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

% *Judgment reserved on :26.04.2017*
Judgment delivered on :02.05.2017

\+ CS(COMM) 885/2016

ELOF HANSSON FIBER LLC ..... Plaintiff

Through Mr. Jatin Zaveri and Mr. Neel Kamal Mishra, Advocates.

versus

M/S DEEPANSHU AGENCIES ..... Defendant

Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. Present suit is a suit for recovery. Plaintiff has claimed a sum of US Dollars 360,636.60/- along with an interest at the rate of 18%per annum from the defendant.

2. The plaintiff is stated to be a company incorporated under the laws of New York State, United States of America carrying on the business of paper and products related to paper industry. The present suit is filed through its assistant manager Mr. K.M.R. Nambiar who has been so authorised under a power of attorney.

3. The defendant is a proprietary concern of Mr. Rakesh Gupta who carries on business as an importer and dealer of all kinds of papers at Karol Bagh, New Delhi.

4. The plaintiff used to supply and sell, from time to time, paper rolls to the defendant at an agreed price. The defendant took the delivery of the goods and accepted the invoices, bills of lading which were raised by the banker of the plaintiff to the banker of the defendant. These invoices, bills required the defendant to clear the outstanding payment within 120 days from their acceptance. The defendant however made payments of only a few invoices, and not all. The invoices from which the payments are due are from a period of 22.12.2005 to 12.01.2006. The defendant in pursuance to the meetings dated 3rd and 4th November, 2006 undertook vide his letter dated 06.11.2006 to clear all the outstanding dues in respect of the supplies made to him by the plaintiff on or before 15.01.2007. However, only a part of the amount was paid and the rest remained due. In spite of various reminders, the defendant failed to pay the due amount. Hence the present suit for recovery was filed under Order XVIII of the Code of Civil Procedure, 1908.

5. Summons were issued and served on the defendant on 22.12.2010. The defendant filed an application seeking leave to defend which was

allowed by the order dated 09.05.2012, granting the defendant unconditional leave to defend the suit. In the written statement filed by him, the defendant submitted that the invoices as claimed by the plaintiff were barred by limitation as prescribed under the Limitation Act, 1963 and thus the suit was not maintainable and could not be proceeded with. It was denied that the letter of the defendant dated 06.11.2006 amounted to an acknowledgement of liability on the part of the defendant and that it was a clever ploy on the part of the plaintiff to circumvent the provisions of the Limitation Act. Further, it was stated that, as the amount mentioned in plaint and the corresponding invoices find no mention in the said letter, the letter thus relates altogether to a different transaction. It was also denied that any amount was recoverable from the defendant; the present suit being a clear abuse of the process of law. It was, in fact the defendant who had to recover a sum of US Dollar 313,137.79/- from the plaintiff on account of ground rent, detention, duty difference and claim on defective goods, which he had addressed to the plaintiff vide an email.

6. Replication was filed reiterating the averments made in the plaint and denying the averments made in the written statement.

7. On 31.10.2013 the suit which was listed for framing of issues, was proceeded ex parte against the defendant, since none for the defendants had been appearing for the last four dates. The issues in the present suit were never framed.

8. Ex parte evidence by way of affidavit (Ex.PW1/X) was tendered by K.M.R. Nambiar on behalf of the plaintiff, reiterating the averments made in the plaint. The plaintiff has also submitted the office copies of the bills of exchange, bills of lading which were raised with respect to the 7 invoices which remain outstanding pertaining to the period between 22.12.2005 to 12.01.2006. These are marked as Ex. PW1/2 (colly) and Ex. PW1/4. These invoices, bills etc collectively sum up to an amount of US Dollars 360,636.60/- as claimed herein by the plaintiff. Nothing to deny the said claim in its entirety or in part has been produced by the defendant. The plaintiff has also deposed that the defendant in his letter dated 06.11.2006 (EX. PW 1/3) had acknowledged his liability towards the plaintiff and had undertaken to clear all his outstanding dues (with respect to previous balances and other invoices) amounting to US Dollars 489,517.45 latest by 15.01.2007, a sum of US Dollars 140,000 within a week and a further sum of US Dollars 204,527.95 on or before 15.03.2007. The defendant had however

made only part payments and sums payable under the aforesaid 7 invoices remained unpaid. The plaintiff has placed reliance on the judgments of the Apex Court in ***Messrs. Lakshmirattan Cotton Mills CO. Ltd. & Anr. vs. The Aluminium Corporation of India Ltd.*** **[(1971 (1) SCC 67]** and ***Food Corporation of India vs. Assam State Cooperative Marketing & Consumer Federation Ltd. &Ors.*** **[(2004) 12 SCC 360]** to sustain his contention that the said letter amounts to an acknowledgement of liability within the meaning of section 18 of the Limitation Act, 1963 and his suit is thus very well within the period of limitation. The plaintiff has also deposed about his entitlement for interest at the rate of 18% per annum. Plaintiff, however, has not produced any evidence to show that market rate of interest was 18% except his bald statement. Neither, any document has been produced and proved to show that rate of interest was agreed between the plaintiff and defendant to be 18%.

9. It however cannot be denied that the amount is due from the defendant to the plaintiff on account of the commercial transaction between them. The letter dated 06.11.2006 marked as Ex PW 1/3 is a valid acknowledgement. It relates to the clearance of the outstanding payment to be made to the plaintiff. This document having been executed by the proprietor of the

defendant and being within the period of limitation is a valid acknowledgment within the meaning of section 18 of the Limitation Act, 1963. It relates to the subsisting liability and indicates existence of jural relationship between the parties such as that of debtor and creditor.

10. In these circumstances, a decree for recovery of Rupees equivalent to US Dollars 360,636.60/- at the rate of exchange prevalent today, with pendente lite and future interest at the rate of 9% p.a. from the date of institution of the suit till the recovery of the amount is passed in favor of plaintiff and against the defendant. Cost of the suit is also awarded to the plaintiff and against the defendant.

11. Suit disposed of in the above terms. Decree sheet be prepared accordingly. File be consigned to the Record Room.

INDERMEET KAUR, J

MAY 2, 2017
ndn