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

+ RFA 304/2014

M/S NATIONAL CO-OPERATIVE CONSUMERS
FEDERATION OF INDIA LTD.

..... Appellant

Through: MS Anju Bhattcharya, Adv.

versus

M/S INDIAN COUNCIL FOR HISTORICAL
RESEARCH & ANR

..... Respondents

Through: Mr. C.P. Tyagi & Mr Manish Kumar,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

22.09.2015

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1. This is an appeal directed against the judgement and decree dated 26.03.2014, rendered by the Addl. District Judge, Patiala House Courts, New Delhi. By virtue of this judgement, the suit filed by the appellant/ plaintiff, for recovery, was dismissed on the ground of limitation.

1.1 The facts which are required to be noticed, in order to adjudicate upon the instant appeal, are as follows:

2. Respondent no.1/ defendant no.1 placed an order on the appellant/ plaintiff for purchasing a Canon Digital Copier IR-5000 (hereafter referred to as the "photocopier"). This order was placed on the appellant/ plaintiff on 04.06.2004. The photocopier was received by the respondents/ defendants at the agreed site, on 13.08.2004. The photocopier was installed in the office of respondent no.2/ defendant no.2 which is located in

Guwahati, in the State of Assam.

2.1 Apparently, on account of alleged defects, vide letter dated 07.02.2006, respondent no.1/ defendant no.1 cancelled the supply order and sought replacement of the photocopier within the period stipulated therein.

2.2 Prior to the cancellation of the supply order, respondent no.1/ defendant no.1 had, vide a letter dated 17.08.2004, brought to the notice of the appellant/ plaintiff that the photocopier supplied was severely damaged and hence could not be accepted in that condition. It appears that between 17.08.2004, i.e. when the defects were brought to the notice of the appellant/ plaintiff by respondent no.2/ defendant no.2, correspondence was exchanged on this issue with the appellant/ plaintiff.

2.3 As indicated above, this led to the cancellation of the supply order on 07.02.2006.

2.4 Evidently, on 11.10.2007, the appellant/ plaintiff wrote to respondent no.1/ defendant no.1 with regard to its failure to clear its dues for supply of the photocopier. In this letter, the appellant/ plaintiff conceded though, that during transportation the lamp and glass of the scanner had got damaged, and that, on account of this the photocopier was brought back to Delhi for replacement of damaged parts. The letter went on to state that after procurement of damaged parts from Singapore, the same were fitted in the photocopier and transported to respondent no.1/ defendant no.1's Guwahati Office, in December, 2004. To demonstrate that the photocopier was working properly, reliance was placed in the letter on two customers service report generated in that behalf. As per the appellant/ plaintiff, the counter reading showed that the photocopier was in use and was in working

condition. This letter concluded with the appellant/ plaintiff seeking release of a sum of Rs. 8,45,912/-.

2.5 Apparently, in response to this letter, respondent no.1/ defendant no.1 wrote a letter dated 20.02.2008 wherein, it reiterated the fact that the supply order qua the photocopier was cancelled on 07.02.2006. While it was emphasized, that the said position held good, a statement was made that it would be willing to review the decision to cancel the supply order if, the appellant/ plaintiff were to agree to transport the photocopier and its accessories from its Guwahati Office to its headquarter at Delhi; albeit at their own risk and cost, and furthermore, have the photocopier re-installed in their Delhi office, and have it checked and defects removed. The latter exercise was also required to be carried out at the risk and cost of the appellant/ plaintiff. The other caveats put in by the respondent no.1/ defendant no.1, were: that only if the photocopier thereafter was found to be in working condition, it would be accepted and used at their headquarter; the appellant/plaintiff would issue a guarantee/ warranty of satisfactory performance for further period of six months; and only if, the performance was found satisfactory, would respondent no.1/ defendant no.1 consider releasing the payment to appellant/ plaintiff.

2.6 Admittedly, none of that, which was indicated in the letter dated 20.02.2008, got done. In other words, the photocopier was not moved by the appellant/plaintiff from the Guwahati Office to the headquarter of the respondents/ defendants at New Delhi. The other conditions stipulated in the letter dated 20.02.2008, accordingly, were not given effect to.

3. The trial court, taking into account the aforesaid facts and

correspondence, returned following findings of facts;

- (i) That letter dated 20.02.2008 confirmed existence of the transaction as also a liability, with the caveat, that the same was disputed.
- (ii) That letter dated 20.02.2008 did not constitute a fresh proposal.
- (iii) That letter dated 20.02.2008 did not extend the period of limitation as the period of limitation expired on 17.08.2007; this date, perhaps, should read as 13.08.2004.

3.1 Based on the aforesaid findings and given the fact that the suit was filed on 13.09.2010, the trial court, came to the conclusion that the suit was barred by limitation.

4. Ms Bhattacharya, who appears for the appellant, has assailed the judgement on the ground that the trial court did not take cognizance of the provisions of Section 25(3) of the Indian Contract Act, 1872 (hereafter referred to as the Contract Act). Ms Bhattacharya did concede though, that no arguments were addressed on the basis of the provisions of Section 25(3) of the Contract Act. It is, however, her submission, that since the facts, which have emerged from the record, are not in dispute, a legal plea such as the one based on the provisions of Section 25(3) of the Contract Act can always be propounded even at this stage.

4.1 In support of her submissions, Ms Bhattacharya has relied upon the following judgements: *M/s R. Sureshchandra & Co. Vs Vadnere Chemical Works & Ors. AIR 1991 Bom. 44* and *Southern Eastern Roadways vs U.P. State Agro Industrial Corporation Ltd. & Anr. AIR 1993 Bom. 300*.

5. Mr Tyagi, who appears for the respondents, on the other hand, has

relied upon the impugned judgement to contend that the appeal is without merit.

6. I have heard the learned counsels for the parties and perused the record. Clearly, the following dates and events are relevant for considering as to whether the suit filed by the appellant/ plaintiff is barred by limitation.

(i) Undoubtedly, qua the photocopier, respondent no.1/ defendant no.1 placed an order on the appellant/ plaintiff on 04.06.2004, which was received at the given destination, on 13.08.2004.

(ii) Correspondence with regard to the defects in the photocopier commenced from 17.08.2004, which finally culminated in respondent no.1/ defendant no.1 terminating the supply order on 07.02.2006.

6.1 Claim for receipt of moneys, towards supplies made would, therefore, ordinarily have to be made within three years of the date of supply. The said period would, in any event, end on August, 2007. For the purposes of extension of period of limitation, the appellant/ plaintiff relied upon letter dated 20.02.2008. This letter, clearly falls outside the limitation period and, therefore, was not considered by the trial court as a document which could extend limitation in favour of the appellant/ plaintiff. I have, in fact, grave doubts as to whether the letter dated 20.02.2008 could even be considered as acknowledgement of debt.

6.2 To my mind, the letter dated 20.02.2008 was in fact a new proposal. To that extent the observations of the trial court, in my view, are clearly wrong. The question is, as to whether the appellant/ plaintiff accepted this proposal. Ms Bhattacharya has conceded in so many words that this proposal was not accepted by the appellant/ plaintiff. The argument,

therefore, which requires consideration is the one advanced by Ms Bhattacharya before me, which is, as to whether the respondents/ defendants had agreed to pay a time-barred debt. For this purpose, Ms Bhattacharya relied upon Section 25(3) of the Contract Act. For the sake of convenience, the said provision is extracted hereafter:

“.... 25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law. – An agreement made without consideration is void, unless.

(1) xxxx

(2) xxxx

(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits....”

6.3 The said provision is clearly demonstrative of the fact that a debtor can always consent to the payment of a time-barred debt either in whole or in part provided that promise is unconditional and without caveats.

6.4 A careful perusal of the letter dated 20.02.2008 would show, as indicated above, there were several caveats to the offer to pay the money with respect to the photocopier supplied by the appellant/ plaintiff. The letter dated 20.02.2008 was, in substance, a new offer, and if it had been accepted it would perhaps have culminated into a new contract and discharged the old contract. That eventuality never occurred.

7. The reliance placed by Ms Bhattacharya on the judgement in the case of *R. Sureshchandra & Co. vs Vadnere Chemical Works & Ors.*, in my

view, would not help, for the reason that the facts stated therein clearly show that the defendants in that case had acknowledged the debt by reflecting the same in their balance sheet. The statement of law, as reflected in the judgement, would clearly establish that Section 25(3) of the Contract Act gets triggered only if there is a clear promise made to pay a time-barred debt. While a promise can be inferred by necessary implication, the promise nevertheless has to be clear and unconditional. In the present case there were, as indicated above, several conditions attached to the offer to pay the money against the supply of the photocopier.

7.1 The position in respect of the other case is no different. In *Southern Eastern Roadways vs U.P. State Agro Industrial Corporation Ltd. & Anr.*, a reply had been sent by the defendant which clearly indicated that the defendant wished to settle the matter. There were no caveats attached to the promise of payment.

7.2 It is in these circumstances that in both cases the court invoked the provisions of Section 25(3) of the Contract Act, and thus, concluded that the said claim was within limitation.

8. Having regard to the aforesaid, in my view, the impugned judgement would have to be sustained. The appeal is, accordingly, dismissed. Parties are, however, left to bear their own cost.

RAJIV SHAKDHER, J

SEPTEMBER 22, 2015

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