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

Date of Decision: 3rd January, 2018

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RFA 129/2007

MOHAN MEWAWALA

..... Appellant

Through: None

versus

DAMANI DYESTUFF LTD. & ANR.

.... Respondents

Through: Mr. Baswat Pattnaik, Advocate
(DR1364/10, Mob.9873057127).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present suit is for rendition of accounts. The Appellant - Plaintiff (*hereinafter, 'Plaintiff'*) in the suit, sought rendition of accounts on the ground that he was a commission agent for the Respondent-Defendant (*hereinafter, 'Defendant'*). The suit was dismissed vide order dated 7th August, 2006, primarily on the ground that the suit as framed is not maintainable. The trial court held that since the Plaintiff knew the specific amount that was due and had quantified the same in the Plaint and in the notice, the suit for rendition of accounts is not maintainable. Relevant portions of the impugned order are set out below:

"...It is thus clear from a plain reading of the aforesaid paragraphs that the Plaintiff knew as to from which particular companies the amount had been by the Defendants and what amount had been paid. Surprisingly, the Plaintiff even after having a definite idea of the amount recoverable from the Defendant, had chosen to file the suit for rendition of accounts

instead of making a prayer for recovery of specific amount. The judgment Gokal Jewellers (Supra) is applicable to the facts of this case. The suit, as framed, is not maintainable. This issue is decided in favour of the Defendants and against the plaintiff.”

2. The present appeal impugning the above order was admitted on 21st January, 2008. Thereafter, none appeared for the Appellant on 5th August, 2011 and the matter remained on board.

3. Learned counsel for the Respondent is present and has taken the court through the impugned order dated 7th August, 2006. The learned trial court has after perusing the pleadings and the documents on record arrived at a categorical conclusion that the Plaintiff knew as to what are the amounts due from the Defendants. In fact, the Plaintiff had adequate knowledge of the payments made by the various companies to the Defendants and the amount recoverable from the Defendants.

4. The legal position in respect of suits for rendition of accounts is clear and is settled by the Supreme Court in ***K.C. Skaria vs. The Government of State of Kerala, (2006) 2 SCC 285*** (hereinafter, ‘*KC Skaria*’) wherein the Court held as under:

“15. It is now well-settled that the right to claim rendition of accounts is an unusual form of relief granted only in certain specific cases and to be claimed when the relationship between the parties is such that the rendition of accounts is the only relief which will enable the plaintiff to satisfactorily assert his legal right (vide Jowahar Singh v. Haria Mal (1899) 60 P.R. 1899, followed in Gulam Qutab-ud-din Khan v. Mian Faiz Bakhsh AIR 1925 Lah 100, State of Jammu & Kashmir v. L. Tota Ram AIR 1971 J&K 71, Triloki Nath Dhar v. Dharmarath Council AIR 1975 JK 76). The right to seek rendition of accounts is

recognized in law in administration suits for accounts of any property and for its administration, suits by a partner of a firm for dissolution of the partnership firm and accounts, suits by beneficiary against trustee/s, suits by a member of the joint-family against the Karta for partition and accounts, suits by a co-sharer against other co-sharer/s who has/have received the profits of a common property, suits by principal against an agent, and suits by a minor against a person who has received the funds of the minor.

16. Even where there is no specific provision for rendition of accounts, courts have recognised an equitable right to claim rendition of accounts. In Narandas Morardas Gajiwala v. S.P.A.M. Papammal AIR 1967 SC 333, this Court considered the maintainability of a suit by an agent against the principal for accounts. Negating the contention that only a principal can sue the agent for rendering proper accounts and not vice versa, (as Section 213 of the Contract Act provided that an agent is bound to render proper accounts to his principal on demand without a corresponding provision in the Contract Act enabling the agent to sue the principal for accounts), this Court held:

“In our opinion, the statute is not exhaustive and the right of the agent to sue the principal for accounts is an equitable right arising under special circumstances and is not a statutory right....

Though an agent has no statutory right for an account from his principal, nevertheless there may be special circumstances rendering it equitable that the principal should account to the agent. Such a case may arise where all the accounts are in the possession of the principal and the agent does not possess accounts to enable him to determine his claim for commission against

his principal. The right of the agent may also arise in an exceptional case where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of his principal are gone into.”

17. To summarise, a suit for rendition of accounts can be maintained only if a person suing has a right to receive an account from the defendant. Such a right can either be (a) created or recognized under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, as that will open the floodgates for converting several types of money claims into suits for accounts, to avoid payment of court fee at the time of institution.”

5. A division Bench of this Court while following **KC Skaria** (*supra*) has further held in **Hari Gokal Jewellers vs. Satish Kapoor 2006 (88) DRJ 837 (DB)** (hereinafter, ‘Gokal Jewellers’) as under:

“14. On simple analysis of the above enunciated principles of law applied to the facts of the present case, we have no doubt in our mind that the appellant could not have instituted a suit for rendition of accounts even when the entire averments made not only in the plaint but as well as in the notice served by the plaintiff upon the defendant are taken to be true for the purpose of disposing of this application under Order 7 Rule 11 CPC. The cause of action is based on the facts pleaded and relatable to the relief claimed as

sine qua non to the institution and maintainability of the suit before the Court of competent jurisdiction.

15. In light of the judgment of the Supreme Court in the case of K.C. Skaria (supra), it was for the plaintiff to satisfy the ingredients stated therein before he could claim successfully that the suit for rendition of account was maintainable. The averments made in the plaint are vague and inadequate even to constitute a proper cause of action. Before the plaintiff would call upon the defendant to render the accounts, the plaintiff has to satisfy the Court that he has a legal right to claim rendition of accounts. It could not file a suit for recovery of money in the garb of a suit for rendition of accounts. The view taken by the trial court, thus, can hardly be faulted. In fact the plaint of the plaintiff suffers from more than one defects in law and the order passed by the learned trial Court could even be sustained for additional reasons as indicated by us above.”

6. The judgment in **KC Skaria (supra)** has been considered by this Court in **Narendra Kumar Rajgarhia v. Vao Techmash Export** (dated 31st August, 2017 in **CS(OS) 176/2000**), wherein the Court dismissed the suit filed by the Plaintiff, who was the commission agent of the Defendant, in similar circumstances.

7. Reiterating the position taken by a Division Bench of this Court in **Gokal Jewellers (supra)**, this Court in **Srinivasa Ferro Alloys Limited v. VLS Finance Limited** (dated 25th July, 2011 in **CS(OS) 575/1999**) held that ‘Plaintiffs cannot be permitted to file a suit for recovery under the garb of suit for rendition of accounts’. Thus, the legal position is quite well settled and needs no further reiteration.

8. A perusal of the suit record reveals that the suit in this case was filed on 13th March, 2002. The plaint has set out and detailed in paragraph 4 the

various companies/firms from whom business has been procured by the Plaintiff for the Defendant. It is the Plaintiff's case that the Defendant was to supply copies of all the bills to the Plaintiff for proper accounting which was not done. The Plaintiff has enumerated the specific amounts of business procured by it and the commission payable by the Defendant. In the written statement, the Defendant pleaded that the suit is barred by limitation and contended that no amount is payable. Vide order dated 2nd June, 2006 the following issues were framed in the suit:

1. Whether the Plaintiff is entitled to the relief of rendition of accounts, as prayed for? OPP
2. Whether the suit is time barred? OPD
3. Whether the Plaintiff has no cause of action? OPD
4. Whether the suit is not maintainable? OPD
5. Relief.

Issues 2, 3 & 4 were taken up as preliminary issues and vide the impugned order the suit was dismissed.

9. A perusal of the record further shows that prior to the institution of the suit i.e. on 8th February, 1999 the Plaintiff had addressed a communication to the Defendant computing the various amounts due from the Defendant. The Plaintiff claims that a total sum of Rs.27.48 Lakhs is due from the Defendant on account of commission amount. This being the position, the Plaintiff ought to have filed a suit for recovery and not a suit for rendition of accounts. The view taken by the trial court is thus, correct in law.

10. A suit for rendition of accounts cannot be filed in place of a suit for recovery. Such a course of action is impermissible. The trial court has

rejected the suit on the ground that the suit by the Plaintiff ought to have been for recovery of a specific amount and not a suit for rendition of accounts. Thus, the impugned judgment is in accordance with the settled legal principles and is neither erroneous nor perverse. The decisions cited above are clearly applicable to the facts of the present case. The suit is not maintainable.

11. The impugned judgment also records that the suit is time barred inasmuch as the last notice was given by the Plaintiff on 8th February, 1999, but the suit was instituted only on 13th March, 2002, which was beyond the limitation period of three years. The notice being an admitted document between the parties, the suit ought to have been instituted within the period of limitation i.e. three years from 8th February, 1999. Having not done so, the suit is barred by limitation. On both counts, the impugned judgment is upheld. The appeal is accordingly dismissed.

JANUARY 03, 2018

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PRATHIBA M. SINGH
(Judge)