

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

+ **RFA No.29/2018**

% **12th January, 2018**

M/S KHATEMA FIBRES LIMITED Appellant
Through: Mr. Hitesh Kumar, Advocate.

Versus

KCL LIMITED Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.1363/2018 (for condonation of delay)

1. For the reasons stated in the application, delay of 163 days in re-filing the appeal is condoned.

C.M. stands disposed of.

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2. This first appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 18.2.2017 by which the trial court has rejected the plaint on account of being barred by time.

3. The subject suit filed by the plaintiff for recovery of Rs.17,67,279/- on account of supply of papers made by the appellant/plaintiff to the respondent/defendant. Invoices which are in question were raised for the years 2007-2008. Admittedly the last payment made by the respondent/defendant as per the statement of account filed with the plaint is dated 8.7.2009. Therefore giving the benefit of Section 19 of the Limitation Act, 1963 to the appellant/plaintiff, the suit for recovery had to be filed on or before 8.7.2012. In the present case however the suit is filed on 21.3.2016. Suit is therefore barred by limitation unless the appellant/plaintiff can take benefit of such periods under Section 14 of the Limitation Act for being added to the period of limitation, and for this purpose the appellant/plaintiff pleads exclusion of two periods spent, being one in the winding up proceedings filed against the respondent/defendant and the second being as regards a suit filed before the civil court at Karkardooma and which plaint was returned to the appellant/plaintiff on account of lack of territorial jurisdiction.

4. The period spent up in the winding up proceedings filed by the appellant/plaintiff against the respondent/defendant is

admittedly for the period from 1.3.2010 to 13.9.2011 i.e approximately 558 days. The period spent in the civil suit before the Karkardooma Courts, Delhi is from 22.2.2012 till 4.3.2013 i.e approximately 377 days. Therefore, a total of 935 days i.e 558+377 days have to be added from 8.7.2012 for calculating the last date on which the appellant/plaintiff should have filed the suit. When we add this period of 935 days to 8.7.2012, the suit would have to be filed within 2 years and 205 days i.e roughly 2 years and 7 months. When a period of 2 years and 7 months is added to 8.7.2012 we would reach the month of at best January, 2015. The subject suit which has been dismissed by the impugned judgment however has admittedly been filed on 21.3.2016 i.e much after the last date of three years prescribed for filing of the recovery suit on the basis of sale of goods.

5. In view of the above discussion, I do not find that trial court has committed an error in rejecting the plaint under Order VII Rule 11 CPC on account of the suit being barred by time. There is no merit in the appeal.

6. Dismissed.

JANUARY 12, 2018/Ne

VALMIKI J. MEHTA, J