

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

481

RSA No.348 of 2008 (O & M)
Date of Decision:01.05.2018

M/s Singh Steel Sales

...Appellant

Versus

M/s Manjit Machinery Works

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Punia, Senior Advocate with
Mr. P.S. Punia, Advocate for the appellant.

Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Akshit Chaudhary, Advocate for the respondent.

ANIL KSHETARPAL, J.

Arguments in the appeal were heard at length. The appeal was allowed with cost of Rs.1,00,000/- vide order dated 01.05.2018. This Court now proceeds to record reasons.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court only on the ground that the suit for recovery was barred by limitation. Plaintiff instituted suit for recovery of Rs.32,19,874/- on the basis of regular business dealings between the plaintiff and the defendant and on the basis of books of accounts. It was pleaded that cheques issued by the defendant for discharge of a part of the debt payable for a sum of Rs.5,00,000/- have been dishonoured on 20.05.1998. Learned trial Court as well as learned First Appellate Court have found that the plaintiff has successfully proved its case and money is due and payable by the defendant.

which arises in the case is:-

Whether in a suit filed for recovery of the amount due arising from a running and continuous account, limitation to file the suit begins to run from the date when the cheque/negotiable instrument representing a part payment of the amount due is received by the creditor or when the intimation regarding dishonour of the cheque presented for encashment by the creditor is received from the Bank?

Learned counsel for the appellant has submitted that as per books of accounts Ex.P-3/F, last entry is dated 11.05.1998 when debit entry was made on receiving intimation that the cheques issued by the defendant for discharge of a part of debt have been dishonoured. Learned counsel for the appellant initially contended that it was a mutual open and current account and, therefore, Article 1 of the Schedule to the Limitation Act would apply and the time would begin to run from the close of the financial year in which last item in the book of account is entered. On the other hand, learned counsel for the respondent pointed out that it was not a mutual account but it was only an account which is maintained by the plaintiff in his books wherein sale of the material was being entered into by making a debit entry and payment received was being entered into by giving a credit entry, hence, it cannot be said as mutual open and current account.

Article 1 of the Schedule to the Limitation Act, 1963 is dealing with a situation where recovery is for the balance due on the basis of a mutual, open and current account, where there have been reciprocal

plaintiff, it cannot be said that such account was mutual and there have been reciprocal demands between the parties. Significant words in Article 1 in the context of the present case are mutual where there have been reciprocal demands between the parties. Plaintiff is selling certain merchandise to the defendant/ respondent. Against the supply of merchandise from time to time payment is received. It is not proved from the file that at any stage defendant had a surplus balance. Hence, such account cannot said to be covered by Article 1 of the Schedule.

Learned counsel for the appellant in the alternative submitted that if no specific Article of the Schedule attached to the Limitation Act, 1963 is applicable then the case would be governed by residuary Article i.e. Article 113.

On the other hand, learned counsel for the respondent-defendant submitted that Article 14 would govern the present suit because price of the goods sold is sought to be recovered.

A careful reading of Article 14 of the schedule attached to the Limitation Act, 1963 would establish that the aforesaid article does not deal with a situation where there are series of transaction of sale of goods. Article 14 only deals with a situation when sale of goods is only by a single transaction, which is not so in the present case. Still further, Article 14 does not deal with a situation where cheques, given for discharge of a part of the debt, have been dishonoured.

As per Article 113 of the Schedule to the Limitation Act, 1963, the limitation would begin to run from the date when the cause of action for filing the suit accrues. In this case, cause of action or right to sue accrues

and hence, the suit instituted on 02.05.2001 was within time. Article 113 of the Schedule to Limitation Act is extracted as under:-

Part X-Suit for which there is no prescribed period

Description of suit	Period of limitation	Time from which period begins to run
Any Suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

From a reading of the aforesaid provision, it is apparent that the learned First Appellate Court erred on the question of limitation.

Learned counsel for the respondent has submitted that dishonouring of the cheque would not extend the limitation and since cheques were handed over to the plaintiff-appellant on 06.04.1998, therefore, at the most the limitation would start from the date of cheque, hence, suit is beyond time. He further submitted that the plaintiff cannot be permitted to argue anything beyond pleadings. He has further drawn the attention of the Court to the order dated 04.02.2008 and hence, submitted that the petitioner-plaintiff cannot be permitted to argue beyond what has been contended, recorded in the order dated 04.02.2008.

The order passed by this Court on 04.02.2008 is extracted as under:-

“Learned counsel for the appellant has brought to my notice that the suit was based upon not only the entries in the accounts book but also on the basis of cheques issued by the defendants, which were later dishonoured. He has referred to 5 cheques mentioned at

page 36 which are said to be dishonoured and at least the suit to the extent that the amount is represented by these cheques, cannot be dismissed on limitation.

There is some substance in this arguments. In view of the above circumstances issue notice for 14.7.2008.

The trial court record be summoned for the date fixed.”

A reading of the order does not show that the plaintiff had ever restricted his claim to the amounts represented by five cheques. This was contention of learned counsel when the case was at the stage of preliminary hearing. Hence, the entire appeal is open for arguments.

The arguments of learned counsel that the limitation would began to run from the date of the cheques is also without any substance as the present suit was filed on the basis of books of accounts and regular business dealings. Plaintiff had opened a running and continuous account in the name of defendant in its books of accounts. In the aforesaid books of accounts when the defendant had issued cheques, the amount of cheques were reflected in the account and a credit was given to the defendant-firm but when intimation was received with regard to dishonour of the cheque the amount was put in debit column and even the bank charges were put in the column of debit.

Next argument of learned counsel is that the plaintiff cannot be allowed to travel beyond his pleadings. The argument has no substance. Plaintiff had filed a suit for recovery of the amount. Plaintiff had pleaded that cause of action kept on accruing from time to time and had also pleaded

having been dishonoured was received. The limitation would begin to run from the time when right to sue accrues. Plaintiff is only required to plead facts and not the evidence or arguments. Plaintiff has filed a suit for recovery. Plaintiff was required to plead only facts. It is for the Court to examine which Article of the Limitation Act, 1963 would apply.

Learned counsel for the respondent in the end submitted that since in the cases arising out of dishonour of the cheques, the plaintiff has accepted a partial payment, therefore, the entire basis of the suit has come to an end.

Learned counsel for the appellant has produced photocopies of the order passed by this Court in Criminal Revision Nos-262, 264, 265 and 266 of 2004.

A careful reading of the order passed by this Court does not establish that the plaintiff had given up his right to recover the remaining amount in the civil suit. Representative of the defendant-firm was convicted in the proceedings under Section 138 of the Negotiable Instruments Act. The order was upheld by the learned First Appellate Court. While considering the prayer for bail by this Court, learned counsel for the plaintiff agreed to receive 75% of the cheque amount without prejudice to his rights. Learned counsel also reserved his right to claim interest and litigation expenses. In such a situation, argument of learned counsel for the respondent has no force.

That although learned trial Court had decreed the suit for a sum of Rs.32,19,874/-, however, on perusal of the file and books of accounts prove that the balance as on 11.05.1998 was Rs.15,70,340/-. Hence, the

appellant shall stand decreed to the extent of Rs.15,70,340/- along with interest @ 9% from 11.05.1998 till realization. The amount paid in the proceedings under Negotiable Instruments Act would be liable to be adjusted. The rate of interest has been determined, keeping in view that the parties were in business and amount claimed is arising from the commercial transaction.

Appeal is allowed with cost of Rs.1,00,000/-.

01.05.2018

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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned:	Yes/No
Whether Reportable :	Yes/No