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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

COMMERCIAL FIRST APPEAL NO. 11 OF 2024

M/S. NICOTRA INDIA PVT. LTD.

..APPELLANT
(ORG. PLAINTIFF)

VS.

DEW POINT HVAC SYSTEM

..RESPONDENT
(ORG.DEFENDANT)

Mr. Darryl B. Pereira a/w. Ms. Natasha Kasad and Mr. Beverly
Fernandes for the appellant.

Mr. Naveen Joshi for the respondent.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 22nd November 2024.

P.C. :

1. The present Commercial First Appeal is filed under Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short 'the Commercial Courts Act') by the appellant/original plaintiff, being aggrieved by the judgment and decree dated 27th February 2024, passed by the City Civil Court at Mazgaon, Mumbai, in Commercial Suit No.1154 of 2021, whereby the suit was dismissed on the ground that it was barred by the law of limitation.

2. The appellant/original plaintiff's case in the suit was that it was in the business of manufacturing and selling of Centrifugal fans,

Axial fans, Ventilation fans, etc. and that the respondent/original defendant approached them for supply of the plaintiff's products. Based on the purchase order, the plaintiff supplied its goods. Initially certain payments were made, however, after 19th July 2016, the payments were stopped, therefore, the plaintiff issued demand notices to the defendant. Since there was no response from the defendant, the plaintiff filed application on 19th March 2019 for pre institution mediation, as per the provisions of Section 12-A of the Commercial Courts Act. Since there was no settlement the District Legal Services Authority, Mumbai, issued its "Non-Starter Report" dated 15th July 2019. According to plaintiff, the said report was received by them only in August 2019. The plaintiff, thereafter, on 18th June 2021, filed the Commercial Suit before the City Civil Court at Mazgaon, Mumbai, for recovery of outstanding claim of Rs.50,85,300/- against the defendant. Thereafter, the defendant appeared in the matter and filed its written statement. Issues were framed and the plaintiff examined its witness. The defendant chose not to examine any witness. The parties thereafter, filed their written submissions and the matter was heard by the Commercial Court Judge of the City Civil Court. The learned Judge of the City Civil Court at Mazgaon, Mumbai, by its judgment and order dated 27th

February 2024 dismissed the Commercial Suit filed by the plaintiff on the ground that the suit was barred by law of limitation.

3. The plaintiff being dissatisfied with the judgment and decree dated 27th February 2024, have filed the present Commercial First Appeal under the provisions of Section 13 of the Commercial Courts Act.

4. Mr. Darryl Pereira appeared on behalf of the plaintiff and made his submissions.

(i) Mr. Pereira submitted that Issue Nos.1, 2 and 6 have been answered in favour of the plaintiff, so also Issue No.4 has been partly answered in favour of the plaintiff. However, Issue No.7 “Whether the suit is barred by limitation?” has been answered against the plaintiff, hence, the suit has been dismissed.

(ii) He submitted that no fixed period has been mentioned in the invoices for the payment of goods sold and delivered. Hence, there is no fixed credit period is agreed upon.

(iii) He submitted that however, the purchase orders clearly mentioned that there was credit of three months available. He further submitted that the last invoice was raised by the plaintiff on 9th August 2016 and thereafter, considering the second *proviso* to sub-

section (3) of Section 12-A of the Commercial Courts Act, the period of three months has to be excluded. Further, as per Article 14 of the Limitation Act, a period of three years has to be excluded. Thereafter, since there was a pandemic, a further period from 15th March 2020 has to be excluded as the suit was filed during the pandemic period that is on 18th June 2021.

(iv) He submitted that the suit was within the limitation period. He prayed that the present Commercial First Appeal should be allowed and the impugned judgment and order dated 27th February 2024 should be quashed and set aside.

5. Mr. Naveen Joshi appeared on behalf of the respondent/original defendant and made his submissions.

(i) He submitted that there is no perversity in the impugned judgment and order dated 27th February 2024.

(ii) He submitted that taking into consideration the facts narrated in the Plaint, the suit was barred by the law of limitation and this Court cannot extend the period of filing the suit.

(iii) He submitted that there is no merits in the present Commercial First Appeal and the same should be dismissed.

6. We have heard learned counsel for the parties and with their

assistance we have gone through the documents on record.

7. There is no dispute that the last invoice was raised by the plaintiff on 9th August 2016 and thereafter, the suit was filed on 18th June 2021. The limitation period for filing the suit had begun from 9th August 2016 and would have come to an end only on 9th August 2019. On 19th March 2019, the plaintiff had preferred an application under Section 12-A(3) of the Commercial Courts Act for pre institution mediation. However, since there was no positive response from the respondent a “Non-Starter Report” was filed on 16th July 2019 by the District Legal Services Authority. Excluding the period of pre institution mediation, the limitation period of three years would have ended on 13th November 2019. The Pandemic was hit in the month of February 2020. The Supreme Court by its various orders passed in *Suo Moto Writ Petition (C) No.3 of 2020* has excluded period from 15th March 2020 to 15th February 2022, to file Court proceedings. In the present proceeding, the suit was lodged on 18th June 2021, which is during the Pandemic period therefore, the limitation could have come to halt only on 15th March 2020. Taking into consideration the limitation period would have come to an end on 6th December 2019, from the said date till 15th March 2020, there is a delay of ninety-nine days in filing the suit.

8. In the plaint which is filed under Section 6 of the Commercial Courts Act, the plaintiff has in paragraphs 31 made averment as regards to the suit being within limitation. Paragraph 31 of the plaint reads as under:-

“31. The plaintiff submits that no part of the claim in the suit is barred by law of limitation as the Advocate notice was issued on the Defendant on 06/02/2019 and Invoices on 2016.”

Hence, the plaintiff's case is based on its notice issued to the defendant on 6th February 2019 in order to claim suit is within limitation. Admittedly, there is no reply filed by the defendant to the said notice. In our view, by issuing notices/letters by the plaintiff, the period of limitation for filing suit cannot be extended.

9. The trial Court has considered the issue about the suit being barred by law of limitation. The said issue has been discussed in paragraphs 23 to 26 and the Court has come to a conclusion that the suit is barred by law of limitation and hence, the trial Court has dismissed the suit.

10. We find no perversity in the judgment and order passed by the trial Court. Hence, the Commercial First Appeal is dismissed. No costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]