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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
DECIDED ON 08th August, 2013

+ **RFA(OS) 105/2012**
OVERSEAS TRADING CORPORATION

..... Appellant

Through : Mr. Vibhor Garg, Adv.
versus

HANDLOOMS & HANDICRAFTS EXPORT
CORPORATION OF INDIA LTD. Respondent
Through : Mr. Vivek Singh and
Ms.Madhu Sharan, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

1. The appellant is an unsuccessful plaintiff. It appealed against the judgment and order of the learned Single Judge dated 9th July, 2012 by which its suit had been dismissed. Simultaneously, the sole defendant's/respondent's (hereafter referred to as "HHEC") suit preferred against M/s. Unisilk Limited, Hong Kong (hereafter referred to as "the exporter") was decreed in full with interest awarded at 18% per annum till date of execution.

2. The brief facts are that the plaintiff entered into an Agreement on 27th October, 1998 with HHEC. In terms of their arrangement, the plaintiff agreed to purchase 500 bales of silk during the period of the contract, i.e. one year. Apparently, in furtherance of this Agreement, HHEC, the sole canalising agency for goods such as silk, entered into a separate contract with M/s. Unisilk Limited Hong Kong for purchase of 311 bales of raw silk on 27th October, 1998. The latter purporting to act in terms of the Agreement with HHEC shipped the goods. It was discovered that instead of the contracted quantity, i.e. 311 bales, actually a consignment of 235 bales were received. HHEC immediately initiated proceedings and sought for recovery of the price of goods, i.e. the price of the goods short delivered (76 bales). This was in the form of a suit, i.e. CS(OS) No.2340/2001. In that suit, HHEC impleaded the exporter, i.e. i) M/s. Unisilk Limited, (ii) the insurer as well as (iii) the carrier. About a decade after the aforesaid transaction, i.e. sometime in 2008, the present appellant filed an independent proceeding CS(OS) No.480/2008, impleading only HHEC, contending therein (i) that its arrangement on 27th October, 1998 with HHEC was an independent contract and that the latter was

not its agent; (ii) that the arrangement was in the nature of one between a principal to principal and; (iii) that HHEC defaulted in insuring the supply of full contracted bales, i.e. 235 bales. The plaintiff/appellant claimed the price of goods, in turn, from HHEC alone.

3. HHEC's contention in the suit is that the arrangement with the appellant/plaintiff was not an independent one or based on a principal to principal transaction but was really by way of an agency. The plaintiff/appellant filed the suit in 2008; consequently, the HHEC took the defence that the claim was time barred. The appellant, however, sought to rely upon certain alleged admissions in the form of letters and endorsements made by HHEC in 2001 & 2002 and also certain letters dated 7th August, 2005 and 4th April, 2006. In addition, the plaintiff/appellant also relied upon certain averments made in the suit instituted by HHEC (CS(OS) 2340/2001).

4. By her common judgment, the learned Single Judge had dismissed the appellant's suit – as noticed in an earlier part of this judgment. At the same time, HHEC's suit was decreed in full as against the insurer, exporter and the carrier with 18% interest per

annum from the date of institution till date of recovery of the amount. The appellant contends that the impugned judgment is erroneous insofar as the findings recorded, vis-a-vis the existence of an agency between itself and HHEC are concerned. For this purpose, Mr.Garg, the learned counsel for the appellant relied upon the terms of the Agreement dated 27th October, 1998 as well as the order placed on the same day. He further contended that upon a proper application of the test indicated in *K. Gopinathan Nair and Ors. v. State of Kerala*, 1997 (10) SCC 1, which, in turn, had relied upon the judgment of the Constitution Bench *K.G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes*, AIR 1966 SC 1216, HHEC was not merely an agency acting as a canalising institution but an independent contractor which agreed to procure the quantity of goods in question by application of its expertise and independent choice. Learned counsel stressed upon the fact that both the Agreement as well as the order placed upon the HHEC are silent as to whether it is an agency agreement. He stressed that there is no reference to the exporter at all and that the HHEC, as an independent contractor was free to choose the supplier, the terms of the contract entered into with the supplier

and other essential details. Contending that the learned Single Judge fell into error in holding that the appellant's suit was time barred, learned counsel relied upon the various notices issued to HHEC and the replies made to them. He also relied upon the acknowledgment/endorsement of HHEC upon the letter requiring it to confirm the credit balance for the year ending 31st March, 2001. Counsel lastly relied upon paras 1, 11, 12 & 14 of the suit filed by the HHEC against the exporter and submitted all these constituted acknowledgment of debt within the ambit of Section 18 of the Limitation Act, 1963. Learned counsel relied upon the judgment reported as *Khan Bahadur Shapoor Fredoom Mazda v. Durga Prosad Chamaria & Ors.*, 1962 (1) SCR 140 and *M/s. Lakshmirattan Cotton Mills Co. Ltd. v. The Aluminium Corporation of India Ltd.*, 1971 (1) SCC 67 to contend that so long as the existence of jural relationship emerges upon reading of the document of the defendant, the Court would infer that it is acknowledgement.

5. This Court has considered the submissions. Before analysing the rival contentions, it would be appropriate to peruse the terms of the Agreement and the order placed concurrently on 27th October, 1998.

The conditions of the relevant stipulations of the Agreement are as follows:-

- “1. The buyer will place order on HHEC for import of silk in India.*
- 2. The HHEC will not be responsible for delay in import or clearance of any consignment caused by circumstances beyond the control of HHEC.*
- 3. The buyer agrees to the terms and conditions annexed with this Agreement as Annexure ‘A’ which shall form an integral part of the Agreement and the buyer undertakes to be bound by the same.*
- 4. The HHEC reserves the right to accept or reject the order without assigning any reason.*
- 5. This agreement is valid for a period of one year in the first instance and may be renewed for another year by mutual consent of the parties hereto. HHEC reserves the right to terminate the agreement at any time without assigning any reason.*
- 6. The buyer undertakes to transact business of 500 bales (30 M.T.) by 28.2.1999.*

6. The purchase order placed in terms of the stipulations contained in the Agreement - which was to be enforced for one year, pertinently states as follows:-

- “3. The particulars of quality as indicated on the import invoice, buyer shall furnish certificate at the time of taking delivery that silk imported is to the satisfaction of the buyers with regard to quality and quantity. It is hereby expressly agreed and understood that HHEC will neither be liable nor entertain any claim in respect of the quality and quantity of the consignment imported.*

11. The buyer agrees and undertakes to keep the HHEC indemnified and harmless against all claims, costs, expenses and risks.

13. The buyer agrees and assures that the HHEC will not be liable or responsible in any manner for any act of fraud, deceit, misrepresentation etc. inter alia as regards the quality of the silk as also in the event the consignment is discovered to be other than that for which the order was placed and the buyer undertakes to keep HHEC indemnified and harmless against all claims, offences, penalties, levies etc.”

7. Upon an analysis of the above conditions, the learned Single Judge held that the HHEC was acting as an agent of the appellant and not as an independent contractor and that the transaction with the exporter was on a principal to principal basis. The impugned judgment gives primacy to clause 3 which expressly disclaimed the HHEC's responsibility with regard to the quality or quantity of goods supplied.

8. There can be no dispute that the label or appellation of a document is not conclusive of its true intent. In order to discern whether a relationship is based upon agency or one between principals, the Court has to necessarily deal into the substance of the

matter and look at its contents. An overall analysis of clauses 3, 11 and 13 – as well as clause 8 in the opinion of this Court leads to only one conclusion, that the HHEC had not acted as an independent contractor but as the appellant's agent. As held by the learned Single Judge, clause 3 is decisive enough as in that it disclaims any responsibility or obligation on the part of the HHEC vis-a-vis the quality or quantity supplied. Furthermore, this Court is of the opinion in the facts of the case HHEC cannot be held liable for any delivery contracted or goods supplied to the buyer in this case, i.e. to the plaintiff/appellant. The latter relied upon the HHEC's expertise who apparently used to import such goods as well as other goods and was in a position to locate a seller. That does not detract from the fact that as regards the transaction in question, HHEC acted as the plaintiff/appellant's agent. The contract does not assure or hold out any promise as to the quality or quantity of the goods, nor does HHEC take up any responsibility in such regard. Clause 11 even goes to the extent of the appellant indemnifying the HHEC against all claims or expenses and risks.

9. Having regard to these facts which the Court has independently

examined, no fault can be found with the Single Judge's reasoning by this Court. The appellant's contentions are consequently rejected. As for the plaintiff's contention of the suit being within time, it is facially evident that the cause of action arose when the invoice was presented for 235 bales, i.e. sometime in 1999. The plaintiff sought to explain the delay of more than six years in filing the suit by contending that in the year 2002, the defendant/ the HHEC had acknowledged – through an endorsement that there was a balance in its books shown as payable on account of the transaction vis-a-vis the shortfall of the goods. The plaintiff has also placed reliance upon notice issued to the HHEC and the letter's reply thereto. Particular reliance is placed upon the decision of *Khan Bahadur Shapoor Fredoom Mazda* (supra) and *M/s. Lakshmirattan Cotton Mills Co. Ltd.*(supra). While there cannot be a dispute on the law on point, an overall reading of the documents in question particularly the reply to the notice would show that HHEC's consistent position has been that it acted as an agent to the plaintiff/appellant and that in the event of its being successful in receiving the so indicated balance amount from the foreign exporter, it would be remitted to the plaintiff/appellant. The learned Single Judge

found that this did not amount to its acknowledgment. This Court has also considered the rulings in *Khan Bahadur Shapoor Fredoom* (supra) and *M/s. Lakshmirattan Cotton Mills Co. Ltd.* (supra). Having regard to the law declared, this Court is satisfied that the letters relied upon by the plaintiff do not constitute an acknowledgement as to enlarge the time under Section 18 of the Limitation Act. No further point is urged on behalf of the appellant.

10. In view of the above discussions, the Court observes that the appeal lacks on merit and is hereby dismissed without any order as to costs.

**S. RAVINDRA BHAT, J
(JUDGE)**

**NAJMI WAZIRI, J
(JUDGE)**

**AUGUST 08, 2013
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