



RSA No.2689 of 1998 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.2689 of 1998 (O&M)

Reserved on : 06.05.2024

Date of Decision : 13.05.2024

M/s Lada Chemical Industries

....Appellant

Versus

M/s Anand Finishers

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Jayanti Singla, Advocate for
Mr. Prateek Mahajan, Advocate for the appellant.

Mr. Pushpinder Kaushal, Advocate for the respondent.

ALKA SARIN, J.

1. The present appeal has been filed by the plaintiff-appellant challenging the judgment and decree dated 07.05.1998 whereby the First Appellate Court had reversed the judgment and decree dated 12.09.1997 passed by the Trial Court.

2. The brief facts relevant to the present case are that the plaintiff-appellant filed a suit for recovery of Rs.19,943.43 paise with future interest and costs. Briefly the bills relied upon by the plaintiff-appellant for recovery of the amount were three bills i.e. bill No.56 dated 04.06.1988 for an amount of Rs.5,201.91 paise (Ex.P-3), bill No.64 dated 24.06.1988 for Rs.1,238.55 paise (Ex.P-4) and bill No.75 dated 04.07.1988 for Rs.5,201.91 paise (Ex.P-5). The suit was filed in the year 1995. It was the case set up by the plaintiff-appellant that from time to time payments were made by the defendant-respondent for the bills raised and the balance was carried forward to the

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next year and therefore there was an open continuous running account between the parties. It was further claimed that in the year 1991-92 the defendant-respondent purchased chemical goods from 12.04.1991 to 01.02.1992 for Rs.1,523.20 paise and the defendant-respondent paid Rs.45,000/- on different dates which was adjusted leaving a balance of Rs.20,943.43 paise in the year 1992. In the year 1992-93 the defendant-respondent made a payment of Rs.11,000/- by cheque from 06.04.1992 to 01.12.1992 which was adjusted leaving a balance of Rs.9,943.43 paise which was not paid by the defendant-respondent. On notice, the defendant-respondent appeared and filed written statement denying that there was ever any account continuous running between the parties. It was further the stand taken that the payments were always made with the understanding that the same have to be adjusted against the bill raised by the plaintiff-appellant and there was no understanding to carry forward the balance. It was further pleaded that on closing of financial year 1987-88, a sum of Rs.6005.19 paise was due from the defendant-respondent to the plaintiff-appellant and a sum of Rs.5000/- was paid by the defendant-respondent on 28.04.1988. Thereafter, three bills were raised by the plaintiff-appellant i.e. dated 04.06.1988, dated 24.06.1988 and dated 04.07.1988, however, the goods purchased by these bills were returned back to the plaintiff-appellant due to some defects. The plaintiff-appellant failed to account for the return goods and therefore the said case had been filed. In replication the contents of the plaint were reiterated and those of the written statement were denied.

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3. On the basis of the pleadings of the parties the following issues were framed by the Trial Court :

- “1. Whether the plaintiff is entitled to the recovery of Rs.19943.43 p from the defendant ? OPP*
- 2. Whether the plaintiff is entitled to recover the interest at the rate of 18% per annum ? OPP*
- 3. Whether the suit is barred by limitation ? OPD*
- 4. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD*
- 6. Whether the suit has not been filed by the competent person ? OPD*
- 7. Whether the good with respect to bill No.56 dated 7.6.88, bill No.64 dated 24.6.88 and bill No.75 dated 4.7.88 were returned back to the plaintiff by the defendants ? OPD*
- 8. Relief.”*

4. The Trial Court vide judgment and decree dated 12.09.1997 decreed the suit filed by the plaintiff-appellant. Aggrieved by the same, an appeal was preferred by the defendant-respondent which appeal was allowed vide judgment and decree dated 07.05.1998. Hence, the present regular second appeal by the plaintiff-appellant.



5. Learned counsel for the plaintiff-appellant would contend that the defendant-respondent paid an amount of Rs.2,000/- on 02.12.1992 and as per the provisions of Section 19 of the Limitation Act, 1963 where payment on account of a debt or interest is made before the expiry of the prescribed period by a person liable to pay debt, a fresh period of limitation shall be computed from the date of payment.

6. *Per contra*, learned counsel for the defendant-respondent would contend that the bills qua which the present suit has been filed pertained to the year 1988. Except for the bills dated 04.06.1988, 24.06.1988 and 04.07.1988, no other bills for the previous period from 1984 have been placed on the record. It is further the contention that the plaintiff-appellant cannot take the benefit of the provisions of Section 19 of the Limitation Act, 1963 inasmuch as the limitation started on 04.07.1988 when the goods were delivered vide bill (Ex.P5) and the period of limitation ended on 04.07.1991 and any payment made beyond the period of limitation of 3 years would not restart the limitation.

7. I have heard the learned counsel for the parties.

8. In the present case the reliance is only on three bills dated 04.06.1988, 24.06.1988 and 04.07.1988. Admittedly, the last delivery of the goods took place on 04.07.1988 vide bill Ex.P5. The period of three years would come to an end on 04.07.1991. Any payment alleged to have been made beyond the said period would not restart the limitation period under Section 19 of the Limitation Act, 1963. Had it been the case that the amount was paid before the expiry of limitation i.e. on 04.07.1991 then the

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provisions of Section 19 would have come to the rescue of the plaintiff-appellant, however, in the absence of any such evidence no fault can be found with the judgment and decree passed by the First Appellate Court.

9. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

13.05.2024
Ankur/Yogesh

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO