

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11987 OF 2014

Akshay Manikchand Bora
Age 41 years, Occ. Business
R/o Rahil Electricals,
Shop No.325, N-3, Cidco
Aurangabad.

..Petitioner

Versus

Gurupreetsing Bagga
The owner of the Bagga
International Hotel,
Akashwani Square,
Near Waman Hari Peth
Jewelers, Jalna Road,
Aurangabad.

..Respondent

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Advocate for Petitioners : Shri Murkute J.M.
Advocate for Respondent : Shri Pagare A.S.
a/w Shri Tribhuwan N.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 15, 2019

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ORAL JUDGMENT:-

1. Rule.
2. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
3. I have heard the submissions of the learned Advocates of the respective sides in view of the impugned order dated 19.11.2013

passed by the trial Court, rejecting the plaint in RCS No.419 of 2013 considering that the case of the plaintiff would not fall under Articles 15 and 16, but would squarely fall under Article 14 of the Limitation Act.

4. I have gone through the petition paper book. I need to record my displeasure that the petitioner has not placed on record all the documents, which were necessary to be shown to the Court, especially, the bill dated 25.6.2010 which finds place in prayer clause (B) of the plaint. The learned counsel has pulled out the bill from his docket and shown in to the Court. Learned Advocate for the respondent submits that it is a bill which does not bear the acknowledgment of the respondent and cannot be believed.

5. Article 14 of the Limitation Act prescribes the limitation period of three years for recovering the price of the goods sold and delivered, where, no fixed period of credit is agreed upon and such limitation would operate from the date of the delivery of the goods. The prayer clause set out in the plaint pertains to a recovery of Rs.82,469/- with interest @ 12% per annum based on the bill dated 25.6.2010. The pleadings in paragraph Nos.17, 19 and 20 indicates that the entire suit rests on the bill dated 25.6.2010. Though the said bill does not carry an acknowledgment of receipt from the

respondent, the suit seems to be based solely on the said bill. In so far as fixed period of credit is concerned, there is nothing placed on record to indicate that there was such a fixed period, which would bring the case of the plaintiff under Article 15 of the said Act, notwithstanding the submission of the learned Advocate that there was such a credit period agreed upon between the parties.

6. By the impugned order dated 19.11.2013, the trial Court has rejected the plaint on the ground that it is time barred under Article 14 of the said Act. However, in so far as the last bill dated 25.6.2010 is concerned, the trial Court has concluded that it would not extend the period of limitation.

7. I find that the trial Court has completely lost sight of the specific prayer put forth by the plaintiff at clause (B), which would indicate that the whole suit rests on the bill dated 25.6.2010. It would be appropriate to consider, whether the plaintiff would prove the bill dated 25.6.2010, which would require evidence. The issue therefore, is a mixed question of facts and law and the trial court could not have passed a drastic order of rejecting the plaint, in a casual manner.

8. In view of the above, this petition is allowed. The impugned

order dated 19.11.2013 is quashed and set aside. Application Exhibit 10 stands rejected and RCS No.419 of 2013 stands restored.

9. It would be appropriate to direct the trial Court to frame an issue of limitation, keeping it open to the plaintiff to prove the bill dated 25.6.2010 and the contention that there was a credit period, which would decide as to whether Articles 14 or 15 would be applicable to this case.

10. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d