

OD-38

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA NO. GA/2/2024
In CS/110/2023

HERALD COMMERCE LIMITED
Vs
KIRTI LAKHOTIA

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date: 10th July, 2024.

Appearance:
Mr. Debnath Mahata, Adv.
Ms. Debanjali Payra, Adv.
... for the plaintiff.

Mr. Ejaz Khan, Adv.
Mr. Dibyangshu Das, Adv.
Mr. Pradip Kr. De, Adv.
... for the respondent.

The Court : Mr. Debnath Mahata, learned Counsel is appearing for the plaintiff. Mr. Ejaz Khan, learned Counsel is appearing for the defendant.

The defendant has filed the present application being GA/2/2024 for rejection of the plaint on the ground of limitation. The plaintiff has filed a suit against the defendant praying for a decree for recovery of an amount of Rs.9,86,32,000/-. As per the books of accounts of the plaintiff company as on 1st April, 2000, an amount of Rs. 10,25,95,000/- was due and payable by the defendant to the plaintiff.

In between 2nd April 2000 and 15th September, 2005, the defendant has made a part payment of Rs. 39,63,000/- out of the total amount of Rs. 10,25,95,000/- by leaving the balance amount of Rs. 9,86,32,000 /-. Thereafter

the defendant has not paid any amount which is due and payable by the defendant. Accordingly, the plaintiff has made several representations to the defendant for payment of the said amount but in spite of receipt of the representation neither the defendant has paid the said amount nor had sent any reply to the said notice. Counsel for the plaintiff submits that the other than the amount of Rs.39,63,000/- in between 2nd April 2000 to 15th September, 2005, the defendant has not paid any further amount which is due and payable to the plaintiff. The plaintiff by its various representations, lastly on 13th December, 2021, again requested the defendant for repayment of loan amount but in spite of receipt of notice, the defendant has neither returned the amount nor had sent any reply. The plaintiff company has taken a resolution for initiation of the suit. Accordingly, the plaintiff has filed the present suit.

Per contra, learned Counsel for the defendant submits that as per the case of the plaintiff, as on 1st April, 2000 an amount of Rs.10,25,95,000/- was due and payable by the defendant to the plaintiff and thereafter in between 2nd April 2000 to 15th September, 2005, the defendant has paid only an amount of Rs.39,63,000/- leaving the balance of Rs. 9,86,32,000/-.

Counsel for the defendant submits that the plaintiff has filed the present suit in the month of June, 2023 i.e. after the period of 17 years. The last payment made on 15th September, 2005 and thus the suit is hopelessly barred by limitation. Counsel for the defendant further submits that merely making the representation will not serve the purpose to condone the delay for filing of the

suit. He submits that the plaintiff has admitted the last payment was made only on 15th September, 2005 and subsequently though the plaintiff has made several representations to the defendant for return of the amount but the defendant has neither paid the amount nor sent any reply. The defendant submits that from the face of record shows that the suit filed by the plaintiff is barred by limitation. The defendant has relied upon the judgment reported in **2012 SCC online Delhi 5465 (Karur vs. The Chairman & ors.)** and submitted that it is settled law that parleys between the parties cannot treated as a substitute for invoking legal remedies and nor can such correspondence enlarge the period of limitation for instituting appropriate legal proceeding. He submits that it has been held in the catena of judgments that the starting point of limitation shall remain unaffected by the conduct of the parties or by correspondence exchange between them and that mere attempt on the part of the litigant to persuade the authorities to accede to his claim by dispatching letter may not be ground for claiming extension of limitation for institution of suit.

In the present case also the amount due and payable as on 1st April, 2000 is Rs.10,25,95,000/- but out of the total amount the defendant has paid Rs.39,63,000/- in between 2nd April 2000 to 15th September, 2005 but the plaintiff has filed the suit only in the month of June, 2023, which is after about 17 years from the last payment is made. The plaintiff has made out the case that the plaintiff has made several representations and lastly on 13.12.2021. It is settled law by making the representation will not extend the period of limitation

for filing a suit as prescribed in law. In the present suit, the plaintiff has prayed for recovery of an amount and as per law the suit is to be filed within three years from the date of the cause of action. The last payment was made on 15th September, 2005 and the suit was filed in the month of June, 2023. From the face of record itself the suit filed by the plaintiff is barred by limitation and accordingly, GA/2/2024 is disposed of.

CS/110/2023 is dismissed. Decree be drawn accordingly.

(KRISHNA RAO, J.)

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