

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 186 of 2015**

- M/s Ratan Automobiles, Proprietor, Ashok Kumar Agrawal, S/o Shri Govindram Agrawal, aged about 46 years, Occupation- Business, R/o In Front Of Main Hospital, Raigarh, Tahsil and District- Raigarh, Chhattisgarh

---- Petitioner**Versus**

1. Raigarh Sainik Transport Company Punjipathra, Owner Harvindar Singh Rai, S/o Shri Sohan Singh Rai, Aged About 45 Years, Retired Major, Village Punjipathra, P.O. Samaruma, Tahsil Gharghora, District- Raigarh, Chhattisgarh
2. Major Harvindar Singh Rai, S/o Sohan Singh Rai, Aged About 50 Years, R/o Solar Halar Kotek A-6-16, Basant Vihar, Second Floor, New Delhi- 110057

---- Respondents

For Appellant
For Respondents

Shri Arvind Shrivastava, Advocate
Shri M. K. Sinha, Advocate

Hon'ble Justice Mr. Prashant Kumar Mishra**Hon'ble Justice Smt. Vimla Singh Kapoor****Order On Board by****Prashant Kumar Mishra J.****07/09/2018**

1. This is plaintiff's appeal under Section 96 of the CPC assailing the judgment and decree passed by the trial Court dismissing his suit for recovery of Rs.6,61,062/-.
2. The plaintiff deals in tyres, tubes and flaps of four wheelers including trucks. The defendant has its transport business at Punjipathra, Raigarh. In connection with his business, the

defendant was procuring tyres, tubes and flaps on credit from plaintiff and was paying the amount as per its convenience either through cheque or cash. As per plaintiff's case, the defendant was continuously purchasing the above items till 04.12.2004, however, thereafter it stopped making payment of the balance as on that date, which was not paid despite service of legal notice.

3. The defendant denied the plaint allegations and stated that it has never purchased any item on credit from plaintiff's shop. According to the defendant, the suit is false and vexatious as also barred by limitation.
4. The trial Court has dismissed the suit, firstly for the reason that the plaintiff has failed to enter the witness box nor the documents have been proved and secondly the suit is otherwise barred by limitation.
5. It is argued that even if the trial was fixed for recording evidence of plaintiff from September, 2009 onwards, recording of evidence did not materialize for various reasons and the plaintiff alone was not responsible for causing delay at all relevant points of time. On some dates, the defendant sought time and on some other dates, the interim applications were filed owing to the necessity arising at that point of time to enable the parties to prosecute their respective case effectively. It is also argued that if the party has availed the legally permissible procedure for effectively prosecuting its case, the same would not amount to causing delay in disposal of suit. It is also putforth that the trial Judge could have imposed cost or could have waited for some more time on the date when the

plaintiff's evidence was closed, because the witness was a local resident and could have come to the Court within short time as he had to attend nature's call for which he went back to his house. It is also put forth that the suit was within limitation, which would have been proved by the plaintiff by examining witnesses and exhibiting documents, because question of limitation is mixed question of law and fact.

6. Respondents' counsel would support the impugned judgment on both the grounds.
7. To appreciate the submission raised at the bar, we have examined the entire records, particularly the order sheets recorded by the trial Court. It appears, both the parties were responsible for seeking unnecessary adjournments and the plaintiff has failed to produce his witnesses on 18 occasions.
8. Learned counsel for the appellant has tried to persuade or to remit the matter back to the trial Court for giving one opportunity to record plaintiff's evidence, however, before considering the prayer, we proceeded to examine the other issues concerning the suit being barred by limitation. The record of the trial Court contains the documents filed by the plaintiff, which would have been proved by him in course of trial had he availed the opportunity to prove the documents. We would take it as if the documents have been produced before the trial Court in a lawful manner so as to find out whether in such eventuality also, plaintiff's suit would be within limitation.

9. On 31.07.2008, plaintiff has filed 30 documents, which are bills/invoices from 29.06.1999 to 06.01.2002, by which plaintiff has supplied tyres, tubes and flaps to the defendant on credit. The last supply was made on 06.01.2002, however, the suit has been preferred on 03.12.2007 by pleading that the accounts were settled between the parties on 04.12.2004, therefore, the suit is within 3 years from the said date. There is no averment in the plaint as to at which place or in presence of which of the authorized person of the defendant, the said account was finalized in between the parties on 04.12.2004. The plaint is also silent as to the date on which the last transaction and credit took place between the parties. Since a party is not entitled to lead evidence contrary to or over and above the documents or the pleadings, we have taken as if the entire fact pleaded in the plaint or the facts emerging from the documents are proved in favour of the plaintiff to examine as to whether in such a situation also, the suit would be within limitation. However, we are unable to hold that the plaintiff has placed sufficient materials on record to demonstrate that the suit was within limitation.
10. In view of the above, we are not inclined to accept the argument that the plaintiff deserves one opportunity to lead evidence, because the suit is otherwise barred by limitation.
11. The appeal has no substance. It deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Vimla Singh Kapoor
Judge