

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

% **Date of decision: 3rd July, 2019**

+ **CS(COMM) 725/2017**

INDIA YAMAHA MOTOR PVT LTD **..... Plaintiff**

Through: Mr. Sachin Dutta, Sr. Adv. with Mr.
Rahul Malhotra, Ms. Rijuta Mohanty
& Mr. Manmeet Singh Nagpal,
Advs.

Versus

SEEMA BHATIA **..... Defendant**

Through: Ms. Zubeda Begum, Ms. Sana Ansari
& Mr. Zubin Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.8753/2013 (of the plaintiff under Section 14 of the Limitation Act, 1963 for condonation of delay of 2095 days in institution of the suit).

1. The plaintiff has instituted this suit for recovery of Rs.1,46,59,899/- from the defendant. The suit was accompanied with the application aforesaid under Section 14 of the Limitation Act, 1963 for condonation of delay in filing thereof.
2. The suit came up first before the Joint Registrar on 24th May, 2013, when summons thereof were ordered to be issued.
3. The pleadings in the suit and the application were completed.
4. The suit came up before this Court on 22nd November, 2018, when the same was ordered to be listed for arguments, presumably on this application under Section 14 of the Limitation Act.

5. The matter came up before the undersigned on 16th May, 2019, when it was straightaway enquired from the counsels, how a plea of Section 14 of the Limitation Act could be decided without evidence. Section 14 of the Limitation Act permits exclusion of time, in computing the period of limitation for filing a suit, during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it. The findings of due diligence and good faith are factual findings and ordinarily cannot be returned without evidence. Reference in this regard may be made to *State of Bombay Vs. Ram Krishna Govind Bhanu* AIR 1958 SC 767 and *State Farms Corporation of India Ltd. Vs. Mahendra Singh* (2013) 205 DLT 326.

6. However, on the counsel for the defendant contending that even after excluding the period of limitation for which the other proceeding was going on, there is a delay in institution of the suit, hearing of arguments on the said aspect was commenced.

7. The senior counsel for the plaintiff contended, that (i) the suit is for recovery of money and Article of the Schedule to the Limitation Act applicable thereto is Article 1 and the closing of the accounting year of the parties was according to the Gregorian Calendar i.e. from 1st January to 31st December of the year and according to the plaintiff, the claim in the suit is within time on the basis of transactions in the account at the close of the year 2004 i.e. 1st December, 2004 to 31st December, 2004 and the limitation

will commence running from 1st January, 2005; it was further contended that the suit was thus required to be filed by 31st December, 2008 but was instituted on 21st May, 2013; (ii) the plaintiff / its predecessor in interest, had earlier referred the disputes with the defendant to arbitration; (iii) the defendant, on 18th October, 2006 filed CS(OS) No.1996/2006 challenging the existence of any arbitration agreement and vide order dated 19th October, 2006 therein, the arbitration proceedings were stayed; the said suit was decreed in favour of the defendant on 13th September, 2007; (iv) the plaintiff filed RFA(OS) No.71/2008 on 22nd January, 2008, delay in filing of which was condoned; (v) the appeal was dismissed on 19th April, 2012; and, (vi) if the period from 18th July, 2006, when arbitration was invoked, to 19th April, 2012, when the appeal was dismissed, is subtracted, the suit would be within time.

8. Per contra, the counsel for the defendant, on 16th May, 2019 contended that the arguments on behalf of the plaintiff were contrary to the pleadings of the plaintiff.

9. During the hearing on 16th May, 2019, it was enquired from the counsels, whether Section 14 of the Limitation Act applies to arbitration proceedings, inasmuch as the same provides for exclusion of time only in a proceeding in a Court, and attention of the Counsels was drawn to ***Lal Mahal Limited Vs. Abdul Ghaffar*** 2018 SCC OnLine Del 8597 and upon the counsels seeking time to consider the matter from this aspect, the hearing adjourned. The counsels were further heard to some extent on 23rd May, 2019 and hearing adjourned to today.

10. Today, the senior counsel for the plaintiff, on the aspect of exclusion under Section 14 of the Limitation Act, of time so spent by the plaintiff in arbitration and challenge thereto, has referred to:

- (i) ***M.P. Steel Corporation Vs. Commissioner of Central Excise*** (2015) 7 SCC 58, holding that Section 14 should be liberally construed, to advance the cause of justice and that the word ‘Court’ in Section 14 takes its colour from the preceding words ‘civil proceedings’; civil proceedings need not be confined to suits which are made only in Courts.
- (ii) ***P. Sarathy Vs. State Bank of India*** (2000) 5 SCC 355, relied on in ***M.P. Steel Corporation*** supra.
- (iii) ***Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department*** (2008) 7 SCC 169, holding that proceedings referred to under Section 43 of the Arbitration and Conciliation Act, 1996 are original proceedings which can be equated with a suit in a Court.
- (iv) ***Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta*** (1993) 4 SCC 338, observing that the proceedings before the arbitrator are like civil proceedings before the Court, within the meaning of Section 14 of the Limitation Act.
- (v) ***Fatechand Ganeshram Agarwal Vs. Wasudeo Shrawan Dalal*** AIR (35) 1948 Nagpur 334, holding that time spent in arbitration proceedings is to be excluded from the computation of the period of limitation in a suit instituted subsequently in

respect of the same subject matter, provided the other requirements of Section 14 are satisfied, and disagreeing with the judgments to the contrary.

- (vi) Paragraphs 8.52 and 8.53 of the 76th Report of the Law Commission of India on the Arbitration Act, 1940.
- (vii) ***State of Goa Vs. Western Builders*** (2006) 6 SCC 239, holding that Section 43 of the Arbitration Act clearly says that Limitation Act, 1963 shall apply to arbitration as it applies to proceedings in a Court and thus Section 14 of the Limitation Act has not been excluded qua arbitral proceedings.

11. The senior counsel for the plaintiff has also fairly disclosed that the view of Justice Chagla, speaking for the High Court of Bombay, in ***Purshottamdas Hassaram Sabnani Vs. Impex (India) Ltd.*** AIR 1954 Bom 309 was to the contrary and which led to the 76th Report of the Law Commission.

12. The senior counsel for the plaintiff thus contends that Section 14 of the Limitation Act is applicable in the present case.

13. With respect to ‘mutual, open and current account’ within the meaning of Article 1 of the Schedule to the Limitation Act, the senior counsel for the plaintiff has today drawn attention to ***A.M. Shaik Ali Vs. DS&A Co. Employees Stores*** 1991 SCC OnLine AP 83 holding that even in the absence of a plea in the plaint that the suit transactions constituted a mutual, open and current account, Article 1 is applicable inasmuch as whether there is a mutuality and reciprocity of demands is a legal inference

to be drawn from the facts, by looking into the accounts and they need not to be pleaded.

14. The senior counsel for the plaintiff has also drawn attention to page 61 of the Part-III A file, being the Dealer Ledger Report filed by the plaintiff of the transactions with the defendant, which show entries on (a) 31st May, 2003 of “Warranty Instant Credit Note”; (b) 1st April, 2003 of “Debit Note”; and, (c) 31st December, 2003 of “credit of interest on deposit for the period April, 2003 to December, 2003” .

15. The senior counsel for the plaintiff otherwise agrees that the question, whether the plaintiff is entitled to the benefit of Section 14 or not, cannot be decided without evidence.

16. The counsel for the defendant has also not controverted that the application, if maintainable in this proceeding, is to be decided after evidence and not at this stage. The counsel for the defendant also fairly states that she has not found any direct judgment holding Section 14 benefit to be not available in the facts and circumstances of the present case. It is however her contention that as per the pleadings of the plaintiff, even after exclusion of time spent in other proceedings, the suit claim is barred by time. The counsel for the defendant thus contends that there is no need for trial on merits on the aspect of Section 14.

17. The counsel for the defendant has in this regard, drawn attention to the plaint, where the plaintiff has *inter alia* pleaded that (i) the plaintiff is an Indian subsidiary of Yamaha Corporation, Japan; (ii) the defendant carrying on business in the name and style of Doon Motorcycles, was the dealer of Motorcycles and Scooters of Escorts Ltd.; (iii) the business of

motorcycles and scooters of Escorts Ltd. was purchased by the plaintiff, and the defendant, under a Dealer's Sales Agreement dated 1st November, 1996, became a dealer of the plaintiff; (iv) the plaintiff used to supply its products to the defendant for further sale to customers and the invoices for the same were raised on the defendant from time to time; (v) the defendant failed to pay the due amount against such invoices on time, despite repeated reminders; (vi) the defendant also did not furnish the requisite 'C' forms; (vii) as on 25th November, 2000, a sum of Rs.2,04,00,000/- was due from the defendant to the plaintiff; (viii) a Memorandum of Understanding (MoU) dated 8th December, 2000 was entered into between the plaintiff and the defendant qua further working and outstanding; (ix) the defendant did not take any steps as agreed by her, for clearance of the outstanding dues and violated the terms and spirit of the Dealer's Sales Agreement as well as the subsequent MoU; (x) the plaintiff invoked the arbitration clause in the Dealer's Sales Agreement dated 1st November, 1996 and referred the dispute with the defendant to the Indian Council of Arbitration; and, (xi) however the defendant filed CS(OS) No.1996/2006 for declaration that there was no subsisting arbitration agreement between the parties and vide order dated 13th September, 2007 in the said suit, the arbitration proceedings were stayed and the said suit and the appeal filed thereagainst were decided in favour of the defendant, bringing a closure to the arbitration proceedings.

18. I may mention that the plaintiff, in the plaint has also given particulars of how it is the successor of the entities to which the payments

are due but the said facts are not relevant for the present purpose and have thus not been incorporated in the aforesaid narration.

19. The counsel for the defendant, has particularly drawn attention to paras no.31 to 33 of the plaint, which are as under:

“(31) It is respectfully submitted that the cause of action in favour of YMIL and against the Defendant arose when the Defendant entered into the Dealer Agreement with YMEL. The cause of action in favour of predecessor of Plaintiff and against the Defendant arose on 8.12.2000 when YMEL entered into the Memorandum of Understanding. The cause of action further arose, when the Defendant failed to honor the terms of the MOU. The cause of action arose in November, 2003, when YMIL was constrained to stop supply of its products to the Defendant. The cause of action also arose when the Defendant got issued a legal notice dated 2nd August, 2004 against YMIL and when YMIL Plaintiff replied to the said notice on 28th September, 2004. The cause of action further arose on 13.09.2007 when the Hon’ble High Court decreed CS(OS) No.1996/2006 in favour of the Defendant and granted liberty to YMIL to take recourse to proper civil remedy for recovery of dues from the Defendant. The cause of action further arose on 19.04.2012 when the appeal being RFA (OS) No.71/2008 filed by YMIL challenging the order dated 13.09.2007 was dismissed by the Hon’ble High Court. The cause of action further arose on 15.03.2008 when entire business of YMIL was purchased by Plaintiff herein as going concern. The cause of action is continuous and still subsists in favour of the Plaintiff.

(32) It is submitted that on account of non-payment of legal debts as per the open, running and mutual statement of account maintained by predecessors of Plaintiff and thereafter being continued by Plaintiff in the regular course of business in view of purchase of entire business of YMIL by Plaintiff herein as going concern vide Business Transfer Agreement dated 15.03.2008, an amount of Rs.1,46,59,899/- (Rupees One Crore Forty Six Lakhs Fifty Nine Thousand Eight Hundred Ninety Nine only) is due and payable by the Defendant to Plaintiff herein.

(33) As stated hereinabove, since earlier the predecessors of Plaintiff were pursuing its claim for recovery against Defendant in arbitration, the Plaintiff has filed accompanying application under Section 14 of the Limitation Act for exclusion of time consumed in said proceedings, the contents of which are not repeated herein again for the sake of brevity and to avoid prolixity. It is therefore submitted that suit filed by Plaintiff is well within the period of limitation.”

(Emphasis added)

20. The counsel for the defendant has contended that as per the plaint, the cause of action for the present suit accrued to the plaintiff, in November, 2003, when the plaintiff admits to having stopped supply of its products to the defendant. It is argued that even if the period during which the arbitration and challenge thereto was being undertaken is excluded, the suit is still barred by time.

21. The senior counsel for the plaintiff, though agrees that if the computation of limitation is done on the basis of November, 2003, the suit claim is barred by time but has drawn attention to the rejoinder to the reply of the defendant to the application of the plaintiff under Section 14 of the Limitation Act.

22. I may mention that the plaintiff, in the application under Section 14 of Limitation Act, has pleaded as under:

“(4) That despite MOU dated 08.12.2000 the Defendant failed to discharge its admitted liabilities towards the Plaintiff. That when the Plaintiff started pressurizing the Defendant for payment of the outstanding dues, the Defendant, in order to avoid payment of the outstanding dues, sent a false, frivolous and concocted legal notice dated 2nd August, 2004. However, it is pertinent to note that in legal notice dated 02.08.2004 the Defendant admitted execution of MOU dated 08.12.2000.

(5) It is submitted that the cause of action for filing of suit against the Defendant for recovery of outstanding amount arose on 02.08.2004 and expired on 01.08.2007. It is submitted that the Plaintiff invoked the arbitration clause and filed its statement of claim before the Indian Council of Arbitration on 18.07.2006 i.e. well within limitation period.

(12) As stated above, since the last date of limitation for filing of the present suit was 01.08.2007, there occurred a delay of 2093 days in filing the present suit. However, as stated above, since the period during which the Plaintiff was pursuing its remedy before different forums from the period 18.07.2006 to 01.05.2012 i.e. 2113 days is excluded, the filing of present suit by Plaintiff on 27.04.2013 is within time in terms of statutory provision laid down in Section 14 of the Limitation Act, 1963.”

(Emphasis added)

23. However in rejoinder, the plaintiff has pleaded as under:

“(2) That the cause of action for filing the instant suit against the Defendant for recovery of outstanding amount arose on 01.01.2005 as the Plaintiff was maintaining mutual, open and current account and the last admitted entry in the open running, and mutual account of Defendant is one payment received from Defendant on 19.03.2004. Consequently, the period of limitation started from close of the year 2004 i.e., 01.01.2005 and was expiring on 31.12.2008. It is pertinent to mention here that the Plaintiff invoked arbitration clause under DSA dated 01.11.1996 and filed its statement of claim before the Indian Council of Arbitration on 18.07.2006 i.e. after 564 days from original start date of limitation i.e., 01.01.2005, well within the limitation period.”

24. The senior counsel for the plaintiff contends that even though the plaintiff has not pleaded, what is pleaded in the rejoinder aforesaid, in the plaint or in the application under Section 14 of the Act, but it is a question of law and once it has been held in *A.M. Shaik Ali* supra that there need not be a plea of mutual, open and current account, the pleadings in the plaint

and in the application are irrelevant. It is further argued that mutual, open and current account has been pleaded in para no.32 of the plaint.

25. The counsel for the defendant has drawn attention to the judgment of the Division Bench of this Court in *Bharath Skins Corporation Vs. Taneja Skins Company Pvt. Ltd.* (2012) 186 DLT 290 and *Era Constructions (India) Ltd. Vs. D.K. Sharma* 2007 SCC OnLine Del 1317 on the aspect of what constitutes a mutual, open and current account within the meaning of Article 1 of the Schedule to the Limitation Act. It is argued, that to be mutual, there must be transactions on each side, creating independent obligations on the other, and not merely transactions which create obligations on the one side, with those on the other being merely complete or partial discharge of such obligations. It is argued that where the relationship is that of a seller and buyer of goods, where the seller has undertaken to make delivery of goods and the buyer has agreed to pay for them and has made part payments from time to time, there can be no question that insofar as the payments have been made after the goods have been delivered, they have been made towards the price due and such payments were in discharge of obligations created in the buyer and do not create any obligations on the sellers in favour of the buyer. It is contended that there was no shifting balances in the account between the plaintiff / its predecessor and the defendant and it was not as if on any occasion there was balance in favour of the defendant. It is however clarified that the defendant does not admit the right pleaded by the plaintiff to recover the dues of others, with whom the defendant earlier had relationship. It is argued that in the present case, bills were raised from time to time on the

defendant and against these bills the defendant has been making payments from time to time; though the payments did not correspond to the bills raised, the amounts that represented invoices have been shown on the debit side of the account and the amount received from the defendant have been shown on the credit side and such account has been held to be not a mutual, open and current account.

26. The counsel for the defendant has further contended that single entry alleged by the plaintiff of 19th March, 2004 cannot constitute open, mutual and current account. It is contended that the plaintiff having pleaded the MOU dated 8th December, 2000 and having pleaded that in November, 2003 supplies to the defendant were stopped, there could be no reciprocal demands in terms of the MOU of after November, 2003.

27. The counsel for the defendant has also contended that it has been held in *M.P. Steel Corporation* supra that the time available will only be the balance of the days left at the time the proceedings were initiated in a wrong forum. It is contended that even after the time taken from 18th July, 2006 when the arbitration was initiated and till 19th April, 2012 when the Division Bench of this Court upheld the judgment of non-existence of the arbitration agreement, the suit is barred by time. It is stated that as per the plea in the plaint, the cause of action arose on 1st December, 2003; the period of limitation available to the plaintiff was of three years and the suit could have been instituted till 30th November, 2006. Counting from 1st December, 2003 till 18th July, 2006 when the arbitration proceedings were initiated, 959 days had been exhausted and balance days left to the plaintiff were only 137; on the contrary, the 2102 days between 18th July, 2006 and

19th April, 2012, are far beyond the period of limitation and the suit is barred by time.

28. The counsel for the defendant has also referred to ***S.R. Dutta Vs. Chuni Lal Bhatia*** 1980 SCC OnLine Del 335, to contend that contents of the replication do not constitute a pleading. It is argued, that the cause of action pleaded in the plaint has to be considered and pleading in the rejoinder to be ignored, as the defendant had no opportunity to respond thereto.

29. I have considered the rival contentions.

30. Though I have in ***Lal Mahal Limited*** supra, relying on ***Purshottamdas Hassaram Sabnani*** supra approved by a three Judge bench of the Supreme Court in ***The Commissioner of Sales Tax, U.P. Lucknow Vs. Parson Tools and Plants, Kanpur*** (1975) 4 SCC 22 and also referring to ***Consolidated Engineering Enterprises*** supra and reasoning, that Section 43(4) of the Arbitration Act having expressly provided for computing the time prescribed by the Limitation Act for commencement of proceedings (including arbitration) with respect to disputes submitted to arbitration and arbitral award wherein is set aside by the Court, held that the provisions of Section 14 of the Limitation Act will have no application to the said situation and the computation of limitation will be under Section 43(4) of the Arbitration Act only, but refrain from deciding the question of exclusion of time spent in arbitration under Section 14 of the Limitation Act in this suit as I am of the opinion that the suit of the plaintiff is liable to be dismissed otherwise. The said question is left to be further decided in another appropriate case.

31. I am also of the opinion that the question, whether the account maintained by the plaintiff / its predecessor, of transactions with the defendant, was a mutual, open and current account within the meaning of Article 1 of the Schedule to the Limitation Act or not is also beyond the scope of the present stage of the proceedings. Suffice, it is to observe that the judgments cited by the counsel for the defendant do appear to suggest that considering the relationship pleaded by the plaintiff, there was no occasion for a mutual, open and current account.

32. I however otherwise find against the plaintiff and dismiss the suit. My reasons therefor are as under:

- A. Order VII Rule 1 of the Code of Civil Procedure, 1908 (CPC) mandates the plaintiff to contain the particulars of “(e) the facts constituting the cause of action and when it arose;” and Appendix ‘A’ of the CPC prescribing the form of pleadings, also in Form No.1 thereof requires, “facts showing when the cause of action arose” to be pleaded. A plaintiff, not complying with the said formalities, cannot be entertained and is liable to be rejected under Order VII Rule 11(a) of the CPC.
- B. The plaintiff, in compliance of the aforesaid provisions, in the plaint, in paragraph 31 pleaded that (i) the cause of action first accrued to the plaintiff against the defendant when the Dealer’s Sales Agreement was entered into and which as per the averments in the plaint was on 1st November, 1996; (ii) the cause of action arose against the defendant on 8th December, 2000 when the MOU was executed; (iii) the cause of action

further arose when the defendant failed to honour the terms of the MOU; (iv) the cause of action arose in November, 2003, when supplies to the defendant were stopped; (v) the cause of action also arose when legal notices dated 2nd August, 2004 and 28th September, 2004 were exchanged; (vi) the cause of action further arose on 13th September, 2007 when CS(OS) No.1996/2006 filed by the defendant was decreed in favour of the defendant, and on 19th April, 2012 when RFA(OS) No.71/2008 preferred by the plaintiff thereagainst was dismissed; and, (vii) the cause of action further arose on 15th March, 2008 when the plaintiff purchased the business of the entity with which the defendant had dealings.

- C. Needless to state that for the purpose of computation of limitation for a suit, the dates pleaded by the plaintiff, of when the cause of action accrued, only till November, 2003 are relevant and the dates given thereafter are not relevant. Issuance of a legal notice and reply thereto does not constitute a cause of action in a suit for recovery of money. Reference if any required can be made to *Santanu Sur Vs. Gail India Ltd.* 2014 SCC OnLine Del 4354 (DB), *XS Infosol Pvt. Ltd. Vs. GLS Technologies Pvt. Ltd.* 2018 SCC OnLine Del 6601, *Gautam Motors Pvt. Ltd. Vs. Autocop India Pvt. Ltd.* 2012 SCC OnLine Del 3629, *Colgate-Palmolive (India) Ltd. Vs. Rajendra* 2011 SCC OnLine Bom 1481, *Sunil Goel Vs. Rajesh Gupta* (2018) 246 DLT 228, *A.P. Sreedharan Vs. N.*

Bhuvaneswari 2017 SCC OnLine Mad 5902, *Shakti Bhog Food Industries Ltd. Vs. The Central Bank of India* 2017 SCC OnLine Del 6395, *C. Nallamuthu Vs. D. Durga Devi* 2016 SCC OnLine Mad 21942 and *Shiv Kumar Gupta Vs. Kumkum Gupta* 2007 SCC OnLine Del 316. Similarly, the dates when cause of action accrued, pleaded of thereafter, are relevant only for the purpose of application of Section 14 of the Limitation Act and not for the purpose of computing the period of limitation for the suit.

- D. Paragraphs 32 and 33 of the plaint referred to by the senior counsel for the plaintiff are not pertaining to when cause of action accrued. The plaintiff therein has merely pleaded that as per the open, running and mutual statement of account maintained by the predecessors of the plaintiff and being continued by the plaintiff in the regular course of business, an amount of Rs.1,46,59,899/- is due and payable by the defendant.
- E. It is not the pleaded case of the plaintiff that the suit is for the balance due on a mutual, open and current account where there have been reciprocal demands between the parties and that the year of the account was the Gregorian calendar or that the last item admitted or approved is entered in the said account in the year 2004 or that the cause of action accrued on 1st January, 2005, as is now argued by the senior counsel for the plaintiff,

obviously with his own legal ingenuity but without any foundation therefor in the pleadings.

- F. The senior counsel for the plaintiff, fully aware thereof, has in this context drawn attention to the rejoinder filed by the plaintiff to the reply of the defendant to the application of the plaintiff under Section 14 of the Limitation Act. However, the averments in the said rejoinder cannot take the place of pleadings required to be made in the plaint as per the mandate of law and in which pleadings the plaintiff has clearly not pleaded so. The counsel for the defendant, in this context has rightly relied upon *S.R. Dutta* supra. Thereafter also it has been held in *Anant Construction (P) Ltd. Vs. Ram Niwas* 1994 SCC OnLine Del 615, *Hatim Attar Vs. Sylvie Goudchau* 1968 SCC OnLine AP 68 (DB), *Thakkar Babulal Dayashanker Vs. Mehta Natwarlal Kaluram* 1976 SCC OnLine Guj 35, *S. Venkatram Reddy Vs. S. Vinod Reddy* 1986 SCC OnLine AP 196, *Ajanta Enterprises Vs. Bimla Charan Chatterjee* 1987 SCC OnLine Raj 516, *State of Rajasthan Vs. Mohammed Ikbāl* 1998 SCC OnLine Raj 46 and *Gurjant Singh Vs. Krishan Chander* 2000 SCC OnLine Raj 237 that pleadings in the replication in addition to what is pleaded in the plaint or in contradiction thereto cannot be considered. I may mention that the defendant in her written statement, in response to paragraph 31 supra of the plaint, has denied that cause of action accrued to the plaintiff on the dates

alleged and expressly pleaded that legal notice could not extend limitation. The defendant, in response to paragraph 32 of the plaint denied that there was any open, running and mutual statement of account in the regular course of business and pleaded that the plaintiff on the one hand was claiming amount to be due as the balance as per the MOU and on the other hand claiming the amount due of the unpaid invoices. The plaintiff, though has filed replication to the said written statement, still did not plead what is being argued today and merely reiterated the contents of the plaint.

- G. It is only at the stage of filing rejoinder to the application under Section 14 of the Limitation Act that the plaintiff, then realizing that computing from November, 2003 and even after excluding the time from 18th July, 2006 to 19th April, 2012, the suit was barred by time, plead that the cause of action accrued on 1st January, 2005.
- H. The question which arises is, whether the plaintiff is entitled to do so. In my view, no. Once the law i.e. the CPC requires the plaintiff to, in the plaint, plead the cause of action and when it accrued, the plaintiff is bound by the pleas so made in the plaint and cannot in pleadings not even replication to the written statement, but in rejoinder to an application set up a contradictory stand and seek trial on the basis thereof. If the same were to be permitted and the plaintiff were to be relieved from its pleaded case, it would throw to the winds the very

necessity of pleadings and the entire procedure of a suit would go haywire, with parties / counsels, at any stage of the suit arguing anything, *dehors* the pleaded or the proven case.

- I. To that extent, I am unable to agree with **A.M. Shaik Ali** supra. It has rightly been held in **Bhagwati Prasad Vs. Chandramaul** AIR 1966 SC 735, **Ram Sarup Gupta Vs. Bishun Narain Inter College** (1987) 2 SCC 555, **D.M. Deshpande Vs. Janardhan Kashinath Kadam** (1998) 8 SCC 315, **Bachhaj Nahar Vs. Nilima Mandal** (2008) 17 SCC 491 and **Transformative Learning Solutions Pvt. Ltd. Vs. Pawajot Kaur Baweja** 2019 SCC OnLine Del 9229 that in a suit no evidence beyond pleadings can be led or read and no decision on the basis thereof rendered.
- J. As per the pleaded case of the plaintiff, the cause of action accrued in November, 2003 and it is admitted by the senior counsel for the plaintiff also that if limitation were to be computed therefrom, even excluding the period, exclusion whereof the plaintiff claims, the suit is barred by time.
- K. I may also notice that the plaintiff, in its statement of claim filed in arbitration and a copy whereof has been filed by the plaintiff along with its documents, is found to have pleaded in paragraph 39 thereof as under:

“39. The cause of action in favour of the Claimant and against the Respondent arose on 1.11.1996, when the Claimant and the Respondent entered into the Dealer Agreement. The cause of

action in favour of the Claimant and against the Respondent arose on 8.12.2000 when the Claimant Company and the Respondent entered into the Memorandum of Understanding. The cause of action further arose, when the Respondent failed to honor the terms of the MOU. The cause of action arose in November, 2003, when the Claimant was constrained to stop supply of its products to the Respondent. The cause of action also arose when the Respondent got issued a legal notice dated 2nd August, 2004 against the Claimant and when the Claimant replied to the said notice on 28th September, 2004.”

The plaintiff in the statement of claim, though has referred to “statement of account maintained by the Claimant in the regular course of business” (in paragraph 33) and “running account” (in paragraph 35), is not found to have pleaded mutual, open and current account, as is now being argued for the first time. Section 14 of the Limitation Act permits exclusion of time thereunder, only when the proceeding in a Court which from defect of jurisdiction or other cause of like nature, is unable to entertain it and relates to the same matter in issue and is prosecuted in good faith. The plaintiff invoked arbitration, time spent wherein is sought to be excluded, by pleading cause of action to have accrued in November, 2003 and for this reason also cannot be permitted to, in this proceeding contend the cause to action to have accrued on 1st January, 2005.

- L. The *mala fides* of the plaintiff are also evident from the averments of the plaintiff, in the plaint, replication, application

under Section 14 of the Limitation Act and in the rejoinder to the reply thereto, pleading different dates on which cause of action accrued. The same demonstrate lack of good faith.

33. Resultantly, the suit is dismissed. The defendant is found entitled to costs of the suit; professional fee assessed at Rs.3 lacs.

Decree sheet be drawn up.

JULY 03, 2019

‘gsr’..

(corrected & released on 8th August, 2019)

RAJIV SAHAI ENDLAW, J.