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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: August 24 , 2012

Judgment Pronounced on : September 12 , 2012

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RFA(OS) No.1/2011

SINEXIMCO PTE. LTD.

...Appellant

Represented by: Mr.A.K.Singla, Sr.Advocate
instructed by Mr.Mridul Gupta,
Advocate

Versus

DINESH INTERNATIONAL PVT. LTD.

...Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J.

1. As per the plaint, claiming decree in sum of ₹84,15,000/- equal to US\$ 1,70,000.00 at and exchange rate of ₹49.50 per US\$, case of the appellant is that on April 29, 1997 a contract was concluded between the appellant and the respondent where under the respondent agreed to purchase Australian Tyson Chick Peas from the appellant at the rate agreed and pursuant whereto the appellant shipped 200 MT Chick Peas valued at US\$ 185,729.25 to the respondent and raised an invoice dated July 23, 1997 followed by Standard Chartered Bank, Singapore, the banker of the appellant drawing up a Bill of Exchange dated July 27, 1997 upon the respondent through its banker, Bank of Punjab, New Delhi for the invoice amount, which Bill of Exchange envisaged payment within 90 days of its acceptance by the respondent. On July 29, 1997 the Bill of Exchange was

accepted for payment by the respondent, but it wanted to pay the amount in installments and accordingly it made four payments on September 09, 1998, September 17, 1998, September 21, 1998, November 24, 1998 and January 20, 1999 in sum of US\$ 17,970.00 each to the appellant followed by a fifth payment made on February 04, 1999 in sum of US\$ 10,970.00 and thereafter did not tender the balance payment of US\$ 84,909.25. The respondent was required to make balance payment under the Bill of Exchange on or before the due date of May 05, 1999 but the needful was not done by the respondent. Since the balance payment was not made by the respondent within the stipulated period, vide letter dated April 21, 1999, Bank of Punjab returned the Bill of Exchange to the banker of the appellant i.e. Standard Chartered Bank, which in turn returned the same to the appellant vide its letter dated May 10, 1999. Thereafter the appellant issued legal notice dated February 24, 2000 to the respondent claiming the sum which remained unpaid under the Bill of Exchange but to no avail. Accordingly, the appellant filed a suit claiming a sum of US\$ 84,909.25 towards principal amount + US\$ 84,790 towards interest @ 18% per annum for the period from October 29, 1997 to the date of filing of suit + US\$ 305 towards bank charges = US\$ 1,70,000 or INR 84,15,000/- from the respondent.

2. In the written statement filed, the respondent admitted that:- (i) on July 24, 1997 a contract for purchase of Australian Tyson Chick Peas was entered into between the parties; (ii) the appellant had shipped 200 MT of chick peas valued at US\$185,729.25 to the respondent vide invoice dated July 23, 1997; (iii) on July 27, 1997 the banker of the appellant Standard Chartered Bank, Singapore had drawn a Bill of Exchange upon the respondent through its banker Bank of Punjab, New Delhi and that said bill was accepted by it on July 29, 1997 and (iv) the respondent had made total

payment of US\$ 100,820 in respect of said contract, last payment being made on February 04, 1999. However, the respondent contended that it is not liable to make balance payment of US\$ 84,909.25 to the appellant for the reasons: - (i) the suit filed by the appellant is barred by limitation; (ii) quantity of chick peas received by the respondent was less than the agreed quantity; (iii) chick peas received by the respondent was not as per agreed specifications; (iii) in view of the deficiencies in the quality and quantity of the chick peas received by the respondent the parties agreed to settle the matter on the respondent making a payment of US\$ 100,820 to the appellant, which amount was duly paid by the respondent and thus no amount whatsoever is due to the appellant from the respondent.

3. On the basis of pleadings of parties, following issues were settled by the learned Single Judge:-

“1. Whether the claim of the plaintiff is barred by the time?
OPD

2. Whether the disputes between the parties stand settled as alleged by the defendants? OPD

3. Whether the plaintiff is entitled to recover the suit amount?
OPP

4. Whether the plaintiff is entitled to interest? If so, at what rate, and for which period and on what amount? OPP”

4. In support of its case, the appellant examined Mr.D.D.Gupta as PW-1, who deposed on the lines of the plaint filed by the appellant. The respondent tendered an affidavit of one Daya Kishan Goel towards examination-in-chief but did not produce him for being cross-examined, and thus it is apparent that issues No.1 and 2 have been decided by the learned Single Judge against the respondent. Holding so, vide impugned judgment

and decree dated November 09, 2010 the learned Single Judge has dismissed the suit holding that the suit is barred by limitation on the reasons:- (i) a reading of the bill of exchange drawn by the appellant upon the respondent shows that the agreement between the parties envisaged payment of amount under the bill of exchange by the respondent within 90 days of acceptance of bill of exchange; (ii) in view of the fact that the respondent accepted the bill of exchange on July 29, 1997 the amount under the bill of exchange became payable by the respondent to the appellant on October 29, 1997, which fact was admitted by the appellant in the plaint as also the legal notice dated February 24, 2000 sent by it to the respondent wherein it was stated that the amount under the bill of exchange became due for payment on October 29, 1997; (iii) Article 34 of the Limitation Act, 1963 which prescribes that the period of limitation on a bill of exchange payable at a fixed time after or after demand is 3 years from the date when the fixed time expired applies in the present case and since in the instant case the time fixed for payment of bill of exchange expired on October 29, 1997 the limitation for filing the instant suit expired on October 29, 2000; (iv) in view of the provisions of Section 19 of the Limitation Act, 1963 and the fact that the respondent had made part payments to the appellant before the expiration of the limitation period for filing the present suit, the limitation period for filing the instant suit requires to be computed afresh from the date of last payment made by the respondent i.e. February 04, 1999; and (v) the limitation period for filing the instant suit, when computed from February 04, 1999, would expire on February 04, 2002 and thus the instant suit on April 22, 2002 i.e. after the expiration of the limitation period is barred by limitation. Accordingly, the Single Judge dismissed the instant suit as being barred by limitation.

5. The only question involved in the present appeal is whether the

suit filed by the appellant is within limitation or not.

6. Articles 31 to 35 in the Schedule to the Limitation Act, 1963 prescribes limitation period in respect of a bill of exchange, which reads as under:-

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
31.	On a bill of exchange or promissory-note payable at a fixed time after date.	Three years	When the bill or note becomes due.
32.	On a bill of exchange payable at sight, or after sight but not at a fixed time.	Three years	When the bill is presented.
33.	On a bill of exchange accepted payable at a particular place	Three years	When the bill is presented at that place.
34.	On a bill of exchange or promissory-note payable at a fixed time after sight or after demand.	Three years	When the fixed time expires.
35.	On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years	The date of the bill or note.

7. Article 34 of the Schedule to the Limitation Act, 1963 prescribes period of limitation for a suit which is based upon a bill of exchange or promissory note payable at a fixed time after sight or after demand.

8. Section 21 of the Negotiable Instruments Act, 1881 defines the expression 'after sight' as under:-

“21. ‘after sight’ means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.”

9. As already noted hereinabove, the bill of exchange in question envisaged payment within 90 days of its acceptance by the respondent. Thus, the bill of exchange which formed the basis of the instant suit is of the kind contemplated under Article 34 of the Schedule to the Limitation Act, 1963 i.e. bill of exchange payable at a fixed time after sight or after demand.

10. So far so good.

11. But, here comes the problem. Though the bill of exchange in the instant case envisaged payment at a fixed time after its acceptance, the respondent did not make the payment at such fixed time. It is an admitted fact that the respondent made part payments under the bill of exchange under five installments after it agreed to pay the bill of exchange in installments. Meaning thereby, the bill of exchange in the instant case became payable by installments.

12. Article 36 in the Schedule prescribes limitation period for a suit based upon a promissory note or bond payable by installments. But we find no analogous provision in the Schedule with regard to suit based upon a bill of exchange payable by installments, probably for the reason the bills of exchange are normally not agreed to be payable by installments.

13. In view of the fact that there is no provision in the Schedule of the Limitation Act 1963 stipulating suits based upon a bill of exchange payable by installments, the residual Article i.e. Article 113 will apply in the present case.

14. Article 113 reads as under:-

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
113.	Any suit for which no period of limitation is provided else wherein this Schedule.	Three years	When the right to sue accrues.

15. When does the ‘right to sue’ accrues in the instant case?

16. To find an answer to the above question we may take assistance from the decision of a Full Bench of the Allahabad High Court reported as AIR 1952 All 900 Sheo Lal & Anr v L.Devi Das & Anr., which does not pertain to a bill of exchange agreed to be paid in installments, but has a very illuminating discussion on the subject of a right to sue when payments under a contract or a court decree are agreed to be paid in installments; and highlights when does ‘Right to Sue’ accrue.

17. In Devi Das’s case (supra), 3 questions were referred for consideration of the Full Bench as under:-

“1. Where a preliminary decree (or money allows installment and provides that in case of default in payment of any specified number of installments, the entire amount then remaining unpaid would become payable, whether the words "when the right to apply accrues" in the third column in Article 181, Limitation Act are confined to the first default or include every fresh accrual of the right to apply upon the happening of each successive default and limitation for applying for a final decree for the balance then due may be counted from the accrual of the last default?

2. Whether in such a case the right to apply for a final decree in respect of the installments not barred by limitation as individual installments, remains intact in spite of the omissions to take advantage of the default clause?

3. Whether the answers to the above two questions would be

affected if the default clause instead of being worded as "the decree-holder shall have a right to apply," or "the decree-holder shall have the option to apply", is worded as "the entire decretal amount shall become payable," or "the entire decretal amount shall become due", or, "the judgment-debtor shall pay the entire decretal amount", even though in all these cases the default clause be intended for the benefit of the decree-holder?"

18. While answering aforesaid questions, the Full Bench made following observations with regard to 'cause of action':-

"The Article of the Indian Limitation Act applicable to an application for the preparation of a final decree is 181. The period of limitation for the application is three years and it begins to run from the time "when the right to apply accrues."The right to apply may occur only once or may occur more than once. It will all depend upon the cause of action. It is an error to suppose that in all cases the right to apply can accrue only once. No doubt, for one particular cause of action the right to apply can accrue only once. But where there are different causes of action, or where after the accrual of one cause of action, another cause of action arises by reason of a change in the circumstances the right to apply can be said to arise upon the accrual of each of the causes of action.

For example, in respect of a preliminary decree payable by installments when there is no defaults clause, as many applications for the preparation of a final decree can be made as there are installments to be recovered. It cannot be that in such a case there should be only one final decree, for if an application for the preparation of a final decree is made after default is made in the last installment, some of the earlier installments may have fallen due more than three years earlier. Thus the first principle to be remembered is that when we speak of 'the right to apply', what is intended is the right to apply for a particular cause of action bearing in mind always that there may be more than one causes of action under one decree.

Let us take a case in which the decree is for the payment of a certain amount by installments, with a condition that if a

certain number of installments say, two, are not paid in time, the whole amount will become payable forthwith. If the first installment is not paid, there can be no doubt that before the second installment has fallen due, the decree-holder can apply for the preparation of a final decree in respect of the first installment.”(*Emphasis Supplied*)

19. After extensively discussing the case law on the point, the Full Bench answered the aforesaid 3 questions referred to it, in the following terms:-

“By the Court--The answers to the questions referred to the Full Bench are as below:

1. The words "when the right to apply accrues" in the third column in Article 181, Limitation Act must mean the first default giving rise to the particular cause of action on the basis of which the application for a final decree is made, unless there has been a waiver, express or implied of the first default in which case the words "when the right to apply accrues" would mean the next succeeding default which is not waived, but the decree-holder will have a right to apply for realization of each successive installment as it falls due, provided the decree is not so worded that the only right left to the decree-holder after the first default is to realize the whole decretal amount.

2. The answer to the second question is the same, that is, the right to apply for a final decree in respect of the installments not barred by limitation as individual installments would remain intact in spite of the omission to take advantage of the default clause provided the default clause is not so worded that the decree-holder has a right to rely on that alone and the decree after the default ceases to be an installment decree.

3. It is immaterial that the default clause is worded as "the decree-holder shall have a right to apply", or as "the decree-holder shall have the option to apply", or as "the entire decretal amount shall become payable", or as "the entire decretal amount shall become due", or as "the judgment-debtor shall pay the entire decretal amount", as in all such

cases the default clause is to be interpreted liberally and for the benefit of the decree-holder and the rights of the decree-holder mentioned by us in our answers to questions 1 and 2 will not be affected.”(*Emphasis Supplied*)

20. Keeping the aforesaid observations made by the Full Bench in regard to cause of action, we conclude that in case of suits based upon a bill of exchange payable by installments the right to sue/cause of action would accrue/arise on each default by the payee of the bill of exchange and a fresh cause of action would accrue on each default unless the agreement of the parties pertaining to the bill of exchange being satisfied in installments provides that in case of a default, the whole of the amount shall become due.

21. The aforesaid view taken by us finds support from an analogous Article i.e. Article 36 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.

22. In the instant case, the respondent failed to pay remaining installments under the bill of exchange. On April 21, 1999 the banker of the respondent i.e. Bank of Punjab returned the bill of exchange to the banker of the appellant i.e. Standard Chartered Bank, which in turn returned the same to the appellant on May 10, 1999.

23. As per Article 113, the period of limitation of 3 years would

begin to run from the date when the right to sue accrues. In view of the above discussion, the right to sue in respect of the installment which remained unpaid by the respondent accrued to the appellant on May 10, 1999 when the bill of exchange was returned to it by its banker. The period of limitation of 3 years expired on May 10, 2002 in the instant case. The appellant filed the instant suit on April 22, 2002 i.e. within the period of limitation prescribed.

24. We thus hold that the Single Judge erred in holding that the suit filed by the appellant was barred by limitation. Accordingly, the present appeal is allowed and the impugned judgment and decree dated November 09, 2010 passed by the learned Single Judge dismissing the suit filed by the appellant is set aside. The suit filed by the appellant is decreed in sum of ₹42,03,007.87/- i.e. US\$ 84,909.25 being the balance amount due as per contract converted into Indian rupees at the exchange rate of ₹49.50 per US\$ together with interest @6% per annum from May 10, 1999 till realization together with proportionate costs in the appeal as also the suit.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 12, 2012
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