

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION (St.) NO. 5796 OF 2017

Vertiv Energy Private Ltd. & Anr.	... Applicants
Vs.	
M/s. PAE Ltd.	... Respondent

Mr. S. Malik a/w. Ms. Archana Deshmukh a/w. Ashwin Vasista, Maaz Hasmi i/b. Singhania & Co., Advocate for the applicants.
Mr. Ajay S. Jaiswal, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **21st July, 2017.**

P.C.:

This Civil Revision Application is directed against the judgment and order dated 22nd September, 2016 passed by the Ad-hoc District Judge, Assistant Sessions Judge, City Civil & Sessions Court, Greater Mumbai in Notice of Motion No. 1851 of 2016 in Short Cause Suit No. 2312 of 2015. The applicants are the original defendants no. 1 and 2, who took out Notice of Motion under Order 7 Rule 11 of Code of Civil Procedure on the ground of limitation. Accordingly, the issue was framed and it was in negative and held that the suit filed is within limitation. Hence, this Civil Revision Application.

2. The applicants/defendants have supplied Lift Inverters to the respondent/plaintiff under the purchase order dated 24th March, 2011

and accordingly, payment was made to the applicants by the respondent. However, the respondent/plaintiff found that the Lift Inverters which were supplied by the applicants/defendants were defective and sub-standard goods, hence they filed suit for recovery of an amount of Rs. 28,44,450/-, which includes principal amount and interest and also for declaration that the applicants/defendants shall take away the goods from Vashi godown of the respondent/plaintiff.

3. The learned counsel for the applicants has submitted that the order passed by the learned Judge of City Civil Court is erroneous and illegal. He submitted that the suit is hopelessly barred. As per the pleadings, the cause of action arose on 24th March, 2011, however, the suit is filed on 5th August, 2015, so it has crossed the limits of three years. It is further submitted that the learned Judge ought not to have considered the emails and SMS in the plaint. The learned Judge should have appreciated that the sale transaction has taken place, goods were supplied, amount was paid and thus, it is a false suit filed by the respondent against the applicants. He further submitted that the suit is based on crafty and illusionary drafting and therefore, the Court is required to fix the period of limitation after three years from 24th March, 2011. The delay in filing of the suit cannot be acceptable and the

applicants' application challenging the limitation of the suit ought to have been appreciated and the suit ought to have been rejected and Application under Order 7 Rule 11 of CPC should have been allowed. In support of his submission, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **T. Arivandandam vs. T.V. Satyapal & Anr., AIR 1977 SC 2421**. He further relied on the judgment of the Hon'ble Supreme Court in the case of **I.T.C. Limited vs. Debts Recovery Appellate Tribunal & Ors., (1998) 2 SCC 70**.

4. The learned counsel for the respondent while arguing the matter has supported the order passed by the learned Judge and submitted that the respondent/plaintiff has stated all the facts in respect of the suit and further correspondence between the plaintiff and defendants. He submitted that the cause of action was extended till 2013 and so the suit filed in 2015 is well within limitation.

5. Heard the submissions and perused the case laws. In the case of **T. Arivandandam** (*supra*), the Hon'ble Supreme Court had an opportunity to deal with Section 35A and Order 7 Rule 11 and Order 10 of Code of Civil Procedure in Special Leave Petition. The Hon'ble Supreme Court held that "if clear drafting has created the illusion of a

cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X of CPC". The Supreme Court has expressed the deep concern for the bogus and frivolous litigation and has held that at this stage the Court needs to be active to use the powers under Order 7 Rule 11 of CPC.

6. In the case of **I.T.C. Limited** (*supra*), the Hon'ble Supreme Court has referred the case of **T. Arivandandam**. In **I.T.C. Limited** also, the Hon'ble Supreme Court has held that if at all no valid cause of action is shown, then the Application under Order 7 Rule 11 is to be rejected. In the said case, a case was made out that non-movement of goods will amount to fraud and it is valid cause of action. However, though the High Court confirmed the said order, the Supreme Court set aside the said order of the High Court and the Courts below and while referring the judgment of **T. Arivandandam** (*supra*), has again laid down a guideline for the Court that if the pleadings are purely illusory then the Court should not allow such pleadings in order to meet the requirement of the cause of action and the suit is to be dismissed.

7. The law laid down by the Hon'ble Supreme Court in **I.T.C. Limited** and especially in **T. Arivandandam** is enlightening on the point of

Order 7 Rule 11 of Code of Civil Procedure. However, every case has to be dealt with in its own facts and circumstances. While considering the challenge of limitation given by the applicants/defendants, first the Court has to look into the pleadings in the plaint to ascertain what is the date of cause of action and whether the cause of action thereafter took place or not. It is a money recovery suit, so the limitation is for three years. The transaction between the parties is not disputed fact, however, a plea is taken by the respondent/plaintiff of receiving the defective and sub-standard goods. The respondent/plaintiff has averred in the plaint that after the use of lift inverters, the respondent realized that it was defective and they brought it to the knowledge of defendant no.1 and when they tried to sell the lift inverters to its customers, lift inverters, being sub-quality goods, failed to give expected results. So, this problem was pointed out to the defendants, who agreed principally that electricity circuit required modification and therefore, they forwarded a service bulletin to the plaintiff. It is further averred in the plaint that lift inverter has basic manufacturing and design defect, so they contacted the applicants/defendants continuously. There was a correspondence between the plaintiff and defendants in respect of defects and clearing the manufacturing defects. The plaintiff has annexed the correspondence to the plaint,

which is referred in the pleadings so forming the part of the plaint. Thus, it appears that as there was continuous correspondence after 2011, it is stated that when plaintiff realized that the defendants are not ready to repay the amount, they issued legal notice to defendants and the defendants when replied to the notice in October and November, 2014 and refused to cooperate, the cause of action arose to file the suit and thereafter they filed the suit. The learned trial Court has considered further developments after 2011 and also the communication between the parties which took place and their emails and SMS. The learned trial Judge has held that there was assurance on the part of applicants/defendants in the emails of 2013 and thereafter the cause of action arose when there was specific denial to correct the defects. The issue of limitation is a matter of fact and law. In this case from the pleadings it appears that the order passed by the learned Judge is well reasoned and cannot be faulted with. Hence, Civil Revision Application is dismissed.

8. The learned counsel for the applicants submitted that the matter is fixed before the trial Court for evidence and the applicants/defendants want to file written statement.

9. A query was made by me whether No WS is passed by the learned Judge or not. The learned counsel informs that No WS is not yet passed. If such order is not passed, then the applicants/defendants be allowed to file written statement. Parties to cooperate.

(MRIDULA BHATKAR, J.)