

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

+ **RFA No. 320/2018**

% **17th April, 2018**

MICROGRAPHICS INDIA Appellant

Through: Mr. Jatin Mongia and Mr. A.
Kumar, Advocates.

Versus

THE GOVT. OF NCT OF DELHI & ANR. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 14845/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 320/2018

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 15.12.2017 by which the trial court has dismissed the suit filed by the appellant/plaintiff for recovery of Rs.24,00,512.80/-. Appellant/plaintiff claimed this amount

on account of works done under two contracts for the respondents/defendants being the Transport Department of the Government of National Capital Territory of Delhi (GNCTD). The first work which was done was of micro-filming of the driving licenses. The second work for which payment is claimed by the appellant/plaintiff is for upgradation done by the appellant/plaintiff with respect to identograph equipment, etc of the respondent no. 1/defendant no. 1.

2. The factual matrix of the case of the appellant/plaintiff has been appropriately summarized by the trial court in paras 2.1 to 2.5 of the impugned judgment and which read as under:-

“2.1. Present suit for recovery of Rs.24,00,512.80/- was filed by plaintiff, a registered partnership firm, who was assigned the contract for micro-filming of commercial driving licences on 23.05.1995 vide Department Letter No. Tpt/CV/11(67)-90/129.

2.2. The plaintiff was instructed by the defendant department to commence work of micro-filming of commercial driving licenses on the approved terms and conditions forming part of AMC Contract valid from 01.04.1993 onwards i.e. @ Rs.3.50 per entry corresponding to micro-filming per document.

2.3. The said job was completed by the plaintiff firm and invoices were raised as under:-

Bill No.	Date	Amount (Rs.)
PF/95-96/46	11.08.1995	4,70,504.91
PF/95-96/60	08.09.1995	4,25,879.58
PF/95-96/68	22.09.1995	3,38,166.50
PF/96-97/90	03.01.1997	75,527.24
PF/96-97/91	03.01.1997	1,47,288.80
PF/96-97/97	24.01.1997	43,502.40

2.4. That besides the aforesaid work, defendant department also placed orders for upgradation identograph equipment, payment for camera card for identograph micro-filming on GDS-800 registration of Blue Line buses and AMC identograph unit from 01.07.1998 onwards and four invoices with respect to the said work were also issued as under:-

- Upgradation of identograph equipment Rs.88,820.00/-
- Payment for camera card for identograph Rs.56,858.00/-
- Micro-filming on GDS-88 registration of Blue Line buses Rs.87,465.00
- AMC of identograph unit from 01.07.1998 onward Rs.1,21,000.00.

2.5. Therefore, as per the plaintiff for the aforesaid goods and services, the defendant department is liable to pay Rs.18,55,012.88, which defendant failed to pay despite letters/reminders. That upon failure to receive the said amount, the plaintiff served legal notice dated 09.01.2002 under Section 80 of CPC claiming aforesaid amount along with interest, but despite the said notice, the payment was not received. Hence, plaintiff has filed the present suit for recovery of amount of Rs.18,55,012.88 along with interest accrued thereupon @ 12% per annum i.e. total Rs.24,00,512.80.”

3. The case of the Transport Department of the GNCTD was that the appellant/plaintiff is not entitled to the sum of Rs.3.50 per exposure but Rs.3.50 per card, inasmuch as, in terms of the contract appellant/plaintiff had to have one exposure for one card of micro-filming whereas the appellant/plaintiff in one microfilm/card did exposure of four licenses.

4. I need not go into the aspects of merits of entitlement of the claim of the appellant/plaintiff, inasmuch as this appeal can be decided and is being decided, on the issue of limitation. The issue of limitation was the first issue, out of the six issues, framed in the suit

and the trial court while deciding the issue of limitation has held that the suit is time barred as the suit was filed on 8.5.2002 with respect to invoices issued by the appellant/plaintiff from 11.8.1995 to 24.1.1997; so far as the micro-filing work is concerned, and dated 30.3.1995 to 25.6.1997 so far as the upgradation of the equipment is concerned.

5. Trial court has dismissed the suit by holding the issue of limitation against the appellant/plaintiff by observing as under:-

“7. Issue No.1: Whether the claim in suit is within time? OPP

7.1. The onus to prove the said issue is upon the plaintiff.

7.2. The present suit has been filed for recovery of Rs.24,00,512.80p on the basis of contract dated 23.05.1995, bills dated 11.08.1995, 08.09.1995, 22.09.1995, 03.01.1997 and 24.01.1997 as well as bills dated 17.05.1995, 30.03.1995, 20.06.1997 and AMC Contract dated 20.06.1997. As per the said bills, the payment was to be made by the defendant department within seven days or ten days, as mentioned at the bottom of the bills, but as the said payments were not made, hence, the plaintiff had written several letters to the defendant department from 01.11.1995 to 29.11.1999. However, as the payment was not made, hence, the present suit was filed by the plaintiff on 26.04.2002.

7.3. At this point, the court would like to reproduce para-16 of the plaint, which relates to cause of action, as under :-

“16. That the cause of action for filing the present suit accrued on 23.05.1995 when the order in question was placed. It further arose on various dates when the work was done by the plaintiff. The cause of action further arose from 1995 to 1997 when respective invoices were raised by the plaintiff. The cause of action further arose from time to time when defendants recommended the payment. It further arose on 22.01.1999 when the recommendation was sent by the Deputy Director to make the payment. It further arose in later part of 1999 and 2000 when the Transport Commissioner recommended for the payment. Lastly, it arose on 09.01.2002 when a notice under Section 80 of the Code of Civil Procedure was issued. The cause of action is continuing as the defendants have failed to pay the amount.”

7.4. As per the said paragraph, the cause of action to file the plaint arose when the invoices were raised by the plaintiff from 1995 to 1997 for

the work done and goods supplied by the plaintiff to the defendant department. The plaintiff has further stated that the cause of action again arose when the Deputy Director of the defendant department sent recommendation for making payment to the plaintiff, however, in the opinion of the court internal letters/ recommendation of the defendant department cannot give rise to the cause of action to the plaintiff to file the present suit. The cause of action to file the suit is actually the contract dated 23.05.1995 and the invoices which were raised subsequently, in terms of the said contract and the demands of defendant department, for the goods and services supplied between 1995 – 1997.

7.5. In the present case, the plaintiff is seeking payment for the services provided by him to the defendant department as well as for the goods supplied by him to the defendant department, therefore, the relevant article which shall determine the limitation of present suit are Articles-14, 15 and 18 of Limitation Act, which are reproduced as under :-

14	For the price of goods sold and delivered where no fixed period of credit is agreed upon	3 years	The date of the delivery of the goods
15	For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit	3 years	When the period of credit expires
18	For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	3 years	When the work is done

7.6. As per all the three articles re-produced above, the period of limitation for filing the suit is three years from the date of delivery of goods or completion of work or when there is fixed period of credit from the date when the said period expires. In the present case, the invoices were raised between 1995 – 1997, as is admitted by the plaintiff himself in para-16 of the plaint which relates to cause of action (as reproduced earlier), and even if the period of three years as prescribed by the aforesaid articles is counted from the last day of 1997, still the limitation expired in the year 2000, whereas the suit has been filed in the year 2002.

7.7. The plaintiff in order to prove that the suit is filed well within limitation relied upon judgment titled **Shahi Exports Pvt. Ltd. Vs. C.M.D. Buildtech Pvt. Ltd. 202 (2013) DLT 735 and Bhajan Singh Samra vs. Wimpy international Ltd. 185(2011) DLT 428.**

7.8. Both the judgments are on Section 18 of Limitation Act. The first judgment provides that an entry made in companies balance sheet amounts to an acknowledgment of debt and has affect of extending period of

limitation u/s 18 of the Act. The second judgment also provides that the admission of debt either in balance sheet or in the form of letter duly signed by respondent, would amount to an acknowledgement, extending period of limitation.

However, in the present case the said judgments are not applicable because the defendant department never made any entry in its balance sheet regarding the amount due towards the plaintiff and also never issued any letter admitting that the defendant department was liable to pay the charges for the goods and services provided by the plaintiff at the rates mentioned in the invoices, raised between 1995 – 1997. The only letter, which the defendant, herein is referring to is letter Ex PW-1/77, dated 22.01.1999, written by Deputy Director (Operations) of the defendant department to the Management Director of the plaintiff, but the said letter also does not admit specifically or even otherwise that the defendant department is liable to pay the charges for the goods and services supplied, as per the invoices raised by the plaintiff company.

7.9. As per Section 18 of Limitation Act, if before expiration of the prescribed period of limitation, any acknowledgement of liability in respect of the right/property is made in writing, signed by the party against whom such right/property is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. However, such a writing has to be unqualified, as it creates a fresh cause of action to the plaintiff to base his claim upon. Mere statement expressing jural relationship between parties does not constitute acknowledgement. The defendant department by letter dated 22.01.1999 Ex PW1/77 has not acknowledged that it was liable to pay the amount as per the invoices dated 22.09.1995, 08.09.1995, 03.01.1997, rather in the said letter the department has stated that the plaintiff is not entitled to payment @ Rs. 3.50 per card, as the plaintiff has micro-filmed four cards in one exposure. There is absolutely no admission in the said letters that the defendant department was liable to pay for microfilming of 368222 cards @ Rs. 3.50 per card.

7.10. In this regard, the court would rely upon judgment of Hon'ble Apex Court, titled as "State of Kerala Vs. T.K. Chacko", (2000) 9 SCC 722. In the said case, the plaintiffs bid for forest produce was accepted by Government of Kerala but as fire broke out in reserved forests, hence, the plaintiff made representation to forest department, seeking reduction of the bid amount on the ground that his coupe was destroyed by the wild fire, but the Government instead of reducing the bid, granted further time of 45 days to the plaintiff to enable him to remove the forest produce. The plaintiff, however, neither paid the balance of the bid amount, nor removed the forest produce in his coupe and filed a suit claiming compensation, which included the refund of bid amount. The defendants in the said case claimed that the suit was time barred, but the plaintiff relied upon Government order dated 27.06.1974, wherein the representation of the

plaintiff was under consideration of the defendant and also upon the proceedings of Divisional Forest Officer intimating the plaintiff that he had failed to remit the balance bid amount and did not remove the forest produce in terms of the order of the Government and that the unremoved forest produce was confiscated and would be option that the risk and loss of the plaintiff. The said writings were considered to be acknowledgement of debt under Section 18 of Limitation Act by the trial court as well as by Hon'ble High Court of Kerala, however, when the matter came up before the Apex Court, it observed that for treating a writing signed by the party as an acknowledgement, the person acknowledging must be conscious of his liability and the commitment should be made towards that liability. The Apex Court while observing the same held that the Government order dated 27.06.1974 and the proceedings before Divisional Forest Officer do not amount to acknowledgement of liability by the Government of Kerala and set aside the orders of the Ld. Trial Court and Hon'ble High Court.

7.11. Coming to the facts of the present case, the letter dated 22.01.1999 Ex PW-1/77 does not amount to acknowledgement of liability by the defendant department of paying Rs. 3.50 per card for the 3,68,222 license cards microfilmed by the plaintiff company for defendant department, rather the said letter specifically denies the said liability. If the said letter is taken to be an acknowledgement of liability, then every reply to legal notice which denies the liability would also come within the purview of Section 18 of Limitation Act, thus, rendering the law of limitation meaning less.

7.12. This issue is accordingly decided in favour of defendant and CS No.20860/2016 Micrographics India Vs. GNCT of Delhi. Page No. 11 /30 against the plaintiff and it is held that the suit is barred by law of limitation.”
(underlining added)

6. I completely agree with the aforesaid findings and conclusions of the trial court, inasmuch as ordinarily limitation for payment for work done begins from the work being done. In the present case, work was done by the appellant/plaintiff from the years 1995-97 and even assuming that the period of limitation is extended till the drawing up and sending of the invoices by the appellant/plaintiff to the respondents/defendants, even then the last

date of the invoice would be 24.1.1997 so far as the micro-filming work is concerned and 25.6.1997 so far as the work of upgradation of the equipment is concerned, and therefore the suit so far as the work of micro-filming is concerned had to be filed by 24.1.2000 and so far as the upgradation of the equipment is concerned by 25.6.2000, whereas the suit has been filed on 8.5.2002 i.e much after the expiry of the period of limitation.

7. Learned counsel for the appellant/plaintiff argued before this Court, and as was argued before the trial court, that in the letter dated 22.1.1999/Ex.PW1/77 of the respondents/defendants, there is acknowledgement of debt in terms of Section 18 of the Limitation Act, 1963 and therefore limitation period stood extended, however, trial court has rightly held that this letter in no manner satisfies the ingredients of Section 18 of the Limitation Act because this letter in no way admits and acknowledges any debt in favour of the appellant/plaintiff. This letter dated 22.1.1999 reads as under:-

“F.No. 10/MF/TPT/97/153
Sh. Rajiv Gujral,
Managing Director,
M/s Micrographics India,
New Delhi-110014.

Dated: 22.1.1999

Subject:- Due payments of Rs.12,88,777.00/- for Microfilming
3,68,222 commercial driving licences cards at the rate of Rs.3.50 per card.

Sir,

1. Kindly refer to your invoice number PF/95-96/68 dated 22/09/95, PF/95-96/60 dated 08/09/95, PF/95-96/76 dated nil, PF96-97/90 dated 03/01/97 and PF/96-97/91 dated 03/01/97 for Microfilming of 3,68,222 Commercial driving license cards at the rate of Rs.3.50/- per card.

2. It has been noticed that same jacket, reel and frame number has been provided for 4 commercial driving licence cards. It has also been noticed that 4 cards are randomly selected instead of serially and microfilmed together in one exposure. Thus instead of microfilming each card, 4 cards have been randomly selected and microfilmed has been exposed. This reflects that instead of 3,68,222 microfilms only 92,055 (i.e. one fourth of 3,68,222) microfilm has been exposed. Thus the payment at the rate of Rs.3.50/- can be made only for 92,055 exposures. You had only made data entry of remaining 2,76,167 cards. It also reflects that material cost is only utilised for microfilming one fourth cards i.e. 92,055 cards.

3. The job of microfilming of commercial driving licences was carried out under the supervision of the then MLO (HQ) Sh. J.C. Dabas who had stated that the cards were brought and stacked in bundles by then newly recruited constables of this department instead as claimed by you, by your staff.

4. Considering the above mentioned facts, it has been decided that the department shall pay at the rate of Rs.3.50 per exposure (i.e. per microfilm) for only 92,055 exposures (i.e. only for one fourth cards, since one microfilm exposed by you contains four cards randomly selected). However the labour charges for data entry of remaining 2,76,167 cards can be made at an mutually agreed rate.

5. You are requested to give your consent to the above mentioned decision urgently, so that the matter can be decided accordingly.

Yours faithfully,

sd/-

(VISHVA MOHAN)

DEPUTY DIRECTOR (OPERATIONS)"

8. The aforesaid aspect with respect to interpretation of this letter Ex.PW1/77 dated 22.1.1999 as not constituting an acknowledgement of debt has been dealt with by the trial court in paras 7.9 and 7.11 of the impugned judgment, and I agree with the reason and conclusion of the trial court that this letter Ex.PW1/77 does

not extend limitation because there is no acknowledgment of liability by this letter.

9(i). Learned counsel for the appellant/plaintiff then argued that the trial court has wrongly applied the provisions of Articles 14, 15 and 18 of the Limitation Act inasmuch as the present was not a case of separate sale of goods and separate sale of services i.e the contract was a joint contract for goods and services, and therefore trial court ought to have applied residuary Article 113 of the Limitation Act.

(ii) In my opinion, even this argument is misconceived because even assuming for the sake of arguments that instead of Articles 14, 15 and 18 the residuary Article 113 of the Limitation Act applies as contended on behalf of the appellant/plaintiff, yet the residuary Article 113 also provides a period of three years, and once invoices are raised after work is done, then limitation would definitely commence from the date of the invoices, if not earlier. In fact, the date of the invoices were from the year 1995 and therefore for the different dates of invoices as stated in para 2.3 of the impugned judgment and for the dates otherwise stated by this Court above with respect to upgradation

of equipment, periods of limitation would have expired after three years of raising of the invoices, and trial court as also this Court is taking this issue liberally in favour of the appellant/plaintiff of limitation commencing only on raising of the last invoice on 24.1.1997/25.6.1997, but even taking that date as the date of commencement of limitation, the suit filed on 8.5.2002 would be barred by limitation.

10. There is no merit in the appeal and the same is hereby dismissed.

APRIL 17, 2018

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VALMIKI J. MEHTA, J

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