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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ RFA 402/2023

DADAN KUMAR SINGH .....Appellant
Through: Mr. Akhilesh Kumar Singh, Advocate

versus

M/S FOOD WORLD .....Respondent
Through: Mr. Amol Sharma and Ms. Tanya Bajla, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% 17.03.2026

1. An Appeal under Section 96, Order XLI read with Section 151 of CPC has been filed on behalf of the Appellant for *setting aside Judgment and Decree dated 28.01.2023, whereby the Suit for recovery of Rs.16,10,059/- along with interest has been decreed partly in the sum of Rs.20,278/-,* along with costs of the Suit.

2. ***Brief facts*** are that Respondent / Defendant was a licensee of Indian Railways, who had been instructed to supply Bed Rolls till 31.03.2012, as per Licence Agreement from Railway. The Respondent was also permitted to take the service of sub-licensee to extend the Bed Rolls services. Plaintiff / Appellant entered into an Agreement dated 01.04.2009 as *licensee and sub-licensee* for the supply of Bed Rolls, to the A/c Class Passenger of Train No.2975/76, i.e. Jaipur-Mysore Express. The conditions of that Agreement were as under:

> "*1. That the Sub-Licensee shall provide the services regarding the Bed Roll to supply maintenance and*

distribution of Bed Roll in the running Train N.2975/76 Jaipur Mysore Express (Jaipur to Mysore) during the contract awarded.

2. That the Sub-Licensee shall provide the material/bed rolls as per the standard quality as per the direction and requirement of the Second Party.

3. That the second party shall inform the first party for the above services well in advance 2-3 days.

4. That Second Party shall pay for these services to the first party @ Rs.17 /- per bed roll.

5. That the first party shall submit the bill of supplies to the Second Party on a monthly basis and first party shall make the payment of the said bill within 05 days of submission of the said bill to continue these services without interruption."

3. The Appellant / Plaintiff claimed that he provided the service for the complete tenure of the Agreement of the Bed Roll, without any interruption. He had provided the best services in quality to the passenger of the Railway and the services were satisfactory. Respondent / Defendant had certified his service, as a Sub-licensee for the best Bed Roll service in Train No.2975/76. Respondent has also provided a Letter of extension of Sub-Licensee Agreement for the same Train No.2975/76 on 30.04.2011, wherein, the terms of Contract were considered in light of the Agreement dated 01.04.2009 and charges were decided to be @ Rs.17/- per Bed Roll. As per the terms of Contract, payment of the Bills were to be made, within five days of submission of the Bill.

4. Appellant / Plaintiff raised First Bill on 01.05.2009, Second Bill on 05.05.2009 and Payment Receipts were collectively handed over on 27.06.2009 @ Rs.17 per Bed Roll.

5. The Plaintiff claimed that subsequent payments were not made as per terms of the Contract / Agreement dated 01.04.2009. He was under the impression that the object of the contract as a Sub-Licensee was to provide the services for complete term of service without any interruption.

6. He raised Bills regularly from 01.05.2009 to 31.03.2012 and provided continuous service. After two or three Bills, Respondent / Defendant started making deductions from the Billed amount, in the form of security amount. The deduction was not part of the Contract. Respondent / Defendant disclosed to the Appellant that in the course of the Contract, as per the rule of Railway, 10% of the Bill is kept as a security amount and at the end of the Contract, the total amount of the deducted security amount, will be paid to the Appellant.

7. At the end of the contract, Appellant requested the Respondent to pay the total amount, which it had deducted as security amount @ Rs.17/- per Bed Roll. To this, the Respondent refused to pay the same.

8. At the end of the contract, Appellant served a Legal Notice dated 13.12.2013 to the Respondent, making demands of Rs.10,45,493/- along with interest @ 18% per annum. When Respondent / Defendant did not make the payment, ***Appellant filed Suit for Recovery of Rs.16,10,059/-.***

9. Respondent / Defendant contested the Suit by filing ***Written Statement,*** wherein *preliminary objection* was taken that there was no Running and Current Account maintained between the parties and payments were being made as per the Bills raised by the Plaintiff/Appellant @ Rs.15/- per Bed Roll. The Plaintiff's claim in respect of the Invoices, which were raised prior to three years from the date of institution of Suit, is *hopelessly time barred*. Only one Bill amounting to Rs.1,72,363/- dated 31.03.2012 is within the limitation period, but the amount so claimed, is not payable.

10. Respondent / Defendant further explained that it has been carrying on its business of catering to Indian Railways along with service of supplying Bed Rolls, which was associated with the catering contract and was not exclusive service. Therefore, Respondent / Defendant charges for the Bed Rolls as well as the amount generated by catering contract, complement to each other, so as to arrive at the profitability in respect of a particular Train. To further elucidate, the Defendant may not be making money on supply of Bed Rolls, but undertakes the exercise inasmuch as the Defendant is compensated on account of contract of catering or *vice versa*.

11. It was under these circumstances and looking into the total profitability of the Train in question, that there were discussions between the parties and it was orally agreed that Defendant shall pay charges @ Rs.15/- per Bed Roll, to the Plaintiff. On this understanding, Defendant had been making payment to the Plaintiff on Bill-to-Bill basis @ Rs.15/- per Bed Roll and TDS was being deducted, accordingly. Also, Plaintiff never questioned or disputed these payments.

12. It is claimed that only as an afterthought, Plaintiff has asserted that they be paid @ Rs.17/- per Bed Roll. The Plaintiff must explain as to why he never objected when the payments were being made to him on Bill-to-Bill basis and that too, @ Rs.15/- per Bed Roll, after deduction of TDS.

13. It is submitted that Plaintiff has not approached this Court with a clean hand and has suppressed material facts. The payments were made in accordance with Bills raised by the Plaintiff. ***There is no merit in Suit, which is liable to be dismissed.***

14. The ***Issues, framed by learned ADJ on 17.03.2016,*** are as under:

> "*1. Whether the suit of the Plaintiff is barred by limitation? OPD.*
>
> *2. Whether the Plaintiff is entitled to recovery of suit amount, as prayed for? OPP.*
>
> *3. Whether the Plaintiff is entitled to interest, if so, at what rate and for which period? OPP.*
>
> *4. Relief.*"

15. Plaintiff, in support of his case, examined himself as PW-1 and proved all Bills and Payment Receipts as Ex.PW-1/4 to 67.

16. Defendant, in support of its defence, examined DW-1Sh. Iqbal Krishan Dogra, Partner of M/s Food world, who re-affirmed the defence as stated in the written statement.

17. **Learned District Judge** held that the *Suit was barred by limitation*, in respect of all the Invoices, except one Invoice dated 31.03.2012 Ex.PW-1/66. Though, it was held that there was an Agreement Ex.PW-1/1 executed between the parties, where the rate was agreed as @ Rs.17/- per Bed Roll, and Defendant could not have unilaterally modified to Rs.15/- per Bed Roll and Plaintiff was entitled to dues of payment @ Rs.2/- per Bed Roll along with interest @ 12% per annum, w.e.f. 01.04.2012. However, because all the Invoices except one, was barred by limitation, ***Suit was decreed for Rs.20,278/- along with interest @ 12% per annum, w.e.f. 01.04.2012.***

18. Aggrieved by this Judgment, **Appellant/Plaintiff has filed present Appeal** to challenge the partly decretal of his Suit.

19. **The grounds of challenge** are that the *cause of action* accrued in favour of the Appellant, when the ***final Bill dated 31.03.2012*** was raised and Legal Notice was served on 13.12.2013. Learned Trial Court, therefore, erroneously held that the Suit was barred by limitation.

20. Pertinently, it has not been appreciated that the Respondent had accepted the Running Account transaction, in evidence and demand Notice in course of supply of Bed Rolls, wherein the chain of the cause of action is in continuance. Therefore, Bill to Bill payment of the Bed Roll Service by Sub-Licensee, cannot form a separate part of the Contract. The Agreement was executed on 01.04.2009, for complete tenure of three years. There was no deficiency in services and the Appellant has provided continuous service to the Railways, as per the Contract of the Respondent from Railway as Sub-Licensee. The Bills were raised regularly, but payments were not being made in a fixed period, nor in the usual course of transactions. It has not been appreciated that the Respondent had paid Bills @ Rs.15/- per Bed Roll, after deducting the security amount @ 10% per Bill. The Contract between the parties has to be read, in totality.

21. Furthermore, ***Section 14 of the Limitation Act*** relates to the sale of the goods and delivery and not to delivery of services, which have been provided continuously without any interruption from exhibited Bills Ex.PW-l/4 to PW.1/67. ***Section 18 of the Limitation Act*** was applicable as per the existing facts and law. As per Agreement, executed on 01.04.2009, complete tenure was of three years and the period of limitation started from 13.12.2013, when the Legal Notice was served.

22. Reliance has been placed on *Ashok Construction Co. vs. Union of India*, (1971) 3 SCC 66, wherein it was held that issue of limitation, is a mixed question of facts and law.

23. A Prayer is therefore, made that impugned Judgment and Decree dated 28.01.2023, be set aside.

Submissions heard and record perused.

24. Admittedly, the parties entered into an Agreement dated 01.04.2009 Ex. PW1/1 whereby the Defendant/Respondent agreed to pay Rs.17/- per Bed Roll. In all, there were 38 bills along with payment receipts, which are Ex. PW1/4 till PW1/66. In all these bills, the rate has been mentioned as Rs.17/- per Bed Roll.

25. The Respondent/Defendant had taken a plea that orally, the parties had revised the terms of the Agreement and it was agreed that the rate would be Rs.15/- per Bed Roll, against all the bills Ex. PW1/1 to PW1/66, instead of Rs.17/- per Bed Roll.

26. The Defendant had further claimed that in all the 38 bills, the payment Appellant had been made @ Rs.15/- per Bed Roll and the Plaintiff had accepted them without any demur or protest, which confirmed that the parties had agreed to revised rate of Rs.15/- per Bed Roll.

27. The Plaintiff, on the other hand, had asserted that in fact the amount of Rs.2/- per Bed Roll was withheld as security and was to be refunded at the end of the contract. Therefore, he did not raise any protest against non-payment of the entire amounts reflected in the bills.

28. The perusal of the Bills would show that the payment against the first two Bills dated 01.05.2009 of Rs. 99,977/- and 05.05.2009 of Rs. 1,79,333/- was made @ Rs.17/- per Bed Roll. However, subsequently though, the rate was reflected as Rs.17/- per Bed Roll in every bill, the payment was made partially, @ Rs.15/- per Bed Roll. The claim of the Defendant/Respondent that the rates have been orally revised, is clearly discredited by the Invoices that were raised and the payments that were made against the corresponding Invoices.

29. The learned Trial Court, therefore, rightly concluded that even though the Plaintiff had been accepting less payment against each Invoice, but there was never any agreement that the rate would be revised to Rs.15/- per Bed Roll, as has been asserted by the Defendant/Respondent. **It has thus, been rightly concluded by the learned District Judge that the rate as per the contract between the parties was Rs.17/- per Bed Roll.**

30. Having said so, the question arises whether the Plaintiff was entitled to the differential payments against the Invoices @ Rs.2/- per Bed Roll. The Invoices dated from 01.05.2009 till 31.03.2012, while the Suit has been filed on 30.03.2015. Consequently, all the Invoices except the last Invoice dated 31.03.2013 bearing bill no 046 in the sum of Rs.1,72,363/- was barred by limitation, as was beyond the period of 03 years from the date of institution of the Suit.

31. The Appellant has raised a claim that the Invoices were being made pursuant to the Agreement dated 01.04.2009 Ex. PW1/1 and the final accounting had to be done, at the conclusion of 03 years.

32. However, this contention is based on misunderstanding of law and facts. Though there may have been a parent Agreement between the parties, but each Invoice amounted to a separate contract and the payments were made against the corresponding Invoice. There was neither any running account nor was any adjustments in the payments, ever made. It is clearly established from the nature of transactions that the payments were made against the individual Invoice and there was nothing like a running account or a running contract.

33. The learned Trial Court, therefore, rightly held that except the Invoice dated 31.03.2012, previous Invoices were barred by limitation. The learned

District Judge, therefore, rightly calculated a sum of Rs.20,278/- as a deficit @ Rs.2/- per Bed Roll, in accordance with the last bill dated 31.03.2012 Ex. PW1/66 and rightly awarded Rs.20,278/- along with the interest @12% p.a. with effect from 01.04.2012.

34. There is no merit in the present Appeal, which is hereby dismissed. The pending Applications are disposed of, accordingly.

NEENA BANSAL KRISHNA, J.

MARCH 17, 2026/*R*