

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

+ **RFA No. 45/2019**

% **21st January, 2019**

M/S PIECO INDIA ENGINEERING CO PVT LTD Appellant

Through: Mr. Neeraj Malhotra, Sr. Advocate
with Mr. Burjis Shabir and Ms.
Cassandra Zosangliani, Advocates
(Mobile No. 9821298197).

versus

M/S SHATABDI SWITCHGEARS & CONTROL PVT. LTD. &
ORS.

..... 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. 2484/2019 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 2482-83/2019 (for delay in filing and re-filing)

2. For the reasons stated in the applications the delays in filing and
re-filing the appeal stand condoned, subject to just exceptions.

C.Ms. stand disposed of.

RFA No. 45/2019 and C.M. Appl. No. 2481/2019 (for stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no. 1 in the suit impugning the Judgment of the trial court dated 28.05.2018 by which the trial court has decreed the suit filed by the respondent no. 1/plaintiff for a sum of Rs. 19,46,286/- along with *pendente lite* interest at 12% per annum and future interest at 6% per annum on account of the appellant/defendant no. 1 having not paid for the electrical goods which were sold/supplied by the respondent no.1/plaintiff to the appellant/defendant no. 1.

4. The facts of the case are that respondent no. 1/plaintiff filed the subject suit for recovery of Rs. 19,46,286/- along with interest pleading that the appellant/defendant no.1 had bought electrical goods on credit basis from the respondent no. 1/plaintiff for the period from 19.08.2009 to 25.02.2009. In fact, the dealings had started between the parties in an earlier Financial Year starting from 01.04.2007. For the financial year from 01.04.2009 to 31.03.2010, a sum of Rs. 1,32,390/- was paid by three cheques with the last cheque

being for a sum of Rs. 25,000/- vide cheque bearing no. 389490 dated 29.09.2009. The subject suit was filed within three years from 29.09.2009 i.e. on 19.09.2012, and therefore a money decree was prayed to be passed in favour of the respondent no. 1/plaintiff.

5. There were three defendants in the suit. The appellant/defendant no. 1 was the company, which had purchased goods from the respondent no.1/plaintiff, and it is only against the appellant/defendant no. 1 that the money decree is passed, and the money decree is not passed against the other two defendants who were rightly held to not be liable, once it was the company which had purchased the goods.

6. In the written statement, appellant/defendant no. 1 did not dispute that there were transactions entered into between the respondent no.1/plaintiff as seller and the appellant/defendant no. 1 as the buyer. It was, however, denied that any payment was made by the appellant/defendant no. 1 for Rs. 25,000/- on 29.09.2009 as it was pleaded that it was infact the respondent no. 2/defendant no. 2 who had made this payment out of his sole proprietorship concern of M/s Pieco International Engineering Company and not for the goods purchased by the sole proprietorship firm the appellant/defendant no. 1

M/s Pieco India Engineering Company. It was thus pleaded that the payment of Rs. 25,000/- made by the sole proprietorship concern of the respondent no. 2/defendant no. 2 was for the business of the sole proprietorship concern with the appellant/defendant no. 1, and this payment therefore made by the respondent no. 2/defendant no. 2 had nothing to do with the dues of the appellant/defendant no. 1 and hence the suit was barred by limitation. It was also the stand of the appellant/defendant no.1 that goods were in fact purchased on credit basis, however all the payments for the goods purchased stood made to the respondent no. 1/plaintiff as per the statement of account of the appellant/defendant no. 1 in its book of accounts. The suit was thus prayed to be dismissed.

7. Trial court framed the following issues:-

- “1. Whether the suit of plaintiff is barred by limitation? OPD
2. Whether the plaintiff is entitled to recover the suit amount from the defendants? OPP
3. Whether the plaintiff is entitled to any pendente lite and future interest? If so, at what rate? OPP
4. Relief.”

8. Parties thereafter led evidence. Whereas the respondent no. 1/plaintiff got examined the Authorized Representative of it's

company, Sh. Trivender Sharma as PW-1, whereas the appellant/defendant no. 1 got examined Mr. Hari Shankar Devnath as DW-1.

9. The trial court in my opinion has committed no illegality, and the suit of the respondent no.1/plaintiff has been rightly decreed by the trial court because it is admitted that the dealings between respondent no. 1/plaintiff and the appellant/defendant no. 1 were on credit basis. If the case of the appellant/defendant no. 1 was that as per its statement of accounts nothing was due, then there was nothing, as rightly reasoned by the trial court, which prevented the appellant/defendant no. 1 from filing its statements of accounts to prove this aspect. The trial court has also rightly observed that the payment of Rs. 25,000/- made vide cheque no. 389490 dated 29.09.2009 would be towards the dues of the appellant/defendant no.1 pending towards the respondent no.1/plaintiff, because in the cross-examination the witness of appellant/defendant no. 1, DW-1 admitted that no goods were ever received by the sole proprietorship concern of the respondent no. 2/defendant no. 2 from the respondent no.1/plaintiff. Obviously, if the sole proprietorship concern of the respondent no.2/defendant no. 2 had made payment to the respondent no. 1/plaintiff, and goods were not supplied by the respondent no. 1/plaintiff to the sole proprietorship

concern of respondent no. 2/defendant no. 2, then the respondent no. 2/defendant no. 2 would not have kept quiet. Obviously, this shows that the payment was made for on behalf of the appellant/defendant no. 1 by the respondent no. 2/defendant no. 2. It need not be gainsaid that consideration to a contract need not flow only between the parties to a contract vide Section 2(d) of the Contract Act, 1872 i.e. dues payable to one person can be cleared by a person who is not a party to the contract. Therefore, the last payment having been made by cheque on 29.09.2009, the period of three years would expire thereafter on 29.09.2012, and therefore, the subject suit having been filed on 19.09.2012 would be thus within limitation. Also, I may note that the payment made of Rs. 25,000/- will be towards the balance due at the foot of the account, and once the payment of Rs. 25,000/- is towards all the dues, the acknowledgment of debt by means of payment under Section 18 of the Limitation Act, 1963, would be towards the entire balance due in the account of the respondent no.1/plaintiff and as against the appellant/defendant no.1 and as so held by this Court in the judgment in the case of *Naraingarh Suger Mills Ltd. v. Krishna Malhotra*, RFA No. 144/2004 & 145/2004 decided on 12.03.2012 and

Mrs Veena Jain v. Sunil Sood, CS(OS) No. 1177/2003 decided on 23.07.2012.

10. Though Ld. Counsel for the appellant/defendant no.1 rightly argued that the trial court has wrongly taken the statement of account filed by the respondent no.1/plaintiff as an open, mutual and current account, however, this Court is proceeding on the basis that the statement of accounts filed by the respondent no.1/plaintiff is not an open, mutual and current account as per Article 1 of the Limitation Act but even if that is so, since the suit is filed within three years of the last payment on 29.09.2009, the subject suit filed on 19.09.2012 was well within limitation period of three years.

11. In view of the aforesaid discussion, there is no merit in the appeal and the same is hereby dismissed. Pending applications stand disposed of.

JANUARY 21, 2019

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VALMIKI J. MEHTA, J