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

+ RFA 569/2015

M/S RUBY HANDICRAFT

..... Appellant

Through: Mr. Iqbal Ashraf Rahmani,
Advocate

versus

NEXUS DESIGN PROJECT PVT LTD & ANR Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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24.08.2015

CM No.16518/2015 (Exemption)

1. Allowed subject to just exceptions.

RFA 569/2015 and CM No.16519/2015 (condonation of delay of 9 days in filing the appeal) and CM No.16517/2015 (for filing additional documents)

2. This appeal is directed against the judgment and decree dated 30.04.2015. The appellant / plaintiff had filed a suit for recovery of a sum of Rs.4,86,933/- alongwith interest against the defendants herein. Respondent no.1 / defendant no.1 is the company against whom the claim is made. Respondent no.2 / defendant no.2 is the Director of respondent no.1/defendant no.1.

2.1 The claim of the appellant / plaintiff arises from eight (8) unliquidated bills for supplies made between the period commencing from 13.04.2008 till 19.06.2010. The supplies made by the appellant / plaintiff apparently were in the nature of handicrafts.

2.2 The appellant / plaintiff is aggrieved by the fact that moneys due against the eight (8) bills had not been liquidated. For this purpose, the

appellant / plaintiff had also issued two legal notices dated 23.12.2010 and 11.01.2013.

2.3 Being aggrieved, the appellant / plaintiff filed a suit for recovery, as indicated above.

2.4 Upon pleadings being completed, the trial court framed the following issues in the suit :-

- “..1). Whether the suit of plaintiff is barred by limitation?
(Onus on both the parties)
2. Whether the plaintiff is entitled to recovery of Rs.4,86,933/-? OPP
3. Whether the plaintiff is entitled to interest, if so, for what period and at what rate? OPP
4. Relief..”

2.5 By virtue of the impugned judgment, the trial court has returned findings against the appellant / plaintiff.

2.6 It is this grievance which has propelled the appellant / plaintiff to institute the present appeal.

3. A perusal of the impugned judgment would show that the trial court has returned the following findings of facts :-

- (i). That out of the eight (8) bills, filed by the appellant / plaintiff, seven (7) were clearly beyond limitation.
- (ii). The eight (8) bills; the details of which are provided in paragraph 8 of the impugned judgment, were not proved. The originals in the form of office / carbon copies were not filed.
- (iii). The books of accounts / ledger were not produced.
- (iv). A computerized statement of account was filed, which was not accompanied by a certificate as required under Section 65 B of the Indian

Evidence Act, 1872.

(v). The account maintained by the appellant / plaintiff in its books of accounts could not be termed as mutual, open and current account as there were no reciprocal demands obtaining between the parties.

(vi) DW-1 had proved that a sum of Rs.1,20,000/- was paid to the appellant / plaintiff in terms of the settlement agreement dated 29.02.2012 (Ex. PW1/17). There was no suggestion to the contrary given to DW-1 in the cross-examination carried out by the appellant / plaintiff.

3.1 None of these findings of fact were disputed before me by the learned counsel for the appellant / plaintiff. The counsel for the appellant / plaintiff only stated that originals were available, which the appellant / plaintiff would have filed, but for the erroneous advice rendered by the counsel engaged by him. It is further submitted that for this very purpose, an application has been preferred with this court under the provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908 (in short the CPC).

3.2 It was also contended by the learned counsel for the appellant that, if, the last entry in the statement of account (Ex. PW1/2), concerning respondent no.1, in the books of the appellant/ plaintiff, is taken into account, then, the suit would necessarily be within the period of limitation – contrary to the conclusion reached by the trial court. This argument was based on the provisions of Article I of the Limitation Act, 1963 (in short the 1963 Act), which relates to accounts which are mutual, open and current.

4. I have heard the learned counsel for the appellant / plaintiff. In my view, each of these findings is fatal to the case of the appellant / plaintiff. Pertinently, none of the findings reached by the trial court have been dislodged.

4.1 Let me, therefore, in the first instance deal with the argument pertaining to limitation. Clearly, the eight (8) bills in issue, in respect of which, the suit, has been filed bear the following dates: 13.04.2008, 16.04.2008, 05.10.2009, 17.12.2009, 17.12.2009, 04.01.2010, 01.02.2010 and 19.06.2010.

4.2 The suit in the instant case was, admittedly filed on 03.06.2013. Therefore, quite clearly, the first seven (7) bills are beyond the period of limitation. Thus, whether or not original bills were produced, it would make no difference to the finding reached by the trial court in respect of the first seven (7) bills. The only way out, perhaps, would have been if, as contended on behalf of the appellant/ plaintiff, the account maintained was one which could be construed as a mutual, open and current account as envisaged in Article I, Schedule 1 of the 1963 Act. For the sake of convenience, the provisions of the said Article are extracted hereinbelow:

Description of suit	Period of limitation	Time from which period begins to occur
For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties	Three years	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.

4.3 A close perusal of the said article would show that it applies only to such accounts where there are reciprocal demands between the parties. In other words, where balances, get triggered from time to time on account of independent obligations. In the instant case, the stand taken by the appellant/ plaintiff is that it supplied the goods to respondent no.1/ defendant

no.1 from time to time and in the process eight (8) bills got generated which stand unliquidated to date. Quite clearly, these bills did not create reciprocal demands which, necessarily, involve transactions, undertaken by each side, giving rise to an independent obligation qua the other side. In other words, a transaction which creates an obligation on one side, with a counter obligation on the other, to complete its part of the obligation, under the same contract, does not create independent obligations or reciprocal demands of the kind envisaged in Article I of the 1963 Act. [see *Hindustan Forest Company vs Lal Chand & Ors.* (1960) 1 SCR 563]. The relevant observations reads as follows:

7. The question what is a mutual account, has been considered by the courts frequently and the test to determine it is well settled. The case of the *Tea Financing Syndicate Ltd. v. Chandrakamal Bezbaruah* (1930) ILR 58 Cal. 649 may be referred to. There a company had been advancing monies by way of loans to the proprietor of a tea estate and the proprietor had been sending tea to the company for sale and realisation of the price. In a suit brought by the company against the proprietor of the tea estate for recovery of the balance of the advances made after giving credit for the price realised from the sale of tea, the question arose as to whether the case was one of reciprocal demands resulting in the account between the parties being mutual so as to be governed by Art. 85 of the Indian Limitation Act. Rankin, C.J., laid down at p. 668 the test, to be applied for deciding the question in these words:

" There can, I think, be no doubt that the requirement of reciprocal demands involves, as all the Indian cases have decided following Hallway, A.C.J., 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. It is

further clear that goods as well as money may be sent by way of payment. We have therefore to see whether under the deed the tea, sent by the defendant to the plaintiff for sale, was sent merely by way of discharge of the defendant's debt or whether it was sent in the course of dealings designed to create a credit to the defendant as the owner of the tea sold, which credit when brought into the account would operate by way of set-off to reduce the defendant's liability."

8. The observation of Rankin, C.J., has never been dissented from in our courts and we think it lays down the law correctly. The learned Judges of the appellate bench of the High Court also appear to have applied the same test as that laid down by Rankin, C.J. They however came to the conclusion that the account between the parties was mutual for the following reasons:

" The point then reduces itself to the fact that the defendant company had advanced a certain amount of money to the plaintiffs for the supply of grains. This excludes the question of monthly payments being made to the plaintiffs. The plaintiffs having received a certain amount of money, they became debtors to the defendant company to this extent, and when the supplies exceeded Rs. 13,000 the defendant company became debtors to the plaintiff and later on when again the plaintiff's supplies exceeded the amount paid to them, the defendants again became the debtors. This would show that there were reciprocity of dealings and transactions on each side creating independent obligations on the other."

9. The reasoning is clearly erroneous. On the facts stated by the learned Judges there was no reciprocity of dealings; there were no independent obligations. What in fact had happened was that the sellers had undertaken to make delivery of goods and the buyer had agreed to pay for them and had in part made the payment in advance. There can be no question that in -so far

as the payments had been made after the goods had been delivered, they had been made towards the price due. Such payments were in discharge of the obligation created in the buyer by the deliveries made to it to pay the price of the goods delivered and did not create any obligation on the sellers in favour of the buyer. The learned Judges do not appear to have taken a contrary view of the result of these payments.

10. The learned Judges however held that the payment of Rs. 13,000 by the buyer in advance before delivery had started, made the sellers the debtor of the buyer and had created an obligation on the sellers in favour of the buyer. This apparently was the reason which led them to the view that there were reciprocal demands and that the transactions had created independent obligations on each of the parties. This view is unfounded. The sum of Rs. 13,000 had been paid as and by way of advance payment of price of goods to be delivered. It was paid in discharge of obligations to arise under the contract. It was paid under the terms of the contract which was to buy goods and pay for them. It did not itself create any obligation on the sellers in favour of the buyer; it was not intended to be and did not amount to an independent transaction detached from the rest of the contract. The sellers were under an obligation to deliver the goods but that obligation arose from the contract and not from the payment of the advance alone. If the sellers had failed to deliver goods, they would have been liable to refund the monies advanced on account of the price and might also have been liable in damages, but such liability would then have arisen from the contract and not from the fact of the advances having been made. Apart from such failure, the buyer could not recover the monies paid in advance. No question has, however, been raised as to any default on the part of the sellers to deliver goods. This case therefore involved no reciprocity of demands. Article 115 of the Jammu and Kashmir Limitation Act cannot be applied to the suit....”

4.4 Which brings me to the last bill, which is dated 19.06.2010. The appellant/ plaintiff in order to bring the eight (8) bills on record, including

the bill dated 19.06.2010, has moved an application under Order 41 Rule 27 of the CPC.

4.5 A perusal of the said provision would show that production of additional evidence, whether oral or documentary, can be permitted by the court, broadly, in three circumstances. First, where the trial court has refused to admit evidence, though it ought to have been admitted. Second, when, evidence was not available to the party concerned, despite exercise of due diligence. Lastly, when, the appellate court, requires additional evidence to be produced to enable it to pronounce judgement or for any other substantial cause.

4.6 In the instant case, the reason provided by the appellant/ plaintiff is that he did not receive appropriate advice in the matter. This reason does not fall in the first two circumstances listed out hereinabove by me under which the court may exercise its power to admit additional evidence. In so far as the last circumstance is concerned, which is that admission of additional evidence would enable pronouncement of judgement in the case or for any other substantial cause, is a decision which courts take, which evolves, based on the attendant circumstances.

4.7 A perusal of the plaint shows that the appellant/ plaintiff evidently arrived at a settlement with the respondent/ defendant on 29.02.2012, with an intercession of the mediation centre at Tis Hazari Courts, and pursuant to the said settlement, the appellant/ defendant received a sum of Rs. 1.20 lacs. The appellant/ plaintiff, thereafter, appears to have taken a chance with the present suit by instituting the same on 03.06.2013, after a gap of nearly 16 months. Surely, such conduct of the appellant/ plaintiff does not call for exercise of powers under the third circumstance articulated by me,

hereinabove.

5. For the aforesaid reasons, I am not inclined to interfere with the impugned judgment and decree. The captioned appeal and the pending applications are accordingly, dismissed.

RAJIV SHAKDHER, J

AUGUST 24, 2015

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