(2011) 10 BOM CK 0120

In the Bombay High Court

Case No : Summons For Judgment No. 70 of 2010 in Summary Suit No. 2640 of 2009

Hetal Enterprises APPELLANT

Vs

New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 07-10-2011

Acts Referred:
Evidence Act, 1872 — Section 35, 39
Limitation Act, 1963 — Article 15, 18

Citation : (2012) 1 ALLMR 252 : (2012) 1 BomCR 44 : (2012) 1 CivCC 346 : (2011) 6 MhLj 661

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : P.L. Mahadik, for the Appellant; A.S. Vidyarthi, for the Respondent

Judgement

Anoop V. Mohta, J.—The matter was adjourned thrice for settlement, but it could not be settled. The Defendants were willing to pay principal amount only, however, the Plaintiffs'' insistence was also on reasonable interest on the same. Therefore, by consent heard finally.

2. The Defendants though served not filed any reply to the summons for judgment.

3. As per the averments made in the plaint, the Plaintiffs used to supply various kinds of stationery goods to the Regional Office of Defendants and always obtained due acknowledgment of delivery of goods on the delivery chalan/bill/ invoice ranging from 16.12.2005 to 19.12.2005. As per the invoice/agreement, the grace period was of 7 days from the date of delivery of goods failing which the Plaintiffs entitled to claim interest at 19.5% on the principal amount. There is no serious dispute with regard to the receipt of the goods and the payment so raised and/or of any quality and/or quantity.

4. Even otherwise as per Article 18 of the Limitation Act, acknowledgment for

liability itself is sufficient. It is not necessary that it should be accompanied by a promise to pay either expressly or even by implication. Food Corporation of India Vs. Assam State Cooperative Marketing and Consumer Federation Limited and Others, It is also necessary to note that such letters and correspondences read with the conduct of the parties which always form part of a chain correspondences which are on record, and as not disputed, such a Summary Suit is maintainable and so also the summons for judgment. (Sections 35 and 39 of Evidence Act). The suit therefore based upon such acknowledgments and receipts is maintainable. [See Full Bench judgment in Jyotsna K. Valia Vs. T.S. Parekh and Co.,]

5. The learned counsel appearing for the Defendants has raised basically an objection that the Suit is barred by the limitation in view of the admitted first delivery chalan/bill/invoice dated 16.12.2005. The Suit was filed on 5.01.2009. As per Article 15 of Limitation Act, a Suit for the price of goods sold and delivered need to be filed after the expiry of a fixed period of grace. In the present case is 7 days. Therefore, the commencement of the limitation will be after 7 days from the date of the bill/delivery chalan. There is no dispute that the limitation period of three years would have expired during the Christmas vacation which was definitely upto 31 December 2008. The Suit, therefore, as filed on the court opening day i.e. 5.01.2009, in the present facts and circumstances, is within limitation.

6. Therefore, considering the uncontroverted averments made, there is no reason not to accept the case of the Plaintiffs to grant summons for judgment as prayed. There is no denial or defence to the averments and the documents of the Plaintiffs.

7. In so far as the interest part is concerned, though the interest as per the invoice is claimed at 19.5% as not paid within 7 days from the date of delivery of goods, however, the learned counsel appearing for the Plaintiffs fairly suggested to pass appropriate order about the rate of interest. Therefore, I am inclined to restrict the same at 9% per annum instead of 19.5% as mentioned in the statement of claims. That will be also the future interest till realisation.

8. Resultantly, the summons for judgment is disposed of accordingly decree be drawn accordingly. There shall be no order as to costs.