*   IN THE HIGH COURT OF DELHI AT NEW DELHI

+   **RFA No.786/2018**

%   **17th September, 2018**

SERVOTECH ELECTRICALS PVT. LTD.

..... Appellant

Through: Mr. Rakesh Kumar, Advocate.

versus

ASHOKA ENTERPRISES (INDIA) & ORS

..... Respondents

Through: Mr. Sanjeev Bahl, Ms. Madhur Dhingra, Ms. Harleen Kaur and Mr. Apoorva Bahl, Advocates (Mobile No. 9810640303).

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CAVEAT No. 856/2018

1. Since counsel for the caveator(s) has entered appearance, the caveat stands discharged.

C.M. Appl. No. 37851/2018 (for exemption)

2. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA 786/2018 and C.M. Appl. No. 37852/2018 (for stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 26.07.2018 by which the trial court has decreed the suit filed by the respondents/plaintiffs/sellers of electrical goods for a sum of Rs. 28,29,661/- along with interest at 12% per annum from 14.02.2011 being the date of the Legal Notice and till the recovery of the amount due.

4. Respondents/Plaintiffs filed the subject suit for recovery of Rs.52,16,324/-, of which an amount of Rs.28,29,661/- was the principal amount, and the balance amount of the suit was the claim of the respondents/plaintiffs towards interest. Respondent no. 1/Plaintiff no. 1 is a partnership firm of which respondent nos. 2 and 3/defendant nos. 2 and 3 are partners. The respondents supplied electrical goods to the appellant/defendant. As per the respondents/plaintiffs, they were maintaining a running account and as per this account, the principal

amount of Rs. 28,29,661 was due as on 31.03.2010. The last payment received by the respondents/plaintiffs was on 15.02.2011 vide cheque of Rs. 27,500/- which was credited to the account of the appellant/defendant. Respondent/plaintiff also pleaded that the appellant/defendant company, as per its balance sheet alongwith the profit and loss account as on 31.03.2010, admitted the appellant's/defendant's liability to the respondents/plaintiffs. The subject suit was filed after serving the Legal Notices dated 14.02.2011 and 09.02.2012 which did not yield the desired result.

5. Appellant/Defendant contested the suit and pleaded that the bills relied upon by the respondents/plaintiffs are forged and fabricated. Appellant/defendant admitted to business dealings between the parties and also the last payment by cheque for a sum of Rs. 27,500/-. It was however denied by the appellant/defendant that there was a running, open, mutual and current account and that payments were made as per the bills. The suit was therefore prayed to be dismissed.

6. After pleadings were complete, trial court framed issues and parties led evidence, and these aspects are recorded in paras 4 to 6 of the impugned judgment, and these paragraphs read as under:-

> "4. Upon completion of the pleadings, on 25.11.2013 the following issues were framed:
> 1. Are the plaintiffs entitled to a decree for recovery of Rs.52,16,324/- along with pendente lite and future interest @ 24% p.a. from the date of filing of the suit till realization? OPP
> 2. Is this suit barred by limitation? OPD
> 3. Have the Plaintiffs filed false and fabricated bills, as alleged by the Defendant? OPD
> 4. Is the suit bad for non-joinder and misjoinder of necessary parties? OPD
> 5. Has the plaint been duly signed and verified by an authorised person. If not, the effect thereof? OPP
> 6. Has the suit been properly valued for the purposes of Court fee and jurisdiction? OPP
> 7. Relief.
>
> 5. In support of his case, the plaintiff has examined 2 witness which are as under:-
> (1) PW-1 Mr. Siddharth Ladha - one of the Partners of the plaintiff firm. In lieu of his examination-in-chief he has deposed by way of affidavit Ex.PW1/A & additional affidavit Ex.PW1/1A wherein he has reiterated the case set forth in the plaint and has relied upon the following documents:
> i. Ex.PW1/1 - Copy of acknowledgment of Registration of Firms (OSR).
> ii. Ex.PW1/2 - Copy of Form-A (OSR).
> iii. Ex.PW1/3 - Copy of Form-V (OSR)
> iv. Ex.PW1/4- Copy of Retirement Deed dated 30.03.2011 (OSR).
> v. Ex.PW1/5 - Copy of Partnership Deed dated 01.04.2011 (OSR).
> vi. Ex.PW1/6, Ex.PW1/8, Ex.PW1/10, Ex.PW1/12, Ex.PW1/14, Ex.PW1/15, Ex.PW1/17, Ex.PW1/19, Ex.PW1/21, Ex.PW1/23, Ex.PW1/25, Ex.PW1/28, Ex.PW1/30, Ex.PW1/32, Ex.PW1/34, Ex.PW1/36 & Ex.PW1/37 - Invoices/ Bills raised against different purchase orders.

vii.Ex.PW1/7, Ex.PW1/9, Ex.PW1/11, Ex.PW1/13, Ex.PW1/16, Ex.PW1/18, Ex.PW1/20, Ex.PW1/22, Ex.PW1/24, Ex.PW1/26, Ex.PW1/27, Ex.PW1/29, Ex.PW1/31, Ex.PW1/33 & Ex.PW1/35- Purchase Orders.
viii. Ex.PW1/38 - Certificate U/Sec.65A and 65B of Indian Evidence Act.
ix. Ex.PW1/39 - Another Certificate U/Sec.65A and 65B of Indian Evidence Act.
x. Ex.PW1/40 - Legal Notice dated 14.02.2011. xi. Ex.PW1/41- Original postal receipts
xii. Ex.PW1/42-Proof of delivery.
xiii.Ex.PW1/43 - Legal Notice dated 09.02.2012
xiv.Ex.PW1/44 - Original postal receipts.
xv. Ex.PW1/45 (Colly) - Copies of Sales Tax forms.
xvi.Ex.PW1/46 - Copy of balance sheet as on 31.03.2010, Profit & Loss Account and Directors Report dated 04.09.2010.
(2) PW-2 Mr. R. K. Saini - Sr. Technical Assistant from the office of Registrar of Companies. He has produced the certified copies of Form-23AC and Balance Sheets for the financial year ending 31.03.2009, 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014 and 31.03.2015. The same are Ex.PW2/1 to Ex.PW2/7 respectively. The Certificate U/Sec.65B of The Indian Act is Ex.PW2/8.

Both the witnesses were cross-examined by Ld. Defence Counsel whereafter PE was closed.

6. In the defence evidence, only one witness has been examined namely Sh. Arunava Das - Managing Director of the defendant company. In lieu of his examination-in-chief he has deposed by way of affidavit Ex.DW1/A and has relied upon Board Resolution dated 03.08.2011 authorizing him to represent the company in the legal proceedings, is Ex.DW1/1.

The witness was cross-examined by Ld. Counsel for plaintiff whereafter DE was closed."

7. Trial court in my opinion has rightly decreed the suit because the Purchase Orders have been proved as Ex.PW1/6 to

Ex.PW1/37 and the Statement of Account is proved as Ex.PW1/38. The last payment was admittedly made of Rs. 27,500/- on 15.02.2011 and the suit was filed within 3 years on 12.03.2012. The trial court has referred to a very important fact that not only has the appellant/defendant failed to file its statement of account as to the due amount from the business dealings between the parties, if not as found in the account of the respondent/plaintiff, but also that the respondent/plaintiff examined the witness from the office of the Registrar of Firms to show the balance sheets of the appellant/defendant company for the Financial Years ending 2009-2015/Ex.PW2/1 to Ex.PW2/7 and which categorically showed that respondents/plaintiffs were shown by the appellant/defendant company as sundry creditors and the outstanding as on 31.03.2012 was shown as a sum of Rs. 17,25,000/-. In my opinion, the admissions made by the appellant/defendant in its balance sheets is the best evidence and clearly shows that it cannot be disputed by the appellant/defendant that it was liable to the respondents/plaintiffs.

8. Learned counsel for the appellant/defendant argued that the suit was not validly filed as the respondent no.1/ defendant no.1/

partnership firm was not registered, however I cannot agree, because this aspect has been rightly decided against the appellant/defendant by the trial court by deciding issue no. 5 in favour of the respondents/plaintiffs that the respondents/plaintiffs proved the registration of firm in the Registrar of Firms vide Ex.PW1/1 and as per Ex.PW1/2 'Form A' in the name of Mrs. Prabha Ladha/respondent no.3/plaintiff no.3 was shown as a partner in the firm. Since the trial court has dealt with this aspect correctly and exhaustively, the relevant para 8 of the impugned judgment is reproduced hereunder:-

> “8. **Discussion on Issues:**
>
> **ISSUE No.5 : Has the plaint been duly signed and verified by an authorised person. If not, the effect thereof? OPP**
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> Defendant in his written statement has taken an objection that the plaint has not been signed and verified by a duly authorized person and as such the suit is liable to be dismissed. However, apart from this averment he had not detailed as to how the authorization is lacking.
>
> Now, the plaintiff is a partnership firm. The provision regarding institution of suit by a partnership firm or against a firm is contained in Sec.69 of The Partnership Act,1932 which reads as under:
>
> "***69. Effect of non-registration*** - (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been

> a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. "
>
> Thus, a bare reading of the said provision brings out that in case where the partnership firm is a plaintiff, the firm should be a registered one and the name of the person suing should be shown in the Registrar of Firms as a Partner.
>
> Reverting to the facts of the present case, perusal of the plaint, the verification clause and the affidavit annexed with it shows that on behalf of the firm the verification has been done by Ms. Prabha Ladha. Further, two affidavits have been filed with the plaint - one by Ms. Prabha Ladha and another by Sh. Siddharth Ladha. Sh. Siddharth Ladha has also stepped into the witness box as PW-1 and has proved the registration of the firm vide Ex.PW1/1. Further, as per Form-A of Registrar of Firms which is Ex.PW1/2, the name of Ms. Prabha Ladha has been shown as a Partner of the firm. Thus, in terms of the mandate of Sec. 69 of the Act, Ms. Prabha Ladha was duly competent and authorized to file the present suit.
>
> Issue accordingly stand decided in favour of the plaintiff."

9. I, therefore, reject the argument urged by the appellant/defendant that the suit was liable to be dismissed under Section 69 of the Partnership Act, 1932.

10(i). Learned counsel for the appellant/defendant then sought to argue that the statement of account which is filed and proved by the respondents/plaintiffs shows that after the subject 17 bills raised by the respondent/plaintiff which are stated in para 1.2 of the impugned judgment, and which are for the period from 05.06.2008 to 11.12.2009, various payments were made by the appellant/defendant, and therefore the subject suit cannot be filed and co-related to the amount as per the statement of accounts filed by the respondents/plaintiffs.

(ii). This argument urged on behalf of the appellant/defendant is completely misconceived because firstly, if the statement of accounts filed by the respondents/plaintiffs were incorrect, then why was the appellant/defendant hesitant to file its own statement of accounts. Secondly, the fact of the matter is, that the statement of account which is filed and proved by the respondents/plaintiffs show that the amounts which have been paid by the appellant/defendant to the respondents/plaintiffs are not for the exact amount of payments of the bills/invoices. The said payments vary on account of *ad hoc* payments being made by the appellant/defendant to the respondents/plaintiffs. I would also like to note that the trial court has rightly relied upon a Division Bench judgment of this Court in the case of ***Bharath Skins Corporation v. Taneja Skins Company Private Limited (2012) 186 DLT 290,*** wherein limitation period with respect to a suit filed on a running and current account has been held to be within limitation as per Article 113 of the Limitation Act, 1963 once the account is a non-mutual account. In fact, I have also held in the judgment of ***M/s Naraingarh Suger Mills Ltd. v. Krishna Malhotra (2012) 190 DLT 253*** that once any payment is made by a debtor to a creditor then such payment which is made is towards balance due at the foot of the account, and therefore, there is an acknowledgment of debt for each part of the unpaid debits which existed in the accounts. This has been held by this Court in the case of ***M/s Naraingarh Suger Mills Ltd. (supra)*** and relevant para 8 of the said judgment reads as under:-

> **8.** I am unable to agree with the contentions as raised on behalf of the appellant, inasmuch as, Section 19 of the Limitation Act, 1963 has rightly been relied upon by the trial Court to hold that a fresh period of limitation commences once payment is made on account of the debt due. In this case, the debt which was due to the respondent/plaintiff was the total debt due including the nine bills which have been referred to in the cross-examination of DW1 and, therefore, the payment of cheque is towards part of the total debt due. Once the payment is made towards part of the total debt due, Section 19 of the Limitation Act, 1963 comes into play whereby a fresh period of limitation starts on payment having been made in writing and under the signatures viz. by a cheque towards the part of debt due. A suggestion by the appellant cannot change the fact that the cheque for Rs. 1,99,600/- was not towards any specific bills, but was towards all dues/debt generally. What is material is the aspect as to the giving of the cheque of Rs. 1,99,600/- by the appellant generally towards the total debt due and not how the respondent/defendant acted or appropriated the payment. The extension of limitation

arises from the factum of payment by the appellant under Section 19 towards the debt due and not how the creditor appropriates. After all when the payment by cheque was made, there was a total figure of debt due at the foot of the statement of account and the cheque issued was towards the total of the debt mentioned at the foot in the statement of account. I, therefore, hold that the payment by means of cheque dated 1.3.1999 was towards the debt due at the foot of the statement of account and, therefore, the same extended the period of limitation for a period of three years. The suit, therefore, could have been filed till 28.2.2002, and since the same was filed on 21.2.2002 the same is within limitation.

11. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

SEPTEMBER 17, 2018 **VALMIKI J. MEHTA, J**