payment of Rs.50,000/- dated 21.8.1995 is taken, the suit with respect to the bills prior to 21.8.1995 would become barred on 21.8.1998. Since the account is not an open, mutual and current account, inasmuch as there are neither shifting balances nor any independent obligations, the relation being only of the appellant being the buyer and the respondent being the seller, therefore, in my opinion, the trial Court has wrongly held the suit to be within limitation. The ratio of the judgment in the case of *Hindustan Forest Company (supra)* squarely applies that the account between the parties cannot be held to be an open, mutual and current account.

8. In fact, a reading of para 23 of the impugned judgment shows that the trial Court has glossed over the issue of limitation by not referring to any dates at all. The trial Court in para 23 ought to have referred to the fact that last payment is dated 21.8.1995, and if it would have so referred then the consequential time would necessarily come to an end on 21.8.1998 for filing

the suit and since the subject suit was filed only on 9.11.1998, the same would be barred by limitation except with respect to bill of Rs.11,940.50/- dated 7.8.1996.

9. In view of the above, the present appeal is allowed. The suit of the respondent/plaintiff is held to be barred by time except for an amount of Rs.11,940.50/- for which amount a decree is passed in favour of respondent/plaintiff. The respondent/plaintiff will be entitled to interest @ 18% per annum on this amount of Rs.11,940.50/- from 7.8.1996 till the amount was deposited in this Court by the appellant.

10. The present appeal is allowed to the extent as stated above and disposed of accordingly. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

11. Since the respondent has already received the amount under the impugned judgment and decree, which has been set aside today, the appellant will be entitled to recovery of the amount from the respondent from the bank guarantee which has been furnished by the respondent in this Court.

VALMIKI J. MEHTA, J.

JANUARY 27, 2012

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