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

+ **RFA 7/2015 & CMs 1959-60/2015**

M/S KRISHNA LIFE STYLES TECHNOLOGIES LIMITED

..... Appellant

Through : Mr. Satinder S. Gulati with
Mr. Kamaldeep Gulati, Advocates

versus

KANWALJEET SINGH

..... Respondent

Through : None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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27.02.2017

1. The appellant/plaintiff is aggrieved by the judgment dated 29.8.2014, passed by the trial court dismissing its suit for recovery of a sum of Rs.3,64,730/- filed against the respondent/defendant for the value of goods supplied.
2. Though the respondent/defendant has been duly served in the appeal, none has appeared on his behalf.
3. Before considering the submissions of the learned counsel for the appellants a glance at the facts of the case is considered necessary. The appellant/plaintiff had instituted the subject suit against the respondent/defendant on 14.5.2008, seeking recovery of a sum of Rs.3,64,730/- on the plea that there was a running account between the parties maintained in the normal course of business and the respondent/defendant had been

purchasing clothes from the appellant/plaintiff from time to time, commencing from the year 2004 and onwards. The bills raised by the appellant/plaintiff for the sale of the goods to the respondent/defendant have been set out in para 4 of the plaint, starting from the first bill raised on 18.9.2004 and ending on 1.9.2005. Claiming that the respondent/defendant had issued a cheque for a sum of Rs.10,000/- in favour of the appellant/plaintiff on 10.9.2005, towards part payment of the goods purchased and thereby, had acknowledged the outstanding bills for which payment had yet to be made, it has been pleaded in the plaint that in the year ending on 31.3.2005, the respondent/defendant owed a sum of Rs.2,22,396/- to the appellant/plaintiff. Adding to the principal amount, interest @ 24% p.a. which would work out to a sum of Rs.1,42,334/-, the appellant/plaintiff had filed a suit for recovery of Rs.3,64,730/- against the respondent/defendant.

4. On being served in the suit, the respondent/defendant had entered appearance and filed a written statement taking several pleas therein, both on facts and in law. After completion of pleadings in the suit, issues were framed on 13.2.2009. Prior thereto, the respondent/defendant had admitted several documents filed by the appellant/plaintiff, including the invoices raised on him and the fact that he had issued a cheque dated 10.9.2005 for a sum of Rs.10,000/- in favour of the appellant/plaintiff. To prove its case, the appellant/plaintiff had produced two witnesses including the Manager of the company, PW-1 and the Head Accountant, PW-2. The respondent/defendant had cross-examined PW-1, he failed to cross-examine PW-2 though he was granted several opportunities to do so. Vide order dated 17.10.2012, the right of the respondent/defendant to cross-examine the appellant/plaintiff's

witnesses was closed. On his part, the respondent/defendant failed to file his affidavit by way of evidence despite repeated opportunities granted to him; nor did he lead any evidence. Finally, vide order dated 3.12.2013, the right of the respondent/defendant to lead the evidence was closed and the suit was directed to be listed for arguments on 1.2.2014.

5. The trial court record reveals that at the request of the counsel for the appellant/plaintiff, the case was adjourned for arguments on 1.2.2014 to 9.4.2014. On 9.4.2014, the Presiding Judge was on leave and the case was adjourned to 2.7.2014. On 2.7.2014, part arguments were advanced on behalf of the appellant/plaintiff and the matter was adjourned to 28.7.2014 for further arguments. On 28.7.2014, none had appeared for the appellant/plaintiff and the case was adjourned to 29.8.2014 for re-arguments. On 29.8.2014, the impugned judgment was pronounced whereunder, the suit was dismissed as being barred by limitation. By a separate order passed on the same day, which mentions that none was present on behalf of the appellant/plaintiff, the learned trial court had recorded that by a separate judgment dictated and announced in the open court, the appellant/plaintiff's suit had been dismissed.

6. The main grievance raised on behalf of the appellant/plaintiff is that the impugned judgment came to be passed on a date when none was present on its behalf to assist the court. Learned counsel for the appellant seeks to explain that the observations made in para 11 of the impugned judgment to the effect that arguments were addressed by the counsel for the appellant/plaintiff, is mistaken for the reason that arguments were addressed only on 2.7.2014, but subsequently, on 28.7.2014, the trial court had put up the case for 29.8.2014, for re-arguments and on the said date, none had appeared on

behalf of the appellant/plaintiff.

7. Learned counsel states that had counsel for the appellant/plaintiff been present before the court on the said date, he would have pointed out that there is an open, current and mutual account between the parties and in those circumstances which could be deducted from the intention of the parties, as reflected from the record, the period of limitation for instituting a suit for recovery would be three years reckoned from the close of the year in which the last item admitted or proved was entered into the account, as prescribed in Article 1 of the Schedule appended to the Limitation Act, 1963. Since the last entry in the ledger account was 01.09.2005, the limitation would have expired on 30.08.2008, whereas the present suit was instituted on 14.05.2008. He argues that in the present case, a ledger account was maintained by the appellant/plaintiff in due course of business for the years 2004-05 and 2005-06 in relation to the defendant, which was duly proved by the Head Accountant of the appellant company (PW-2) and was exhibited as Ex.PW2/1 and though several opportunities were granted to the respondent/defendant to cross-examine the said witness, he had failed to do so. Given the aforesaid facts, it is contended that the observations made in the impugned judgment to the effect that the statement of account (Ex.PW2/1) had not been proved by the appellant, is contrary to the record. It is further stated that the learned trial court has erred in placing reliance on Section 18 of the Limitation Act, 1963 to arrive at a conclusion that the cheque for a sum of Rs.10,000/- dated 10.9.2005, drawn by the respondent/defendant in favour of the appellant/plaintiff would not extend the limitation in respect of the remaining invoices which relate to the period between 18.9.2004 to 29.7.2005.

8. Coming first to the question as to which Article in the Schedule appended to the Limitation Act, 1963 would apply in the present case, it is apparent from the pleas taken by the appellant/plaintiff in the plaint that the dealings between the parties were of a buyer and seller. The appellant/plaintiff had been supplying goods to the respondent/defendant from time to time. Once the goods were supplied by the appellant/plaintiff, the respondent/defendant was expected to pay the price of the goods delivered. As and when the appellant/plaintiff as a seller, had made delivery of the goods to the respondent as a buyer, the latter had to pay the price due for them.

9. Such payments to be made by the respondent/defendant cannot be treated as an obligation on both, the seller and the buyer as contended by counsel for the appellant. The said relationship between the parties does not have an element of mutuality and therefore, it cannot be described as a mutual account, as contemplated under Article 1 to the Schedule of the Limitation Act, 1963, there being no dual contractual relationship between them. Instead, the dealings between the parties disclose a single contractual relationship of a buyer and a seller. In those circumstances, as has been held by a Division Bench of this Court in the case of Bharath Skin Corporation vs. Taneja Skins Company Pvt. Ltd. reported as **186 (2012) DLT 290**, the residual Article, i.e., Article 113 of the Schedule to the Limitation Act, 1963 would apply. Under Article 113, the period of limitation for filing a suit is three years and the time from which the period begins to run, is to be reckoned when the right to sue accrues.

10. Proceeding next to the plea of Section 18 of the Limitation Act, the said provision contemplates that where, before the expiration of the

prescribed period for institution of a suit or application in respect of any property or right, an acknowledgement of liability has been made in writing signed by a party against whom a claim is laid, a fresh period of limitation shall be computed from the time when the said acknowledgement was so signed.

11. Counsel for the appellant/plaintiff herein has taken a plea that there was an open running account maintained in respect of the respondent/defendant and therefore the cheque for a round figure of Rs.10,000/- issued by him, in favour of the appellant/plaintiff on 10.9.2005, in partial discharge of his obligation, which when presented, had remained unpaid, would give a fresh period of limitation for purposes of instituting a suit for recovery of money. To substantiate his submission that even though a cheque may bounce during the pendency of a suit, bouncing of the said cheque will not undo the advantage of extension of the period of limitation earned by the plaintiff and nor will it extinguish the liability of the defendant and the said cheque must be treated as an effective mode of payment, reliance has been placed on the case of Rajesh Kumari vs. Prem Chand Jain, reported as **67 (1997) DLT 502**.

12. In the instant case, the captioned cheque issued by the respondent/defendant in favour of the appellant/plaintiff will have to be treated as an acknowledgment of liability for payment, irrespective of the fact that on being presented, the same was dishonoured and the limitation for instituting the suit would stand extended by computing the period from the date of issuance of such a cheque. That the cheque issued by the respondent/defendant had bounced, will not work to the disadvantage of the appellant/plaintiff since it was duly accepted and it remains an effective

mode of payment for purposes of applying Section 19 of the Limitation Act.

13. The statement of account maintained by the appellant/plaintiff in its ledger account for the years 2004-05 and 2005-06 in respect of goods supplied to the respondent/defendant and the amounts received from him as payment reveals that there were several transactions conducted between the parties and bills were raised by the appellant/ plaintiff on the defendant for sale of goods from time to time, against which part payments were made by the respondent/defendant in the year 2004-05. As on 1.4.2004, the opening balance has been shown in the ledger account as Rs.2,46,554/- and at the end of the year 2004-05, the debit balance i.e., the balance due was Rs.90,730/-. The said amount was carried forward as due and payable in the ledger account to the year 2005-06 which had ended with a debit balance of Rs.1,41,113/- and the said outstanding amount was again carried forward as due and payable, to the year 2006-07.

14. In the meantime, in partial discharge of his obligations, the respondent/defendant had issued a cheque for a sum of Rs.10,000/- in favour of the appellant/plaintiff on 10.9.2005, which was duly received and banked by the appellant/plaintiff but was dishonoured on being presented. Issuance of the said cheque has been duly admitted by the respondent/defendant and the same has been exhibited as Ex.P-1. That being the position, it is evident that the appellant/plaintiff would get the advantage of extension of the period of limitation under Section 18 of the Limitation Act, 1963 as held in the case of Rajesh Kumari (supra). Axiomatically, the appellant/plaintiff was entitled to sue the respondent/defendant upto three years reckoned from 10.9.2005, which would have expired on 9.9.2008 whereas, the present suit was instituted well before that, on 14.5.2008.

15. Given the aforesaid legal position, the impugned judgment dated 29.8.2014 cannot be sustained and is set aside. The case is remanded back to the trial court for a fresh decision, in accordance with law.

16. List before the trial court on 27th March, 2017, for further proceedings.

17. The trial court record be released forthwith.

18. The appeal is disposed of, along with the pending applications.

FEBRUARY 27, 2017

sk/ap/rkb

HIMA KOHLI, J