(2005) 12 BOM CK 0099

In the Bombay High Court

Case No : Second Appeal No. 874 of 2005

Daulat Feeds Duistributors APPELLANT

Vs

Razvi Brothers and Shri Mubarak Babalal Razvi RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:
Limitation Act, 1908 — Article 1, 115, 14, 52, 20

Citation : (2006) 4 ALLMR 325 : (2006) 2 BomCR 573 : (2006) 108 BOMLR 110 : (2006) 2 MhLj 201

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : T.S. Ingale, for the Appellant; Kuldeep S. Patil, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—The appellant-plaintiff preferred this second appeal against the concurrent findings given by both the Courts by observing that the suit for recovery of the outstanding of account for purchase of poultry feed in question was beyond the period of limitation and therefore, dismissed the same.

2. Appellant-plaintiff''s suit as sought to be contended, based on the recovery of the balance amount without submitting the account or agreed account between the parties. The suit was for recovery of the price of goods sold and delivered. The plaintiff''s case was that the account continued and as the amount was paid and or received by the plaintiff from time to time, lastly on 7/10/1992, therefore, the suit as filed was within limitation from the receipt of the last payment.

3. The suit for recovery of the balance amount in such transaction of sale and purchase of goods governed by the provisions of Limitation Act, basically Article 1 and or Article 14 of the Limitation Act. The suit itself based on the recovery of the amount of goods sold and delivered. The period of limitation will commence from the date of the transaction, lastly entered into between the parties. In the present case, that was 11th December, 1989, when the account was closed.

Admittedly, the suit in question was filed on 4/10/1995 and is was beyond the period of limitation.

4. A Division Bench of Bombay High Court in Atmaram Vinayak Kirtikar Vs. Lalji Lakhamsi, , after considering the old provisions of Limitation Act (1908) Article 52, clearly observed the suit for balance due for price of goods sold and delivered, the Article 52, applies and not Article 115 (Limitation Act 1908). It is clear reasoning that the time runs from the date of delivery. Therefore, the cause of action in such matters is date of the last delivery. The Division Bench has observed as under;

"The plaintiff''s cause of action is, in my opinion, for the price of goods sold and delivered, and I can see no ground for saying that the claim is not a claim for the price of goods sold and delivered, but is for the balance due at the foot of an account. The evidence was of sale and delivery of goods and there was no evidence that the defendant ever had any account submitted to him, or that he ever agreed to be bound by any account and the mere fact that he paid moneys on account of what was due from time to time, for which he was given credit, cannot alter the nature of the plaintiff''s cause of action."

"In my opinion, the case falls within Article 52, which provides that for the price of goods sold and delivered, where no fixed period of credit is agreed upon, the period of limitation is three years from the date of the delivery of the goods."

4. A same view has been further fortified and endorsed by the Division Bench of Bombay High Court in (Vijaykumar Satischandra and Co. and Anr. v. Rajgopal Badrinarayan Malpani, 1996 (1) Mh.L.J. 594, the learned Counsel appearing for the respondents therefore, strongly relied and contended that the facts of the present case also covered the facts and circumstances of the case Vijaykumar (Surpa). After going through the judgment and comparing the facts and circumstances of the present case, I am also convinced that the defence raised by the Counsel appearing for the respondents is correct and in view of following paragraphs;

"A plain reading of the provisions of section 20 of the Act makes very clear that it would not be applicable in the instant case in view of the clear provisions of Article 14 of the Limitation Act. The suit is for recovery of the price of goods purchased by the appellants-defendants and admittedly there is no sale or purchase transaction by the appellants-defendants since 1975. Under Article 14 of the Act, the cut-off date for starting the period of limitation is the date of purchase or delivery of the goods by the appellants-defendants on credit. In our opinion, as the suit for recovery of the price of goods sold and not a suit for accounts, the findings and reasonings of the learned trial Judge are unsustainable and the suit was absolutely barred by the provisions of Article 14 of the Limitation Act."

There remained no doubt that the suit being of recovery of price of goods sold and delivered, the limitation of three years would commence from the last date of the purchase /sale and delivery of goods on credit and not from the date of last payment. This was also not the suit for accounts.

6. In view of the above observation and clear findings, there is no reason to interfere with the concurrent findings given the Courts, which is within the frame work of law, as well as within the frame of record. Second Appeal is therefore, dismissed.

