

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

+ **RFA No.286/2004**

%

21st March, 2012

M/S. VIDEOCON INTERNATIONAL LTD. Appellant

Through: Mr. L.K. Sinha, Advocate.

versus

M/S. CITY PALACE ELECTRONICS PVT. LTD. Respondent

Through: Mr. Mukesh Anand, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

Yes.

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 30.1.2004 dismissing the suit filed by the appellant/plaintiff for recovery of moneys on the ground of non-payment for the electronic goods supplied.

2. The main issue in this appeal, and which is the only issue argued before me, is the issue as to limitation. The trial Court framed issue No.2 in this regard. While dealing with this issue, the trial Court has held the suit to be barred by limitation as it was held that limitation begins from each of the bills and from each of the bills was of three years prior to the

filing of the suit. The relevant paragraphs of the impugned judgment are paras 11 to 21 and the same read as under:-

“11. **Finding on issue No.2**

Issue No.2 was whether the present suit is barred by period of limitation. Onus of this issue was on the plaintiff. Case of the defendant is that transaction between the parties had taken place in the year 1999 and present suit has been filed on 23.10.03 i.e. after three years, therefore, same is barred by period of limitation.

12. On the other hand, case of the plaintiff is that transaction between the parties was continuing account and said transaction between the parties had taken place in February, 2000, therefore, limitation will have to be counted from the end of 2000 and since the present suit has been filed on 23.10.03, it is well within limitation.

13. In his testimony, PW-1 has proved invoices against which supplies were made to the defendant which have been proved as Ex.PW1/4 to 1/9. Statement of accounts has been proved as Ex.PW1/20. Plaintiff is deposed to have supplied the copies of documents to the defendant and acknowledgment of the receipt of documents has been proved as Ex.PW1/212. In his cross examination PW1 has admitted that for the last time goods were supplied to the defendant in February, 2000. However, he did not recollect the amount of the bill which was sent to the defendant. He has also admitted that the bill has not been placed on record. He even admitted that the fact had goods were supplied last to the defendant in February, 2000 had not been mentioned in the plaint. He even admitted that plaintiff had sent the goods as per individual bill. So far as accounts are concerned, he has not produced the original account book containing the entries as mentioned in statement of account Ex.PW1/20. Even the Accountant who had prepared these entries has not been examined. He has denied that defendant had made payment against bill of February, 2000. On the other hand, it has been stated that defendants had made payments in a running account towards discharge of running pecuniar liabilities.

14. On the other hand, DW-1 in his testimony has stated that transaction between the parties had taken place in 1999 and defendant used to make payment against each and every invoice individually. It is also deposed that no amount is outstanding and that defendant had never made on account payment and all the payments were made individually against each and every invoice. In his cross examination he has stated that he cannot say whether Ex.PW1/4 to 1/14 bear the stamp of defendant as he was not directly involved in the transaction of purchase. He also stated that he cannot recognize the signature made on behalf of defendant company on Ex.DW1/PB and he cannot recollect the exact date as to when the last purchase order was placed with plaintiff company. He has also stated that he cannot tell as to when the cheque bearing No.141451 in the sum of ` was credited in statement of account for the period commencing from 1.10.91 to 31.3.00 as detailed in Ex.PW1/20. He has denied that a sum of `

12,78,819/- was due towards him.

15. It has been argued on behalf of plaintiff that defendant was maintaining a running account with plaintiff and statement of account has been proved on record. It is also argued that no counter statement of account has been filed by the defendant. It is argued that form Ex.PW1/3 is signed by the defendant but the invoices and statement of account relate to period of liabilities. It is argued that last cheque was issued by the defendant on 6.3.00 as a party payment in running liabilities, therefore, limitation stood extended from that very date.

16. On the other hand, ld. counsel for the defendant has argued that no running account was being maintained by the defendant with plaintiff and whenever purchase order was placed with plaintiff, he used to supply the goods and he has made payment against each and every invoice individually. Therefore each and every invoice is an independent transaction between the parties. It is also argued that invoices pertain to year 1999 and amount claimed by the plaintiff for these invoices come to the same amount as claimed by him in the suit. It is argued that present suit has been filed on 23.10.03, therefore, suit is barred by limitation. It is argued that so far as payment of March, 2000 is concerned, it was against bill which has not been placed on record by the plaintiff.

17. It will be seen that plaintiff claims extension of period of limitation on the ground that defendant was maintaining a running account for goods supplied to him and for the last time goods were supplied to him in February, 2000. No bill regarding goods supplied to the defendant in February, 2000 has been placed on record. Though plaintiff claims that goods were dispatched to the defendant in February, 2000 but this has not been pleaded in the plaint. When this fact has not been pleaded in the plaint, plaintiff cannot be allowed to prove the same. It is argued that defendant made payment on 6.3.00 as part payment towards his running liabilities. However, no such cheque has been produced or proved on record. Under limitation Act if the plaintiff wants the benefit of extension of limitation on the ground that part payment was made by the defendant on 6.3.00, then such payment should be represented in writing and signed by the defendant. No such cheque has been produced on record to prove the part payment in writing and signed by the defendant. Therefore, it does not stand proved on record that defendant had made part payment in accordance in running account or period of limitation stood extended w.e.f. 6.3.00.

18. Now coming to invoices Ex.PW1/4 to 1/19, it is clear that all these invoices pertain to the year 1999. No bill for the year 2000 has been placed on record. Therefore, what the plaintiff has been able to prove is that it supplied goods to the defendant till the year 1999 and not thereafter.

19. Ld. counsel for the plaintiff has relied upon authorities reported as Hasanali Kurjibhai v. Ratilal Nyalchand Chitalia & Anr, AIR 1953 SAU 141, G. Gopal Chettiar v. Shammuga Nadar & Bros, AIR 1967 Mad, 369 and has argued that in case of running account, according to provisions of Limitation Act, period of limitation will run from the end of the year in which goods were last supplied. In the present suit, since the goods were supplied in February 2000, therefore, limitation will start from the end of December, 2000.

20. I am unable to accept this contention. First of all plaintiff has failed to prove part payment under the signature of defendant (i.e. Payment of 6.3.00), therefore, limitation cannot be deemed to have been extended on account of part payment. So far as liability of running account is concerned, even presuming for the sake of argument that there was running

account between the parties, nevertheless in the present case, plaintiff has not been able to prove that goods were last supplied in February, 2000. Since plaintiff failed to prove the part payment limitation cannot run from the end of year 2000. All the invoices placed on record pertain to year 1999, therefore, at the most limitation will start from the end of 1999 and in that eventuality also suit is time barred inasmuch as it was filed on 23.10.03. Therefore, on this count also suit appears to be time barred. Ld counsel for the defendant has given summary of payment made against each and every invoice which is as follows:-

Sr. No.	Bill No.	Bill Date	Amount (Dr.)	Paid on	Amount (Cr.)
1.	IDRE-00001	10.4.99	79,400	15.4.99	79,400
2.	IDRE-00002	10.9.99	1,07,120	15.4.99	1,07,120
3.	IDRE-00012	13.4.99	1,19,100	24.5.99	1,19,100
4.	IDRE-00036	13.4.99	1,12,500	23.4.99	1,23,500
5.	IDRE-00045	15.4.99	79,400	28.4.99	79,400
6.	IDRE-00047	15.4.99	41,560	28.4.99	41,560
7.	IDRE-00011	22.4.99	1,16,430	10.5.99	1,16,430
8.	IDRE-00094	24.4.99	66,960	24.5.99	63,960
9.	IDRE-00041	26.4.99	1,16,850	26.5.99	1,16,850
10.	IDRE-00096	26.4.99	31,160	14.5.99	31,160
11.	IDRE-00115	30.4.99	1,16,850	26.5.99	1,16,850
12.	IDRE-00132	10.5.99	77,900	26.5.99	77,900
13.	IDVD-00024	14.5.99	67,120	25.5.99	67,120
14.	TDT-	15.5.99	52,450	29.5.99	52,450

	00040				
15.	CSCT-00001	17.5.99	1,64,990	31.5.99	1,64,590
16.	IDRE-00162	17.5.99	93,900	26.6.99	93,000
17.	IDRE-00165	21.5.99	1,16,850	26.5.99	1,16,850
18.	IDRE-00174	24.5.99	40,200		
19.	IDDO-00113	27.5.99	4,240		
20.	IDRE-00191	28.5.99	21,180		
21.	IDRM-00207	29.5.99	10,900	31.5.99	80,760
22.	IDRM-00194	29.5.99	77,900	3.7.99	77,900
23.	IDTO-00085	31.5.99	90,900	26.6.99	90,900
24.	IDWM-00250	31.5.99	77,900	3.7.99	77,900
25.	IRDE-00212	8.6.99	40,200	26.6.99	40,200
26.	IDWM-00279	9.6.99	1,16,850	3.7.99	1,16,850
27.	IDWM-00280	11.6.99	77,900	3.7.99	77,900
28.	IDWM-00477	12.7.99	79,900	31.8.99	77,900

21. From the details of payment as enumerated above, it is clear that at no occasion, defendant made part payment towards any of the invoices. Payment against all the invoices was made individually. It clearly shows that defendant was not maintaining running account but payments were being made as per individual order placed and goods supplied by the plaintiff. Even PW-1 in his cross examination has admitted that plaintiff had sent goods as per individual bill. I, therefore, come to the conclusion that it is not the case where plaintiff has been able to prove that defendant was maintaining the running account. In

view of reasons given above, this issue is also decided in favour of the defendant and against the plaintiff.”

(underlining added)

3. A reading of the aforesaid paragraphs shows that the transactions between the parties were of the year 1999 and the suit was filed on 4.3.2003 i.e. after three years of the last bill issued against the respondent/defendant. The invoices which were proved on record were Ex.PW1/4 to Ex.PW1/19 and the statement of account which was proved on record, was Ex.PW1/20. In the cross-examination PW-1 admitted that for the last time the goods were supplied to the defendant in February, 2000. The trial Court has also given a finding that there was no payment made by the respondent/defendant as alleged by the appellant/plaintiff on 6.3.2000, inasmuch as this was denied by the respondent/defendant and no proof was filed of any such payment inasmuch as the alleged cheque by which payment was made on 6.3.2000 was not produced or proved on record. The trial Court in para 18 of the impugned judgment notes that for the year 2000, no invoice/bill in fact has been placed on record. The trial Court in para 20 of the impugned judgment has specifically noted that payments which were made by the respondent/defendant were against each bill. In fact, the payment was against each bill inasmuch as the appellant/plaintiff used to take in advance entire leaves of cheques from the

respondent/defendant/buyer and on the dispatch of goods the cheques were filled in for value of the goods dispatched and deposited in the bank. Para 20 is reproduced above and which shows the cheques amounts corresponding with the amounts of invoices.

4. I may note that the trial Court has assumed the account being a running account i.e. account being open, mutual and current under Article 1 of the Limitation Act, 1963 and has proceeded accordingly as is clear from para 20 of the judgment and held the suit to be barred even on that basis. Subsequently in para 21, the trial Court has also held that the account between the parties was not a running account and it has been held that the payment was qua each bill, and thus limitation commenced with respect to each bill. Since I have held that the account does not fall under Article 1 of the Limitation Act, 1963, I am not required to go into the facts as to what would be the limitation if there was a bill of February, 2000.

5. The basic thrust of the argument on behalf of the appellant before me was that the statement of account in question as maintained by the appellant/plaintiff in its books of account was an open, mutual and current account and hence the suit was filed within limitation. Though even if the account was an open, mutual and current account the suit would still have been time barred as stated in the just preceding para, let us

examine whether the account-Ex.PW1/20, is an account falling under Article 1 of the Limitation Act, 1963. It is argued on behalf of the appellant that no doubt the relationship between the appellant/plaintiff and respondent/defendant was only of a seller and buyer respectively, however, in view of various schemes which were floated by the appellant/plaintiff, and under which schemes the respondent/defendant claimed benefits also, the appellant was also a debtor. It is argued that there were, as per the schemes, issues of cash discounts as also issues of bonus/incentives, and therefore, on account of such claims of the respondent/defendant towards the schemes, bonus and incentives, there arises reciprocal demands and therefore the account is an open, mutual and current account. Reliance is placed upon the judgments of the Supreme Court reported as *Hindustan Forest Company Vs. Lal Chand & Ors. AIR 1959 SC 1349* and *Kesharichand Jaisukhal Vs. The Shillong Banking Corporation AIR 1965 SC 1711*.

6. The relevant paragraphs of the judgment in the case of *Hindustan Forest Company (supra)* are paras 7 to 10 and the same 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 Bezbaruah I.L.R (1930) Cal. 649, 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 realisation 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 realised 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. Rankin, C.J., laid down at p. 668 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 Hallway, 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 amounts 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 Rs. 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 obligations on the other."

9. The 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.

10. The learned Judges however held that the payment of Rs. 13,000 by the buyer in advance before delivery had started, made the sellers the debtor of the buyer and had created an obligation on the sellers in favour of the buyer. This apparently was the reason which led them to the view that there were reciprocal demands and that the transactions had created independent obligations on each of the parties. This view is unfounded. The sum of Rs. 13,000 had been paid as and by way of advance payment of price of goods to be delivered. **It was paid in discharge of obligations to arise under the contract. It was paid under the terms of the contract which was to buy goods and pay for them. It did not itself create any obligation on the sellers in favour of the buyer; it was not intended to be and did not amount to an independent transaction detached from the rest of the**

contract. The sellers were under an obligation to deliver the goods but that obligation arose from the contract and not from the payment of the advance alone. If the sellers had failed to deliver goods, they would have been liable to refund the monies advanced on account of the price and might also have been liable in damages but such liability would then have arisen from the contract and not from the fact of the advances having been made. Apart from such failure, the buyer could not recover the monies paid in advance. No question has, however been raised as to any default on the part of the sellers to deliver goods. This case therefore involved no reciprocity of demands. Article 115 of the Jammu and Kashmir Limitation Act cannot be applied to the suit.” (emphasis supplied by me)

7. The relevant paragraphs of the judgment in the case of ***Shillong Banking Corporation (supra)*** are paras 10 to 13 of the judgment, authored by Bachawat, J. on behalf of the majority. These paras read as under:-

“10. The next point in issue is whether the proceedings are governed by Art. 85 of the Indian Limitation Act, 1908, and if so, whether the suit is bared by limitation. The argument before us proceeded on the footing that an application under s. 45(D) of the Banking Companies Act is governed by the Indian Limitation Act, and we must decide this case on that footing. But we express no opinion one way or the other on the question of the applicability of the Indian Limitation Act to an application under s. 45(D). Now, Art. 85 of the Indian Limitation Act, 1908 provides that the period of limitation for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties is three years from the close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. It is not disputed that the account between the parties was at all times an open and

current one. The dispute is whether it was mutual during the relevant period.

11. Now in the leading case of *Hirada Basappa v. Gadigi Muddappa* [[1871] VI Madras High Court Reports. 142, 144]. Holloway, Acting C.J. observed :

"To be mutual there must be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations."

12. These observations were followed and applied in *Tea Financing Syndicate Ltd. v. Chandrakamal Bezbaruah* I. L.R[1931] 58 Cal. 642 and *Monotosh K. Chatterjee v. Central Calcutta Bank Ltd.* [1953] 91 C.L.J. 16, and the first mentioned Calcutta case was approved by this Court in *Hindustan Forest Company v. Lal Chand* [MANU/SC/0147/1959](#) : [1960]1SCR563 . Holloway, Acting C.J. laid down the test of mutuality on a construction of s. 8 of Act XIV of 1859, though that section did not contain the words "where there have been reciprocal demands, between the parties". The addition of those words in the corresponding Art. 87 of Act IX of 1871, Art. 85 of Act XV of 1877 and Art. 85 of the Act of 1908 adopts and emphasises the test of mutuality laid down in the Madras case.

13. In the instant case, there were mutual dealings between the parties. The respondent Bank gave loans on overdrafts, and the appellant made deposits. The loans by the respondent created obligations on the appellant to repay them. The respondent was under independent obligations to repay the amount of the cash deposits and to account for the cheques, hundis and drafts deposited for collection. There were thus transactions on each side creating independent obligations on the other, and both sets of transactions were entered in the same account. The deposits made by the appellant were not merely complete or partial discharges of its obligations to the respondent. There were shifting balances; on many occasions the balance was in favour of the appellant and on many other occasions, the balance was in favour of the respondent. There were reciprocal demands between the parties,

and the account was mutual. This mutual account was fairly active up to June 25, 1947. It is not shown that the account ceased to be mutual thereafter. The parties contemplated the possibility of mutual dealings in future. The mutual account continued until December 29, 1950 when the last entry in the account was made. It is conceded on behalf of the appellant that if the account was mutual and continued to be so until December 29, 1950, the suit is not barred by limitation, having regard to s. 45(O) of the Banking Companies Act. The Courts below, therefore, rightly answered issue No. 1 in the negative.” (emphasis added by me)

8. A reading of the ratio of the aforesaid judgments of the Supreme Court in the case of *Hindustan Forest Company (supra)* and *Shillong Banking Corporation (supra)* shows that before an account can be said to be an open, mutual and current account, it is necessary that either there are shifting balances or there are reciprocal demands. In case, two parties are engaged in a single legal relationship, then there is required shifting balances i.e. sometimes one person has to take moneys from the other and on other occasions, the first person, in fact, has to pay moneys to the second person i.e. sometimes there is credit balance in favour of one person and sometimes there is credit balance in favour of another person. This is how the shifting balances have been defined. Reciprocal demands have been defined (and when there is no requirement of shifting balances) to mean when two persons do not have a single relationship but two separate relationships and consequently pursuant to those separate

relationships independent obligations or reciprocal demands arise. The Supreme Court in the judgment of *Hindustan Forest Company (supra)* in para 7 has referred to the judgment in the case of *Tea Financing Syndicate Ltd. Vs. Chandrakamal Bezbaruah I.L.R. (1930) Cal. 649* to explain the proposition of reciprocal demands. In the case of *Tea Financing Syndicate Ltd. (supra)* there was a loan given by one person to the second. The second person was also in fact selling tea to the first person. The Supreme Court said that if the tea, which was sold to the first person, was in discharge of the obligations for the loan then there would be a single legal relationship, however, if tea is supplied to the first person not for discharge of the loan obligation, only then there would be an independent legal relationship of a seller (2nd person) and a buyer (1st person) of tea. In such cases there arises reciprocal demands, and in such reciprocal demands there need not be shifting balances.

In the case of *Shillong Banking Corporation (supra)* also the customer and the bank had two separate legal relationships inasmuch as one was an independent overdraft account in which limits were availed of and another relationship was independent because the customer had deposits with the bank. It may be noted that these deposits were not pledged for repayment of the dues in the overdraft account. Therefore

there were two legal relationships i.e. one where the customer was a debtor of the bank on account of having taken overdraft facilities, and the second relationship was where the bank itself was the debtor of the customer because the bank had with it deposits of the customer. Accordingly, it was held that it was a case of reciprocal obligations.

9. In my opinion, in the present case also the legal relationship is single i.e. only of a seller and a buyer between the appellant/plaintiff and the respondent/defendant respectively. There is no dispute that in the statement of account there are no shifting balances and therefore there is no account falling under Article 1 of the Limitation Act, 1963 on this basis. So far as 'reciprocal demands' is concerned, because in the relationship of the appellant/plaintiff as a seller and the respondent/defendant as a buyer there are also sub-relationships or certain debits and credit because of the appellant/plaintiff floating some schemes or giving cash discounts or giving incentives or giving bonus, will not mean that there is an independent relationship in the nature of the one as envisaged in the judgment in the cases of *Hindustan Forest Company (supra)* and *Shillong Banking Corporation (supra)*. The schemes, cash discounts, bonus schemes etc are terms of single contractual relationship of seller-plaintiff/appellant and buyer-defendant/respondent. Such facets are not independent contracts to

create 'reciprocal obligation' on other independent relationships. As per the ratio in the case of *Hindustan Forest Company (supra)*, these schemes etc were not 'detached from rest of the contract' and thus it cannot be said that there were reciprocal demands. Once there is only a single relationship and there are no shifting balances it cannot be said that account in question maintained by the appellant/plaintiff was an open, mutual and current account.

10. I may finally note that with regard to the entitlement on merits of the amount due as claimed by the appellant/plaintiff, the trial Court has noted that the appellant/plaintiff relied only on the statement of account, and which statement of account lacks credibility inasmuch as admittedly many payments which were made against different invoices were not reflected in the statement of account. The trial Court therefore held that there cannot be attached credibility in the statement of account, Ex.PW1/20. The relevant observations of the trial Court are contained in para 24 of the impugned judgment and the same reads as under:-

“24. In his cross examination PW-1 has specifically stated that he has not personally maintained the account book. The person who maintained the book of account has not been examined in the court. There is no first hand evidence from the side of plaintiff that an amount of ₹ 12,78,819/- is due towards the defendant except the statement of account Ex.PW1/20. On the other hand PW-1 on the basis of this, statement of account claims that an amount of ₹ 12,78,819/- is

due towards the defendant but DW-1, A.K. Chaturvedi has denied that any amount is due. From the perusal of statement of account and invoices ex. PW1/4 to PW1/19. It is clear that the payment has been made against number of invoices, therefore, veracity of the statement of account in itself is in question. Therefore, statement of account can not be relied upon as authentic proof that amount claimed by the plaintiff is due towards the defendant. On the other hand, PW-1 Shailender Mishra, has no first hand knowledge about the details of the transactions or about the accounts maintained by the plaintiff company. Therefore, on the basis of his statement it cannot be said that plaintiff has proved that amount as claimed by him is due towards the defendant. Therefore, I come to the conclusion that the amount claimed by plaintiff is not due towards the defendant. These issues are accordingly decided against the plaintiff and in favour of the defendant. Payments at Sr. No.1,2,3,5,6,9 and 11 are represented by ex.PW1/16, PW1/15, 13,11,10,17,19,6,8 and 5 respectively. It is therefore, clear that payments against all these invoices have been made by the defendant which has been included in the amount claimed by the plaintiff. Therefore, no reliance can be placed on the statement of the account of the plaintiff.”

11. Before concluding, I must add that learned counsel for the respondent/defendant sought to urge before this Court that after the subject suit was dismissed, the appellant/plaintiff on the same cause of action in the present suit got an FIR registered under Section 156(3) Cr.P.C. in a Court in Jammu & Kashmir and the respondent/defendant was put to a lot of harassment because the respondent/defendant had to get the FIR subsequently quashed from the High Court of Jammu & Kashmir and therefore the conduct of the appellant/plaintiff be noted.

Since however, civil law does not permit taking note of

conduct of a person for deciding the case, I would not like to make any observation with respect to the arguments which have been advanced on behalf of the respondent/defendant in this regard.

12. In view of the above, I do not find that the trial Court has committed any illegality or perversity in holding that the suit filed by the appellant/plaintiff was barred by time. I agree with the trial Court, and I have also given my additional reasoning to show that there were neither shifting balances nor reciprocal demands, as is understood in law, for the account to be an open, mutual and current account.

13. In view of the above, the appeal being without any merit is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J

MARCH 21, 2012

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