
(2012) 07 DEL CK 0274

In the Delhi High Court

Case No : Regular First Appeal 366 of 2003

Hindustan Paper Corporation

APPELLANT

Vs

M/s Nav Shakti Industries P. Ltd.

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Contract Act, 1872 — Section 8
Limitation Act, 1963 — Section 19

Citation : (2012) 4 BC 217 : (2012) 5 ILR Delhi 737

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Nikhilsh Krishanan, for the Appellant; K. Bhardwaj, Ajay Sejwal and Mr. S.K. Tanwar, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.—This appeal is directed against the judgment and decree dated 27.01.2003, whereby a decree for recovery of Rs.3,55,744.96 with proportionate costs and pendente lite and future interest @ 10% per annum was passed in favour of the respondent and against the appellant. The facts giving rise to filing of this appeal can be summarized as under:-

The appellant is a Government company manufacturing paper, which the respondent had been purchasing from it from time to time. The respondent had deposited a sum of Rs.1,00,000/- with the appellant as security deposit, which was to carry interest @ 15% per annum. The case of the plaintiff/ respondent was that it was maintaining a current account of the defendant/appellant and there were occasions when it made excess/advance payment to the appellant/defendant, which was subject to adjustment for future purchases. A sum of Rs.2,81.161.47 was alleged to be due to it from the appellant/defendant, being the excess/advance payment made to it. The plaintiff/respondent filed the aforesaid suit for recovery of that amount with interest, amounting to Rs.74,718.75/- and also claimed the security deposit of Rs.1,00,000/- which it

deposited with the appellant/defendant, thereby raising a total claim of Rs.4,55,880.24.

The appellant/ defendant filed the written statement contesting the suit and took a preliminary objection that the suit was barred by limitation. On merits, it was alleged that the entire amount due to the plaintiff/respondent, including the amount of security deposit was paid by way of a cheque of Rs.1,40,113.77 which was accepted by the plaintiff/ respondent.

It was also alleged in the written statement that the plaintiff/respondent had indented about 450 m.t. of papers which the defendant/appellant made available to the plaintiff/respondent. The plaintiff/respondent however failed to lift the entire indented paper and lifted only 198 m.t. This, according to the defendant/appellant, resulted in considerable loss to it on account of payment of godown rent for storage of the indented and subsequently unlifted papers, insurance related charges and premium of the stored and unlifted paper besides the expenses incurred in finding out the alternative buyers. It was alleged in the written statement that the godown rent and insurance cost to the extent of Rs. 78,878/- was debited to the account of the plaintiff/respondent.

2. On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled to the suit amount? OPP
2. If so, the rate of interest which the plaintiff is entitled? OPP
3. Whether the suit is not barred by limitation? OPD
4. Whether the suit is not properly valued for the purpose of the court fees and jurisdiction? OPD
5. Relief.

3. ISSUE NO. 4:

This issue was decided by the learned Trial Judge in favour of the plaintiff/respondent. The finding on this issue has not been assailed by the learned counsel for the appellant/defendant.

4. ISSUE NO. 3:

This suit was filed on 2nd February, 1995. Admittedly, no payment was made by the plaintiff/respondent to the defendant/appellant after December, 1991. The defendant/appellant neither made any past payment in writing nor did it acknowledge any liability towards the plaintiff/respondent at any time between December 1991 and February 1995. Computed from the date of the excess payment, the suit would be barred by limitation. Even the stockistship of the plaintiff/respondent was terminated vide letter dated 4th February, 1992. The learned counsel for the plaintiff/respondent has, however, contended that since Article 1 of the Limitation Act applies to the suit filed by them, computed from the end of the year in which the last entry in the mutual current account which

the plaintiff/respondent was maintaining in respect of its transaction with the defendant/appellant, the suit was within limitation.

Article 1 of the Limitation Act reads as under:-

PART I-- SUITS RELATING TO ACCOUNTS

1.

For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.

Three years

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.

The above referred Article came up for consideration before the Supreme Court in *Hindustan Forest Company v. Lal Chand and Ors.* AIR 1959 SC 1349. In the case before the Supreme Court, the parties had entered into an agreement whereby the respondents/sellers were to supply food articles to the appellant/buyer at the rates and times specified therein. The buyer had paid a sum of Rs.3,000/- to the seller and agreed to pay a further sum of Rs.10,000/- as advance within 10-12 days of the agreement. The balance was to be paid after the expiry of every month. Since the whole of the price was not paid by the buyer, the sellers filed a suit for recovery of the balance price of the goods. The suit was dismissed as barred by limitation. The Division Bench of the High Court in an appeal filed by the seller, held that Article 115 of the J&K Limitation Act (which is identical to the Limitation Act, 1963) was applicable and therefore the suit was not barred. It was an admitted position in that case that the last item in the account having been entered in June, 1947, the suit having been filed in October, 1950 was within limitation. Therefore, the question which came up before the Supreme Court for consideration was as to whether the account between the parties was a mutual account. The High Court had, inter alia had given the following reason while holding the suit to be within limitation:

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.

Setting aside the decision of the Division Bench of the High Court, the Supreme Court inter alia held as under:

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.

4. The facts of the case before this Court are identical to the case of Hindustan Forest Company (*supra*). In that case, the buyer had paid an initial amount of Rs 3,000/- to the seller and advance payment of Rs 10,000/-thereafter. In the case before this Court, it has been specifically alleged in the plaint that there were occasions when the plaintiff/respondent made excess/advance payment to the appellant/defendant which was subject to adjustment for future purchases. Therefore, any excess payment made by the plaintiff/respondent was to be treated as advance payment towards purchase of the paper by the plaintiff/respondent from the defendant/appellant. The excess/advance payment by the plaintiff/respondent to the appellant/defendant being towards purchase of the paper, it cannot be said that the said payment was made towards an independent transaction, unconnected with the contract between the parties for purchase of paper by the plaintiff/respondent from the defendant/appellant. Of course, the appellant/defendant was under an obligation to either deliver the goods for which advance payment was received by it or it was required to refund the advance/excess payment to the plaintiff/respondent. But, this liability of the appellant/defendant arose under the same contract under which it was supplying paper to the plaintiff/respondent and was not an obligation independent of the contract for sale of paper to the plaintiff/respondent. There was only one contract between the parties, and that was for the sale of paper by the appellant/defendant to the respondent/plaintiff. Had there been no contract between the parties for sale of paper by the appellant/defendant to the plaintiff/respondent, there would have been no occasion for the plaintiff/respondent to make any excess payment to the

appellant/defendant. The suit filed by the plaintiff/respondent being squarely covered by the decision of Supreme Court in *Hindustan Forest Company (supra)*, there is no escape from the conclusion that it was barred by limitation.

5. The learned counsel for the plaintiff/respondent has relied upon the decision of this Court in *Polar Industries Ltd. v. Arihant Communications*, RFA No. 662/2003, decided on 16.01.2012, *Sunil Dutt v. Shankar Gupta*, RFA No. 85/2011, decided on 08.02.2011 and *Indian Metal Industries Vs. United Glass Co.*, on the other hand, the learned counsel for the appellant has placed reliance upon the decision of a Division Bench of this Court in *Manish Garg v. East India Udyog Ltd.* 2001(3) AD (Delhi) 493, and decision of Kerala High Court in *Union Bank Ltd. Vs. N. Raghavan Nair*, . However, since the matter before this Court is squarely covered by the decision of Supreme Court in *Hindustan Forest Company (supra)*, I need not undertake an analysis of these judgments. The issue is, therefore, decided against the plaintiff/respondent and in favour of the appellant/defendant.

6. Issues No. 1, 2 and 5

It is an admitted fact that the appellant/defendant had made a payment of Rs 1,40,113.77/-. This payment was made on 01.07.1993. The case of the appellant/defendant is that the payment was made after settling the entire account between the parties. The case of the plaintiff/respondent, on the other hand, is that this was a part payment. If the payment dated 01.07.1993 is held to be a part payment, the suit would be within the prescribed period of limitation since in view of the provisions contained in Section 19 of Limitation Act, 1963, a fresh period of limitation starts from the date of part payment in writing and admittedly the payment was made by way of a cheque, which amounts to payment in writing. I find that in his examination-in-chief recorded in the Court on 19.02.1997, PW-1 Kishan Chand Goel, director of the plaintiff-company specifically stated that the defendant, after expiry of one and a half years after termination of the contract, sent a cheque of Rs 1,40,000/- and something which, "according to them", was in full and final settlement of the account of the plaintiff. Though in his cross-examination recorded after a long gap, PW-1 tried to get out of this admission, but, in my view, such attempt would not take away the admission made by him in the earlier examination, particularly when there is no explanation of the admission made by him. It is thus evident that while remitting payment of Rs 1,40,113.77/-, the appellant/defendant had made it clear to the plaintiff/respondent that the said payment was being made in full and final settlement of the account between the parties. Even otherwise, part payments are ordinarily made for a lump sum amount or for the whole or balance amount of one or more invoices and not for an odd amount such as Rs 1,40,113.77/-. This is yet another indicator that this payment was remitted by the defendant/appellant in full and final settlement of its account. If this conditional payment was not acceptable to the plaintiff/respondent, it ought not to have been accepted the same. However, not only did the plaintiff/respondent accept that payment by encashing the cheque, no communication was sent by it

to the defendant/appellant stating therein that the payment was being accepted by it as a part payment and not as a payment in full and final settlement of the account between the parties.

7. Section 8 of Contract Act, to the extent it is relevant, provides that the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal. By remitting payment of Rs 1,40,113.77/-towards full and final settlement of the account, the defendant/appellant gave an offer to the plaintiff/respondent for settling the account on payment of that amount. The plaintiff/respondent accepted the offer by encashing the cheque sent by the defendant/appellant. This led to a contract between the parties for settling the account on payment of 1,40,113.77/- by the defendant/appellant to the plaintiff/respondent. Therefore, it is not open to the plaintiff/respondent to now say that since they had credited the said payment as part payment, they are entitled to recover the balance amount from the defendant/respondent. The view taken by me finds support from a number of decisions on the subject. In *Union of India (UOI) v. Rameshwarlall Bhagchand* 1973 AIR Guwahati, the consignee served a notice on the Railway Administration, claiming compensation of Rs.2368.25. The General Manager, N.F. Railway Pandu, sent a cheque of Rs. 1173.19 to the consignee in full and final settlement of his claim. The consignee encashed the cheque, but subsequently informed the General Manager that the cheque received satisfied only a part of the claim and consequently he (the General Manager) should reopen the case and remit the balance amount. Referring to the provisions of Section 8 of the Contract Act, the High Court observed that the General Manager sent a cheque of Rs.1173.19 to the plaintiffs, subject to the condition that it was in full and final settlement of the claim. If the plaintiffs believed that the amount of the cheque fell short of the sum legally due to them, the obvious course for them to adopt was to write immediately to the General Manager, while retaining the cheque with them, that they would not accept the amount of the cheque as fully settling their claim, and that if he (the General Manager) would not agree with them they would send back the cheque to him or treat it in partial satisfaction of their claim. It was further observed that the plaintiffs should have proceeded to deal with the cheque, only after getting a reply from the General Manager to such a communication. The High Court also observed that had the plaintiff written to the General Manager before encashing the cheque, he may have been withdrawn the proposal made by him, but by getting the amount of the cheque first and then writing a letter to the General Manager that its amount did not satisfy their claim fully, the plaintiffs placed the General Manager in a situation where he could not be restored to his former position. The High Court held that the plaintiffs having encashed the cheque, without first communicating to the General Manager that they did not agree to the proposal made by him, they must be assumed, in terms of Section 8, to have accepted his proposal by mere acceptance of the consideration of Rs. 1173.19. It was further held that the subsequent letter sent by the plaintiffs, denying that

the amount of the cheque had fully settled their claim would not alter the position in any manner to the detriment of the defendants.

In Behari Lal v. Radhye Shyam AIR 1953 ALL745, the defendants made a proposal to the plaintiffs by his letter, enclosing a cheque, offering the money under that cheque, in full satisfaction of the rent, subject to the condition that the plaintiff gave him a credit for the sum, which, according to him, was spent in the repair of the bungalow. It was held that the plaintiff shall be deemed to have accepted the correctness of the sum which the defendants claimed to have spent towards the repairs and it was not open to him to turn around and say that he has accepted the cheque in part satisfaction and was disputing the amount spent on repairs.

In New India Insurance Company Ltd. Vs. Ghulam Mohi-ud-din, the High Court observed that when a party accepts the claim in full and final settlement, then that party is stopped by his act and conduct to raise the issue that the claim had not been settled. In taking this view, the High Court placed reliance upon the decision of Supreme Court in Nathani Steels Ltd. v. Associated Constructions

I, therefore, have no hesitation in holding that having encashed a cheque of Rs.1,40,113.77/-, the plaintiff/respondent was not entitled to any further payment from the appellant/defendant. The issues are decided in favour of the defendant/appellant and against the plaintiff/respondent.

In view of the findings recorded by me on the issues, the impugned judgment and decree dated 27.01.2003 are hereby set aside. However, in the facts and circumstances of the case, there shall be no order as to costs either in the suit or in the appeal.