

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

+ CS (OS) 2542/1997

Date of Decision: 13.09.2013

ASHOK PARSHAD

.....PLAINTIFF

Through: Mr.Satya Prakash Gupta, Adv.

Versus

M/S. MAHALAXMI SUGAR MILLS CO. LTD.

....DEFENDANT

Through: Mr.S.N.Kumar, Sr.Adv. with
Mr.K.B.Soni, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The plaintiff has filed the present suit against the defendant for recovery of Rs. 2738253.95/-.

2. The facts presented are that the defendant has been purchasing from the plaintiff various items of chemicals from time to time starting from 14.05.1982 to 31.03.1997. The plaintiff had maintained a Running Account of the defendant in its books of accounts and the purchases so made by the defendant from the plaintiff were duly and regularly debited to the said account. Similarly, the payments received from the defendant from time to time were duly and regularly credited to the said account. It is the plaintiff's case that all

the supplies were made to the defendant on the orders received and accepted at Delhi and the goods were sent from the plaintiff's place to the transport carriers place for delivery to the defendant on payment of freight. It is his case that the defendant accepted the delivery of all the supplies and sent the required sales tax Forms 'C' for all these supplies. The plaintiff has given the details of the supplies made to the defendant from 01.04.1982 to 31.03.1997, furnishing the details of the bills' dates and the amounts. Likewise, the details of the amounts remitted by the defendant from time to time, have also been given. As per the details, the last supply was made vide bill No. 10953 dated 12.02.1993 of goods worth Rs. 50130.20/- and the last amount remitted by the defendant was by way of a cheque amounting Rs. 50,000/- dated 11.07.1996. The plaintiff submits that a sum of Rs. 10,90,052.57/- as the principal remains outstanding against the defendant. It is also the plaintiff's case that interest @ 23% p.a. was payable by the defendant on each delivery in the event of the payment being not made within seven days. This was stated to be specifically mentioned on the bills that interest at this rate will be charged if the payment was not made within seven days. The plaintiff has claimed interest totaling Rs. 1648201.38, giving the details from the year 1983 to 31.10.1997. In this way, the plaintiff has claimed a total of Rs. 1090052.57/- towards principal and Rs. 1648201.38 towards interest.

3. The defendant contested the suit alleging that each supply made by the plaintiff was an independent contract and was paid for separately. The defendant specifically referred to the bills dated 24.01.1984 (of Rs. 3560.30) and 6.11.1984 (of Rs. 8139.06) to contend that the payments were made of these exact amounts and so, the plaintiff's assertion that these were on account, is incorrect. The defendant submits that the suit is hopelessly barred by time as the account maintained was mutual and reciprocal and not running. It is also the defendant's case that the orders were placed from Iqbalpur and the delivery of the goods were also received there, and thus, the Delhi Court has no territorial jurisdiction in the matter. While not denying that the payments as mentioned in Paras 16 to 18 of the plaint were made vide cheques starting from 20.01.1995 to 11.01.1996, the defendant pleads that these cheques were not issued by it from Iqbalpur. The defendant also denies its liability of payment of interest and submits that the plaintiff has not shown in the last sixteen years a single debit voucher claiming interest. It is also the case of the defendant in this regard that the conduct of the plaintiff clearly shows that there was neither any agreement nor any claim regarding payment of interest.

4. On the pleadings of the parties, the following issues were framed for trial on 29.07.2002:

- 1. Whether this court is entitled to deal with the subject matter of the suit?*
- 2. Whether the suit is barred by time?*
- 3. To what amount, if any, the plaintiff is entitled on account of number?*
- 4. To what interest whether the plaintiff is entitled to interest, if so, at what rate?*
- 5. Relief.*

5. The plaintiff examined himself as PW1 and his Accountant Satya Narayan Goel as PW2. The defendant examined its Purchase Officer Mr.Rajinder Kumar Kapila as DW1.

6. The issue-wise findings are as follows:-

ISSUE NO. 1

7. There is no dispute that the goods were supplied by the plaintiff to the defendant from time to time on the specific orders of the defendant. There is also no dispute that the orders were received by the plaintiff at Delhi and the goods were supplied from Delhi to the defendant through the transport carriers. The submission of the defendant that since the communication of the acceptance of the order was received at Iqbalpur, the court at Iqbalpur has the jurisdiction and not Delhi, is entirely erroneous. The acceptance of the order at Delhi and the delivery of goods at Delhi to the transport carriers for onward delivery to the consignee i.e. the defendant, would bring into the formation of the contract at Delhi. The delivery

to the transport carriers was to be taken as delivery to the consignee as per Section 39 of the Sale of Goods Act, 1930.

8. PW2 stated and maintained that order of the defendant used to come from its Delhi office and that the documents with regard to the delivery also used to be sent directly to the defendant at Delhi office, and some time through the bank. It is seen from the bills proved on record that all the communications between the parties were to be settled at Delhi and the transactions were subject to Delhi jurisdiction. From all this, there does not remain any doubt that this court has the jurisdiction to entertain the present suit. The issue is accordingly decided in favour of the plaintiff.

ISSUE NO. 2

9. The submission of the learned senior counsel for the defendant is that the account that was maintained by the plaintiff was not a Running Account, but a Mutual, Reciprocal and Current Account and since the payments were made by the defendant of specific amounts or towards separate bills, the claims of the bills are time barred. In other words, the submission is that it is Article 1 of the Limitation Act, which governs the field and as the last delivery was made on 12.02.1993, the suit filed in December 1997 is barred by limitation. As against this, the submission of the learned counsel of the plaintiff is that the plaintiff was maintaining a Running Account of the defendant in its books of accounts, which were regularly maintained in the ordinary course of business and that the payments made by the

defendant from time to time were appropriated by the plaintiff towards the total outstanding amount against it in the account. Having heard the learned counsel on this point, there does not appear to be any dispute with regard to the proposition that if the plaintiff was maintaining a Running Account, then, in that case, it was Article 14 of the Limitation Act that would be applicable and not Article 1 of the Limitation Act. Before proceeding further, it may be relevant to reproduce these Articles, which read as under:

<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<i>1. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties</i>	<i>Three years</i>	<i>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.</i>
<i>14. For the price of goods sold and delivered where no fixed period of credit is agreed upon.</i>	<i>Three years</i>	<i>The date of the delivery of the goods.</i>

10. A bare reading of the aforesaid Articles set out in the Schedule to the Limitation Act shows that Article 1 relates to suits in respect of balance due on a Mutual, Open and Current Account where there have been reciprocal demands between the parties. The period of limitation prescribed by this Article is three years from the close of the year in which the last item admitted or proved is entered in the account and such year is to be computed as in the account. In other

words, if the statement of account between the parties is to be regarded as a Mutual, Open and Current Account, then the period of limitation of three years would begin from the close of the year in which the last item admitted or proved is entered in the account.

11. The question what is Mutual or Reciprocal Account has been considered by the courts frequently and the test to be determined is well-settled. Article 85 of the Indian Limitation Act, 1908, which is in the same term as Article 1 of the Indian Limitation Act except as to the period of limitation, was interpreted by Rankin C.J. in **Tea Financing Syndicate Ltd. Vs. Chandrakamal, AIR 1931 Cal 359**. The observations of Rankin C.J. have never been dissented from in our courts and the same has been endorsed by the Supreme Court in various cases. Reference can be made to **Hindustan Forest Company Vs. Lal Chand and Others, AIR 1959 Supreme Court 1349**. The test that was laid by Rankin C.J. for determining whether an account is mutual and reciprocal or not, was reiterated by the Supreme Court in the aforesaid case of Hindustan Forest Co., observing that “the requirement of reciprocal demands involves 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.

12. The Supreme Court in the case of **Kesharichand Jaisukhlal Vs. Shillong Banking Corporation Ltd., (1965) 3 SCR 110**, after referring to the lead case on Mutual Account titled **Hirada Basappa Vs. Gadigi Muddappa, (1871) VI MHCR 142** observed as under:

“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”.

13. A Division Bench of this Court in the case of **Manish Garg Vs. East India Udyog Ltd., 2001 III AD (Del.) 493**, after referring to the judgment of the Supreme Court in Kesharichand Jaisukhlal’s case (supra) and the case of Hindustan Forest Co. (supra), held as follows:

“8. Thus for an account properly to be called Mutual Account there must be mutual dealing in the sense that both the parties come under liability under each other. In this case, this ingredient is not satisfied. It was simply a case of debtor and creditor only and not a case of mutual obligations which will in the ordinary way result in enforceable liabilities on each side. Mutual Account is when each has a demand or right of action against the other”.

14. Thus, from the above judicial pronouncements, it comes out to be that the distinctive features of Mutual or Reciprocal Account are that there should be two sets of independent transactions between the

parties and in one transaction, one of the party should be debtor and the other creditor, whereas, in the other transaction, the party should occupy the reverse position. Beside that, the dealings should be independent of deviations on both sides and not merely transactions which create obligations on one side. In **Raghunath Shaw Vs. Kanai Lal Das, AIR 1962 Cal. 97**, the Calcutta High Court held that “where goods were supplied from time to time by the plaintiff to the defendant and there was no fixed period of credit agreed upon, the fact that there was part payment by the defendant towards the unpaid price will not make the account mutual and the suit would be governed by this Article only.”

15. In this view of the matter, it comes to be that if it is not a Mutual or Reciprocal Account as is contemplated in Article 1 of the Limitation Act, but, is a Running Account as prescribed in Article 14, in that event, the limitation would not end with the supply, but it would keep on being extended when the last payment is made. Though, where the goods were delivered to the defendant from time to time on account, the starting point of limitation in respect of each item of account as per Article 14 is to be the date of delivery of goods under that item of account, and the last date of delivery cannot be taken to be the date of delivery on earlier occasions, but the cause of action for all the items delivered is single down to the date of last delivery.

16. In **Kedarnath Vs. Denobandhu Saha**, AIR 1916 Cal. 580, Jenkins C.J. quoted with approval the following passage from the decision in **Bonsey Vs. Wordsworth**, (1856) 18 CB 325:

“Where a tradesman has a bill against a party for any amount in which the items are so connected together that it appears that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one continuous demand the whole together forms but one cause of action and cannot be divided”.

17. This was followed by the Rajasthan High Court in **Chandra Nath Vs. Pahlad Narain**, AIR 1961 Rajasthan 154 (V 48 C 43), wherein it was observed as under:

“9. With all respect, I fail to understand why the plaintiff cannot appropriate a payment towards all the items outstanding on a particular date. Section 60 of the Contract Act provides that "where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by law in force for the time being as to the limitation of suits. This right the creditor may exercise until the very last moment and need not declare his intention in express terms -- see Cory Bros. and Co. v. Owners of the "Mecca", 1897 AC 286 at p. 289”.

18. In the above case, the reliance was also placed upon the earlier decision of Nagpur High Court in **Sukhdeo Prasad Baldeo Prashad Vs. J. Michael, AIR 1938 Nag 266**, wherein it was held as under:

"If more debts than one are due and a payment is made which is not specifically appropriated, it is a question of fact in respect of which debt the payment was made. This appropriation need not be proved by any express declaration of the debtor at the time of the payment, but any expression used by him either before or after that time, or any other circumstances from which it may be inferred that the payment was intended to be appropriated to any particular debt or debts or was made on account of all the debts collectively will be sufficient for the purpose. If the evidence shows that the payment was made on account of all, it will prevent any of the debts being barred by statute."

19. Section 19 of the Limitation Act, 1963 specifically provides that once the payment is made towards the part of the total debt due, a fresh period of limitation starts on such payment. This extension of limitation arises from the factum of the payment towards the debt due and not how the creditor appropriates the same. It is under this provision that the period of limitation gets extended when the demand is made towards a debt and as seen above, the creditor is within its rights to appropriate the payments as towards the entire outstanding, unless there was an expressed agreement or intention of the debtor to adjust such payments towards specific debt.

20. Now, reverting back to the facts, it is seen that except two specific payments of small amounts all other on account payments were made by the defendant from time to time. All these payments were made by the defendant not with the delivery of the goods vide specific bills, but, as per its own convenience. Though, the payments were required to be made by the defendant within seven days of delivery as per the terms stipulated in the bills, but, the same having not been adhered to by the defendant and there being no other agreement of fixed period of credit, the part payments were made by the defendants towards the unpaid amounts. These by any means, cannot make the account mutual or reciprocal. The dealings between the parties continued and did not terminate with one supply and thus, the deliveries got united with one another and formed one continuous demand which kept on being carried forward from year to year till the last supply was made. Thus, it all formed one cause of action and could not be divided. The nature of transactions as well as the payments made and the conduct of the defendant would evidence that the payments were made on account of outstanding amounts of deliveries and if that was so, the last payment was to be taken as the date for calculation of limitation as per Article 14 read with Section 19 of the Limitation Act. In this view of the matter the conclusion comes out to be that the period of limitation commenced from 11th July, 1996 when the last payment of Rs.50,000/- was made, and it expired on 10.07.1999. The suit having been filed in December, 1997, was well within time of limitation.

The issue is decided accordingly.

Issue No. 3

21. The plaintiff as also his witness PW-2 stated and maintained that the plaintiff was maintaining running account of the defendant in the books of accounts maintained in the ordinary course of business. The plaintiff has also given bill-wise details of the deliveries made to the defendant. It has been stated that C-Forms were also issued by the defendant in respect of those deliveries. All these have remained uncontroverted on the part of the defendant.

22. The defendant has not led any evidence in rebuttal. The defendant has also not denied the payments made by it to the plaintiff by way of cheques, the details of which have been given by the plaintiff in the plaint. The only plea that was taken throughout was that the payments were made against specific deliveries and thus, the suit was barred by limitation. This aspect has already been dealt with above against the defendant. Thus, there is no reason to disbelieve the statements of PW-1 and PW-2 as also the bills as well as C-Forms proved on record. The conclusion comes out to be that the books of accounts were maintained by the plaintiff in ordinary course of business and a sum of Rs.10,90,052.57/- was due from the defendant as towards the principal against the deliveries of the goods made by the plaintiff. The issue is decided accordingly.

Issue No. 4.

23. The plaintiff's case is that as per the terms stipulated on the bills, the interest @ 23% per annum was chargeable after seven days of the delivery of the goods. This was not specifically denied by the defendant. The defendant, however, submitted that there was no specific agreement as regard to the interest, nor there was any intention of the plaintiff to charge such interest. It is submitted that the plaintiff has not shown any amount of interest debited in the defendant's accounts for all these years and that would substantiate that the plaintiff never intended to charge any interest.

24. In view of the above specific stipulation regarding interest to be charged @ 23 per cent per annum after seven days of the delivery, the oral evidence of the Accounts Officer of the defendant would not be relevant or reliable, more so, when the testimonies of PWs-1 and 2 as regard to interest, remained un-assailed. The fact that there was no specific voucher issued with regard to interest or any debit entry made as regard to interest in the running account of the defendant, that was again no ground to assume that the interest clause stipulated in the bills was waived or that the plaintiff had agreed not to charge the interest.

25. Thus, from all this, it is held that the plaintiff is entitled to charge interest @ 23 per cent per annum. But, however, since the plaintiff has claimed interest @18% per annum, he is entitled to this interest from the defendant on principal amount. The plaintiff has calculated the interest at this rate and the correctness of which has

not been dislodged by the defendant. As a consequence thereto, it must be held that the plaintiff is entitled to interest @ 18% per annum. The issue is decided accordingly.

Relief

23. In view of above findings, the suit is decreed for a sum of Rs.27,38,253.95 with interest @ 18% per annum on the principal amount of Rs.10,90,052.00 from the date of filing of the suit till the date of payment. The decree be drawn accordingly. No order as to costs.

M.L. MEHTA, J.

SEPTEMBER 13, 2013

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