

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

+ **RFA No.554/2004**

% **29th May, 2012**

FREE INDIA DRY ACCUMULATORS LT Appellants
Through: Mr. Deo Prakash Sharma with
Mr. Umesh Gupta & Mr. Manoj Yadav, Advts.

VERSUS

UOI Respondent
Through: Mr. Jaswinder Singh, Adv.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial Court dated 29.5.2004 dismissing the suit for recovery of ₹2,09,504/- alongwith interest of ₹5,40,225/-, totalling to ₹7,49,729/-.

2. At the outset, I must confess that after half an hour of arguments by counsel for the appellant/plaintiff I am really unable to make much head or tail of the case as is being argued by counsel for the appellant/plaintiff. Sometime it is averred that the 17 bills which are the subject matter of the suit and the present appeal were in fact subject matter of an arbitration proceedings initiated by the appellant/plaintiff and for which there is an Award in favour of the appellant/plaintiff, on other occasions it is said that there are no arbitration proceedings and in fact arbitration proceedings were with respect to another contract and in execution proceedings of the Award in those other proceedings the amount of the subject bills was sought to be attached, and therefore, the suit filed for the bills of 1978 in 1990 is within limitation because of the acknowledgment made in the aforesaid execution proceedings. Thus what exactly is being urged by counsel appearing on behalf of the appellant/plaintiff, there is no clarity.

3. The facts of the case are that the appellant/plaintiff is seller of batteries to the respondent/UOI. The amounts which are claimed in the suit are with respect to 17 bills which are as under:-

"S.No.	Bill No.	Date	Amount
1.	13/78-79	29-4-78	18.483/00

2.	4/78-79	29-4-78	12.599/00
3.	5/78-79	29-4-78	20.508/00
4.	4/78-79	29-4-78	12.599/00
5.	6/78-79	29-4-78	12.599/00
6.	10/78-79	29-4-78	7414/00
7.	12/78-79	29-4-78	16.885/00
8.	9/78-79	29-4-78	17.254/00
9.	14/78-79	29-4-78	10.201/00
10.	15/78-79	29-4-78	9.199/00
11.	16/78-79	29-4-78	7.301/00
12.	17/78-79	29-4-78	5.743.00
13.	18/78-79	29-4-78	12.516/00
14.	19/78-79	29-4-78	16.687/00
15.	20/78-79	29-4-78	18.773/00
16.	21/78-79	29-4-78	5.674/00
17.	8/78-79	29-4-78	4.747/00
		Total	₹2,09,504/00”

4. It was the case of the appellant/plaintiff that amounts of the 17 bills are due and therefore the decree as prayed for ₹2,09,504/- was claimed as principal amount and interest of ₹5,40,225/- was claimed i.e. a total claim of ₹7,49,729/- was made in the suit.

5. The respondent/defendant/UOI inter alia contended that the suit was barred by limitation. It was also contended that in another contract of the UOI with the appellant/plaintiff, there was an Award in favour of the UOI and in execution proceedings the amounts of the 17 bills were sought to be attached, and which attachment order was declined. It was pleaded that this

cannot amount to an acknowledgment to extend the limitation as per the provision of Section 18 of the Limitation Act, 1963.

6. Before I turn to the basic issue which has been decided against the appellant/plaintiff by the trial Court of the suit having been barred by limitation, I must note that if I accept the statement made by counsel on behalf of appellant/plaintiff as correct that with respect to these 17 bills which were the subject matter of the present suit, there were earlier arbitration proceedings initiated by the appellant/plaintiff itself and there was also an Award with respect to these 17 bills, then, the subject suit is in fact a gross abuse of process of law because the issue with respect to the disputed bills would already be a subject matter of judicial proceedings and which have achieved finality. I really fail to understand that if I accept this stand of the appellant/plaintiff as urged through its counsel then how at all could this suit have been filed. This suit was therefore liable to be dismissed on this short ground itself.

7. On the issue of limitation, and which was issue no.2 as framed by the trial Court, the trial Court has observed as under:-

“16. The onus of proving this issue was on the defendant. Thus question, which falls for determination, is whether the suit filed by the plaintiff is within the period of limitation.

17. A perusal of the entire record nowhere suggests as to on which date, the defendant has admitted in the execution case filed in the Hon'ble High Court that the bills were withheld by the Defendant/Union of India all through against their claims which were adjudicated in arbitration by the arbitrator. Both the parties to this litigation are silent on this aspect of this matter. In absence of any evidence available on record specially when the plaintiff has not at all proved any document to establish this fact and the defendant who is Union of India has also not trailed behind as the defendant has also not filed any document in this regard to prove the question of limitation which otherwise goes to the root of the matter. Thus the documents and the pleadings inter se the parties tend me to take judicial notice which otherwise are not disputed and rather admitted by the parties.

18. The plaintiff before filing the suit had issued a notice under section 80 of CPC to the Defendant. This notice is dated 17.4.1990. Relevant para 3 of the notice reads as follows:

“In view of the aforesaid, the said amount of ₹2,09,503/- because refundable to our aforesaid client on 6.11.86 when the Controller of Accounts confirmed that the decreed amount of ₹3,02,285/- was recovered by them from the other bills of our client.”

19. Thus from a perusal of para 3 of this notice, it can be safely said that the plaintiff was in the knowledge that the amount of ₹2,09,504/- became refundable on 6.11.86. It is well settled that in order to recover any amount or debt, the period of limitation prescribed by law is three years. The plaintiff on 11.12.1990 filed the present suit. Thus the period of limitation started to run against the plaintiff from 6.11.1986 i.e. the date when the Controller of Accounts confirmed that the decretal amount of ₹3,02,285/- was recovered from the other bills of their client.

20. At this stage, the learned counsel for the plaintiff has contended that the amount of the 17 bills was withheld on account of inaction and negligence on the part of the defendant which otherwise is a Government body and as such the plaintiff cannot be deprived of the amount which otherwise is legally due to the plaintiff. I am not in agreement with contention of the learned counsel for the plaintiff for the following reasons. Firstly, there is no dispute about the fact that the 17 bills on the basis of which the plaintiff has filed the present suit for recovery of suit amount were refundable admittedly withheld by the defendant, secondly, the 17 bills date back to the year 1978-79 and right from 1978 till December 1990 when the present suit was filed, the plaintiff slept over his rights and did not bother to get his rights agitated, thirdly, the plaintiff should have issued a notice to the defendant or should have initiated legal proceeding for recovery of the amount of the 17 bills but for the reasons best known to the plaintiff, he did not take any action, fourthly, the plaintiff should have got the matter referred to the arbitrator for getting the dispute settled. Thus in view of this, by no stretch of imagination, it can be said that because of fault on the part of the defendant, the plaintiff was not in a position to file the suit. The plea of the learned counsel for the plaintiff that the defendant neither made any payment nor referred the matter to arbitration also does not cut much ice for the simple reason that it was the plaintiff whose bills were withheld and it was he who was seeking to recover the amount on the basis of the bills withheld by the defendant, thus it was for the plaintiff to have initiated legal proceedings or should have got the matter referred to the arbitrator.”

8. I completely agree with the findings and conclusions of the trial Court inasmuch as surely with respect to amounts due of the bills of the year

1978 a suit cannot be filed after 12 years inasmuch as limitation for filing a suit for recovery for supply of goods is 3 years. The only way in which limitation could have been extended was that within a period of 3 years of the date of the bills i.e. 29.4.1978 there is an acknowledgment in writing signed by the respondent/defendant/UOI with respect to the 17 bills. Admittedly, there is not a single sheaf of paper on record showing any alleged acknowledgment as required under Section 18 of the Limitation Act, 1963. The only ground which is urged on behalf of the appellant/plaintiff is that in the execution proceedings in the year 1985, the respondent/defendant admitted that amounts of these bills were payable and therefore this should be treated as an acknowledgment in writing under Section 18 of the Limitation Act, 1963, however, even this argument is on the face of it unacceptable because an acknowledgment under Section 18 has to be within 3 years of the date on which the amount became payable. Since in this case bills are of the year 1978, acknowledgment at best could have been on or before 29.4.1981. Any alleged acknowledgment of 1985, cannot be an acknowledgment under Section 18 of the Limitation Act, 1963.

9. In my opinion, the present suit as also the appeal is nothing but a gross waste of judicial time and an endeavour to overreach the Court. In fact,

I must once again put on record that there was lack of clarity in the arguments as were being urged on behalf of the appellant/plaintiff inasmuch as about 8 to 10 times different stands were taken up time and again either with respect to the present suit and appeal being filed for the first time for the 17 bills and on the other hand alternatively stating that in fact there were earlier arbitration proceedings initiated by the appellant/plaintiff for these very 17 bills. Even with respect to the acknowledgement most ambivalent arguments were raised, when direct questions were put as to how acknowledgment within the period of limitation of 3 years was given by the respondent/defendant/UOI. I probably feel that the correct position is that appellant/plaintiff is trying to take advantage of an alleged admission of payment due of the disputed 17 bills in an execution proceedings although the bills were subject matter of arbitration proceedings and an Award i.e. a due adjudication. The appellant/plaintiff must have thought that advantage can be taken of UOI having committed a mistake of admitting amounts due of the 17 bills (although there was due adjudication/Award for these bills) in a collateral execution proceeding.

10. In view of the above, the appeal being wholly devoid of merit, is dismissed with costs of ₹40,000/- in view of the ratio of judgment in the case of *Ramrameshwari Devi and Others v. Nirmala Devi and Others, (2011) 8*

SCC 249 and in terms of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*. Costs shall be paid within a period of 4 weeks from today. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J

MAY 29, 2012
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