

(2011) 12 DEL CK 0246

In the Delhi High Court

Case No : Regular First Appeal (OS) 13 of 2002

Bharath Skins Corporation

APPELLANT

Vs

Taneja Skins Company Pvt. Ltd.

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Banking Companies Act, 1949 — Section 45D
Limitation (Amendment) Act, 1859 — Section 8
Limitation Act, 1963 — Article 1, 115, 14, 85, 87

Citation : (2012) 186 DLT 290

Hon'ble Judges : S.P. Garg, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : G. Tushar Rao and Mr. Alarm Mukherjee, for the Appellant; J.N. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The above captioned appeal arises out of a judgment and decree dated 29.8.2001 passed by the learned Single

Judge whereunder the suit for recovery in sum of Rs. 26,30,000/- filed by respondent M/s. Taneja Skin Company (P) Ltd. has been decreed

against the appellant M/s. Bharat Skins Corporation. Since arguments in the appeal were restricted to only whether the suit which was filed on

2.9.1985 was barred by limitation or not, we propose to note only such facts as would be relevant on the subject.

2. Claim in the suit was that commencing with the first supply made on 11.8.1978, hides were sold under 56 bills by the plaintiff to the defendant

and for which a current, open and mutual account was maintained by the respondent in the name of the appellant and as and when goods were

supplied, a bill was raised for the value of the goods supplied and

correspondingly a debit entry was made in the account of the appellant and as and when payment was received the same was credited by making a credit entry in the account. Last supply being effected on 3.9.1982, on the balance struck Rs. 19,42,982.26 was due and payable and that after legal notice was served Rs. 7,000/- were received and after giving credit thereof Rs. 19,35,982.26 remained outstanding.

3. In the written statement, relevant for the issue of limitation, was the plea taken that goods being supplied on credit, limitation would run for each supply and that the account between the parties was not a mutual account. Last supply being on 3.9.1982 as alleged in the plaint, it was pleaded that the suit would be barred by limitation qua all preceding bills, a plea which we note has not been urged in so many words, but is evidenced from an intelligent reading of the written statement.

4. The statement of account Ex. PW-1/59 to Ex. PW-1 / 70 would reveal that the bills Ex. PW-1/3 to Ex. PW-1 /58 have been reflected in the said statement of account and a corresponding debit entry is made in the statement of account and as and when payments were received, a credit entry has been made.

5. Unfortunately, the learned Single Judge has not discussed, though he has noted the law as to when would an account be a current, open and mutual account, whether the instant account was of said category and we do not find that the learned Single Judge has expressly stated that for purposes of limitation, Article 1 of the Schedule to the Limitation Act 1963 would apply, but it is apparent from the reasoning of the learned Single Judge that he had applied Article 1 of the Schedule to the Limitation Act, 1963 while determining issue No. 2, which Article provides that in case of a suit filed for recovery of balance due on a mutual, open and current account, where there have been reciprocal demands between the parties, the limitation period begins to run from the close of the year in which the last item admitted or proved is entered in the account such year to be computed as in the account, to hold the present suit was filed by the respondent company within the prescribed limitation period.

6. The question which has arisen for consideration in the appeal is: Whether the learned Single Judge is correct in applying Article 1 of the Schedule to the Limitation Act, 1963 in the present case?

7. In England, the Limitation Act of 1623 barred certain actions at Common Law after the period prescribed for such actions had expired. Actions

on accounts relating to trade between the merchant and merchant were, however, excluded from the operation of the Act and there was no

limitation for such suits. Actions on accounts between persons other than merchants were governed by the Act. But in such cases, every new item

and credit in the account given by one party to the other was regarded as an implied acknowledgement of the prior existing debt, sufficient to take

the case out of the statute. In the decision reported as (1795) 101 ER 504, *Catling v. Skoulding*, it was observed as under:

Here are mutual items of account, and I take it to have been clearly settled as long as I have memory of the practice of the Courts that every new

item and credit in the account given by one party to the other is an admission of there being an unsettled account between them, the amount of

which is afterwards to be ascertained and any act which the jury may consider as an acknowledgement of its being an open account is sufficient to

take the case out of the statute.

8. The doctrine of implied acknowledgement in cases of accounts between non-merchants and the exception in the statute of limitation as regards

actions on accounts between merchants were abolished in England, by Lord Tenterden's Act, 1828 and Mercantile Law Amendment Act, 1857

respectively. In 1859 the Legislature in India, however, enacted in Section 8 of the Limitation Act, 1859, the principle of *Catling's* case (*supra*), as

between merchants and traders and provided that "in suits for balances of accounts current between merchants and traders, who have had mutual

dealings, the cause of action shall be deemed to have arisen at, and the period of limitation to be computed from, the close of year in the accounts

of which there is the last time admitted or proved indicating the continuance of mutual dealings. Article 1 of the Schedule to the Limitation Act,

1963 corresponds to Section 8 of the Limitation Act, 1859 and reads as under:

No. Description of Suit Period of Time From Which Period

Limitation Begins to Run

1 For the balance due on a Three years The close of the year in which

mutual, open and current the last item admitted or proved

account where there have is entered in the account such
been reciprocal demands year to be computed as in the
between the parties account.

9. The object of Article 1 is thus in effect, to apply the old English Common Law of acknowledgement (which is different from the
acknowledgements and payments referred to in Sections 18 and 19 of the Limitation Act, 1963) to a certain type of cases for the purpose of
exempting the plaintiff from the principle that limitation runs against each item from its date, and to provide that if the last item is within time, it will
draw the previous items after it, however old they may be, although there has been no acknowledgement or payment sufficient to comply with the
conditions imposed by Sections 18 and 19 of the Limitation Act, 1963.

10. In order to find an answer to the question: Whether Article 1 of the Schedule to the Limitation Act, 1963 applies to the present case, it is first
required to be seen: Whether the account between the parties was a mutual account as envisaged in Article 1 of the Schedule to the Limitation Act,
1963, it not being in dispute that the account was current and open.

11. In the decision reported as Kesharichand Jaisukhal Vs. The Shillong Banking Corporation, the Supreme Court defined the scope of the
expression "mutual" occurring in Article 85 of the Schedule to the Indian Limitation Act, 1908 (precursor to Article 1 of the Schedule to the
Limitation Act, 1963) in the following terms:

The next point in issue is whether the proceedings are governed by Article 85 of the Indian Limitation Act, 1908, and if so, whether the suit is
bared by limitation. The argument before us proceeded on the footing that an application u/s 45(D) of the Banking Companies Act is governed by
the Indian Limitation Act, and we must decide this case on that footing. But we express no opinion one way or the other on the question of the
applicability of the Indian Limitation Act to an application u/s 45(D). Now, Article 85 of the Indian Limitation Act, 1908 provides that the period
of limitation for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties is three
years from the close of the year in which the last item admitted or proved is entered in the account such year to be computed as in the account. It is

not disputed that the account between the parties was at all times an open and current one. The dispute is whether it was mutual during the relevant period.

11. Now in the leading case of *Hirada Basappa v. Gadigi Muddappa*, (1871) VI Mad H C R 142, 144]. Holloway, Acting C.J. observed:

To be mutual there must be transactions on each side creating independent obligations on the other, and not merely transactions which create

obligations on the one side, those on the other being merely complete or partial discharges of such obligations."

12. These observations were followed and applied in *Tea Financing Syndicate Ltd. v. Chandrakamal Bezbaruah*, ILR [1931] 58 Cal. 642 and

Monotosh K. Chatterjee v. Central Calcutta Bank Ltd., [1953] 91 C.L.J. 16 , and the first mentioned Calcutta case was approved by this Court

in *The Hindustan Forest Company Vs. Lal Chand and Others*, Holloway, Acting C.J. laid down the test of mutuality on a construction of Section 8

of Act 14 of 1859, though that Section did not contain the words "'where there have been reciprocal demands, between the parties'". The addition

of those words in the corresponding Article 87 of Act 9 of 1871, Article 85 of Act 15 of 1877 and Article 85 of the Act of 1908 adopts and

emphasises the test of mutuality laid down in the Madras case.

13. In the instant case, there were mutual dealings between the parties. The respondent Bank gave loans on overdrafts, and the appellant made

deposits. The loans by the respondent created obligations on the appellant to repay them. The respondent was under independent obligations to

repay the amount of the cash deposits and to account for the cheques, hundis and drafts deposited for collection. There were thus transactions on

each side creating independent obligations on the other, and both sets of transactions were entered in the same account. The deposits made by the

appellant were not merely complete or partial discharges of its obligations to the respondent. There were shifting balances on many occasions the

balance was in favour of the appellant and on many other occasions, the balance was in favour of the respondent. There were reciprocal demands

between the parties, and the account was mutual. This mutual account was fairly active up to June 25, 1947. It is not shown that the account

ceased to be mutual thereafter. The parties contemplated the possibility of

mutual dealings in future. The mutual account continued until December 29, 1950 when the last entry in the account was made. It is conceded on behalf of the appellant that if the account was mutual and continued to be so until December 29, 1950, the suit is not barred by limitation, having regard to Section 45(o) of the Banking Companies Act. The Courts below, therefore, rightly answered issue No. 1 in the negative.

(Emphasis supplied)

12. From the aforesaid observations, it can be deduced that for the creation of an open, current and mutual account, there must be an intention between the parties, either express or implied, which may be deducible from the course of dealings to have mutual dealings, creating reciprocal obligations, independent of each other. A "demand" in relation to a matter of account means a "claim for money", arising out of a "contractual business relationship" between the parties. Where the dealings between the parties disclose a "single" contractual relationship, there will be demands only in favour of one party. For instance, where the relationship between "A" and "B" is that of lender and borrower respectively, "A" will have a "demand" against "B" in respect of every item of loan advanced. But "B" can have no demand against "A". Where the dealings between the parties disclose "two" contractual relationships, there will arise demands in favour of each side against the other. For instance, where "A" advances money to "B" from time to time as loan, and "B" engages "A" as his agent for the sale of goods sent by "B", there are two contractual relationships between the parties: one, that of lender and borrower and the other, that of principal and agent. "A" as creditor may have several demands against "B" who as principal may have, independently, several demands against "A". The real test, therefore, to see whether there have been reciprocal demands in any particular case is to see: Whether there is a "dual contractual relationship" between the parties.

13. Where "A" sells goods to "B" from time-to-time and "B" makes payments towards the price from time-to-time, there is only a "single" contractual relationship, namely that of buyer and seller, between the parties. "A" has demands against "B" for items sold, but "B" can have no "demands" against "A". Such case is not one of reciprocal demands and thus Article 85 of the Schedule to the Indian Limitation Act, 1908

corresponding to Article 1 of the Schedule to the Limitation Act, 1963 will not apply to suits on such accounts. We are fortified in our view by the

following observations made by the Supreme Court in the decision reported as *The Hindustan Forest Company Vs. Lal Chand and Others*,

The learned Judge of the High Court who heard the suit held that Art. 115 had no application and dismissed the suit as barred by limitation. The

sellers went up in appeal which was heard by two other learned Judges of the High Court. The learned Judges of the appellate Bench of the High

Court held that Art. 115 of the Jammu & Kashmir Limitation Act applied and the suit was not barred. They thereupon allowed the appeal and

passed a decree in favour of the sellers. The buyer has now come up in appeal to this Court.

5. Article 115 of the Jammu and Kashmir Limitation Act which is in the same terms as Art. 85 of the Indian Limitation Act except as to the period

of limitation, is set out below:

6. If the article applied the suit would be clearly within time as the last item found to have been entered in the account was on June 23, 1947. The

only question argued at the Bar is whether the account between the parties was mutual.

7. The question what is a mutual account, has been considered by the Courts frequently and the test to determine it is well settled. The case of the

Tea Financing Syndicate Ltd. v. Chandrakamal Bezbaruah, ILR (1930) Cal. 649, may be referred to. There a company had been advancing

monies by way of loans to the proprietor of a tea estate and the proprietor had been sending tea to the company for sale and realisation of the

price. In a suit brought by the company against the proprietor of the tea estate for recovery of the balance of the advances made after giving credit

for the price realised from the sale of tea, the question arose as to whether the case was one of reciprocal demands resulting in the account

between the parties being mutual so as to be governed by Art. 85 of the Indian Limitation Act. Rankin, C.J , laid down at p. 668 the test to be

applied for deciding the question in these words :

There can, I think, be no doubt that the requirement of reciprocal demands involves, as all the Indian cases have decided following *Halloway*,

A.C.J , transactions on each side creating independent obligations on the other

and not merely transactions which create obligations on one side, those on the other being merely complete or partial discharges of such obligations. It is further clear that goods as well as money may be sent by way of payment. We have therefore to see whether under the deed the tea, sent by the defendant to the plaintiff for sale, was sent merely by way of discharge of the defendant's debt or whether it was sent in the course of dealings designed to create a credit to the defendant as the owner of the tea sold, which credit when brought into the account would operate by way of set-off to reduce the defendant's liability."

8. The observation of Rankin, C.J , has never been dissented from in our Courts and we think it lays down the law correctly. The learned Judges of the appellate Bench of the High Court also appear to have applied the same test as that laid down by Rankin, C.J. They however came to the conclusion that the account between the parties was mutual for the following reasons:

The point then reduces itself to the fact that the defendant company had advanced a certain amount of money to the plaintiffs for the supply of grains. This excludes the question of monthly payments being made to the plaintiffs. The plaintiffs having received a certain amount of money, they became debtors to the defendant company to this extent, and when the supplies exceeded Rs. 13,000 the defendant company became debtors to the plaintiff and later on when again the plaintiff's supplies exceeded the amount paid to them, the defendants again became the debtors. This would show that there were reciprocity of dealings and transactions on each side creating independent obligations on the other."

9. The reasoning is clearly erroneous. On the facts stated by the learned Judges there was no reciprocity of dealings there were no independent obligations. What in fact had happened was that the sellers had undertaken to make delivery of goods and the buyer had agreed to pay for them and had in part made the payment in advance. There can be no question that in so far as the payments had been made after the goods had been delivered, they had been made towards the price due. Such payments were in discharge of the obligation created in the buyer by the deliveries made to it to pay the price of the goods delivered and did not create any obligation on the sellers in favour of the buyer. The learned Judges do not

appear to have taken a contrary view of the result of these payments.

10. The learned Judges however held that the payment of Rs. 13,000 by the buyer in advance before delivery had started, made the sellers the

debtor of the buyer and had created an obligation on the sellers in favour of the buyer. This apparently was the reason which led them to the view

that there were reciprocal demands and that the transactions had created independent obligations on each of the parties. This view is unfounded.

The sum of Rs. 13,000 had been paid as and by way of advance payment of price of goods to be delivered. It was paid in discharge of obligations

to arise under the contract. It was paid under the terms of the contract which was to buy goods and pay for them. It did not itself create any

obligation on the sellers in favour of the buyer it was not intended to be and did not amount to an independent transaction detached from the rest of

the contract. The sellers were under an obligation to deliver the goods but that obligation arose from the contract and not from the payment of the

advance alone. If the sellers had failed to deliver goods, they would have been liable to refund the monies advanced on account of the price and

might also have been liable in damages but such liability would then have arisen from the contract and not from the fact of the advances having been

made. Apart from such failure, the buyer could not recover the monies paid in advance. No question has, however, been raised as to any default

on the part of the sellers to deliver goods. This case therefore involved no reciprocity of demands. Article 115 of the Jammu and Kashmir

Limitation Act cannot be applied to the suit.

(Emphasis supplied)

14. In view of the above discussion, since the dealings between the parties disclose a single contractual relationship i.e. of buyer and seller between

them, the account between them cannot be termed as a "mutual" account. As a necessary corollary, Article 1 of the Schedule to the Limitation

Act, 1963 has no application in the present case.

15. Having held that Article 1 of the Schedule to the Limitation Act, 1963 does not apply in the present case, the further question which arises for

consideration is, which Article in the Schedule to the Limitation Act, 1963 applies in the present case.

16. It has been submitted by the learned Counsel appearing for the appellant

that Article 14 of the Schedule to the Limitation Act, 1963 applies in the present case and that on applying the said article the suit would be barred by limitation. Learned Counsel for the respondent conceded that if Article 14 of the Schedule to the Limitation Act 1963 would apply, the claim would be barred by limitation. But had urged that Article 1 of the Schedule to the Limitation Act, 1963 would be attracted, a plea which we have already rejected. Thus, we consider whether Article 14 of the Schedule to the Limitation Act is attracted.

17. Article 14 of the Schedule to the Limitation Act, 1963 reads as under:

No. Description of Suit Period of Time from which period Limitation Begins to run

14. For the price of goods sold Three years The date of delivery of the and delivered when no fixed goods. period of credit is agreed upon

18. In the instant case, the account between the parties was an open, running and non-mutual account.

19. In case of a running and non-mutual account between the buyer and seller, when goods are delivered by the seller to the buyer, the value of the goods is debited in the debit column and when amounts are paid by the buyer to the seller, they are entered in the credit column. The difference is continuously struck in the column for balance. In such a case, when the buyer defaults to make balance payment, the seller's action is not for the price of goods sold and delivered but for the balance due at the foot of an account. Thus, Article 14 would have no application in suits of recovery of money due on a running and a non-mutual current account between the buyer and seller.

20. In this regards, it is important to note the following observations made in the decision reported as (1849) 7 C. 3.106, Dood v. Wigley, when it was observed:

Where goods are ordered of a tradesman on the 1st of January and distinct orders for other goods are given on the 2nd, 3rd, 4th, 5th, etc , if from the previous dealings between the parties, or from general usage, or otherwise, it is to be inferred that it was contemplated by the parties, that, in

the event of the dealing continuing, the several items should be included in the monthly, quarterly, or yearly bills, the result of such an arrangement, and the legal position of the parties, seems to be this -- upon the delivery and acceptance of the first parcel of goods, delivered on the 1st of January, an entire contract is created, and a complete cause of action accrues, the tradesman, being under no engagement to sell other goods, or to give credit beyond the price of the articles then delivered : when, on a subsequent day, other goods are delivered and accepted, a new contract arises, not simply a contract to pay for the goods then delivered, but a new entire contract by which the tradesman waives his existing right to payment of the goods delivered on the 1st of January, and the purchaser agrees to pay for both parcels as upon one entire sale... After the successive waiver and extinguishment of each preceding contract, the only subsisting contract and cause of action ex contractu will be the last.

21. The observations in the decision reported as (1856) 18 C.B. 325, *Bonsey v. Woodsworth* are also worthy of being noted and are as under:

where a tradesman has a bill against a party for any amount, in which the items are so connected together that it appears that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one continuous demand, the whole together forms but one cause of action and cannot be divided.

22. The upshot of the above discussion is that Article 14 of the Schedule to the Limitation Act, 1963 does not apply to suits for recovery of money due on a running and current but a non-mutual account between the buyer and seller i.e. an account of the kind with which we are dealing.

23. There being no Article in the Schedule to the Limitation Act, 1963 dealing with suits for recovery of money due on running and current but non-mutual accounts, in such circumstances, the residual article viz. Article 113 applies to such suits.

24. Under Article 113, the period for limitation for filing a suit is three years and the same begins to run when the right to sue would accrue when claim was denied in response to the legal notice dated 26.6.1985 on 13.7.1985 but since Rs. 7,000/- was paid on 13.7.1985 and 24.7.1985 (Rs. 2,000/- on the former date and Rs. 5,000/- on the latter date), limitation would commence from 24.7.1985. The suit being filed on 2.9.1985,

governed for purposes of limitation by Article 113 the suit would be within limitation.

25. In view of the above discussion, the above captioned appeal is dismissed. The impugned judgment and decree dated 29.8.2001 passed by the

learned Single Judge is upheld.. Appellant to pay the costs assessed by the Taxation Officer to the respondent.