

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

+ **RFA No. 614/2006**

% **19th April, 2012**

MILANO INTERNATIONAL (INDIA) PVT. LTD. Appellant
Through : Mr. Ankur Bansal, Advocate.

versus

UNION OF INDIA AND ANR. Respondents
Through : Mr. Jaswinder Singh, 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 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 22.7.2006 dismissing the suit by holding that the same was barred by limitation. In spite of the fact that the trial Court had recorded the complete evidence of both the parties, no finding was given on merits with respect to issue No. 1 which was the claim of the appellant/plaintiff for recovery of the suit amount of Rs.7,17,928/- alongwith

interest.

2. The facts of the case are that the plaintiff-Company is a manufacturer and exporter of garments. The defendant No.2/Director General of Foreign Trade/respondent No.2 from time to time issues policies for export promotions and in 1991 an exporter under the policy of respondent No.2/defendant No.2 was entitled to REP license. This REP license is given depending upon the value of the goods exported by the exporter. The appellant/plaintiff claims to have become entitled to REP license worth ₹35,53,060/- on account of exports from January, 1991 to March, 1991 and accordingly submitted an application vide its letter dated 28.8.1991 by submitting the relevant documents except the provisional certificate of 37 shipping bills. The provisional shipping bills could not be submitted as the appellant/plaintiff had not received the Cash Compensatory Support (CCS) from the concerned agencies, however, the details of the bills were included in the application dated 28.8.1991.

3. The respondents/defendants, issued a partial license of ₹14,65,800/- against the total license claim of ₹35,53,060/-. The balance of the REP license was to be issued after submission of provisional certificate by the appellant/plaintiff. The appellant/plaintiff submitted the provisional certificate of 37 shipping bills vide letter dated 7.8.1992 received by the

respondents/defendants on 11.8.1992, however, the respondents/defendants did not issue any REP license worth ₹20,87,260/-. In the meanwhile, respondent No.2/defendant No.2 issued its circular dated 5.5.1993, as per which those exporters who had a claim for REP license at their option were entitled to be paid 20% premium in lieu of REP license. The exporters who fulfilled this criteria, were asked to submit their application forms and the appellant/plaintiff accordingly filed its application dated 31.5.1993 for payment of ₹4,17,400/- being the 20% premium calculated on ₹20,87,260/-, the amount for which REP licenses were still to be issued. The application of the appellant/plaintiff was received by the respondents/defendants on 31.5.1993, but since the payment was not made the subject suit came to be filed.

4. The respondents/defendants filed the written statement and contested the suit disputing the liability. A preliminary objection was also taken of the suit being barred by limitation.

5. After the completion of pleadings, the trial Court framed the following issues:-

“Issue no.1 Whether the Plaintiff is entitled to decree for a sum of Rs.7,17,928/- along with interest @ Rs.24% p.a? OPP.

Issue no. 2 Whether the suit is barred by limitation? OPD.

Issue no.3 Relief.”

6. Trial Court has dismissed the suit by making the following observation with respect to issue No. 2 of limitation:-

“Issue no.2 Whether the suit is barred by limitation? OPD

10. It is the case of the Plaintiff that he became entitled to REP license worth Rs.35,53,060/- vide the policy of the Defendants. It (Plaintiff) had submitted that the application dated 28.08.1991. The Defendants had admittedly issued a partial license for Rs. 14,65,800/-. Admittedly, the Plaintiff had not submitted the provisional certificate in respect of 37 Shipping bills. It is not disputed even by the Plaintiff that submission of provisional certificate was a pre-condition. Therefore, the Defendants, after taking into account the documents relied on by the Plaintiff, had issued the partial license vide letter dated 23.06.1992. The Plaintiff, therefore, became aware of the fact that the Defendants were not prepared to issue REP license for the balance amount i.e 20,87,260/-. It had submitted the provisional certificate vide letter dated 07.08.1992 which was delivered to the Defendants on 11.08.1992. However, the REP license for this amount had not been issued. It is the case of the Plaintiff that it had made repeated requests sent through several reminders and had personally met the officials of Defendant no. 2. Therefore, the period of limitation to claim the REP license for Rs. 20,87,260/- had arisen in 1993. In the present suit the Plaintiff is not seeking this relief. The Plaintiff is basing its relief on the circular dated 05.05.1993. It is the case of the Plaintiff that because of this circular and because of the pendency of its application for issuance of REP license of Rs. 20,87,260/-, it became entitled to claim 20% premium. The Plaintiff had submitted the application dated 31.05.1993. It can be taken that the alleged dues of the Plaintiff had not been paid to it in 1994. It was for this reason that the organization had

issued the letter dated 26.04.1994. In para-11 of the plaint it has been averred that the Plaintiff had written various letters dated 10.06.1996, 17.06.1996 and 11.07.1996 to the Defendants. It is also the case of the Plaintiff that the organization had also sent letters dated 18.04.1997 and 30.05.1997. In my view the period of limitation to file the present suit for recovery had started in 1994. Even if, for arguments sake it is taken that the Defendants were not paying any heed and were putting lame excuses, then in that case also the period of limitation had started in 1997. The plea of the Plaintiff that since officials of the Defendants were unable to trace out their files, therefore, period of limitation would commence from 1999 is mis-conceived. Similarly, admission of DW-1 that records are not available, will not extend period of limitation. The period of limitation in this case commenced on the date on which the amount allegedly became due and payable. The suit was filed on 14.11.2002. It was therefore, hopelessly time barred. This issue is decided against the Plaintiff and in favour of the Defendants.”

7. Learned counsel for the appellant/plaintiff has raised two main submissions. Firstly, it is argued that once various issues are framed, then the trial Court is not competent to decide only one of the issues. In support of this argument, reliance is placed on Order 14 Rule 2 CPC which requires the Court to decide all issues unless any one issue is treated as a preliminary issue. It is also argued that this provision was specifically amended by Act 104 of 1976 so as to ensure that the judgment is given on all the issues, except where the case is to be decided on a preliminary issue, i.e. a preliminary issue which is a legal issue and which does not require trial.

8. The second argument is that the trial Court has wrongly held the suit to be barred by limitation, inasmuch as, before the letter dated 7.3.2001, Ex.PW1/23, there was never any refusal by the respondents to pay the premium. It was argued that unless there is a categorical refusal, there does not arise cause of action for filing of the suit and which suit is governed by Article 113 of the Limitation Act, 1963. It is argued that if the application of the appellant/plaintiff is kept pending, and unless there is a clarity of refusal, if the appellant/plaintiff had rushed to the Court, the suit in fact would have been premature.

9. In response, learned counsel for the respondents/defendants argues that by mere writing of letters, limitation cannot be extended.

10. In my opinion, the arguments as raised on behalf of the appellant/plaintiff carries weight and the appeal deserves to be allowed on both the submissions as argued on behalf of the appellant/plaintiff. Firstly, the trial Court in view of Order 14 Rule 2 CPC ought to have given a finding on issue No.1, and, if the trial Court would have given finding with respect to issue No.1, and which it was bound to do so in terms of Order 14 Rule 2 CPC, then today I would have decided the suit as a whole in terms of Order 41 Rule 24 CPC, however, since there is no finding with respect to issue No.1, I am forced to remand the matter, inasmuch as, I am of the opinion that the suit

cannot be said to be barred by limitation.

11. I put it to learned counsel for the respondents/defendants as to whether any letter was written by the respondents/defendants prior to 7.3.2001 specifically rejecting the claim of the appellant/plaintiff, and the counsel for the respondents had no option but to concede that before this letter no other letter was written specifically rejecting the claim of the appellant/plaintiff. In fact, learned counsel for the appellant/plaintiff has drawn my attention to repeated letters which were written by the appellant/plaintiff and which show that the matter was in fact kept pending at the end of the respondents/defendants. These letters which were sent by the appellant/plaintiff to the respondents/defendants are : Ex.PW1/12A dated 10.6.1996 alongwith its receipt Ex.PW1/12B; letter dated 17.6.1996 Ex.PW1/13; letter dated 11.7.1996, Ex.PW1/14A alongwith its receipt Ex.PW1/14B; letter dated 10/18.4.1997 Ex.PW1/15A alongwith its receipt Ex.PW1/15B; letter dated 20.3.1998 Ex.PW1/17; letter dated 11.6.1998 Ex.PW1/18 alongwith its receipt Ex.PW1/19 and letter dated 13.12.1999 Ex.PW1/21, sending the requisite documents as asked for by the respondents/defendants vide its letter dated 16.11.1999.

12. Surely, unless there was a decision and clarity with respect to refusal of the claim of the appellant/plaintiff, the appellant/plaintiff could not have come

to the Court because the decision was pending. Merely because a Government department keeps a decision pending cannot mean that it can turn around and say that the suit is barred by limitation, although no refusal is ever communicated in spite of repeated reminders on behalf of the appellant/plaintiff which show that a decision is still to be taken. Admittedly, except the letter dated PW1/23 dated 7.3.2001, no letter was ever written by the respondents/defendants in rejecting the claim of the appellant/plaintiff. Once limitation is counted from the letter dated 7.3.2001, i.e three years from 7.3.2001, the suit filed on 24.10.2002 is surely within limitation.

13. In view of the above discussion, I set aside the impugned judgment dated 22.7.2006 holding the suit not to be barred by limitation. The suit is held within limitation and the matter is remanded back to the trial Court to give its findings with respect to issue No.1. I may hasten to clarify, that I have not made any observation on merits for or against any of the parties and issue No.1 will be decided by the trial Court uninfluenced by the observations which have been made in the present judgment.

14. Parties to appear before the District and Sessions Judge, Tis Hazari Courts, Delhi on 24th May, 2012, and on which date, the District and Sessions Judge, Delhi will mark the suit for disposal to a competent Court in accordance with law.

15. The present appeal is allowed and disposed of accordingly, leaving the parties to bear their own costs. Trial Court record be sent back so as to be available for the District and Sessions Judge on the date fixed.

VALMIKI J. MEHTA, J.

APRIL 19, 2012

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