

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: November 05, 2019

+ RFA 1029/2016

NATIONAL SMALL INDUSTRIES CORP LTD

..... Appellant

Through: Ms.Manvi Gola, Advocate.

versus

M/S SUPER PACKERS & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 has been filed by the appellant challenging the Judgment / Order dated September 1, 2016 passed by Mr. Shailender Malik, ADJ-16 (Central), Tis Hazari Courts, New Delhi in CS NO. 572/16/06 titled National Small Industries Corporation Ltd. v. Super Packers and Anr. Suffice it would be to state that the Suit filed by the appellant has been dismissed.

2. Some of the facts, relevant for decision of this appeal are, the appellant, a company registered under the Companies Act, 1956 (a Government of India enterprise) filed a Suit for Recovery of ₹15,67,802.45 with pendente lite and future interest, relief of injunction and compensation for use and retention costs. The

prayers made in the plaint are as under:-

Under the facts and circumstances stated hereinabove and in the interest of justice, this Hon'ble Court may be pleased to:

i]. Call for the records of the case being CS No.572/16/06 titled National Small Industries Corporation Ltd. Vs. M/s Super Packers & Anr., decided by the court of Sh. Shailender Malik, ADJ-16 (Central), THC Delhi vide judgment and decree dated 01.09.2016; and

ii) Set-aside judgment and decree dated 01.09.2016 passed by Sh. Shailender Malik, ADJ-16 (Central), THC Delhi in CS No.572/16/06 titled National Small Industries Corporation Ltd. Vs. M/s Super Packers & Anr., and decree the suit of the Appellant; And

iii) Pass such other and further orders as are deemed fit and proper in the facts and circumstances of the case.”

Respondent no.1 is a proprietorship concern and the respondent no. 2 is the husband of the proprietor of respondent No.1.

3. The case of the appellant was that respondent no.1 through its proprietor had approached the appellant for supply of paper corrugating and slitting attachment machines on three different occasions. The appellant considered the request of the respondent no.1 and agreed to supply those machinery / equipment under hire purchase agreement scheme after completing necessary formalities. It was the case of the appellant that three hire purchase agreements dated October 21, 1987, December 21, 1990 and April 01, 1991 were executed. The

appellant supplied the machinery / equipment to respondent no.1. As per the first hire purchase agreement dated October 21, 1987, heavy duty oblique type high speed single face paper corrugating machine along with fitting attachments were supplied. As per the second hire purchase agreement dated December 21, 1990, Everest heavy duty cutting and creasing platen press was supplied and under the third agreement dated April 1, 1991, sheet pasting box M/S 72" stitching M36 board cutter machines were supplied.

4. According to the appellant, under the above three hire purchase agreements, the cost of the contract inclusive of insurance charge was for a total sum of ₹15,66,848/-. As per the first hire purchase agreement, first installment amount of ₹26,886/- were payable on half yearly basis until the payment of entire hire purchase value. Under the second hire purchase agreement, the installment of ₹57,061/- was to be paid on or before July 1, 1992 and subsequent 12 installments of ₹35,693/- each were payable on half yearly basis until the hire purchase value was paid. The last instalment was payable on or before July 1, 1998. Under the third hire purchase agreement, the first installment of ₹1,00,62/- was payable by October 1, 1991 and rest of the amount in 12 installments of ₹6,298/- each was payable on or before October 1, 1998.

5. It was the case of the appellant that the respondents had agreed to pay normal interest @ 15% *per annum* under the aforesaid hire purchase agreements. As per clause 6 of the hire purchase agreements, the respondent agreed to pay interest @ 2% more than the normal rate, i.e., @17% *per annum*. It was the

case of the appellant that under Clause 2 (X) of hire purchase agreement, if the respondent No.1 failed to pay the hire purchase dues during the tenure of the agreement, and the respondent No.1 retained the possession of the property after the expiry of hire purchase period, the appellant is entitled to claim compensation for use and retention of machinery at the same rate of six monthly hire rent as mentioned in Clause 1 of the agreement besides paying insurance charges incurred by the appellant. It was the case of the appellant that under the agreement, option was also available to the respondent No.1 to purchase the property after fulfilling the obligations under three hire purchase agreements upon expiry of the tenure on October 1, 1998. It was their case that the respondent No.1 had failed to exercise the option of purchasing the property / machinery, yet retained the same beyond the period of October 1, 1998 and therefore the appellant was entitled to claim a sum of ₹2 Lacs for use and illegal retention of property / machinery by respondent no.1 from October 1, 1998 till filing of the Suit. The appellant has also stated that respondent no.2 / guarantor offered to pay ₹2,50,000/- towards full and final settlement of the outstanding amount by a letter dated August 12, 2004. As the respondent no.2 / guarantor did not fall under the norms of OTSS, the same was rejected. The appellant's case is that respondent no.1 had failed to make the payment under three hire purchase agreements even after issuance of notice dated May 24, 2005, whereby the respondent no.1 was called upon to pay total sum of ₹8,50,000/- as outstanding amount, which the respondent no.1 failed to pay.

Hence the suit was filed for an amount of ₹8,67,802.45/- along with decree for sum of ₹2,00,000/- as compensation towards use and illegal retention of property / machinery as well as decree for sum of ₹5,00,000/- as residual value of the machinery. A further plea of injunction was made by the appellant restraining the respondents from using, alienating the machinery property in favour of any third party. Future interest @ 17% was also sought.

6. Respondent no.1 filed a written statement thereby taking objections that the suit filed by the appellant is hopelessly time barred. It was also stated that the appellant had not approached the Court with clean hands. The suit is without any cause of action and nor has been properly filed, signed, verified and instituted by duly authorized person. The case of the appellant was denied on merits. It was pleaded that the suit is bad for misjoinder of cause of action, as three separate distinct hire purchase agreements of different dates, different amounts and different machines were executed, but the appellant has deliberately clubbed three hire purchase agreements in an attempt to recover the time barred dues. It was stated that the agreements were admittedly entered in the years 1987, 1990 and 1991 and the instalments in each of the hire purchase agreements were to be made by September 1, 1995, June 1, 1998 and October 1, 1998 respectively whereas the Suit has been filed on August 3, 2006 after 11 years from the date of last installment, under the first hire purchase agreement and 8 years from the last installment payable under second and third hire purchase agreements. Thus, the

cause of action as per hire purchase agreements is not disputed. However, the liability under the same has been denied on the ground of limitation. It was also denied that the respondent no.2 had agreed to pay a sum of ₹2,50,000/- by letter October 12, 2004. The claim of the appellant company regarding compensation of ₹2,00,000/- on the ground of retention of the machinery was also denied. Respondent no.2 did not appear despite service of summons and thus was proceeded ex-parte on October 13, 2006. Replication was filed by the appellant. On the basis of pleadings, the following issues were framed:

- (i) *Whether the suit is time barred? OPD*
- (ii) *Whether the plaintiff (appellant herein) has not approached the court with clean hands and has tried to mislead the court? OPD*
- (iii) *Whether the suit is liable to be dismissed for misjoinder of cause of action? OPD*
- (iv) *Whether the suit has been filed without any cause of action? OPD*
- (v) *Whether the suit has been instituted, signed and verified by duly authorized person? OPP*
- (vi) *Whether the memorandum of agreement dated October 21, 1987, December 12, 1990 and April 1, 1991 are beyond the scope of consideration being insufficiently stamped? OPD*
- (vii) *Whether plaintiff (appellant herein) is entitled to recover the suit amount from the defendants (respondents herein)? OPP*
- (viii) *Whether the plaintiff (appellant herein) is entitled*

to interest, if yes, at what rate and from when?
OPP

(ix) Relief.

7. On issue no. 1, the trial court was of the view that as per the three different hire purchase agreements executed between appellant and respondent no.1, first one being on October 21, 1987 and the first hire instalment was payable by September 1, 1989 and 12 instalments were payable on or before September 1, 1995. Second hire purchase agreement was executed on December 21, 1990 under which first instalment was payable on or before July 7, 1992 and last instalment was payable by July 1, 1998. Similarly, third hire purchase agreement was executed on April 1, 1991 under which first instalment was payable on October 1, 1992 and last instalment was payable on October 1, 1998. The trial court was of the view that the suit was filed on August 3, 2006. The trial court referred to para 13 of the plaint, wherein a reference has been made that on June 14, 1999, an amount of ₹10,000/-; on February 8, 2000; July 11, 2000; May 9, 2003; May 27, 2004; December 16, 2004 and February 23, 2005 an amount of ₹5,000/- each is stated to have been deposited. These dates and details have been mentioned to state that the suit is within limitation. Besides, it was also mentioned that respondent no.2 by letter dated August 12, 2004 offered to settle the outstanding amount under the above said three hire purchase agreements by paying an amount of ₹2,50,000/-. It was stated in the plaint by the appellant that the said offer was rejected by the

appellant as it did not fall under the norms. The appellant had produced PW-1, R.K. Tyagi, who proved hire purchase agreements as Ex. PW1/6, Ex. PW1/7 and Ex. PW1/8. He deposed that after adjusting all the payments made by respondent no.1, a sum of ₹8,67,802.45/- was still outstanding. He also deposed that the defendants have admitted their liability through different letters which have been exhibited as Ex. PW1/19 to Ex. PW1/27, the last one being letter dated December 15, 2004. He also testified letter dated August 12, 2004 as Ex. PW1/28, an offer for final settlement of the claim of the appellant for ₹2,50,000/-, which was rejected by the plaintiff corporation. The trial court was of the view that PW-1 admitted that all the three hire purchase agreements were different and independent agreements having no connection with each other. Under the three hire purchase agreements, different payment schedule for installments were fixed. It was the case of the respondent no.1 that from the date of last payment of instalments under the three different hire purchase agreements, suit was highly belated and barred by limitation. Reliance was placed on the judgment of ***National Small Industrial Corporation Ltd. Vs Takdeer Singh 2005 (VI) Apex Decisions 106***. It was argued that for the purpose of limitation, cause of action accrued separately with regard to each and every instalment payable. The trial court was of the view that cause of action for the purpose of limitation accrues from the date on which each instalment is due and in case of failure in payment of any instalment, claim for outstanding amount can be made within three years from each due date of outstanding instalment.

The trial court found that the due-date of last instalment under first hire purchase agreement was September 1, 1995; under the second hire purchase agreement was July 1, 1998 and under the third hire purchase agreement it was October 1, 1998. The trial court was of the view that that the suit filed in year 2006 appears to be hopelessly barred by limitation. The trial court has also examined whether certain payments having been made within prescribed period of law, results, in the extension of limitation. There is no dispute that certain payments were made by respondent no.1 by way of cash, the last one being on February 23, 2005. Reliance placed on those receipts was disbelieved by the trial court on the ground that it did not bear the signatures of the respondent no. 1. The trial court was of the view that the receipts do not match with the statement of account of the appellant corporation, placed on record as Ex.PW2/1, Ex. PW2/2 and Ex. PW2/3. In other words, there is no entry in these statement of accounts regarding receipt of any amount in respect of which receipts, Ex. PW.1/12 to Ex. PW.1/18, were issued. The trial court finally concluded that the receipts did not establish deposit of any amount by respondent no.1. In fact, the trial court was of the view that that these receipts were never even put to DW-1, who was produced in the witness box to prove such amount as mentioned in the receipts were deposited by her on different dates. The trial court even on examination of receipts was of the view that none of these receipts bear the stamp of appellant company nor the person who had issued such receipts been examined because PW-1 admitted in his cross examination

that none of the documents were executed by him nor in his presence. The trial court has also referred to the testimony of PW-2 Mohd. Shamim who is Deputy Manager (Accounts) in the appellant corporation to hold that the said witness had not uttered a single word regarding issuance of receipt Ex.PW1/12 to Ex. PW1/18. In his testimony he has stated that the statement of accounts of the present case was not being maintained by him. So, the trial court was of the view that Ex.PW1/12 to Ex.PW1/18 are neither lawfully proved nor establish alleged payments made by respondent no.1. Therefore, such receipts do not in any manner extend the period of limitation. That apart, the trial court while referring to communications / letters which are Ex.PW1/19 to PW1/27 was of the view that no reference is made in the plaint regarding receipt of different letters as mentioned. The trial court by stating so, has held that said communications / letters are beyond pleadings as those are not even mentioned in the replication. The trial court was of the further view that perusal of the said letters would not reveal any acknowledgment of liability. The said letters were also not put to DW-1, Gurmeet Kaur, in her cross-examination to confront her by contents of those letters. So, the trial court was of the view that since the letters have not been lawfully proved on record, the appellant corporation cannot take advantage of the letters/communications Ex. PW1/19 to Ex. PW1/27. On the issue of letter dated August 12, 2004, Ex.PW1/28, which according to the appellant was an offer on behalf of the respondents to settle the outstanding amount of payment of ₹2,50,000/-, in his cross-examination, PW-1 had

admitted that Ex. PW1/28 does not bear the signature of respondent no.1. The witness had admitted that the appellant corporation has filed an envelope of the letter, Ex.PW1/28. The trial court was of the view even if it is considered that the letter was written by Amarjit Singh / respondent No.2, who is the husband of proprietor of respondent Firm, it is also a matter of record that hire purchase agreements were signed only by Ms. Gurmeet Kaur as the proprietor of respondent no.1 Firm. Therefore, a letter of husband of the proprietor, does not amount to the acknowledgment of respondent no. 1 to fasten the liability upon her. On the issue of clubbing of three agreements is concerned, the trial court by noting the position of law in *NSIC v. Takdeer Supra(supra)* has observed that every instalment under the hire purchase agreement shall have its own limitation period of three years commencing from the date when any particular instalment become due and in the present case clubbing of three different hire purchase agreements was nothing but an attempt to defeat the provisions of law of limitation. The trial court held that the appellant was required to give specific details as to how much instalments were paid under each of hire purchase agreement, so that the period of limitation could be ascertained from date of unpaid instalment. The same was not done and accordingly, the trial court found that the suit was barred by limitation and decided the issue against the appellant and in favour of the respondents.

8. Issue no.2 was decided against the respondent No.1 stating that the appellant has not in any manner tried to mislead

the court.

9. On the issue of the cause of action, the trial court held that there is no legal bar to unite different causes of action in one suit, if the same has accrued as against the respondent No.1 in the suit. Intention of law is that in one litigation as against all the disputes arising out of different causes of action must be encouraged to avoid multiplicity of litigation. Reference is made to the Judgment of this court in the case of **Jai Industries v. M/s Neckson Industries AIR 1992 Delhi 338**, wherein it was held that single suit relating to two different cause of actions filed by the appellant is maintainable. Issue nos. 4 and 5 were also decided against the defendants (respondents herein).

10. Issue no. 6 with regard to the memorandum of agreements dated October 21, 1987, January 21, 1990 and April 1, 1991, the trial court held, are beyond the scope of consideration for being insufficiently stamped and has been decided in favour of respondents by holding that the documents having been executed on insufficient stamp duty or without stamp duty, such instruments are not admissible in evidence.

11. Issue no. 7 has been decided against the appellant herein. On the interest also, the issue has been decided against the appellant.

12. It is the case of the appellant so contended by the learned counsel for the appellant that impugned order / decree is against the facts and law and is based on surmises and conjectures.

13. It was her submission that the trial court has failed to appreciate that in terms of the hire purchase agreements, the last

instalment under the three agreements were to be paid by respondent no.1 on or before September 1, 1995, July 1, 1998 and October 1, 1998 and further respondent no.1 vide its various letters dated between October 7, 1995 to December 15, 2004 had acknowledged the liability to pay the debt of the Appellant. Thus, the suit filed by the appellant in the year 2006 could not have been termed as time barred.

14. It was her submission that the trial court had committed a grave error in not appreciating that the respondent no.1 had made part payments to the appellant in pursuance to the hire purchase agreements in question. The said payments were made by the respondent no.1 through cheque and cash on June 14, 1999, February 8, 2000, July 11, 2000, May 9, 2003, May 27, 2004, December 16, 2004 and February 23, 2005 in terms of receipts exhibit PW1/12 to PW1/18. In terms of the said payments made by respondent no.1 to the appellant, the suit filed by the appellant was within the period of limitation.

15. It was her submission that the trial court committed grave error in holding that the payment receipts exhibits PW1/12 to PW1/18 do not reconcile with the statement of account of the appellant. According to her each and every payment made by the respondent no.1 was entered in the statement of accounts PW2/1 to PW2/3 and as such there was no need to prove the said payments any further. She submitted that the trial court failed to appreciate that there was no need to put the said payments receipts to DW1 in her cross examination as the said payments were made by her mainly through cheque.

16. It was her submission that trial court erred in holding that the deposition of appellant's witness was beyond pleading with regard to acknowledgments and payments made by respondent no.1. According to her, agreements in question were duly mentioned by the appellant in paras 11 and 13 of the plaint. It is submitted by her that the appellant had led primary evidence by producing original letters written by respondent no.1 to the appellant. Further the said documents could have either been proved by the author of the said documents or the person who had received the said documents. Since the documents were received by the appellant, the appellant's officials were the best witnesses to prove the said documents. She submitted that it was never been the case of the respondents that the Appellant had forged and fabricated the said documents.

17. She also submitted that the trial court fell in grave error in holding that letter dated August 12, 2004 Ex.PW1/28 was written by the husband of Ms. Gurmeet Kaur, i.e., the proprietor of respondent no.1, as such the same does not amount to an acknowledgement to fasten any liability on the respondent No.1. It was also submitted that the letter dated August 12, 2004 was written by Sh. Amarjit Singh / respondent No.2, who stood as guarantor for his wife Ms. Gurmeet Kaur thereby guaranteeing to pay the dues of the appellant in case the hirer fails to pay the said dues. According to the learned counsel for the appellant, the liability of a guarantor is co-extensive with the principal debtor and if any acknowledgement is made by the guarantor, the same would bind the principal debtor also. Same principle applies

when principal borrower acknowledges anything, which binds the guarantor. Since the guarantor i.e. respondent no.2 vide letter dated August 12, 2004 had acknowledged its liability towards the appellant, the same brings the suit of the appellant within the period of limitation. She also stated that the trial court had erred in holding that the hire purchase agreements executed between the parties were inadmissible in evidence being insufficiently stamped as such the said agreements would not be read in evidence. According to her there is no requirement to get the hire purchase agreements stamped and registered. However, even if the said agreements were not stamped, even then the same could have been read in evidence. According to her, the said agreements were duly admitted by the respondent no.1 in her written statement.

18. She also submitted that the trial court committed a grave error in holding that appellant could not have clubbed three different hire purchase agreements in one suit. It is her case that all the three hire purchase agreements were executed between the same parties, whereby certain machines were supplied to respondent no.1. Further the respondent no.1 had been writing the letters to the appellant clubbing all the three hire purchase agreements. Respondent no.1 was also not making separate payments in respect of each agreement. On account of payments also being made by the respondent no.1 to the appellant in respect of all the three hire purchase agreements, there was no illegality to club all the three hire purchase agreements in one suit.

19. According to the learned counsel for the appellant, trial court committed grave error in observing that three separate statement of accounts were not placed on record by the appellant. She stated that separate statement of account in respect of each hire purchase agreements was maintained by the appellant and the same were placed on record and were duly proved as PW2/1 to PW2/3. Learned counsel for the appellant submitted that trial court erred in observing that whether or not the statement of accounts PW2/1 to PW2/3 were in respect of three hire purchase agreements. She submitted that on the top of each statement of account, the name of machine, its hire purchase value, rate of interest, number of instalments were duly mentioned. Thus, there was no confusion with regard to the said statement of account.

20. She also stated that trial court committed a grave error in holding that there is no evidence on record to show that respondent No.2 was the guarantor and none of the document was signed by the said respondent No.2. According to her, the appellant had duly proved on record the Guarantee Deeds executed by respondent No.2 as Ex.PW1/3 to PW1/5 in respect of all the three hire purchase agreements. The Guarantee Deeds duly reflect that the same were executed by respondent no.2 in respect of all the three hire purchase agreements. In the end, she submits that the impugned judgment / order is liable to be set aside.

21. Having heard the learned counsel for the appellant and perused the record, at the outset, it may be stated here that the suit filed by the appellant before the trial court was for recovery, injunction, compensation of use and retention costs. The trial

court has rejected the suit on the basis of findings on issue nos. 1, 6 and 7. As noted above, issue nos. 1, 6 and 7 reads as under:

- (i) *Whether the suit is time barred? OPD*
- (vi) *Whether the memorandum of agreement dated October 21, 1987, December 12, 1990 and April 1, 1991 are beyond the scope of consideration being insufficiently stamped? OPD*
- (vii) *Whether plaintiff (appellant herein) is entitled to recover the suit amount from the defendants (respondents herein)? OPP*

22. I have already reproduced the findings of the trial court on the aforesaid issues. Having noted the findings, the submissions of Ms. Bhamba against the same in substance are as under:

- 1) That under various letters between October 7, 1995 till December 15, 2004 (Ex. PW 1/19 to Ex. PW1/27), the respondent no.1 had acknowledged the liability to pay the debt of the appellant and as such the suit filed by the appellant in the year 2006 cannot be termed as time barred.
- 2) That the respondent no.1 had made payments on different dates in terms of Ex.PW1/12 to PW1/18 and as such the suit is within limitation.
- 3) Each and every receipt of payments (Ex.PW1/12 to PW1/18) were reflected in the statement of accounts, i.e., Ex.PW2/1 to Ex.PW2/3 and as such the receipts were not required to be proved.
- 4) The letters written by respondent no.1, Ex.PW1/19 to Ex.PW1/27, clearly proves the acknowledgment of debt by

respondent no.1 and the letters having been received by the appellant's officials, the same are deemed to have been proved, more so, when it is not the case of the respondent no.1 that they are forged and fabricated.

5) The trial court fell in grave error in holding that the letter dated August 12, 2004 (Ex.PW1/28) was written by the husband of the respondent no.1, who was not the guarantor. According to her, he was the guarantor and his liability is co-extensive. Since the guarantor had acknowledged the liability towards the appellant, the said suit was maintainable being within the limitation period.

6) There is no requirement to get the hire purchase agreements stamped and registered. Even if it is not stamped, the same could be read in evidence. More so, they were admitted by the respondent no.1.

23. Having noted the submissions made by Ms. Bhamba, before I come to the plea raised by her that the suit was within limitation, it is important to deal with the plea of Ms. Bhamba that the Trial Court's finding that the hire purchase agreements are insufficiently stamped and as such, could not be read in evidence, is erroneous. The Trial Court against issue no. 6 has held that the documents are insufficiently stamped and as such inadmissible in evidence and therefore liable to be impounded. This conclusion of the Trial Court is not in accordance with the procedure laid down under the Indian Stamp Act, 1899 ('Stamp Act', for short) vide Sections 33 and 35. It is clear that the Court has power to admit the document in evidence if the party

producing the same would pay the stamp duty together with a penalty amounting to ten times the deficiency of the stamp duty. If the court chooses to admit the document on compliance of such condition the Court needs to forward only a copy of the document to the Collector, together with the amount collected from the party for taking adjudicatory steps. But if the party refuses to pay the amount aforesaid, the Court has no other option except to impound the document and forward the same to the Collector. On receipt of the document through either of the said avenues, the Collector has to adjudicate on the question of the deficiency of the stamp duty. If the Collector is of the opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof. This position of law has laid down by the Supreme Court in the case of ***Chilakuri Gangulappa vs. Revenue Divisional Officer, Madanpalle and Ors Appeal (Civil) 1800 of 2001 decided on 14.03.2001***, as under:-

“12. It is clear from the first sub-section extracted above that the court has a power to admit the document in evidence if the party producing the same would pay the stamp duty together with a penalty amounting to ten times the deficiency of the stamp duty. When the court chooses to admit the document on compliance of such condition the court need forward only a copy of the document to the Collector, together with the amount collected from the party for taking adjudicatory steps. But if the party refuses to pay the amount aforesaid the Court has no other option except

to impound the document and forward the same to the Collector. On receipt of the document through either of the said avenues the Collector has to adjudicate on the question of the deficiency of the stamp duty. If the Collector is of the opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof.”

24. It is also a settled position of law that whenever any objection has been raised regarding admissibility of any material in evidence, the Court ought to first rule upon such objections before proceeding with trial of the suit. Under Section 35 of the Stamp Act, Instrument not duly stamped is inadmissible in evidence. However, the objection related to deficiency of stamp duty of a document, has to be decided before proceeding further. In that eventuality, the document requires to be impounded, appropriately valued and adequately stamped before the trial in the matter could proceed.

25. In the present case, it is noted that the appellant had filed an application under Section 33 of the Stamp Act with a prayer as under:

“It is therefore, respectfully prayed that all the hire purchase agreements filed by the plaintiff in this case be impounded.”

26. It is also transpires from the record that the said application was not pressed at that stage. The trial court had clearly held that the issue of insufficiency of stamp duty on the hire purchase agreements shall be considered by keeping the

question open. Be that as it may, even if the court has to come to a conclusion that the hire purchase agreements were insufficiently stamped, the trial court ought to have followed the procedure as stated above. Unfortunately, it did not follow the procedure but had rejected hire purchase agreements, being insufficiently stamped, which is clearly erroneous as the court was only required to impound the documents and should have either called upon the appellant to pay the stamp duty to the extent the documents are insufficiently stamped and if the party did not agree with the direction, the Court could have impounded the documents and sent it to the collector for adjudication, but at the same time adjourn the proceedings, which has not been done here. Hence the rejection of the hire purchase agreements being insufficiently stamped and inadmissible in evidence is clearly erroneous.

27. Now insofar as the plea of Ms. Bhamba that the conclusion of the Trial Court that the suit was barred by limitation is concerned, this plea of Ms. Bhamba has to be seen from the perspective whether the payments made by respondent no.1 on different dates and the last one being in 2005 shall make the suit having been filed within limitation. The answer has to be in the negative. Firstly the appellant has not stated against which hire purchase agreement the last installment of ₹5,000/- was made in the year 2005. That apart, it is clear that every hire purchase agreement is a separate agreement and shall be governed by its own terms and conditions. The cause of action in each hire purchase agreement shall be the last date on which the

installment was to be paid. In these hire purchase agreements, the dates are September 1, 1995, June 1, 1998 and October 1, 1998, whereas the suit was filed in the year 2006. So, it is clear that the suit was barred by limitation as the limitation had expired somewhere between the years 1998-2001. The question would be whether the payments made between 1995 till 2005 would extend the limitation. The answer to this question has also to be in negative for the reason that mere payments made without acknowledgment of debt, after the expiry of limitation period would not extend the limitation. The acknowledgement has to be in writing admitting the jural relationship and the liability to pay.

28. I have perused the letters which have been exhibited as Ex.PW1/12 to Ex.PW1/27 which are of the years 1995-2004. Assuming that the letters for the years 1995-2004 were written within the limitation period, but a perusal of the same would indicate that the same have been written by respondent no.1 expressing her difficulty in making regular payments and also calling upon the appellant to settle the dispute at hypothecated value. No doubt, the letters do indicate that the respondent acknowledges the factum of her paying the installments, but it cannot be construed of accepting the liability of the amount as claimed by the appellant in the suit proceedings. That apart, the letters between 1995-2000 shall at the most extend the limitation upto 2003, but not for the period thereafter. Even on that ground, the filing of suit in 2006 shall be barred by limitation. In so far as the letters written in the year 2004 are concerned, those are clearly after the period of limitation had expired. I must say, in

the said letters also, the respondent no.1 has expressed her inability to make the regular payments and also calling upon the appellant to settle the dispute. The said letters cannot be construed as an acknowledgement of the liability. So the trial court is right in rejecting the suit on the ground of limitation insofar as the suit for recovery is concerned. However, the question would be whether the suit having been filed for compensation, for use and retention costs can be said to be hit by limitation. The answer is “No”.

29. This I say because the Trial Court while coming to the conclusion that the suit is barred by limitation has clearly overlooked the prayer made by the appellant in the suit which is for compensation for use and retention costs. There is no dispute that the respondent no.1 has retained the equipments and machinery supplied by the appellant, and there is a stipulation in the hire purchase agreements, subject to being read in evidence, that if the respondent no.1 fails to pay the hire purchase agreements dues during the tenure of the agreement and the respondent no.1 still retains the possession of the property after the expiry of hire purchase agreements, respondent no.1 is liable to pay the appellant compensation for the use and retention of the machinery at the same rate of six monthly hire rent as mentioned in Clause 1 of the agreement besides paying insurance charges incurred by the appellant. If that be so, as long as the respondent no.1 retains the machinery, the appellant shall be within their rights to invoke the said clause in its favour and that the cause of action would still continue to exist in favour of the appellant as

long as the machinery is retained. That cause of action would be a recurring / continuous cause of action as long as the machinery is retained subject to limitation of three years preceding the filing of the suit for which the retention costs / compensation can be claimed. Unfortunately this aspect has been overlooked. In other words, the suit could not have been rejected by the trial court on the ground of limitation when the appellant had prayed for relief of compensation and retention costs. Accordingly, the impugned judgment to the extent of findings to issue Nos. 1, 6 and 7 is set aside to the extent of findings to issue Nos.1, 6 and 7 and the matter is remanded back to the learned Trial Court to the extent that the learned Trial Court, being of the view that the lease agreements are unstamped, shall proceed in the manner stated above and decide the only issue as to the claim of the appellant for compensation for use and retention cost as, according to this Court, such a plea cannot be barred by limitation except that if the Court allows the claim in favour of the appellant then the benefits thereof shall be limited to a period of three years preceding the filing of the suit. The appeal is disposed of. The parties shall appear before the District Judge (Central) on December 02, 2019 for further proceedings.

30. There shall be no order as to costs.

31. The Trial Court record be sent back forthwith.

V. KAMESWAR RAO, J

NOVEMBER 05, 2019/jg