

(2021) 11 DEL CK 0213

In the Delhi High Court

Case No : Regular First Appeal (COMM) No. 22 Of 2021

Jai Shiv Steel Enterprises & Anr

APPELLANT

Vs

Manish Aggarwal & Anr.

RESPONDENT

Date of Decision : 26-11-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11
Arbitration And Conciliation Act, 1996 — Section 9, 23(4), 29A
Commercial Courts Act, 2015 — Section 12A, 12A(3)
Negotiable Instruments Act, 1881 — Section 138(b), 138(c)
Limitation Act, — Section 18

Citation : (2021) 11 DEL CK 0213

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Amardeep Maini

Final Decision : Dismissed

Judgement

Navin Chawla, J

CM 42323/2021(exemption)

Allowed, subject to all just exceptions.

RFA(COMM) 22/2021

1. This appeal has been filed by the appellants challenging the order dated 06.09.2021 passed by the learned District Judge (Commercial Court)-02, District West, Tis Hazari Courts, Delhi in Suit being CS(COMM) No.260/2021, dismissing the suit filed by the appellant as being barred by limitation and accordingly, rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908.

2. The above suit was filed by the appellants seeking a recovery of 7,00,121/- (Rupees Seven Lakhs One Hundred Twenty One only) along with interest from the respondents, alleging therein that the respondent no.1 is the nephew of the appellant no.2 and the proprietor of respondent no.2.

3. The plaint further alleges that the respondents had purchased old iron Rails unserviceable items from the appellants and also got an amount of 1,00,000/- (Rupees One Lakh only) through cheque dated 18.04.2015. The respondent no.1 had agreed to pay interest at the rate of 18% per annum of due amount. The appellants claimed that the respondents were liable to pay a sum of 3,36,597/- (Rupees Three Lakhs Thirty Six Thousand Five Hundred Ninety Seven only) and also interest at an agreed rate of 18% per annum amounting to 3,63,524/- (Rupees Three Lakhs Sixty Three Thousand Five Hundred Twenty Four only) from 01.04.2015 to 31.03.2021, thereby totaling of an amount of 7,00,121/-. It was averred that as the respondents failed to pay the said amount, the appellants claimed the same by way of a legal notice dated 13.10.2020. The respondents, however, by reply dated 26.10.2020 denied the liability. The appellants thereafter issued a rejoinder notice dated 08.11.2020, however, as the amount was still not paid nor the respondents appeared before the New Delhi District Legal Services Authority for pre-litigation mediation, the appellants filed the above suit seeking recovery of the amount due.

4. To bring the suit within the period of limitation, the appellants pleaded as under:

"10. That Defendants are liable to pay above said amount jointly and severally. Defendants have not paid the above said amount to Plaintiffs in spite of the demand by the Plaintiffs. Defendants have also not appeared before New Delhi District Legal Services Authority for pre-litigation mediation. Hence, this suit. Defendants have admitted that they were liable to pay an amount of Rs. 3,36,597/- but falsely stated in reply to notice that Defendants have paid the said amount to Plaintiffs. Defendants have admitted their liability to pay the suit amount to Plaintiffs in their balance sheets which they have submitted before Income Tax Authorities for the financial years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20.

11. That cause of action arose to Plaintiffs against the Defendants on different dates when Plaintiffs supplied the goods to Defendants. Cause of action also arose to Plaintiffs against Defendants on 13/10/2020 when Plaintiffs sent a legal notice to the Defendants. It also arose on 08/11/2020 when Plaintiffs sent a Rejoinder to Defendants. Cause of action further arose to Plaintiffs against Defendants on 05/12/2020 when Plaintiffs filed application for Pre-Litigation Mediation before West District Legal Services Authority, Tis Hazari Courts, Delhi. Cause of action further arose to Plaintiffs against Defendants on 08/01/2021 when WDLSA supplied Non-Starter Report to Plaintiffs. That cause of action is continuing one. As per section 12(A)(3), period during which parties remained occupied with pre-institution mediation, such period shall not be computed for the purpose limitation under the limitation 1963. Period from 05/12/2020 to 08/01/2021 to be excluded for the purpose of limitation, so suit of the Plaintiff is within limitation. Hon'ble Supreme Court of India in *Suo Moto Writ Petition (Civil) No.3 2020* has issued the following directions:

1. In computing the period limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

So, suit of the Plaintiff is within limitation. Cause of action is also continuing one."

5. As noted hereinabove, the learned District Judge, vide his impugned order, however, has been please to dismiss the suit observing as under:

"5. Indisputably the suit is beyond the point of limitation as the liability crystallized on 01.04.2015. Admittedly the suit has been filed on 08.04.2021. Further, Ld counsel has admitted that they have not filed a single document which according to him is the basis on which he has claimed that the amount is recoverable from the defendant as he had mentioned the same in the balance sheet filed with the Income Tax Authorities.

6. Ld counsel on behalf of plaintiff argued that the defendant has mentioned in their balance sheets their liability thereby acknowledging their debt and therefore the period of limitation can be extended. It is further submitted that limitation is a mixed question of fact and law and hence can only be decided after the parties lead their evidence.

xxxx

9. In the present case, the plaintiff has stated in the plaint that defendant admitted their liability in their balance sheet filed before the Income Tax Authorities but there is not a single document on record to support the same. The pleadings of the plaintiff in fact stated in the plaint alongwith the document filed in support. To my mind the bald statement in the plaint which is based on some imaginary documents without the document being on file cannot amount to mixed question of law and facts.

10. Bald statement in the plaint, in my most respectful opinion would be therefore, question of law and undoubtedly the suit is filed beyond the period of

limitation there being no acknowledgement on record, I am of the opinion that plaint is liable to be rejected under Order VII Rule 11 CPC."

6. The learned counsel for the appellants submits that the learned District Judge has wrongly held the suit to be barred by limitation. He submits that there was an admission of liability by the respondents in the balance sheets submitted by them before the Income Tax Authorities for the Financial Years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20. This was specifically pleaded by the appellants in the plaint. The appellants had also listed the said documents in the List of Reliance. He submits that the learned District Judge, instead of dismissing the suit, should have called upon the respondents to produce these balance sheets.

7. We have considered the submissions made by the learned counsel for the appellants, however, find no merit in the same.

8. As rightly observed by the learned District Judge in his impugned Order, barring making a bald averment of admission of liability by the respondents in their balance sheet, not a shred of documentary evidence has been filed in support thereof by the appellants with the plaint. Even in the legal notice dated 13.10.2020, there is no mention of such balance sheets. The respondents in their reply dated 26.10.2020 to the legal notice, denied their liability and stated that the said amount already stood paid/repaid. In the rejoinder notice, the appellants merely contended that the respondents assured him that the amount claimed has been shown in the books of accounts as well as in the balance sheets of the respondents and in fact called upon the respondents to produce the said balance sheets and the books of accounts.

9. There can be no doubt to the proposition that the entry made in the books of accounts, including balance sheets, can amount to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act, 1963 (hereinafter referred to as 'the Act') however, in the present case, barring making a bald averment, no document in the form of books of accounts or balance sheets of the respondents has been placed on record by the appellants along with the plaint or with the present appeal. It was for the appellants to produce these documents as the appellants was seeking an extension of period of limitation based thereon. It is a settled law that Section 9 of the Act is to be strictly adhered to and once the time begins to run, it cannot be halted, except by a process known to law. The Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 also requires the plaintiff to file all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him.

10. In the facts of the present case, we, therefore, find no infirmity in the order passed by the learned District Judge.

11. The appeal is accordingly dismissed. There shall be no order as to costs.