

(2010) 02 DEL CK 0117

In the Delhi High Court

Case No : C.S. (OS) No. 1734 of 1999, I.A. No. 9113 of 2009 and Criminal M.A. No. 12895 of 2009

Bhushan Steel and Strips Ltd.

APPELLANT

Vs

Bhartiya Loha Udyog (P.) Ltd.

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Citation : (2010) 167 DLT 237 : (2011) 7 RCR(Civil) 2493

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Rajesh Banati and S.K. Aggarwal, for the Appellant; Pradeep Dewan and Rajiv Samaiyar, for the Respondent

Judgement

Indermeet Kaur, J.—The present suit has been filed for recovery of Rs. 80,47,868/-. The plaintiff is M/s Bhushan Steel & Strips Ltd., a company registered under the Companies Act 1956, having its office at Plot No. 23, Site IV, Industrial Area, Shahibabad, Ghaziabad (U.P.). The suit has been filed through its law officer Mr. Rishipal, authorized vide power of attorney dated 18.5.1999 to sign and verify the pleadings on behalf of the plaintiff.

2. Defendant M/s Bhartia Loha Udyog Pvt. Ltd. is also a company registered under the Indian Companies Act, 1956, having its office at Z-216/1, Loha Mandi, Naraina, New Delhi.

3. plaintiff at the request of the defendant supplied C.R. Coils/Sheets & G.P. Sheets of various sizes to the defendant from time to time and various bills were raised by the plaintiff; a running account was maintained by the parties. Account payments received by the plaintiff from the defendant were given due credit in the books of the plaintiff. Books of account of the plaintiff were regularly audited and maintained in the ordinary course of the business.

4. As per the accounts of the plaintiff, a sum of Rs. 54,65,445.60 became due from the defendant in terms of the statement of account filed along with plaint

annexure P-1. This statement of account is for the periods 1.4.1994 to 31.3.1995, 01.4.1995 to 31.03.1996 and 01.4.1996 to 31.3.1997.

5. On 17.4.1997 an amount of Rs. 5,00,000/- was sent by the defendant vide cheque No. 072375 to the plaintiff to clear the aforesaid part outstanding amount. The said cheque was dishonoured by the banker of the defendant with the remark "payment stopped by the drawer". Criminal complaint u/s 138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act) was filed by the plaintiff which is pending adjudication in the Court of Metropolitan Magistrate, Ghaziabad.

6. Legal notice dated 12.4.1999 was sent by the plaintiff to the defendant asking him to clear his outstandings along with interest @ 21% per annum. However, payments were not made. plaintiff has claimed the aforesaid amount with interest; interest is calculated at Rs. 25,82,422.40 @ 21% per annum on the principal figure of Rs. 54,65,445.60. Interest has been claimed from 17.4.1997 till 17.7.1999.

7. In the written statement defendant has taken preliminary objections; the plaint has not been signed, verified by a duly authorized person; there is no cause of action as the accounts between the parties stood settled in April 1996 and there had been no transaction between the parties after 11.4.1996.

8. It is stated that the plaintiff has suppressed material facts; plaintiff had been allowed to use the premises of the defendant situated at Naraina; defendant is dealing in sale and purchase of iron sheets and the parties had good business dealings with one another. Disputes arose with the plaintiff when the plaintiff started charging higher rates as compared to the competitors in the market but on assurances of the plaintiff, the defendant continued to purchase the material from others on the premise that the loss would be compensated by the plaintiff. Since the plaintiff failed to adhere to his business dealings, the dealings between the parties stopped. Suit is also bad for mis-joinder of the parties.

9. On merits, it has been reiterated that the accounts between the parties had been settled in April 1996 and after 11.4.1996 there had been no dealings between the parties. No amount is due and recoverable from the defendant.

10. It is stated that the cheque bearing No. 072375 dated 17.4.1997 was never issued to the plaintiff by the defendant. At the time of settling the accounts in September 1995, the defendant gave ten cheques to the plaintiff; out of the ten cheques nine cheques were encashed up to November 1995 and it was represented by the plaintiff that cheque No. 072375 had been lost and was not traceable by the plaintiff. On the advice of plaintiff, defendant wrote a letter to its banker in January 1996 for stopping the payment of the aforesaid cheque. Defendant on 10.3.1996 paid a sum of Rs. 5,00,000/- to the plaintiff against this lost cheque. Cheque dated 17.4.1997 is a classic case of forgery even as per the statement of account filed by the plaintiff. Forgery has been done by the plaintiff to bring the present suit within limitation. The said fact was also communicated

by the defendant to the plaintiff vide communication dated 15.1.1996.

11. Present case has been filed by the plaintiff as a measure for pure harassment as the relations between the parties had become strained. No amount is due from the defendant. The entire accounts having been settled between the parties in April 1996, there was no occasion to issue any cheque to the plaintiff on 17.4.1996; suit of the plaintiff is liable to be dismissed.

12. Replication has been filed reiterating the averments contained in the plaint while denying the submission and the defence as set up by the defendant in his written statement.

13. On 19.11.2001, on the pleadings of the parties, the following issues were framed:

1. Whether the plaint has been signed and verified and suit instituted by a duly authorized person?
2. Whether the plaintiff has no cause of action for filing the suit?
3. Whether the suit is barred by time?
4. Whether the suit is bad for misjoinder of causes of action?
5. Whether the plaintiff is entitled to recover a sum of Rs. 80,47,868/-, claimed in the plaint?
6. Whether the plaintiff is entitled to interest, claimed? If so, at what rate?
7. Relief.

14. plaintiff has examined one witness in support of his case PW-1 Rishipal the authorized representative of the plaintiff company.

15. On 09.1.2004, the affidavits by way of evidence filed by the defendant were held to be beyond pleadings of the defendant; the said two additional affidavits were permitted to be withdrawn by the defendant. On 15.3.2004 it was recorded that the fresh affidavit by way of evidence was also beyond the pleadings of the parties.

16. Defendant in support of his case has examined four witnesses. On 13.1.2005, oral evidence of the defendant was permitted to be recorded. Mr. Gopal Chand Mittal, director of the defendant company was examined on oath as DW-1. DW-2 Mr. Hemender Singh, had brought the summoned record of the plaintiff company showing its name change i.e. from M/s Bhushan Industries Pvt. Ltd to M/s Bhushan Industries Ltd. and then to M/s Bhushan Ltd; sales tax registration certificates of the company are Ex.DW-2/3 to Ex.DW-2/4. DW-3 Mr. D.D. Pandit, computer operator in the State Bank of Bikaner & Jaipur had produced the statement of account of the defendant showing the instructions given to the Bank for "stop payment" against cheque No. 072375 dated 08.01.1996 Ex.DW3/1 & Ex.DW3/2. DW-4 Mr. Suresh Pal Singh the Ahlmad

(Record Keeper) of the Court of M.M. Ghaziabad had produced certified copy of the voucher of the disputed cheque No. 072375 dated 18.11.1995 Ex.DW4/2.

17. Arguments have been heard and record has been perused.

18. Findings on the issues are as follows:

19. Issue No. 1

PW-1 Rishipal has on oath deposed that he is the constituted attorney and authorized representative of the plaintiff company. He is conversant with the facts of the case. Company is duly registered under the Indian Companies Act. Certificate of incorporation is Ex.PW-1/1. PW-1 has been authorized to file the suit vide power of attorney Ex.PW1/2 dated 18.5.1999 duly executed by Neeraj Singhal, managing director of the plaintiff, in his favour to sign and verify the pleadings and to institute the present suit on behalf of the company. Ex.PW- 1/2 has been duly notarized and is endorsed on a stamp paper of Rs. 10/-. In his cross-examination, PW-1 had denied the suggestion that he is not competent to sign, verify or institute the suit on behalf of the plaintiff company.

20. It is submitted that the plaintiff is admittedly a company; there is no board resolution authorizing Rishipal to sign and verify the plaint on behalf of the company; a power of attorney can be executed by a company only by following the due procedure which is contained in Section 48 of the Companies Act; which mandates that the common seal of the company has to be affixed on the said power of attorney. Ex.PW-1/2 does not contain the seal of the company. Provisions of Order 29 Rule 1 of the CPC (hereinafter referred to as "the Code") also cannot be resorted to as Rishipal is admittedly only a law officer; Neeraj Singhal not being a principal officer of the corporation he could not have executed the power of attorney; Order 29 of the Code even otherwise applies to verification of pleadings only and not to the institution of a suit. Reliance has been placed upon Nibro Ltd. Vs. National Insurance Co. Ltd., , United Bank of India Vs. Naresh Kumar and others, . It is stated that the provisions of Order 6 Rule 14 of the Code specifically direct that the pleadings can be signed only by a duly authorized person. Rishipal could not have been delegated the authority to sign the pleadings on behalf of the plaintiff corporation.

21. Order 29 Rule 1 of the Code prescribes that the pleadings can be signed or verified on behalf of the corporation by a director of the corporation as well. Neeraj Singhal in his capacity as managing director of the plaintiff company had vide Ex.PW-1/2 dated 15.7.1999 authorised Rishipal to sign and verify the pleadings on behalf of the plaintiff company and to take steps for filing a suit for recovery of Rs. 80,47,868/- against the defendant and to do all such act in lieu thereof. This power of attorney had been executed in terms of the agreement dated 1.10.1994 entered into between the company and the managing director. It not having the seal of the company is an irregularity which cannot defeat the otherwise valid and subsisting claim of the plaintiff.

22. In United Bank of India Vs. Naresh Kumar and others, , it had been held by Supreme Court that procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code, to ensure that injustice is not done to any party who has a just case as far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

23. plaintiff has been able to establish that the plaint has been signed, verified and instituted by a duly authorized person.

24. Issue No. 1 is decided in favour of the plaintiff and against the defendant.

25. Issue No. 2:

The cause of action for filing the present suit has been detailed in para Nos. 9 & 10 of the plaint. It is stated that a sum of Rs. 54,65,445.60 is due from the defendant along with interest; On 17.4.1997 the cheque given by the defendant to the plaintiff, on presentation had been dishonoured by the defendant's banker. Cause of action is a bundle of facts. The said facts must have a direct nexus to the lis between the parties. Averments in the aforementioned paras of the plaint have a direct nexus to the lis involved.

26. Issue No. 2 is decided in favour of the plaintiff and against the defendant.

27. Issue No. 4:

A preliminary objection has been taken that the suit is bad for mis-joinder of causes of action and is liable to be dismissed under Order 2 Rule 2 of the Code. DW-1 in his entire examination-in-chief has not whispered a word about this objection. None of the other witnesses of the defendant has also deposed to the said effect. At the time of final arguments counsel for the defendant conceded that he is even otherwise not pressing this issue.

28. Issue Nos. 3 and 5:

PW-1 Rishipal is the only witness on behalf of the plaintiff. He has on oath reiterated the averments made in the plaint. He has deposed that the plaintiff had been supplying C.R. coils/sheets and G.P. sheets of various sizes to the defendant from time to time. plaintiff had raised various bills; running account was maintained between the parties. Accounts of the plaintiff were being regularly audited; no objection was ever raised by the defendant to the correctness of the accounts of the plaintiff. As per the statement of account Ex.PW-1/3, a sum of Rs. 54,65,445.60 was due and outstanding in the name of the defendant. This statement of account Ex.PW-1/3 is from period 1.04.1994 to 31.03.1995, 1.04.1995 to 31.03.1996 and thereafter from 01.04.1996 till 31.03.1997. There are hundreds of entries showing the various transactions between the plaintiff and the defendant. The closing balance as on 22.4.1997 shows that an amount of Rs. 54,65,445.60 is due from the defendant.

29. PW-1 has deposed that the defendant had been making payment of cheques;

one such cheque bearing No. 72375 dated 17.4.1997 drawn on State Bank of Bikaner & Jaipur, Naraina Industrial Area in the sum of Rs. 5,00,000/- was given to the plaintiff towards discharge of their outstanding. On presentation the defendant bank dishonoured the cheque with remark "payment stopped by drawer". The cheque Ex.PW-1/4 has an endorsement that the cheque has been stopped for payment; the return memo is Ex.PW-1/5. Complaint u/s 138 of N.I. Act was filed which is pending before Ghaziabad Court.

30. The contention of the defendant is that the cheque dated 17.4.1997 was never issued by him; it is forged document; if this document is discarded, the suit of the plaintiff which was filed on 5.8.1999 is clearly time barred as the last transaction even as per the statement of account Ex.PW-1/3 filed by the plaintiff shows that it was made in July 1996.

31. In view of the aforesaid objection, both these issues will be decided by a common discussion.

32. Ex.PW-1/3 is the statement of account filed by the plaintiff into 19 pages. In support of this statement of account 274 bills i.e. the transactions between the plaintiff and the defendant have been filed by the plaintiff. It is relevant to state that at the time of admission/denial of documents, the defendant made a blanket denial of all the aforesaid bills. In the next breadth the defendant in support of his case filed the same bills and placed reliance upon them. They are Ex.DW-1/58A to DW- 1/332A. These bills evidence an endorsement on them referring to certain discounts which the plaintiff had allegedly given to the defendant. These discounts are noted on all the bills i.e. from 06.04.1994 onwards upto 14.8.1995.

33. The defence of the defendant which has been reiterated on oath by DW-1 is that accounts stood squared in April 1996 and after that no running account was maintained between the parties; whatever goods were supplied by the plaintiff, payment were made by the defendant on a bill to bill basis. It was further agreed that the plaintiff company will give cash discount of 2%. This was pursuant to the disputes which had arisen between the parties as the plaintiff was charging higher rates as compared to the other competitors in the market. No cheque No. 072375 dated 17.4.1997 had been issued to the plaintiff; there was no occasion to do so. Ten cheques had been issued by the defendant to the plaintiff in September 1995; plaintiff has averred that the disputed cheque i.e. the cheque No. 072375 had been lost and it was not traceable. In January 1996 on the advice of the plaintiff the defendant had written a letter to his banker for stopping payment of the aforesaid cheque. Reliance by the plaintiff on this cheque dated 17.4.1997 is a forgery committed by the plaintiff to bring his suit within limitation.

34. This defence as set up by the defendant is implausible. The statement of DW-1 on oath is a material improvement which did not find mention in his pleadings; in his written statement, he had not stated that the plaintiff had

agreed to give cash discount of 2%. Even otherwise as per the case of the defendant, the cash discounts was to be given by the plaintiff after April 1996 when the parties had settled their disputes. DW-1 has relied upon letters Ex.DW-1/1, Ex.DW-1/2 and Ex.DW-1/3 dated 20.04.1996, 26.4.1996 and 02.05.1996 to substantiate his submission that after April 1996 payments were made on bill to bill basis on the discounts agreed to be given by the plaintiff and payments were made after deducting cash discounts. Perusal of the bills Ex.DW-1/58A to DW-1/332A filed by the defendant himself show that in all the bills which are commencing from 6.4.1994 right upto 14.8.1995 there is an endorsement in ball pen showing rate difference of different amounts in the different bills. Defendant by his own documents evidenced that even in April 1994, the plaintiff was offering discounts to him which is not his case as set up in his evidence on oath. His oral and documentary evidence is contrary and conflicting. This submission of 2% discounts offered by the plaintiff was even otherwise a material improvement which was made by him on oath for the first time; it was not mentioned in the written statement. DW-1 in his cross-examination has also admitted that these discounts were not reflected in Ex.PW-1/3. Ex.DW-1/14 is another written statement filed by the defendant in an earlier suit i.e. suit No. 1734/1999. This was filed on 19.5.2000. Stand of the defendant was that the parties had settled accounts in April 1996; thereafter payments were made on bill to bill basis; even in this written statement there was no mention that plaintiff had agreed to give 2% discount to the defendant thereafter. Case of the defendant is totally demolished when he has gone back on his own stand and by his own documents evidenced that the plaintiff was giving discounts even in April 1994. Defendant has not come to the Court with clean hands.

35. Defendant's submission is that cheque No. 072375 dated 17.04.1997 could never have been issued so to him as there was a series of 10 cheques from 072368 to 072377 which had been issued by the defendant to the plaintiff. It is difficult to imagine that one single cheque No. 072375 had been retained by the defendant and the other cheques issued by him, stood encashed as is evident from Ex.PW-1/3 i.e. the statement of account filed by plaintiff.

36. On the first blush, this argument appears to be attractive. However, this is also a false evidence which has been set up by the defendant. The defendant has stated that he had stopped payment of this cheque in January 1996 as the plaintiff had informed him that this cheque was not traceable. In lieu of this cheque another cheque of Rs. 5,00,000/- had been given by the plaintiff in March 1996 itself. Ex.DW-1/4 is the letter of intimation to the bank dated 08.01.1996 written by the defendant to the Bank. This letter has been proved by DW-3 as well as Ex.DW-3/2. On oath DW-1 has stated that the Bank had been informed on 11.1.1996; Ex.DW-1/4 is dated 08.01.1996. Testimony of DW-1 does not match the date in Ex.DW-1/4. DW-1 has further stated that a copy of this letter had been sent to the plaintiff company on 15.1.1996 Ex.DW-1/5. Ex.DW-1/6 is a UPC receipt evidencing its dispatch; what was in the UPC has not been

established by the defendant. Ex.DW-1/4 and DW-3/1 also do not show that this letter had been endorsed to the plaintiff. PW-1 on oath has categorically denied that he had received any such communication. If the defendant had stopped the payment of this cheque which as per his averment was on the information given by the plaintiff that this cheque had been lost, it would have been a most natural conduct of the defendant to have informed the plaintiff that this cheque had been stopped for payment for the said reason. Defendant has failed to establish this.

37. Further defence of the defendant that he had given a cheque in March 1996 in lieu of this misplaced cheque also appears to be implausible. Admittedly, there is no such document. That apart, this defence does not find mention in the reply given by the defendant to the legal notice. Legal notice Ex.PW-1/6 dated 12.4.1999 had been sent by the plaintiff. In Ex.PW-1/6, it has clearly been mentioned that cheque No. 072375 dated 17.4.1997 for a sum of Rs. 5,00,000/- had been given by the defendant which was dishonored on presentation. The reply to the legal notice is Ex.DW-1/9. It is dated 26.4.1999. In this reply it is stated that ten undated cheques had been issued by the defendant to the plaintiff out of which nine cheques were encashed this cheque No. 072375 had been reported by the plaintiff to have been lost; in good faith the bank was informed by letter dated 11.1.1996 to stop the payment of the aforesaid cheque. There is no mention herein that a substitute cheque dated 12.3.1996 had been issued in lieu of this lost cheque which is the defence which was taken up in the written statement. It would have been natural and obvious for the defendant to have replied to this averment by telling the plaintiff that he had already replaced his lost cheque with the substituted cheque dated 10.3.1996 but this did not find mention in the reply to the legal notice and this is for an obvious reason. The obvious reason being that till that time, defendant had not built up his strategy; it was only in the written statement which was filed in March 2000 that the defendant took the plea that last cheque had been replaced by cheque dated 12.3.1996. This is a sham defence.

38. Defendant has vehemently argued that the plaintiff has fabricated its record; the initial statement of account Ex.PW-1/3 a copy of which has been sent to the defendant along with summons in the suit had mentioned the disputed cheque No. 072375; thereafter the plaintiff realized his mistake in his statement of account and by ball pen has changed the entry from 072375 to 072373. Attention has been drawn to the statement of account which has been received by the defendant and the statement of account Ex.PW-1/3 which has been filed by the plaintiff in Court. There is no doubt that 072375 has been overwritten with the last digit as "3" over the digit "5". This is clearly a typing error and this submission of the plaintiff finds support from the fact that there is no other reason as to why the cheque number would have been mentioned as 072375 in Ex.PW-1/3 when this cheque number has been relied upon by the plaintiff in his pleadings. plaintiff in his plaint in para No. 7 has clearly stated that cheque No. 072375 on presentation had been dishonoured by the defendant. Who had made the correction in Ex.PW-1/3 and ball pen insertion of the digit "3" on the digit

"5", is not answered.

39. An application u/s 340 Cr.P.C. has also been filed by the defendant wherein it has averred that this is a fabrication which has been made by the plaintiff for which he should be penalized. DW-4 has been summoned in the witness box with the record of the proceedings filed u/s 138 of the N.I. Act pending before the Magistrate. Certified copy of statement of account Ex.DW-4/1 issued by Delhi High Court shows the cheque number is 072375, thus, establishing averments of the defendant that initially the statement of account which has been filed in the Delhi High Court bore cheque number 072375; thereafter in Ex.PW-1/3 the last digit "5" had been converted to "3" to make it read as cheque No. 072373. However, it has not been established as who is responsible for this change whether it was plaintiff or whether it was defendant or any other interested party cannot be prima facie established. Contention of the plaintiff is that this is a mischief played by the defendant himself to divert from the main issue i.e. the liability of the defendant and to throw out the case of the plaintiff when this is a simple typing error. There is force in this submission of learned Counsel for the plaintiff. There is no reason as to why and for what purpose plaintiff would forge the record. Cheque No. 072375 has been relied upon by the plaintiff in his plaint and finds mention in it. Cheque number mentioned as 072375 in Ex.PW-1/3 is obviously and apparently a typing error which has occurred in the statement of account. Who has made the necessary change cannot be answered. In these circumstances, the application u/s 340 Cr.P.C. also has no merit; it is dismissed.

40. In this context, it is relevant to state that the subject matter of the proceedings u/s 138 of the N.I. Act was disposed of by the order of the Allahabad High Court dated 06.4.2004. It has been held that a cheque which has been stopped for payment would fall within the parameters of a dishonor of a cheque as contained in Section 138 of the N.I. Act.

41. The defendant has further averred that this was an undated cheque which has been given by the defendant to the plaintiff. The plaintiff had filled in the date of 17.4.1997 to bring his suit within limitation. No pleadings in the complaint case i.e. the case u/s 138 of the N.I. Act has been placed on record to substantiate as to whether this was also the defence taken by the defendant in the said case. This defence does not find mention in the order of Allahabad High Court where the defendant sought quashing of the proceedings on the ground that a cheque which has been stopped for payment would not fall within the ambit of a dishonor of cheque u/s 138 of the N.I. Act. This also reinforces the belief of this Court that the defence set up by the defendant is sham. It was in lieu of a valid transaction that the cheque dated 17.4.1997 had been issued by the defendant to the plaintiff.

42. PW-1 has proved the statement of account Ex.PW-1/3. It would again be pertinent to point out that no dispute about the correctness of the figures mentioned in this document has been raised by the defendant. Ex.PW-1/3 has reflected the bills raised by the plaintiff and the payments made by the

defendant. As already discussed supra a large percentage of these bills are bill to bill payment even in the year 1994-95 and some parts of the statement of account reflect that the bills had been raised but the payments were made in account by the defendant. In his cross-examination, DW-1 had admitted that there is no document which has been given by the plaintiff showing that the accounts between the parties have been settled on 15.7.1996; there is also no document given by the plaintiff stating that the running account between the parties stand closed.

43. Parties were admittedly enjoying cordial business relations with one another right from the year 1983. It has also been established that the plaintiff was using the premises of the defendant. DW-2 has brought the summoned record of the plaintiff evidencing that the plaintiff company had been registered with the Sales Tax Department of Delhi. The place of business of this company was at X-37A, Loha Mandi Naraina, New Delhi as also Z-216, Loha Mandi, Naraina, New Delhi. Both the properties were owned by the defendant; because of his cordiality, plaintiff was using the premises of the defendant. DW-2 has established that it was only in November 1997 that the business of the plaintiff shifted to Y-3C, Loha Mandi, Naraina from its earlier premises.

44. From this record oral and documentary, it has been established and in fact not disputed that the parties had business relationship with one another from 1983 up to April 1996. Question is whether the parties had settled all their scores and closed the running account after April 1996; whether after April 1996 a bill to bill payment was being made with a 2% cash discount offered by the plaintiff.

45. In view of the evidence discussed supra this has not been established by the defendant. On the other hand, plaintiff has been able to establish that he is entitled to recover Rs. 54,65,445.60 in terms of the bills which had been raised by him upon the defendant. Last payment having been received by cheque dated 17.4.1997 in the sum of Rs. 5,00,000/- which cheque stood dishonoured. It was a valid document for the purpose of extension of the period of limitation.

46. In 1997 42 DRJ Rajesh Kumari v. Prem Chand Jain on construing the principle of Section 19 of the Limitation Act 1963 it was held by a Bench of this Court that a payment by cheque satisfies the requirement of Section 19. Dishonoring of a cheque would not result in extinguishing the liability of the debtor to the extent of the amount of the cheque; the cheque remains an effective payment for the purpose of Section 19 of the Limitation Act.

47. Cheque dated 17.4.1997 was a valid acknowledgment made by the defendant of his liability and was well within the period of limitation. Present suit filed on 05.08.1999 is, thus, not barred by time.

48. Counsel for the defendant has relied upon AIR 1968 1413 Gopal Krishanji Ketkar v. Mohamed Haji Latif and Ors., (2006) 6 SCC 120 Rajappa Hanamantha Ranoji v. Mahadev Channabasappa and Ors. and Janki Narayan Bhoir Vs. Narayan

Namdeo Kadam, . It is submitted that non-production of best witness and best evidence destroys the case of the prosecution. plaintiff has to stand on his own legs. Books of account had not been produced during cross-examination of PW-1. These submissions are bereft of any merits. Original books of account of the plaintiff had been produced in Court. It is only after a comparison of original statement of account that the copy of the statement of account was exhibited as Ex.PW- 1/3. This is clear from the examination-in-chief of PW-1 recorded on 10.3.2003 wherein it is stated by the plaintiff that he has brought the original statement of account maintained by the plaintiff company. Submission of the defendant that C.M. Mittal, S.C. Verma and Rakesh Chaturvedi had not been produced as witnesses by the plaintiff is not only a misdirected argument but wholly unworthy. Names of the aforesaid persons had appeared for the first time in the cross-examination of DW-1; plaintiff evidence had been concluded.

49. plaintiff has been able to establish that he is entitled to recover the aforesaid amount of Rs. 54,65,455.60 in terms of the statement of account Ex.PW-1/3. The suit is well within the period of limitation.

50. Issue Nos. 3 and 5 are decided in favour of the plaintiff and against the defendant.

51. Issue No. 6

plaintiff has also claimed interest @ 21% per annum on the principal amount of Rs. 54,65,445.60. Interest amount calculated is Rs. 25,82,422.40. This interest is claimed from 17.4.1997 till 17.7.1999. Admittedly, there was no contract for interest on delayed payment. This has also not been contended by the plaintiff. In today's scenario keeping in view the market rate, being a commercial transaction plaintiff is entitled to interest @ 12% per annum on the principal amount of Rs. 54,65,445.60 from 17.4.1997 to 17.7.1999.

52. Issue No. 7 : Relief:

Suit of the plaintiff is accordingly decreed for Rs. 69,41,115.90 with future interest @ 9% per annum from the date of the decree till realization. Cost is also awarded in favour of the plaintiff. Decree sheet be drawn. File be consigned to Record Room.