IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 260 OF 2022

M/s. Surjilal Dasaram Sao and ors **Vs.** M/s. S. D. Masala Company

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr. K. B. Zinjarde, Advocate for appellants.
Mr. Deoul Pathak, Advocate for respondent.

CORAM : ROHIT W. JOSHI, J.
DATE : 19.09.2025.

. The plaintiff has filed a suit for recovery of amount against the defendant/firm. Admittedly, there are several transactions of sale and purchase of goods between the plaintiff and defendant/firm from time to time, commencing from the year 1992 and onwards.

2. The plaintiff filed a suit seeking recovery of amount of Rs.17,81,603.84/- alongwith interest. The learned Trial Court decreed the suit to the extent of Rs.2,17,698.31/-. The learned Trial Court has held that the suit was barred by limitation, except for the period of three years preceding the date of filing of the suit.

3. The plaintiff challenged this decree by filing Regular Civil Appeal No.126 of 2016. The defendant/firm also filed a cross-objection in the said appeal. Vide judgment and decree dated 15.03.2022, the learned Principal and District Judge, Bhandara, has allowed the appeal filed by the plaintiff and dismissed the cross-objection filed by the defendant/firm. The learned First Appellate Court has granted a decree for recovery of amount of Rs.14,42,903.31/- with interest at

the rate of 12% per annum from the date of filing of the suit till the date of decree and interest at the rate of 6% per annum till the date of realization of the amount.

4. The original defendant has filed the present second appeal, aggrieved by the aforesaid appellate decree. The learned Advocate for the defendant strenuously argues that the learned First Appellate Court has erred in holding that the suit was governed by Article 1 in the schedule appended to the Limitation Act.

5. The contention of the learned Advocate is that Article 1 applies only in cases where there are reciprocal demands between the parties, which is not the case in the present suit. Apart from this, the learned Appellate Court has also referred to Exh. 471, which is the balance sheet of the defendant/firm.

6. The learned Advocate for the defendants draws attention to the cross-examination of Chartered Accountant who has prepared the said balance sheet. He contends that the balance sheet was prepared on the basis of documents provided to the Chartered Accountant by the plaintiff and, therefore, the said will not bind the defendant/firm.

7. Perusal of this balance sheet indicates that the name of the plaintiff appears in the list of sundry creditors and as on 31.03.2008, an amount of Rs. 14,42,903.31/- is shown as due and payable by the defendant/firm to the plaintiff.

8. The learned Advocate for the respondent/original plaintiff draws attention to the cross-examination of the

witness No.2 for the defendant, who is one of the partners in the defendant/firm. Perusal of the said cross-examination indicates that the said witness has admitted that the document at Exh. 471 is the balance sheet of the defendant/firm.

9. A question was put to the witness as to whether he would be able to produce the ledger account statement and audit report for the financial year ending on 31.03.2008. The defendant/firm has failed to produce the said documents, despite the partner of the witness firm agreeing to produce same during the course of his cross-examination.

10. It will be pertinent to mention that the ledger account statements and audit report are pertaining to financial year ending on 31.03.2008 and the suit was filed in September, 2008. The cross-examination of this witness was recorded on 27.10.2015. The witness has stated that since a period of 6 years had lapsed, the ledger account statement and audit reports were destroyed. It is difficult to digest that the said documents were destroyed, despite the fact that a civil suit for recovery of money was pending, although the said books of account had material bearing on the controversy forming subject matter of suit.

11. Although the defendant/firm contends that the balance sheet at Exh. 471 is prepared on the basis of documents provided by the plaintiff, it is not its case that income tax return is filed on the basis of any other balance sheet or income tax is not paid as per the said

balance sheet. The defendant has also not produced any other balance sheet for the relevant financial year on record.

12. As regards limitation, in the considered opinion of this Court, the entry in the balance sheet amounts to an admission of liability, extending the period of limitation in accordance with Section 18 of the Limitation Act.

13. In that view of the matter, in the considered opinion of this Court, no substantial question of law arises for consideration, inasmuch as decree is passed on the basis of balance sheet of the defendant/firm, showing the decreetal amount as amount due and payable by the defendant to the plaintiff.

14. The second appeal is, therefore, **dismissed.**

(ROHIT W. JOSHI, J.)

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