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

% ***Judgment dated 30th September, 2016***

+ **CS(COMM) 1141/2016**

WINGS PHARMACEUTICALS (P) LTD Plaintiff

Through Mr. Rajeev Kumar, Advocate
versus

PRAVEEN BHASIN Defendant

Through Mr. S.C. Singhal, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

IA.22205/2015 (IA. /2016) (under Order VI Rule 17 CPC by the plaintiff)

1. This is an application under Order VI Rule 17 of the Code of Civil Procedure filed by the plaintiff seeking amendment to the plaint. Registry is directed to register this application in the year 2016 as the suit has been registered as a Commercial Suit in 2016.
2. By this application under Order VI Rule 17 of the Code of Civil Procedure (*in short 'CPC'*), the plaintiff wishes to amend paragraph 3 of the plaint by inserting the sentence: "*Thus open mutual current account between the parties to the suit came into existence.*" Learned counsel for the plaintiff/applicant submits that the necessity of filing this application has arisen on account of the fact that the defendant has made an application under Order VII Rule 11 CPC on 27.06.2015, wherein the defendant has raised a technical objection that there are no pleadings to the fact that the parties maintained an open mutual current

account and consequently, the suit is barred by limitation. Counsel further submits that the defendant has also instituted a suit against the plaintiff wherein the defendant himself has admitted that there was an open mutual current account between the parties to the suit.

3. Mr. Singhal, learned counsel for the non-applicant, submits that the present application is misconceived for the reason that the statement of account which has been filed along with the suit does not show that the parties maintained an open mutual current account. He submits that even if the amendment is allowed, his objection with respect to the nature of account be kept open.
4. I have heard the learned counsel for the parties. While allowing amendment, this Court does not have to, at this stage, decide as to whether an open mutual current account between the parties was opened or not. Accordingly, the application is allowed. The objection of Mr. Singhal is kept open. Let the amended plaint be taken on record.
5. The application stands disposed of.

IA.12641/2015 (IA. /2016)(Order VII Rule 11 CPC filed by the defendant)

6. This is an application has been filed by the defendant seeking rejection of the plaint under the provision of Order VII Rule 11 of the Code of Civil Procedure. Registry is directed to register this application in the year 2016 as the suit has been registered as a Commercial Suit in 2016.
7. By the present application the defendant prays for rejection of the plaint on the ground that the same is barred by limitation.
8. Necessary facts to be noticed for disposal of the application are that the plaintiff has filed the present suit for recovery in the sum of Rs.96,89,850.24. As per the plaint, the plaintiff company had appointed the defendant as its distributor to supply pharmaceuticals preparations

and products manufactured by the plaintiff company *inter alia* to the Health Department, Delhi Government and MCD. The plaintiff company supplied its manufactured pharmaceutical products against orders placed by the defendant and raised appropriate bills on the agreed terms and conditions printed at the footnote of the invoices. It is also the case of the plaintiff that the plaintiff company received 'on account' payments from time to time from the defendant for the supplies made to him which were duly entered into the books of accounts maintained in its regular course of business. All debit notes of the defendant stand adjusted and accounted for in the books of account of the plaintiff company and no debit note of the defendant is pending. To this end, the plaintiff had sought amendment of the plaint and has added the sentence that "*Thus open mutual current account between the parties to the suit came into existence.*"

9. Learned counsel for the plaintiff/ non-applicant submits that as per the terms and conditions printed on the footnote of the invoices, in case the defendant failed to pay the amount as per the invoice to the plaintiff company within 21 days from the date of the receipt of the pharmaceuticals products, the defendant was liable to pay interest @ 18% per annum to the plaintiff company. The plaintiff thus claims interest w.e.f. 01.04.2012 on the amount due. The plaintiff relies on the statement of account, a copy whereof has been filed on record to show that a sum of Rs.65,47,290.24 is outstanding towards the principal amount as on 31.03.2012 and a sum of Rs. 31,42,560/- has accrued as interest thereon w.e.f. 01.04.2012 to November, 2014. Thus, the plaintiff has claimed a total sum of Rs. 96,89,850.24.
10. As per the plaint, owing to the outstanding of Rs. 65,47,290.24 on 31.03.2011, the plaintiff had called upon the defendant to clear the

amount which the defendant agreed to clear and in discharge of its partial liability, issued 18 cheques in favour of the plaintiff, details of which are extracted as under:

<u>S.No.</u>	<u>Cheque No.</u>	<u>Date</u>	<u>Amount (in Rs.)</u>
1.	591048	14.04.2011	1,95,275
2.	591042	18.04.2011	3,09,586
3.	591125	06.05.2011	4,18,120
4.	591126	16.05.2011	4,48,877
5.	591127	24.05.2011	4,43,299
6.	591135	29.05.2011	3,53,955
7.	591136	30.05.2011	3,26,130
8.	626105	16.08.2011	4,00,000
9.	626107	16.08.2011	43,048
10.	625970	16.08.2011	4,00,000
11.	625971	16.08.2011	4,00,000
12.	625972	16.08.2011	4,00,000
13.	626103	16.08.2011	4,00,000
14.	625968	16.08.2011	4,00,000
15.	625973	16.08.2011	4,00,000
16.	626104	16.08.2011	4,00,000
17.	625969	16.08.2011	4,00,000
18.	626106	16.08.2011	4,00,000
Total:			65,38,290

11. It is clear that the first cheque was dated 14.04.2011 and the last was dated 16.08.2011. Admittedly, all the aforesaid cheques, when presented, were returned by the banker of the defendant with the

remarks “payment stopped by drawer”. The debit memos received by the plaintiff are dated 24.08.2011. Accordingly, the plaintiff has also instituted 18 criminal complaints against the defendant; and since the amounts were not forthcoming, the present suit was filed.

12. Mr. Singhal, learned counsel for the applicant/ defendant submits that on a bare perusal of the plaint would show that the plaint was verified on 18.12.2014, the affidavit is of the same date, while the present suit was filed on 23.12.2014. Mr. Singhal submits that further reading of the plaint, more particularly para 6, would show that the first cheque was dated 14.04.2011 and the last cheque was dated 16.08.2011 and according to the plaint, all the cheques were dishonoured vide memos dated 24.08.2011. Learned counsel submits that the cause of action, if any in favour of the plaintiff, would arise on 24.08.2011 and the period of three years would come to an end on 23.08.2014; whereas the plaintiff has claimed that the cause of action has arisen on 31.03.2012, which is the closing of the financial year. Mr. Singhal submits that merely because the plaint has been amended and the plaintiff has used the expression that the parties maintained an open mutual current account, that by itself, would not extend the period of limitation and would not allow the plaintiff to avail of Article 1 of the Schedule to the Limitation Act for the reason that the statement of account brought on record by the plaintiff itself does not reflect that there was an open mutual current account between the parties as at no point of time, the plaintiff owed any money to the defendant.
13. Per contra, the counsel for the plaintiff has stated that there was a open mutual current account between the parties and he has also amended his plaint to plead the same. He further submits that as there was a open mutual current account between the parties, the suit will be governed

by Article 1 of the Schedule to the Limitation Act and accordingly, the limitation period will begin to run from the closing of the financial year, i.e. 31.03.2012.

14. I have heard the learned counsel for the parties. The basic facts in this case are not in dispute. According to the plaint, the plaintiff has supplied goods to the defendant for which invoices were issued. As per the footnote of the invoices, the payments were to be made within 21 days from the date of the receipt of the invoices. As per the plaint, the defendant had issued 18 cheques in favour of the plaintiff. The details of the cheques have been extracted in paragraph 10 foregoing. The plaint also shows that all the cheques were returned unpaid on the ground that payment has been stopped on 24.08.2011.

15. Order VII Rule 11 of CPC reads as under:

“11. Rejection of plaint.— The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

...

(d) where the suit appears from the statement in the plaint to be barred by any law;”

16. In **Arjan Singh v. Union of India**, AIR 1987 Del 165 finding that the stand taken by the plaintiff therein in the plaint would show that the suit is within limitation and the question was linked with the merits of the claim, it was held as under:

“12. This discussion was meant to show that this question of limitation raised by reason of the statement in the written statement is different from the limitation involved in rejecting the plaint. If the plaint itself shows that the claim is barred by time, then the plaint can be rejected. However, if the real question of limitation is connected with the merits of the claim in the suit then it has to be tried along with other issues. I would accept this appeal only to the extent that the plaint could not be rejected but, I direct that this issue of limitation

should be tried along with other issues in the suit because, notwithstanding what is said above, the suit may still be barred by time. The result would be that the suit will be decided on merits and the issue of limitation will also be re-decided, if necessary. I leave the parties to bear their own costs.”

(Emphasis Supplied)

17. The purpose of Order VII Rule 11 has been examined by the Supreme Court in ***Sopan Sukhdeo Sable and Ors v. Asst. Charity Commissioner and Ors., (2004) 3 SCC 137.*** In the said matter, the plaint had been rejected owing to Section 80 of the Bombay Public Trusts Act, 1950 as being suit covered under the said statute. The Supreme Court had allowed the appeal by observing that the question was in respect of continuance of tenancy and period of tenancy, which were outside the ambit of the Public Trusts Act and accordingly, the rejection of the plaint was not warranted. The relevant paragraphs of the judgment read as under:

“17. Keeping in view the aforesaid principles, the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.

...

20... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly

implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

(Emphasis Supplied)

18. In *N. V. Srinivasa Murthy and Ors. v. Mariyamma*, (2005) 5 SCC 548, a sale deed had been executed in 1953 by the late father of the plaintiff therein allegedly to secure a loan of Rs. 2000; it was alleged that the reconveyance deed was to be executed upon the repayment of the loan. The loan was fully repaid in 1987 and a promise was made by the defendant to reconvey the property. The suit was filed in 1996 on the premise that the cause of action had arisen in 1994 when the mutation was done in the name of the defendants. The Supreme Court held that the plaint had been cleverly drafted in order to avoid limitation as the cause of action can be said to have arisen in 1953 *qua* the declaration of the sale deed as a loan agreement and in 1987 for reconveyance of the property and accordingly, the suit was hopelessly barred by limitation. The relevant paragraphs read as under:

“14. After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5-5-1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts.

15. Civil Suit No. 557 of 1990 was pending when the present suit was filed. In the present suit, the relief indirectly claimed is of declaring the sale deed of 5-5-1953 to be not really a sale deed but a loan transaction. Relief of reconveyance of property under alleged oral agreement on return of loan has been deliberately omitted from the relief clause. In our view, the present plaint is liable to rejection, if not on the ground that it does not disclose “cause of action”, on the ground that

from the averments in the plaint, the suit is apparently barred by law within the meaning of clause (d) of Order 7 Rule 11 of the Code of Civil Procedure.

16. The High Court does not seem to be right in rejecting the plaint on the ground that it does not disclose any “cause of action”. In our view, the trial court was right in coming to the conclusion that accepting all averments in the plaint, the suit seems to be barred by limitation. On critical examination of the plaint as discussed by us above, the suit seems to be clearly barred on the facts stated in the plaint itself. The suit as framed is prima facie barred by the law of limitation, provisions of the Specific Relief Act as also under Order 2 Rule 2 of the Code of Civil Procedure.”

(Emphasis Supplied)

19. Thereafter, the Supreme Court in ***Popat and Kotecha Property v. State Bank of India Staff Assn.***, (2005) 7 SCC 510 held that the plaint cannot be rejected when limitation is to be decided upon a question of fact. The relevant portion reads as under:

“25. When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo case the inevitable conclusion is that the Division Bench was not right in holding that Order 7 Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case.”

(Emphasis Supplied)

20. In ***Hardesh Ores (P) Ltd. v. Hede and Company***, (2007) 5 SCC 614, where the plaintiff/ appellant therein had sought to re-agitate a stale

claim of specific performance of a renewal clause in a agreement by camouflaging it as a suit for injunction; the Supreme Court, upholding the rejection of plaint by the high court and trial court, held as under:

“25. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of Clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of Clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in Liverpool and London S.P. and I Association Ltd. v. M.V. Sea Success I and Anr. and Popat and Kotecha Property v. State Bank of India Staff Association.

...

33. The respondent sought rejection of the plaint by filing application under Order 7 Rule 11 CPC contending that the suit was barred by limitation on the face of it. It was contended before the High Court as also before us that the plaint has been cleverly drafted to give it the appearance of a simple suit for injunction to enforce the terms of clauses 15 and 20 of the agreement which incorporated negative covenants prohibiting mining operation by anyone else except the appellant Haradesh, or without its permission. It was submitted before us that the law is well settled that the dexterity of the draftsman whereby the real cause of action is camouflaged in a plaint cleverly

drafted cannot defeat the right of the defendant to get the suit dismissed on the ground of limitation if on the facts, as stated in the plaint, the suit is shown to be barred by limitation...

(Emphasis Supplied)

21. To ascertain whether the suit is barred by limitation and the plaint deserves to be rejected under Order VII Rule 11, the courts must have a holistic reading of the plaint and the documents filed along with the same. The averments made in the plaint are to be taken to be true in their entirety. At the same time ensuring that the plaint must be meaningful and not a formal reading in order to ascertain as to a proper cause of action has been set out and it is not a case of clever drafting to get out of Order VII Rule 11.
22. A complete reading of the plaint would show that for the goods supplied 18 cheques were issued by the defendant in favour of the plaintiff, the details of which are given in paragraph 10 aforegoing. The first cheque is dated 18.04.2011 and the last cheque is dated 16.08.2011. The aforesaid cheques when presented were dishonoured by the bankers of the defendant with the remarks 'payments stopped by drawer'. Para 7 of the plaint shows that the cheques were returned unpaid by debit memos dated 24.08.2011. Upon return of the aforesaid cheques, the plaintiff issued demand notices and has filed complaint under Section 138 of the Negotiable Instruments Act. The counsel for the defendant has submitted that the period of limitation would begin at best from 24.08.2011 when the cheques were returned unpaid by the debit memos. The plaintiff has made a specific averment that the cause of action lastly arose on 31.03.2012, the closing date of the financial year in which the last transaction took place. The plaint has been amended and by the amendment, the plaintiff has stated that there was

an open mutual current account between the parties to the suit. The learned counsel for the plaintiff has submitted that the suit is well within the period of limitation.

23. Applying the law to the facts of the present case, the amended plaint would show that the counsel for the plaintiff has contended that the parties had an open mutual current account and accordingly, the period of limitation shall begin from the close of the financial year, i.e. 31.03.2012 as per Article 1 of the Schedule to the Limitation Act and hence, the suit having been filed on 23.12.2014 is within the period of limitation. On the contrary, the counsel for the applicant/ defendant has submitted that the plaint should be read in its entirety and it is based upon the cheques issued by the defendant. He further submits that the cause of action can at best be said to have arisen on 24.08.2011, i.e. the date the cheques were returned unpaid and accordingly, the suit is barred by limitation. Mr. Singhal has also contended that the parties do not maintain an open mutual running account, which is evident upon perusal of the statement of account itself.

24. The only question which arises for consideration is as to whether the parties were maintaining an open mutual running current account? In ***Bharath Skins Corporation v. Taneja Skins Company Pvt. Ltd.***, 186 (2012) DLT 290 (DB) it was held as under:

“10. In order to find an answer to the question: Whether Article 1 of the Schedule to the Limitation Act, 1963 applies to the present case, it is first required to be seen: Whether the account between the parties was a mutual account as envisaged in Article 1 of the Schedule to the Limitation Act, 1963, it not being in dispute that the account was current and open.

11. In the decision reported as AIR 1965 SC 1711, Kesharichand Jaisukhlal v. The Shillong Banking Corporation, the Supreme Court defined the scope of the

expression 'mutual' occurring in Article 85 of the Schedule to the Indian Limitation Act, 1908 (precursor to Article 1 of the Schedule to the Limitation Act, 1963) in the following terms:

The next point in issue is whether the proceedings are governed by Article 85 of the Indian Limitation Act, 1908, and if so, whether the suit is bared by limitation. The argument before us proceeded on the footing that an application under Section 45(D) of the Banking Companies Act is governed by the Indian Limitation Act, and we must decide this case on that footing. But we express no opinion one way or the other on the question of the applicability of the Indian Limitation Act to an application under Section 45(D). Now, Article 85 of the Indian Limitation Act, 1908 provides that the period of limitation for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties is three years from 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. It is not disputed that the account between the parties was at all times an open and current one. The dispute is whether it was mutual during the relevant period.

11. Now in the leading case of Hirada Basappa v. Gadigi Muddappa, (1871) VI Mad H C R 142, 144]. Holloway, Acting C.J. observed:

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.'

12. These observations were followed and applied in Tea Financing Syndicate Ltd. v. Chandrakamal Bezbaruah, I.L.R. [1931] 58 Cal. 642 and Monotosh K. Chatterjee v. Central Calcutta Bank Ltd., [1953] 91 C.L.J. 16, and the first mentioned Calcutta case was approved by this Court in Hindustan Forest Company v. Lal Chand, (1960) 1 SCR

563. Holloway, Acting C.J. laid down the test of mutuality on a construction of Section 8 of Act 14 of 1859, though that Section did not contain the words "where there have been reciprocal demands, between the parties". The addition of those words in the corresponding Article 87 of Act 9 of 1871, Article 85 of Act 15 of 1877 and Article 85 of the Act of 1908 adopts and emphasises the test of mutuality laid down in the Madras case.

13. In the instant case, there were mutual dealings between the parties. The respondent Bank gave loans on overdrafts, and the appellant made deposits. The loans by the respondent created obligations on the appellant to repay them. The respondent was under independent obligations to repay the amount of the cash deposits and to account for the cheques, hundis and drafts deposited for collection. There were thus transactions on each side creating independent obligations on the other, and both sets of transactions were entered in the same account. The deposits made by the appellant were not merely complete or partial discharges of its obligations to the respondent. There were shifting balances on many occasions the balance was in favour of the appellant and on many other occasions, the balance was in favour of the respondent. There were reciprocal demands between the parties, and the account was mutual. This mutual account was fairly active up to June 25, 1947. It is not shown that the account ceased to be mutual thereafter. The parties contemplated the possibility of mutual dealings in future. The mutual account continued until December 29, 1950 when the last entry in the account was made. It is conceded on behalf of the appellant that if the account was mutual and continued to be so until December 29, 1950, the suit is not barred by limitation, having regard to Section 45(o) of the Banking Companies Act. The Courts below, therefore, rightly answered issue No. 1 in the negative.

(Emphasis supplied)

12. From the aforesaid observations, it can be deduced that for the creation of an open, current and mutual account, there must be an intention between the parties, either express or implied, which may be deducible from the course of dealings to have mutual dealings, creating reciprocal obligations,

independent of each other. A 'demand' in relation to a matter of account means a 'claim for money', arising out of a 'contractual business relationship' between the parties. Where the dealings between the parties disclose a 'single' contractual relationship, there will be demands only in favour of one party. For instance, where the relationship between 'A' and 'B' is that of lender and borrower respectively, 'A' will have a 'demand' against 'B' in respect of every item of loan advanced. But 'B' can have no demand against 'A'. Where the dealings between the parties disclose 'two' contractual relationships, there will arise demands in favour of each side against the other. For instance, where 'A' advances money to 'B' from time to time as loan, and 'B' engages 'A' as his agent for the sale of goods sent by 'B', there are two contractual relationships between the parties: one, that of lender and borrower and the other, that of principal and agent. 'A' as creditor may have several demands against 'B' who as principal may have, independently, several demands against 'A'. The real test, therefore, to see whether there have been reciprocal demands in any particular case is to see: Whether there is a 'dual contractual relationship' between the parties.

13. Where 'A' sells goods to 'B' from time-to-time and 'B' makes payments towards the price from time-to-time, there is only a 'single' contractual relationship, namely that of buyer and seller, between the parties. 'A' has demands against 'B' for items sold, but 'B' can have no 'demands' against 'A'. Such case is not one of reciprocal demands and thus Article 85 of the Schedule to the Indian Limitation Act, 1908 corresponding to Article 1 of the Schedule to the Limitation Act, 1963 will not apply to suits on such accounts. We are fortified in our view by the following observations made by the Supreme Court in the decision reported as AIR 1959 SC 1349, Hindustan Forest Company v. Lal Chand:

The learned Judge of the High Court who heard the suit held that Art. 115 had no application and dismissed the suit as barred by limitation. The sellers went up in appeal which was heard by two other learned Judges of the High Court. The learned Judges of the appellate Bench of the High Court held that Art. 115 of the Jammu & Kashmir Limitation Act applied and the suit was not barred. They

thereupon allowed the appeal and passed a decree in favour of the sellers. The buyer has now come up in appeal to this Court.

5. Article 115 of the Jammu and Kashmir Limitation Act which is in the same terms as Art. 85 of the Indian Limitation Act except as to the period of limitation, is set out below:

6. If the article applied the suit would be clearly within time as the last item found to have been entered in the account was on June 23, 1947. The only question argued at the Bar is whether the account between the parties was mutual.

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, I.L.R. (1930) 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 Holloway, 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.

14. In view of the above discussion, since the dealings between the parties disclose a single contractual relationship i.e. of buyer and seller between them, the account between them cannot be termed as a 'mutual' account. As a necessary corollary, Article 1 of the Schedule to the Limitation Act, 1963 has no application in the present case.

(Emphasis Supplied)

25. In the present case as well, the statement of account cannot be said to

be an 'open mutual running current account' as the relationship is singular, i.e that of buyer and seller. The statement shows the account of the defendant being credited upon sales of pharmaceutical products and the defendant occasionally paying the same. Upon being shown the statement of account placed on record by the plaintiff, the counsel for the plaintiff very fairly agrees that, in fact, the account placed on record does not reflect that it was an open mutual current account. In my view, merely by stating that it was an open mutual current account would not bring the suit within the parameters of Article 1 of the Schedule to the Limitation Act.

26. Therefore, as per the plaintiffs own stand the limitation period in the present case would commence from the date of the dishonour of the cheques, i.e. 24.08.201. To avoid the bar of limitation, the plaintiff has sought to base the claim on a 'open mutual running current account'. From the foregoing, it is clear that the account maintained between the parties was not a 'open mutual running current account' to bring it under the purview of Article 1 of the Schedule to Limitation Act; as a necessary consequence the suit continues to be based on the invoices and the cheques and therefore, has been filed beyond the period of limitation.
27. Accordingly, the application is allowed. The plaint of the plaintiff is rejected on the ground of limitation.

SEPTEMBER 30, 2016

//pst

G.S.SISTANI, J