

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

% *Judgment Reserved on : October 18, 2012*

Judgment Pronounced on : November 06, 2012

+ **RFA(OS) 110/2010**

MAHAVIR SPINNING MILLS LTD. Appellant

Represented by: Ms.Malavika Rajkotia,
Advocate and Mr.Chetanya Puri, Advocate

versus

HB LEASING AND FINANCES CO.LTD. Respondent

Represented by: Mr.P.K.Mittal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J.

1. Briefly stated, the facts leading to filing of the above captioned appeal are that on May 29, 1992 the respondent company filed a suit for possession and recovery of a sum of ₹23,04,199/- against the appellant company on the original side of this Court.

2. It was pleaded that the respondent company is engaged in the business of leasing machines and providing other financial services. On May 23, 1984 Mohta Industries Ltd. wrote a letter to the respondent company stating therein that the respondent company should purchase 1 Hydraulic Bricketting Press (hereinafter referred to as the 'Equipment') costing about ₹12,00,000/- from M/s.Punjab Machinery Manufacturing Corporation and thereafter let out said equipment to it i.e. Mohta Industries Ltd. On May 29, 1984 the respondent company purchased the equipment from M/s.Punjab Machinery Manufacturing Corporation for a sum of ₹13,20,000/-. After several discussions, on May 31,

1984 the parties entered into a lease agreement whereby the respondent company agreed to let out the equipment to Mohta Industries Ltd. The term of the lease was 96 months. The rental payable was ₹33,000/- per month for the period from May 31, 1984 to May 30, 1989 and ₹660/- per month for the period from May 31, 1989 to May 30, 1992. Due to substantial cost involved in the transportation of the equipment, M/s.Punjab Machinery Manufacturing Corporation directly delivered the equipment at the premises of M/s.Mohta Industries Ltd. On October 18, 1986 Mohta Industries Ltd. sent a certificate to the respondent company, which certificate recorded that M/s.Punjab Machinery Manufacturing Corporation had installed the equipment in the premises of Mohta Industries Ltd. on May 29, 1984. Mohta Industries Ltd. regularly paid the rental till September 30, 1986 but thereafter stopped paying rent despite several demands raised by the respondent company in said regard. On April 01, 1988 Mohta Industries Ltd, which was declared as a sick company, was amalgamated with the appellant company. As per scheme of amalgamation, the appellant company took over all the liabilities of Mohta Industries Ltd. including its liability to pay rent of the equipment to the respondent company. In the meantime, the respondent company had sent 2 legal notices dated December 01, 1987 and February 23, 1988 to Mohta Industries demanding payment of rent of the equipment but Mohta Industries did not pay any heed to said notices. After amalgamation of Mohta Industries with the appellant company the respondent company sent several letters to the appellant company seeking payment of rent of the equipment but to no avail. On June 20, 1991 the respondent company issued a legal notice to the appellant company demanding payment of rent of the equipment, in response where to the appellant company sent letter dated September 13, 1991 to the respondent company denying its liability to pay rent of the equipment.

3. Relief (s) claimed in the suit were as under:-

“(a) Grant a decree for recovery of sum of ₹23,04,199/- in favor of the respondent company; (₹10,46,760/- towards rent for the period from 01.10.1986 to 30.04.1992 + ₹12,57,439/- towards penal interest for the period from 01.10.1986 to 29.05.1992 calculated in terms of clause 2.2 of lease agreement)

(b) Grant a decree for possession of the equipment in favor of the respondent company;

(c) Grant a decree for recovery of mesne profits for use and occupation of the equipment @₹700/- per month;

(d) Award costs of suit and

(e) Award interest @1.5 % per month on the amount found due to the respondent company.”

4. In the written statement filed, it was contended by the appellant company that:- (i) the suit is barred by limitation; (ii) this Court does not have the territorial jurisdiction to deal with the suit; and (iii) the records of Mohta Industries Ltd. bring out that no lease agreement dated May 31, 1984 was entered into between Mohta Industries Ltd. and the respondent company and that the equipment was never received by Mohta Industries Ltd. It was pleaded that when the new management which took over Mohta Industries Ltd. conducted a due diligence it found no such equipment entered in the stock register.

5. In its replication, the respondent company reiterated the averments made by it in its plaint. Additionally, it was contended that on May 31, 1984 a buy back agreement was entered into between Mohta Industries Ltd., the respondent company and K.P.Traders whereby K.P.Traders agreed to purchase the equipment from the respondent company after the expiry of the period of lease agreement dated May 31, 1984.

6. In view of pleadings of the parties, following issues were settled:-

1. Whether the suit is barred by limitation?
2. Whether this Court has territorial jurisdiction to try and decide the suit?
3. Whether the plaint discloses any cause of action?
4. Whether the plaintiff entered into a lease agreement dated 30.5.1984 with Mohta Industries Ltd., in pursuance of a request raised by the plaintiff under letter dated 23.5.1984 for leasing out one Hydraulic Bricketting Press?
5. Whether the Hydraulic Bricketting Press was delivered and supplied to the defendant Company by the plaintiff?
6. Whether the plaintiff is entitled to a decree for ₹23,04,199/- from the defendant and also for recovery of possession of Hydraulic Bricketting Press, as claimed in the suit?
7. Whether the plaintiff is entitled to interest and if so, at what rate?
8. Relief.

7. In support of its case, the respondent company examined Mr. Anil Goyal, Managing Director of the respondent company, and Mr. Vijay Grover, Manager (Accounts) of the respondent company, as PW-1 and PW-2 respectively, which witnesses deposed on the lines of the averments made in the plaint and rejoinder filed by the respondent company.

8. As regards the documentary evidence, the respondent company proved following documents:-

- (i) receipt dated 29.05.1984 Ex.PW-2/1 issued by M/s. Punjab Machinery Manufacturing Corporation recording that M/s Punjab Machinery Manufacturing Corporation has received 2 cheques totaling ₹12,00,000/- from the respondent company;
- (ii) ledger book Ex.PW-2/2 of the respondent company recording that the respondent company had purchased the

equipment from M/s.Punjab Machinery Manufacturing Corporation for a sum of ₹12,00,000/-;

(iii) ledger book Ex.PW-2/3 pertaining to the plant and machinery of the respondent company recording the acquisition of the equipment by the respondent company;

(iv) vouchers and bank pay-in slips Ex.PW-2/4 recording that the respondent company had deposited a sum of ₹33,000/- received by it towards rent with the Bank;

(v) ledger Ex.PW-2/5 pertaining to lease income account of the respondent company recording that the respondent company had received lease rental in sum of ₹33,000/- from Mohta Industries Ltd;

(vi) letter dated 23.05.1984 Ex.PW-1/4 written by Mohta Industries Ltd. to the respondent company;

(vii) invoice dated 25.05.1985 Ex.PW-1/5 issued by M/s.Punjab Machinery Manufacturing Corporation recording that the respondent company had purchased 1 Hydraulic Bricketting Press for a sum of ₹13,20,000/-

(viii) lease agreement dated May 31, 1984 Ex.PW-1/6 entered into between Mohta Industries Ltd. and the respondent company;

(ix) buy back agreement dated May 31, 1984 Ex.PW-1/7 entered into between Mohta Industries, respondent company and K.P.Traders;

(x) certificate of installation Ex.PW-1/8 issued by Mohta Industries Ltd. recording that the equipment was installed in the premises of Mohta Industries on 29.05.1984 and

(xi) letter dated 01.10.1986 Ex.PW-1/9 written by Mohta Industries Ltd. to the respondent company recording that it has tendered the payment of ₹33,000/- towards lease rental of the equipment for the month of September 1986.

9. Before proceeding further, we note the following clauses of the lease agreement dated May 31, 1984 entered between the respondent company and Mohta Industries Ltd.:-

“2. TERM OF LEASE:

2.1 The Lessor hereby gives on lease and Lessee hereby takes on lease, the Equipment, for 96 months from the commencement date, subject to the terms and conditions, covenant and stipulations contained therein and in the Schedule. It is hereby expressly agreed that the Lessee shall not have the right of sooner determination of the lease.

2.2 The Lessee shall pay to the Lessor/Lessor's designated bankers by way of demand draft payable at par at Delhi from the commencement date, lease rentals specified in the Schedule, regularly and punctually, without any deduction or abatement, irrespective whether the equipment is in use by the lessee or working for one or more shifts or not or is under repairs or maintenance or replacement for any period whatsoever. Arrears of lease rentals shall carry interest at the rate of 1.5% per month or part thereof on compounding basis with monthly rests, from the due date specified in the Schedule till date of actual payment.

2.3 Upon termination of the lease by efflux of time, or otherwise, the Lessee shall, at its own cost and expense, forthwith deliver or cause to be delivered to the Lessor the equipment, at such time and place as may be directed by the Lessor, in good repair, order and condition (subject to normal wear and tear). The lessee shall ensure that the equipment is delivered to and received by the Lessor without any impediment or hindrance from any source or person including any servants, agents, workmen in employment of the lessee or otherwise.

8. TERMINATION

8.1 On the occurrence of any of the events specified below, notwithstanding any subsequent acceptance of rentals, the Lessor shall be entitled, without prejudice to any other rights or remedies which the Lessor may have under this lease or otherwise in law, to terminate this lease at any time after the occurrence of such event, without any notice except as specified in 8.1.2 hereof.

8.1.1 If the Lessee fails to pay the rentals on the dates and in the manner stipulated in the Schedule or other sums

payable hereunder within seven days of their becoming due whether demanded or not.

8.2.2 Without prejudice to and in addition to the Lessor's rights provided to in clause 8.2.1 hereinabove, the Lessor shall be entitled to recover from the Lessee and the Lessee shall be bound to pay to the Lessor the following amounts, viz:

a) the entire amount of the rentals for the period of the lease computed in the manner set out in the Schedule on the footing and as if the lease had not been terminated to the end and with intent that the lessee shall pay on demand to the Lessor not only arrears of rentals upto the date of termination of the Lease but also such further amount for the then unexpired residue of the period which the lessee would have been bound to pay to the Lessor had the lease continued."

10. In support of its case, the appellant company examined Mr.M.L.Sharma, Vice-President of the appellant company, as DW-1, who deposed in harmony with the averments made in the written statement filed by the appellant company.

11. At this juncture, it would be relevant to note the following portion of the cross-examination of Mr.M.L.Sharma, DW-1:-

"I was not responsible for preparation of list of inventory for raw materials, works in process, finished goods and plant and Machinery. It is correct that we have not attached the detailed list of plant and machinery alongwith my affidavit by way of affidavit Ex.D-1...It is correct that as per the Companies Act, 1956 every Co. is required to maintain register of Plant and Machinery. I have not filed alongwith my affidavit Ex.D-1 the extracts of Register of Assets/Plant and machinery in support of my contention that the possession of bricketting plant was not given to us....It is also correct that I have not seen the Register of assets/Plant and machinery of M/s MIL for the year 1984, 85 and 86....It is also correct that I have not seen the Books of Account,

records, papers and documents of M/s MIL for the period 1984,85 and 86. ” (*Emphasis Supplied*)

12. We need not note the documentary evidence proved by the appellant company for nothing much turns thereon.

13. On August 27, 2008 the aforesaid suit came up for final hearing before a learned Single Judge of this Court, on which date none appeared for the appellant company. Noting the fact that no one has been appearing for the appellant company on several previous dates when the suit was called out for hearing, the learned Single Judge proceeded to hear the final arguments in the suit on August 27, 2008 in the absence of the counsel representing the appellant company.

14. At the time of the hearing of suit on August 27, 2008, the counsel representing the respondent company gave up the reliefs (b) and (c) claimed in the suit relating to possession of the equipment and mesne profits respectively.

15. Vide judgment and decree dated August 27, 2008 it has been held by the learned Single Judge that the respondent company is entitled to a decree in sum of ₹23,04,199/- against the appellant company together with pendente lite interest @12 % per annum from the date of institution of the suit till the date of passing of the decree and future interest @9% per annum from the date of passing of the decree till the date of payment.

16. In arriving at aforesaid conclusion, it has been held by the learned Single Judge that:- (i) in view of the ratio of law laid down by a learned Single Judge of this Court vide decision dated October 23, 2007, disposing of OMP No.561/2006, titled National Research Development Corporation v Pulver Ash Project Ltd. wherein it was held that where an agreement is not determined, right to sue predicated upon such agreement would arise on expiry of the period of agreement and thus when a claim is filed within 3 years of the expiry of

period of the agreement the same would be within the period of limitation; the fact that the lease agreement dated May 31, 1984 entered into between the parties was not determined but came to an end due to efflux of time, the present suit which was filed within 3 years of the period of expiry of lease agreement dated May 31, 1984 is not barred by limitation; (ii) in view of Article 10.8 of the lease agreement dated May 31, 1984 entered into between the parties which stipulates that the civil courts at Delhi shall have the exclusive jurisdiction to deal with the disputes arising out of said agreement coupled with the facts that the appellant company had tendered cheques towards payment of lease rental to the respondent company at Delhi and said cheques were got deposited by the respondent company for encashment at Delhi this Court has territorial jurisdiction to try the present suit; (iii) the 11 documents proved by the respondent company (noted in para 8 above) establish that the respondent company had leased out the equipment to M/s.Mohta Industries pursuant to a request received by M/s.Mohta Industries Ltd. in said regards on May 23, 1984 and that the equipment was delivered and installed at the premises of M/s.Mohta Industries Ltd; and (iv) in view of the admissions made by the witness of the appellant company, M.L.Sharma DW-1, that the appellant company has not attached the detailed list of its plant and machinery as also the extract of Register of its plant and machinery together with his affidavit and that he had not seen the register of assets/plants and machinery of Mohta Industries Ltd. for the years 1984-1986, the stand of the appellant company that the equipment was never delivered in the premises of Mohta Industries Ltd is unacceptable.

17. Thereafter the appellant company filed an application under Order IX Rule 13 CPC seeking setting aside of the judgment and decree dated August 27, 2008. Vide order dated August 30, 2010 a learned Single Judge of this Court dismissed the aforesaid application filed by the appellant company as not being

maintainable for the reason the pre-requisite for invoking Order IX Rule 13 CPC is that the judgment and decree sought to be set aside must be ex-parte, which is not the position in the present case inasmuch at no point of time the appellant company was proceeded ex-parte in the instant suit.

18. Aggrieved by the judgment and decree dated August 27, 2008 read with the order dated August 30, 2010 passed by the learned Single Judge the appellant company has filed the above-captioned appeal.

19. At the time of the hearing of the appeal, following 3 arguments were advanced by the counsel appearing for the appellant company:-

A. That the finding returned by the learned Single Judge that the respondent company has been successful in establishing that the equipment was delivered at the premises of Mohta Industries Ltd. is fallacious for the reason while returning said finding the learned Single Judge failed to appreciate that the delivery challan which was best evidence to prove delivery of the equipment at the premises of Mohta Industries Ltd. was not produced by the respondent company.

B. Alternatively to the first submission, it was urged by the counsel that the suit in question was filed by the respondent company in collusion with Mohta Industries Ltd. Counsel submitted that either the lease agreement dated May 31, 1984 entered into between the respondent company and Mohta Industries Ltd. was a sham agreement and the equipment was never delivered at the premises of Mohta Industries Ltd. pursuant to the execution of the lease agreement dated May 31, 1984 or the equipment was taken by the respondent company from the premises of Mohta Industries Ltd. before it was amalgamated with the appellant company. Counsel further submitted that the factum of collusion between the respondent company and Mohta Industries Ltd. can be gathered from the circumstance that the respondent company raised the dispute about non-RFA(OS) 110/2010

payment of lease rental of the equipment nearly 6 years after Mohta Industries Ltd. had started defaulting in payment of lease rental and only when Mohta Industries Ltd. was amalgamated with the appellant company.

C. That the finding returned by the learned Single Judge that the suit in question is not barred by limitation is erroneous.

20. It is settled legal position that a civil dispute has to be decided on the preponderance of probabilities and the evidence led by the parties has to be considered and probablized with reference to how a prudent person ought, under the circumstances of the particular case, to act on the supposition that a fact should be believed to exist or not to exist. As per Section 3 of the Evidence Act, 1872 a fact is disproved, when after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

21. Keeping afore-noted legal position in mind, we proceed to determine whether the finding returned by the learned Single Judge that the respondent company has been successful in establishing that the equipment was delivered and installed at the premises of M/s.Mohta Industries Ltd. is correct or not.

22. On an analysis of the documents proved by the respondent company (brief description whereof have been given by us in para 8 above) in the light of the evidence of the witnesses of the respondent company, any prudent man would reach to the conclusion that:- (i) the respondent company had purchased the equipment from M/s Punjab Machinery Manufacturing Corporation pursuant to a request received by M/s.Mohta Industries Ltd. in said regards; (ii) a lease agreement dated May 31, 1984 was entered into between the parties whereby the respondent company agreed to lease the equipment to the appellant company for a period of 96 months on the payment of monthly lease rental; (iii)

M/s Punjab Machinery Manufacturing Corporation had delivered and installed the equipment at the premises of M/s.Mohta Industries Ltd; and (iv) the appellant company had paid lease rental in respect of the equipment to the respondent company for some months after the execution of the lease agreement dated May 31, 1984.

23. The best evidence by means of which the appellant company could have proved that the equipment was not delivered at the premises of M/s.Mohta Industries Ltd. was the register of plant and machinery of the appellant company. Had the equipment been delivered at the premises of M/s.Mohta Industries Ltd. it would have been recorded in the register of the plant and machinery for the appellant company had taken over all the assets and liabilities of M/s.Mohta Industries Ltd. and vice versa the non-mention of the equipment in the said register would have been a pointer to the fact that the equipment was never delivered at the premises of M/s.Mohta Industries Ltd.

24. The register of its plants and machinery has not been produced by the applicant company. No reasons for its non-production are forthcoming.

25. In the decision reported as 2007 (4) SCC 94 Sriram Industrial Enterprises Ltd v. Mahak Singh & Ors., the case of the respondents was that although they had worked continuously from the date of their appointment for more that 240 days in a calendar year, the appellant had illegally retrenched them in violation of the provisions of Section 6N of the UP Industrial Disputes Act, 1947. The dispute relating to retrenchment of the respondents was referred by the State Government to the Industrial Disputes Tribunal under Section 4K of the Act to determine as to whether the retrenchment of the services of the respondents by the appellant was just and/or illegal. Appellant contended that the services of the respondents were never terminated since none of them had worked for 240 days in the last calendar 12 months immediately preceding

alleged date of termination. Respondents requested the appellant to produce certain documents in its custody namely Attendance Register, Payment of Bonus Register and various other documents relating to the engagement of the respondents as workmen under it. Appellant failed to produce afore-noted documents. The Tribunal did not lay any importance to the non-production of the documents on the ground that the appellant did not keep such record relating to the temporary hands and relied on the documents that had been produced to reach a finding that the workmen had not put in 240 days service in a calendar year preceding the termination of their services. Respondents assailed the awards by way of filing writ petitions in the High Court. Drawing an adverse inference against the appellants for non- production of the documents in its possession and holding that the appellant had failed to discharge the onus and disprove the respondent's claim, the High Court held that under the circumstances the Tribunal should have drawn an adverse presumption under Section 114 Illustration (g) of the Indian Evidence Act, 1872 against the appellant. Taking further note of the expression 'continuous service' under Section 2(g) of the U.P. Act, the High Court found that the termination of service of the workmen was in violation of Section 6N of the aforesaid Act. Aggrieved by the decision of the High Court appellant filed special leave petition before the Supreme Court and contended that the High Court was wrong in drawing an adverse inference against them. After considering the case in its entirety Supreme Court held that best evidence having been withheld by the appellant the High Court was entitled to draw such adverse inference against them.

26. In the decision reported as 2007 Cri.L.J. 2750 Iddar v. Aabida & Ors. and Rama Paswan & Ors. v. State of Jharkhand, the Supreme Court has held that in weighing evidence, the Court can take note of the fact that the best

available evidence has not been produced and thus can draw an adverse inference.

27. The fact that the appellant company has not produced the register of its plant and machinery entitles this court to draw an adverse inference against the appellant company. Besides that, the documents proved by the respondents and as noted in para 8 above, by themselves are sufficient to return a finding that the respondent has proved having delivered the equipment to the appellant.

28. In view of the aforesaid, no fault can be found with the finding returned by the learned Single Judge that the respondent company has been successful in establishing that the equipment was delivered at the premises of M/s.Mohta Industries Ltd.

29. As regards the argument regarding non-production of the delivery challan of the equipment by the respondent company; we note that it is the case of the respondent company that due to the substantial costs involved in the transportation of the equipment M/s Punjab Machinery Manufacturing Corporation the manufacturer of the equipment had directly delivered the equipment at the premises of M/s.Mohta Industries Ltd. therefore the respondent company could not have produced the delivery challan pertaining to the equipment for the same was in possession of M/s Punjab Machinery Manufacturing Corporation as it had effected the delivery of the equipment upon M/s.Mohta Industries Ltd. may not be a good defence for not proving the delivery challan because a witness from said company could have been summoned, but said document not being proved makes no difference in view of Ex.PW-1/8 issued by Mohta Industries on May 29, 1984 acknowledging the delivery and installation of the equipment at its factory premises.

30. We note and reject the argument relating to collusion between the respondent company and erstwhile management of Mohta Industries Ltd.

advanced by the appellant company for the reason no such plea was taken by the appellant company in the written statement filed by it and no evidence led: no issue was settled and the learned Single Judge has not therefore penned on said subject.

31. Whether the suit in question was filed within the prescribed limitation period?

32. To find an answer to the aforesaid question, we look to the various provisions of the Limitation Act, 1963.

33. Section 22 of the Limitation Act, 1963 reads as under:-

“22. Continuing breaches and torts – In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.”

34. Section 22 deals with the question as to when period of limitation commences for a suit or other proceeding in respect of various causes of action that may arise from the wrongful acts of parties. It provides that in the case of *a continuing breach*, or of a *continuing tort*, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues.

35. The underlying principle of this Section is that a plaintiff is not bound to launch an endless succession of suits each day a wrong persists. He can wait and include in the action all damages down to the date of suit.

36. Where rights and duties are created by the terms of *a contract* between the parties, a breach of a duty is a wrong arising out of contract. Where they are created otherwise than under a contract the breach of a duty is a *wrong independent of contract*. A breach of either of these duties is thus a wrong and

the tests applicable to find out what is a '*continuing wrong*' are equally applicable to find out what is a '*continuing breach of contract*'. The criterion for application of Section 22 is not whether the *right* or its corresponding obligation is a continuing one, but whether the *wrong* is a continuing one.

37. Where the wrong consists of a breach of *positive duty*, i.e., to do something, the test to find out whether there is a continuing wrong is to see whether the duty is *to continue to do that thing*. If so, the omission to do that thing is a continuing wrong during the time the omission lasts. Where the wrong consists of a breach of *negative duty*, i.e., to refrain from doing something, the test to find out whether there is a continuing wrong is to see whether the wrongful act *produce a state of affairs, every moment's continuance of which is a new wrong (i.e., which is a continuing source of injury) and is of such a nature as to render the doer of it responsible for the continuance*. If the wrongful act is of such a nature, it is a continuing wrong.

38. The very essence of *continuing wrong* is that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue.

39. In the instant case, the act of Mohta Industries of defaulting in payment of lease rental to the respondent company on 30th of each month causes an injury to the respondent company which is complete on the date fixed for non-payment of lease rental i.e. 30th of each month and is thus not a continuing wrong. As a necessary corollary to the aforesaid, it has to be held that Section 22 of the Limitation Act, 1963 has no application in the present case.

40. Looking further at the provisions of the Limitation Act, 1963 we find Articles 36 and 37 contained in the Schedule to the Limitation Act, which reads as under:-

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
36.	On a promissory-note or bond payable by installments.	Three years	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.
37.	On a promissory-note or bond payable by installments which provides that, if default be made in payment of one or more installments, the whole shall become due.	Three years	When the default is made unless where the payee or obligee or the benefit of the provision and then when fresh default is made in respect of which there is no such waiver.

41. As is evident from the aforesaid, Articles 36 and 37 apply to the promissory notes and bonds.

42. Section 4 of the Negotiable Instruments Act, 1881 defines ‘promissory note’ as under:-

“A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.”

43. Section 2(5) of the Indian Stamps Act, 1899 defines ‘bond’ as under:-

“(5) “bond” includes

(a) any instrument whereby a person obliges himself to pay any money to another, on condition that the obligation shall be void if a specific act is performed, or not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another;

(c) any instrument so attested, whereby a person obliges himself to deliver to grain or other agricultural produce to another;”

44. From the aforesaid definitions of the promissory note and bond, it is clear and beyond any doubt that the lease agreement dated May 31, 1984 entered into between the respondent company and Mohta Industries Ltd. is neither a promissory note nor a bond. Thus, Articles 36 and 37 have no application in the present case.

45. Before proceeding further, we note that Articles 36 and 37 guides that in case of non-payment of a promissory note or bond payable by installments the cause of action for filing suit for non-payment of each installment arise on non-payment of such installment on the date fixed for its payment.

46. Going further, we come across Article 55 contained in the Schedule to the Limitation Act, which reads as under:-

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
55.	For compensation for the breach of any contract, express or implied, not herein specifically provided for.	Three years	When the contract is broken or (<u>where there are successive breaches</u>) <u>when the breach in respect of which the suit is</u>

			<u>instituted</u> occurs or (where the breach is continuing) when it ceases.
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47. Though Article 55 has no application in the instant case, for it applies to suits where relief claimed is compensation for breach of contract. We note that from a conjunctive reading of Section 22 and Article 55 we get guidance that the Limitation Act draws a distinction between ‘*continuing breach of contract*’ and ‘*successive breaches of contract*’. We have already dealt with the expression ‘*continuing breach of contract*’ while discussing Section 22. Successive breaches occur when a party to a contract agrees to do or forbear from doing two or more different things; in such cases the contracting party may commit several breaches by not doing those things which he has contracted to do or by doing those things which he has contracted to do.

48. Whereas, as per Section 22, the cause of action for filing a suit in respect of continuing breach of contract arise on every moment of time during which the breach continues, Article 55 provides that in case of the successive breaches of contract the cause of action for filing a suit claiming compensation in respect of each individual breach arise on the date of occurrence of each breach.

49. Having fully gone through the Schedule to the Limitation Act, 1963 we find no provision therein dealing with the suit filed in the present case. (We clarify here that Article 52 would not apply in the instant case for said Article applies to suits to recover arrears of rent in respect of only immovable property). Such being the position, the residual Article i.e. Article 113 will apply in the present case. Article 113 reads as under:-

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
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113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.
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50. When does the ‘*right to sue*’ accrue in the instant case? In other words, when does the cause of action for filing the instant suit arise?

51. In the instant case, as per the lease agreement dated May 31, 1984 entered into between Mohta Industries Ltd. and the respondent company, Mohta Industries Ltd./appellant company was under an obligation to pay lease rental to the respondent company on 30th of each month during the period of lease agreement. Mohta Industries Ltd./appellant company did not pay lease rental to the respondent company after September, 1986.

52. In view of the guidance offered to us by Section 22 and Articles 36, 37 and 55 we have no hesitation in holding that the cause of action for filing suit for the non-payment of lease rental for a particular month arose on the due date of the lease rental for such month.

53. As regards the decision in Pulver’s case (supra) relied upon by the learned Single Judge we note that the said decision is based upon the decision of a learned Single Judge in I.A. No.3629/1998 titled ‘*National Research Development Corporation v Chrome International*’ decided on March 01, 2007. The facts of Chrome’s case (supra) are that on February 23, 1976 a license agreement was executed between the petitioner and the respondent. In terms of the agreement, the petitioner had developed a know-how for the manufacture of Potassium Ethyl Xentate (PEX) and had full rights in the invention which was sought to be licensed by the respondent on payment of ₹4,000/- for a period of 14 years commencing from December 01, 1975. Under the said agreement, the respondent was also liable to pay to the petitioner royalty at the rate of one and

half per cent on the net ex-factory sale price of the material manufactured by the respondent. The royalty was to become due on the 1st of April and on the 1st of October of every year during the period of agreement. The agreement also provided for determination of license by the petitioner on happening of 5 specified events, one of which event was non-payment of royalty by the respondent. The respondent never paid any royalty to the petitioner. The agreement was to come to an end on November 30, 1989. On June 01, 1989 the arbitration clause contained in the agreement was invoked by the petitioner claiming damages for the period from the year 1976 to 1989 for non-payment of royalty plus interest. On March 29, 1997 the sole arbitrator passed an award deciding in favor of the petitioner, aggrieved by which the respondent had filed objections under Sections 30 and 33 of the Arbitration Act, 1940. One of the objections raised by the respondent was that the claim of the petitioner relating to a period more than 3 years prior to the invocation of the reference was barred by time and thus could not be allowed by the arbitrator. It was held by the learned Single Judge that since the respondent had never rendered accounts or specified turnover the position in the case is analogous to a suit for accounts for it is only on the agreement coming to an end that the petitioner would be entitled to claim accounts and thus Part I of the Schedule to the Limitation Act dealing with the suits relating to accounts would apply in the case and the petitioner could make a claim for the amounts due over the period of agreement within 3 years of the expiry of the agreement.

54. From the aforesaid, it is clearly evident that the facts of Chrome's case (supra) are clearly distinguishable from the facts of the present case and thus the learned Single Judge erred in relying upon the decision in Pulver's case (supra) which is based upon the reasoning contained in Chrome's case (supra).

55. In the instant case, the term of the lease agreement dated May 31, 1984 was 96 months i.e. 8 years thus the agreement expired on May 30, 1992. Mohta Industries Ltd./appellant company did not pay lease rental to the respondent company after September, 1986. The lease rental payable was ₹33,000/- per month for the period from per month for the period from May 31, 1984 to 30.05.1989 and ₹660/- per month for the period from May 31, 1989 to May 30, 1992. The suit in question was filed on May 29, 1992. The suit in question pertaining to non-payment of lease rental for the period from October, 1986 to April, 1989 is barred by limitation inasmuch as the suit was filed after the expiry of 3 years from the due date(s) of the lease rentals for such months. The suit pertaining to non-payment of lease rental for the remaining period i.e. the period from May, 1989 to May, 1992 is well within limitation for the suit was filed within the period of 3 years from the due date(s) of the lease rental for such months.

56. In view of the above discussion, the respondent company is entitled to:-

- (i) Lease rental in sum of ₹33,000/- for the month of May, 1989 + lease rental in sum of ₹660/- per month for the period from June, 1989 to May, 1992;
- (ii) Pre-suit 'simple' interest @18% per annum in terms of clause 2.2 of the lease agreement dated May 31, 1984; (Though clause 2.2 provides for compound interest we award simple interest for the reason compound interest @18% per annum is usurious);
- (iii) Pendente lite interest @12 % per annum from the date of institution of suit till the passing of the decree by the learned Single Judge;
- (iv) Future interest @9% per annum from the date of passing of the decree by the learned Single Judge till the date of payment.

57. The impugned judgment and decree dated August 27, 2008 passed by the learned Single is modified and the suit filed by the respondent against the appellant is decreed in terms of para 56 above requiring the decree writer to compute the amounts due as per para 56(i) and thereafter compute pre-suit interest as per para 56(ii). Needless to state the pendent lite and future interest would be on the sum computed as per para 56(i).

58. The respondent would be entitled to proportionate costs in the suit and as regards the appeal the parties shall bear their own costs.

59. Noting that the appellant was required to deposit the decretal amount as a condition of stay of the decree and that the appellant has deposited the same out of which the respondent has received 50% of the decretal amount by furnishing an indemnity bond that the amount would be refunded with interest @ 9% should the decree be reversed, since the sum decreed by us would be much less than 50% by the sum decreed by the learned Single Judge, we direct that amount lying in deposit pursuant to orders passed in the appeal be returned to the appellant with interest and that after the decree is drawn in the appeal the learned Registrar (Appellate) shall invoke the guarantee bond in such amount which has to be refunded by the respondent to the appellant and on receiving the amount shall pay over the same to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

November 06, 2012
dk