* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of decision: 24th May, 2016.**

\+ **RFA No.638/2015**

RAJIV KHANNA ..... **Appellant**
Through: Mr. Apar Gupta and Ms. Garima Jain, Advs.

Versus

M/S SUNRISE FREIGHT FORWARDERS PVT LTD & ANR ..... **Respondents**
Through: Mr. Manish Kohli and Mr. Pradeep Shukla, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgement and decree dated 4th June, 2015 of the Court of the Additional District Judge (ADJ)-01, Patiala House Courts, New Delhi District, New Delhi of dismissal of Suit No.424/2013 filed by the appellant for recovery of Rs.12,78,470/- along with *pendente lite* and future interest consequent to rejection under Order 7 Rule 11 of the CPC of the plaint on the ground of the relief claimed, from the averments contained therein, being barred by time.

2. Notice of the appeal was issued and the Trial Court record requisitioned. Considering that in the event of the appeal being allowed the

suit will have to be remanded, after admitting the appeal on 10th February, 2016 it was posted for hearing for today. The counsels have been heard and the Trial Court record to the extent required perused.

3. The appellant/plaintiff on 10th December, 2013 instituted the suit from which this appeal arises, for recovery of the emoluments due to him for the period of his employment with the respondent/defendant no.1 Company and of which the respondent/defendant no.2 is the Chairman-cum-Managing Director and which employment admittedly came to an end on 20th September, 2008. Though the plaint is long-winded but the appellant/plaintiff in para 22 of the plaint has given the break-up of the amount claimed in the suit as under:-

S. No.	***Particulars***	***Outstanding Amount (In Rs.)***
1.	*Incentives for the period of 2006-2007*	*1,41,680/-*
2.	*Balance Gross salary for the period of April, 2007 – March, 2008*	*8,57, 790/-*
3.	*Balance reimbursement for the month of July, 2008 (for services provided in June, 2008)*	*65,000/-*
4.	*Gross salary for the month of August, 2008 (for services provided in July, 2008)*	*1,28,500/-*
5.	*Gross salary for the month of September, 2008 (for services provided in August, 2008)*	*81,000/-*
	TOTAL	***12,78,470/-***

4. The appellant/plaintiff prior to the institution of the suit from which this appeal arises filed Company Petition No.369/2009 for winding up of the

respondent/defendant no.1 Company and which winding up petition was vide order dated 10th October, 2011 permitted to be withdrawn with liberty to file appropriate proceedings and though ordinarily the time taken in pursuing a winding up proceeding is not to be excluded from the limitation for the purposes of a suit for recovery of money (See ***Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari*** AIR 1951 SC 16; ***Anil Pratap Chauhan Vs. Onida Savak Ltd.*** AIR 2003 Delhi 252; ***Diwan Chand Kapoor Vs. The New Rialto Cinema Pvt. Ltd.*** 28 (1985) DLT 310 (overruled by Division Bench on another aspect in ***Diwan Chand Kapoor Vs. New Rialto Cinema (P) Ltd.*** (1986) 60 CompCas 276); ***Ajab Enterprises Vs. Jayant Vegoiles & Chemicals Pvt. Ltd.*** AIR 1991 Bom. 35) but the learned Company Judge vide order dated 10th October, 2011 clarified that the time spent in prosecuting the winding up petition shall stand excluded while determining the period of limitation for recovery proceedings to be initiated by the appellant/plaintiff and which order has attained finality.

5. The appellant/plaintiff after waiting for more than two years, on 10th December, 2013 instituted the suit from which this appeal arises.

6. The learned ADJ has rejected the plaint on the ground of the relief claimed therein being barred by time (i) applying Article 7 of the Schedule to

the Limitation Act, 1963; (ii) computing the period of three years under Article 7 from 20th September, 2008, being the date of cessation of employment of the appellant/plaintiff with the respondent/defendant no.1 Company; and, (iii) finding that even after excluding the time taken in pursuing the winding up petition from 31st July, 2009 to 10th October, 2011, the suit should have been filed on 30th November, 2013 but had been filed on 10th December, 2013.

7. The counsel for the appellant/plaintiff before me has not controverted that Article 7 of the Schedule to the Limitation Act which prescribes limitation of three years commencing from the date when the wages accrue due for a suit for wages would apply to the instant case.

8. On enquiry whether not the learned ADJ has erred in proceeding on the premise that the wages accrued due on 20th September, 2008, being the date of cessation of employment, and not at the end of each month for which the wages fell due, the counsel for the appellant/plaintiff fairly admits that it would be so. On yet further enquiry whether the appellant/plaintiff, in the plaint has pleaded that the wages/emoluments which ordinarily would fall due month by month at the end of each month for which they are due, did not so fall due owing to a *contract to the contrary* between the parties, he again

fairly states that it is not so pleaded.

9. Thus the amounts claimed, of which break-up is given by the appellant/plaintiff in the table set-out hereinabove, would fall due not on 20th September, 2008 but at the end of each month for which they would be due. Thus seen, the suit would be barred by more than ten days computed by the learned ADJ.

10. The counsel for the appellant/plaintiff however pegs his case only on the acknowledgment in writing by the respondents/defendants of their liability to the appellant/plaintiff within the meaning of Section 18 of the Limitation Act. Attention in this regard is drawn to the reply dated 28th May, 2009 sent by the respondent/defendant no.2 Shri Ashwani Handa as Chairman and Managing Director of the respondent/defendant no.1 Company to the legal notice dated 11th May, 2009 preceding the winding up petition earlier filed by the appellant/plaintiff. It is argued that the respondents/defendants in the said reply to the legal notice have in the following portions acknowledged their liability:-

> *"At the outset, I must point out that our Company or the undersigned as the Managing Director of the Company, **have never denied the payment of any due amounts to your client, Mr. Rajiv Khanna** (alias Rajive Khanna).*
>
> *Our Company has agreements, rules and systems with which all other officers have been complying, **as will be***

borne out by documents on our records as well as will be witnessed by our current and former officers. ONLY your client has not complied and is not entitled to most of the amounts about which he has misled you."

(emphasis added)

11. Attention is then invited to the explanation (a) to Section 18 supra and to ***Khan Bahadur Shapoor Freedom Mazda Vs. Durga Prosad Chamaria*** AIR 1961 SC 1236 in which ***Green Vs. Humphreys*** (1884) Ch.D. 474 defining acknowledgment as "an admission by the writer that there is a debt owing by him, either to the receiver of the letter or to some other person on whose behalf the letter is received but it is not enough that he refers to a debt as being due from somebody. In order to take the case out of the statute there must upon the fair construction of the letter, read by the light of the surrounding circumstances, be an admission that the writer owes the debt" was quoted with approval.

12. Upon it being asked, whether the appellant/plaintiff in the plaint also has pleaded the said communication dated 28th May, 2009 as acknowledgment, the counsel for the appellant/plaintiff has drawn attention to paragraphs 23 and 26 of the plaint in which reference is made to the said communication.

13. Per contra the counsel for the respondents/defendants has taken

me to the reply dated 28th May, 2009 supra in entirety to show that there is no acknowledgment therein. It is further his contention that the respondents/defendants had applied for rejection of the plaint besides on the ground of the plaint, as per the averments therein being barred by time also on the ground of not disclosing a cause of action and which the learned ADJ has not dealt with explicitly. He has drawn attention to paragraphs 14, 17 and 20 of the plaint to contend that there is no averment as to how the amounts mentioned therein are due to the appellant/plaintiff. He has yet further contended that even with respect to the limitation there are no pleadings in the plaint showing as to how the plaint is within time. Attention in this regard is also drawn to the reply filed by the appellant/plaintiff to the application of the respondents/defendants under Order 7 Rule 11 of the CPC to contend that even therein no such particulars were given. Reliance in support of all the aforesaid contention is placed on (i) ***Hardesh Ores Pvt. Ltd. Vs. M/s. Hede and Company*** JT 2007 (7) SC 150; (ii) ***I.T.C. Limited Vs. Debts Recovery Appellate Tribunal*** AIR 1998 SC 634; (iii) ***The Church of Christ Charitable Trust & Educational Charitable Society Vs. M/s. Ponniamman Educational Trust*** AIR 2012 SC 3912; (iv) ***C.N. Locanathan Vs. Union of India*** 1989 LAB. I.C. NOC 58; (v) ***Sakal Deep Sahai***

Srivastava Vs. Union of India AIR 1974 SC 338; (vi) ***Jail Chand Sawhney Vs. Union of India*** 1969 (3) SCC 642; and, (vii) ***Ram Prakash Gupta Vs. Rajiv Kumar Gupta*** (2007) 10 SCC 59.

14. Having considered the rival contentions and the plaint, I am unable to find any error in the order of the learned ADJ of rejection of the plaint leading to dismissal of the suit, on the ground of the claim therein as per the averment contained therein being barred by time.

15. The counsel for the appellant/plaintiff has also not controverted that the suit filed on 10th December, 2013, even by counting the period of limitation of three years not from the date when the wages/emoluments claimed fell due month by month but from the date of cessation of employment and further even after excluding the time spent in the winding up proceedings was beyond three years.

16. Thus the only question which remains is to see whether there was any acknowledgment of liability.

17. I may in this regard notice that Order 7 Rule 6 of the CPC requires the plaintiff, where the suit is instituted after the expiration of the period prescribed by law of limitation, to show the ground upon which exemption from such law is claimed. A perusal of the plaint shows the

appellant/plaintiff to have utterly failed to do so. The argument now raised, of acknowledgement of liability contained in communication dated 28th May, 2009 does not find any mention in the plaint. A mere reference in the plaint of the communication dated 28th May, 2009 without pleading the same to be an acknowledgement of liability, does not amount to a pleading within the meaning of Order 7 Rule 6 of the CPC. Rather, the appellant/plaintiff, in the plaint, has pleaded the said communication as "not denying the non-payment of dues of the plaintiff" and as "making counter allegations against the plaintiff and trying to scuttle the real issue". The counsel for the respondents/defendants is correct in his contention that the appellant/plaintiff at the time of institution of the suit was perhaps oblivious of the law of limitation and for this reason only no computation in that regard was made and the argument of acknowledgment of liability is being taken only after realising that the suit filed was beyond time.

18. The counsel for the appellant/plaintiff has also contended that since the reply aforesaid was filed along with the plaint, even in the absence of any pleading of the same as an acknowledgment in writing saving limitation, within the meaning of Section 18 of the Limitation Act and Order 7 Rule 6 of the CPC, the same is required to be read and if any admission or

acknowledgment is deciphered therefrom, the appellant/plaintiff is entitled to benefit thereof.

19. Supreme Court, as far back as in ***Sant Lal Mahton Vs. Kamala Prasad*** AIR 1951 SC 477 held that if the plaintiff's right of action is apparently barred under the statute of limitation, Order VII Rule 6 of CPC makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act upon which he relies to exclude its operation and that to claim exemption the plaintiff must have alleged and proved such ground of limitation. This Court also in ***Ms. Susanne Lenatz Vs. C.J. International Hotels Ltd.*** (2005) 125 DLT 498 (FAO(OS) No.373/2007 whereagainst was dismissed by the Division Bench on 21st September, 2007) held that though a suit may be instituted after the expiration of the period prescribed by the law of limitation but the plaintiff is required to show in the plaint itself the grounds upon which exemption from such law is sought and that if no such ground is indicated or no such exemption is claimed, then the plaint, if it is beyond the period prescribed by the law of limitation, would be liable for rejection straightway under Order VII Rule 11(d) CPC. Again, in ***Alliance Paints and Varnish Works Pvt. Ltd. Vs. Hari Kishan Gupta*** (2010) 168 DLT 591, relying on the judgments of the High Courts of Madras

and Himachal Pradesh, it was held that where the plaintiff in the plaint has not pleaded an exemption from the Limitation Act, it would not be open to the plaintiff to rely on an exemption not specifically pleaded in the plaint. (I must however notice that Single Judges of the Madras High Court in ***Indo International Ltd. Vs. Continental Carriers Private Ltd.*** MANU/TN/1953/2003 and in ***Swarna Paper Cutting Works Vs. M/s Indian Express (Madurai) Pvt. Ltd., Madras*** MANU/TN/0199/1999 have taken a different view on the basis of the Proviso to Order VII Rule 6 of CPC).

20. I am otherwise also of the opinion that the communication dated 28th May, 2009, even if were to be considered, does not contain an acknowledgement of liability of any right claimed by the appellant/plaintiff. I have in ***Deepak Mehta Vs. Yashi Multimedia Pvt. Ltd.*** MANU/DE/0937/2014 (RFA(OS) No.123/2014 preferred whereagainst was dismissed on 7th July, 2015) relying upon ***S.F. Mazda Vs. Durga Prasad*** AIR 1961 SC 1236 held that the words used in the acknowledgement must indicate the existence of jural relationship between the parties such as that of debtor and creditor and it must appear that the statement is made with the intention to admit such jural relationship. It was further held that the acknowledgement of liability within the meaning of Section 18 of Limitation

Act has to be clear, unambiguous, unequivocal and unconditional. It was yet yet further held that willingness to adjust the advance received in subsequent transactions on certain terms cannot be said to be an acknowledgement of liability within the meaning of Section 18 of the Act and that statements made for an attempt to resolve the controversy and rather placing the blame on the other party cannot be construed as an acknowledgement.

21. Tested on the said anvil, the communication dated 28th May, 2009 cannot be construed as an acknowledgement of liability. The respondents/defendants, in the said communication stated (i) that they had sent several communications to the appellant/plaintiff to come forth and settle all the issues of his dues; (ii) that the demand of the appellant/plaintiff in the legal notice was unwarranted and thereafter proceeded to write, without prejudice to their rights and contentions (a) that the demand of the appellant/plaintiff was an afterthought, subsequent to the notice got issued by the respondents/defendants with respect to acts of cheating by the appellant/plaintiff; (b) that most of the amounts claimed by the appellant/plaintiff were not due; (c) that the respondents/defendants would be giving a complete detailed account of what the appellant/plaintiff was entitled to from the respondents/defendants and what the appellant/plaintiff

owed to the respondents/defendants and corroborate the same with details and the appellant/plaintiff may verify the same; (d) that the averments in the legal notice were otherwise false and frivolous. The said contents of the communication dated 28th May, 2009 can, in my view, by no stretch of imagination be read as an acknowledgement of the respondents/defendants of jural relationship of debtor of the appellant/plaintiff or of admitting any right of the appellant/plaintiff against themselves.

22. It cannot also be lost sight of that the said reply to the legal notice was not sent by an Advocate on behalf of the respondents/defendants but by the respondent/defendant no.2 himself. The same thus has to be construed not as a legal document but as a commercial document and the principles of interpretation with respect whereto are that the same has to be read as commercial men would understand the same and not under the lens of legalese. Even the judgment cited by the counsel for the appellant/plaintiff does not support the argument raised. The same also requires the document, even if pleaded as an acknowledgment, to be fairly constructed in the light of the surrounding circumstances. A holistic reading of the reply dated 28th May, 2009 does not show any intent on the part of the respondents/defendant to admit the claim of the appellant/plaintiff.

23. Thus there is no merit in the appeal; the same is dismissed with costs. Counsel's fee assessed at Rs.10,000/-.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

MAY 24, 2016
'pp/bs'