IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.18 OF 2016

Nova Flexipack (P) Ltd. A Company
Incorporated under the Companies Act
1956, having its registered office at
Seksaria Chambers, 3rd Floor, 139,
Nagindas Master Road, Mumbai 400 023 … Appellant.

-vs-

Ketan Gor,
Adult of Indian Inhabitant
Proprietor of M/s A Crescent Marketing,
carrying on business at 802/C Aarci Corner,
Opp. Gujarat College, Ellisbridge,
Ahmedabad,380 006 … Respondent

Ms Sheetal Shah, Advocate i/by M/s Mehta & Girdharilal for appellant.
None for respondent.

CORAM : A. S CHANDURKAR, J.
DATE : December 20, 2018

Oral Judgment :

This appeal has been preferred by the original plaintiff being aggrieved by the dismissal of the summary suit as filed seeking recovery of an amount of Rs.21,79,218/- .

As per the plaint averments it is the case of the plaintiff that it is a company registered under Companies Act, 1956 and carrying on its business. The Company was supplying material to the defendant since April 2005. As per the understanding between the parties payment of invoices was to be made within a period of thirty days from the receipt of invoices, failing which the amount in question was to carry interest at the rate of 24% per annum. According to the plaintiff it supplied goods through various invoices and about thirteen invoices remained unpaid. The plaintiff therefore issued letters to the defendant on 17/12/2008 and 20/01/2009. Thereafter on 19/03/2009 legal notice was issued by the plaintiff to the defendant seeking payment of the amounts due. The defendant issued four cheques of Rs.1,00,000/- each on 18/06/2009. These cheques were deposited and on 24/06/2009 the plaintiff was informed that all the four cheques stood dishonoured. It is on the aforesaid causes of action that the plaintiff filed suit on 11/01/2010 for recovery of the amounts due.

2. The defendant despite service did not appear in the proceedings and the suit proceeded ex-parte. The plaintiff examined its Director who deposed in terms of the plaint averments. The plaintiff was however not cross-examined. Thereafter on the directions of the learned Judge of the trial Court an additional affidavit along with accompanying documents was placed on record. The plaintiff's witness was again not cross-examined.

3. The trial Court after considering the evidence on record found that out of the total thirteen invoices, the first invoice was dated 14/06/2006 and the last invoice was dated 15/12/2006. The suit as filed was on

11/01/2010. Reliance was placed upon the judgment of the Division Bench of this Court in ***Chintaman Dhundiraj vs Sadguru Narayan Maharaj Datta Sansthan and ors. AIR 1956 Bom 553*** wherein it was held that issuance of cheques which were subsequently dishonoured would not amount to extension of the period of limitation under Section 18 of the Limitation Act, 1963 (for short, the said Act). On the ground that no alternate relief was not claimed, the entire suit was held to be barred by limitation and the same came to be dismissed. Being aggrieved the original plaintiff has filed the present appeal.

4. Ms Sheetal Shah, the learned counsel for the appellant submitted that as per the invoices issued, the payment was to be made within period of thirty days of the delivery of goods and failure to make that payment made the defendant liable to pay interest at the rate of 24% per annum. The last invoice in question was dated 15/12/2006. The payment thereof was to be made by 14/01/2007 and hence the suit as filed on 11/01/2010 was within period of three years and hence within limitation. It was submitted that though the learned Judge of the trial Court has referred to the decision of the Division Bench in ***Chintaman Dhundiraj*** (supra) that judgment was considered by the Full Bench of the Gujarat High Court in ***Hindustan Apparel Industries v. Fair Deal Corporation, New Delhi AIR 2000 Guj 261,*** the Full Bench did not endorse to the view as expressed by the Division Bench in ***Chintaman***

Dhundiraj (supra). It was submitted that the judgment of the Division Bench of this Court was rendered when the erstwhile State of Bombay was in existence. After re-organization of States said judgment stands overruled by the judgment of Gujarat High Court and hence the judgment of the trial Court based on said over ruled decision was liable to be set aside. It was then submitted that there were various decisions of other High Courts which take the view that even if a cheque that is given acknowledging liability is dishonoured, same would amount to extending the period of limitation under Section 18 of the said Act. In that regard the learned counsel referred to the decisions in ***Prafulla Chandra vs. Jatindra Nath AIR 1938 Cal 538, Thayya Subhrahmanyam vs. Chenna Venkataratnam AIR 1956 AP 105, Rajpati Prasad vs. Kaushlya Kuer AIR 1981 Pat 187 Rajesh Kumaru vs. Prem Chand Jain AIR 1998 Del 80*** and ***Gorilal vs. Ramjeelal AIR 1961 MP 346.*** It was thus submitted that the subsequent view as taken by various High Courts be adopted and it be held that the suit as filed was within jurisdiction.

Reference was also made to the decision in ***Vijay Ganesh Gondhlekar vs. Indranil Jairaj Damale 2007 (6) Mah LJ 419*** as well as the decisions considered by the trial Court in the impugned judgment and it was urged that the suit as filed was well within limitation was liable to be decreed.

In the alternate it was submitted that the four cheques which were issued on 20/06/2009 stood dishonoured and intimation in that regard was received on 24/06/2009. The suit having been filed on 11/01/2010, the trial Court ought to have decreed that part of the claim as acknowledged by the four cheques. This submission however was without prejudice to the principal submission that the suit was filed within limitation.

5. The following points arise for consideration :

(A) *Whether the suit for recovery is filed within limitation in the light of the fact that the four cheques acknowledging the defendant's liability were dishonoured ?*

(B) *Whether the plaintiff is entitled for any relief ?*

6. As noted above the defendant has been duly served but has not chosen to contest the appeal. I have thus heard the learned counsel for the appellant and I have also perused the documents placed on record including deposition of the plaintiff's witness.

7. As the plaintiff's witness was not cross-examined before the trial Court his evidence has gone unchallenged. Said witness placed on record thirteen invoices, the first one dated 14/06/2006 and the last one dated 15/12/2006. As per these invoices a period of 30 days was given for making the payment and after that period interest at the rate of 24% per annum was

to be charged. The amounts due under the heads was Rs.21,79,218. The suit in question has been filed on 11/01/2010 which according to the plaintiff is within three years from the expiry of period of one month for making the payment as per the last invoice. It is also evident from the record that in response to the notice that was given by the plaintiff on 19/02/2009 the defendant issued four cheques on 22/06/2009 for Rs.1,00,000/- each and all said cheques have been dishonoured. According to the plaintiff these cheques were issued in part payment of the amounts due that was to be paid by the defendant.

8. Since the trial Court has dismissed the suit on the ground that it was barred by limitation by relying upon the judgment of the Division Bench in ***Chintaman Dhundiraj*** (supra) it would be necessary to refer to that decision. The facts of that case indicate that initially on 12/07/1939 the plaintiff gave a cheque for Rs.35,000/- to the defendant. That amount was promised to be paid by the defendant by the end of October 1939. On 25/09/1942 the defendant issued a cheque for Rs.35,000/- in favour of the plaintiff. But the same was dishonoured. Thereafter the defendant again on 10/11/1944 issued four cheques each of Rs.5000/- in favour of the plaintiff and those cheques also were not honoured. The defendant expired on 03/09/1945 and the plaintiff thereafter on 08/11/1947 filed suit for recovery of Rs.35,000/- from the estate of the said defendant. The trial Court

dismissed the suit as being barred by limitation. On appeal by the plaintiff it was urged that the amount borrowed on 12/07/1939 having been acknowledged and partly paid by virtue of cheques dated 25/09/1942 and 10/11/1944 the suit as filed on 08/11/1947 was within limitation. Said contention was not accepted by the Division Bench holding that the subsequent dishonour of cheques would not amount to acknowledgment of liability and same could not be regarded as part payment within the meaning of the provisions of Section 20 of the Limitation Act, 1908. It was thus held that the suit having been filed beyond the period of limitation which commenced after 12/07/1939 was thus barred by limitation. The Court then considered the alternate claim as made based on the four cheques issued by the defendant and held that the plaintiff was entitled for the amounts mentioned in the cheques that were dishonoured as that claim was within limitation. The Court thus did not grant any relief as regards the principal claim but granted relief as regards the amount as shown under the dishonoured cheques.

9. The Full Bench of Gujarat High Court in ***Hindustan Apparel Industries*** (supra) while considering a reference to answer the question as to whether payment by cheque which was subsequently dishonoured amounted to acknowledging a debt held that issuance of a cheque would prima facie amount to an admission of debt unless a contrary intention has been

expressed by the person issuing the cheque. Subsequent dishonour of that cheque would not result in such admission/acknowledgment of liability to cease and to hold otherwise would be contrary to fair play between the parties, justice and equity. On that premise the Full Bench did not endorse the view as taken by the Division Bench in ***Chintaman Dhundiraj*** (supra).

The Full Bench of the Gujarat High Court followed the view as taken in ***Thayya Subramanyam, Rajpati Prasad*** and ***Gorilal*** (supra) which decisions have also been relied upon by the learned counsel for the appellant. The proceedings in ***Vijay Ganesh Gondhlekar*** (supra) arose under the Negotiable Instruments Act, 1881 and the learned Single Judge in paragraph 6 therein has observed that the question whether the claim could be said to be barred by limitation if a suit was to be filed on the basis of the dishonoured cheque was not required to be gone into.

10. According to the learned counsel for the appellant since the judgment of the Division Bench of this Court in ***Chintaman Dhundiraj*** (supra) is dated 12/03/1956 which was when the erstwhile State of Bombay was in existence and after re-organization of the States, the Full Bench of the Gujarat High Court having overruled said decision, it no longer continues to operate as good law. The submission though may appear appealing, it cannot be accepted. The judgment of the Division Bench of the erstwhile Bombay High Court in ***Chintaman Dhundiraj*** (supra) was delivered on

12/03/1956. In view of enactment of the Bombay Reorganisation Act, 1960 and from the "appointed day" which was 01/05/1960 the new State of Gujarat came to be formed. As per provisions of Section 37(4) of that Act any order made by the High Court of Bombay before the appointed day in respect of proceedings with regard to which the High Court at Bombay retained jurisdiction was to have effect for all purposes not only as an order of the High Court at Bombay but also as an order made by the High Court of Gujarat. In ***Anand Municipality vs. Union of India and ors. AIR 1960 Gujarat 40*** , the Full Bench of the Gujarat High Court considered the question as to whether that High Court was bound by the decisions of the Bombay High Court delivered before 01/05/1960. It was held that the decisions of the High Court of Bombay given prior to the appointed day were binding on the High Court of Gujarat. Thereafter in ***State of Gujarat vs. Gordhandas Keshavji Gandhi and ors. AIR 1962 Gujarat 128*** the Special Bench consisting of five learned Judges on a reconsideration of the decision of the earlier Full Bench by majority held that the decisions of the Bombay High Court given prior to 01/05/1960 would have the same binding force and effect as decisions of the Gujarat High Court.

11. From the aforesaid decisions, it thus becomes clear that the judgment of the Division Bench in ***Chintaman Dhundiraj*** (supra) operated as a binding precedent in the newly formed State of Gujarat. It is in that

backdrop that the Full Bench of the Gujarat High Court in ***Hindustan Apparel Industries*** (supra) considered the reference questioning the correctness of the judgment of the Division Bench in ***Chintaman Dhundiraj*** (supra). Though said decision of the Division Bench now stands overruled in view of the judgment of the Full Bench of the Gujarat High Court in ***Hindustan Apparel Industries*** (supra) it would not mean that said decision has ceased to operate as law in so far as the areas falling under the High Court of Bombay as it now stands. Moreover, the judgment in ***Chintaman Dhundiraj*** (supra) arises from an appeal challenging the judgment of the trial Court at Pune. Admittedly, said area falls within the territorial jurisdiction of the High Court of Bombay. Though various other High Courts have taken a view contrary to the view in ***Chintaman Dhundiraj*** (supra), in my view that judgment of the Division Bench continues to operate as a binding precedent for this Court.

In that view of the matter the finding recorded by the trial Court based on the aforesaid decision that issuance of four cheques would not result in extending the period of limitation in the light of provisions of Section 18 of the said Act cannot be faulted.

12. Coming to the issuance of four cheques by the defendant dated 22/06/2009, I find no difficulty in granting relief to the plaintiff to that extent. The said cheques of Rs.1,00,000/- each stood dishonoured on

24/06/2009 and the suit in question has been filed on 11/01/2010. The said cheques were issued pursuant to the legal notice dated 19/03/2009 while seeking to repay the principal amount due. Further, as per provisions of Section 118 of the Negotiable Instruments Act, 1881, there is a presumption in favour of the payee that the cheque has been issued for consideration. That presumption has not been rebutted by the defendant. The trial Court however has observed that as there was no alternate prayer made in the plaint no relief for that amount would also be granted. It is to be seen that even if the entire relief cannot be granted to the plaintiff, the plaintiff is always entitled to lessor relief to which the plaintiff is found entitled in law. The cause of action as pleaded indicates that dishonour of those four cheques is also part thereof and it is thus found that the plaintiff is entitled to relief to that extent.

As the plaintiff's claim based on the invoices has been found to be barred by limitation, the decreetal amount cannot carry interest at the rate of 24% per annum. The four cheques having been issued pursuant to the plaintiff's legal notice, interest at the rate of 10% per annum in the light of the proviso to Section 34 of the Code of Civil Procedure, 1908 would serve the ends of justice.

13. In the light of aforesaid discussion the following order is passed :

(i) The judgment of the trial Court in Summary Suit No.4155/2010 dated 15/01/2015 is set aside.

(ii) The suit is partly decreed with costs by directing the defendant to pay to the plaintiff an amount of Rs.4,00,000/- with interest at the rate of 10% per annum from 11/01/2010 till realization.

(iii) The First Appeal is partly allowed in aforesaid terms with costs.

(A. S. Chandurkar, J.)

Asmita