(2018) 11 DEL CK 0296

In the Delhi High Court

Case No : Regular First Appeal No. 462 Of 2017

Sarvesh Security Services Pvt Ltd APPELLANT

Vs

Centre For Development Of Telematics RESPONDENT

Date of Decision : 27-11-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96, Order 12 Rule 6, Order 7 Rule 11
Limitation Act, 1963 — Section 18

Citation : (2018) 11 DEL CK 0296

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Sheha Singh, Balaparameshwari K.

Final Decision : Dismissed

Judgement

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment

of the trial court dated 16.01.2017 by which the trial court has rejected the suit plaint as time barred under Order VII Rule 11 CPC. In fact, when a

suit is dismissed as time barred, the judgment would actually be under Order XII Rule 6 CPC and not under Order VII Rule 11 CPC vide Prem Lata

Nahata and Another v. Chandi Prasad Sikaria, (2007) 2 SCC 551.

2. The subject suit was filed by the appellant/plaintiff for recovery of Rs. 28,46,758/- claiming that the appellant/plaintiff provided security services to

the respondent/defendant in terms of the Agreement dated 01.11.2007, and that payment for the security services rendered from 01.02.2010 to

18.05.2010 has not been paid, and hence the subject suit was filed.

3. The trial court has held that since the amount claimed is for the period from 01.02.2010 to 18.5.2010, the suit could have been filed at best within

three years from 18.05.2010, but the suit filed in August, 2014 i.e. after a period of three years, and therefore the suit plaint was rejected as time

barred.

4. I do not find any error in the impugned judgment because the suit was filed on 04.08.2014 and the entitlement to claim security services charges for

01.02.2010 to 18.05.2010 arose in the month of March to June, 2010, and therefore suit could have been only filed till June, 2013, but the suit has been

filed much later in August, 2014, and therefore the suit has been rightly dismissed as time barred.

5. The ld. counsel for the appellant/plaintiff argued by placing reliance upon the letter dated 19.09.2012 of the respondent/defendant that the same

constitutes an acknowledgment of debt under Section 18 of the Limitation Act, 1963 and for this purpose reliance is placed upon the judgment of the

Supreme Court in the case of Food Corporation of India v. Assam State Cooperative Marketing and Consumer Federation Ltd. and Ors., (2004) 12

SCC 360. Reliance is also placed upon the judgment of the Supreme Court in the case of Lakshmirattan Cotton Mills Co. Ltd. and Ors. v. The

Aluminium Corporation of India Ltd., (1971) 1 SCC 67.

6. There is no dispute to the proposition of law as laid down in the aforesaid two judgments but before an acknowledgment of debt is an

acknowledgment of debt there must be an admission of the liability, though the acknowledgement may dispute the payment, but in any case there must

be an acknowledgment of a jural relationship of debtor and creditor. In my opinion, the letter dated 19.09.2012 issued by the respondent does not in

any manner admit any liability towards the appellant/plaintiff or in the same in no manner admits that the respondent/defendant is the debtor of the

appellant/plaintiff. The letter dated 19.09.2012 reads as under:-

â??19.09.2012

To,

M/s Sarvesh Security Services Pvt. Ltd.

419, Pocket E,

Mayur Vihar, Phase II,

New Delhi-110091

Sub: Regarding non-remittance of EPF and ESI

Sir,

Please refer to our various letters written to you regarding non-payment of PF/ ESI to the security staff engaged by you in C-DOT during the contract

period from 01.11.2007 to 18.05.2010.

Our CAG Auditors, DOT Performance Auditors and Internal Audit Reports have observed that PF has not been credited to the account though

payment has been released by C-DOT fulfilling the responsibility of the principal Employer. However you have not remitted the EPF and ESI

contribution though mentioned in the payment sheets. You have left C-DOT rather fled C-DOT with EPF and ESI contribution of more than 30 lacs

besides non-payment to labourers.

You are hereby directed to remit the amount to C-DOT within fifteen days of receipt of this letter failing which the matter will be reported to the

appropriate authorities for flouting the statutory requirement.

Sd/-

Manager (Admin)â??

7. In view of the aforesaid position, in my opinion, suit has been rightly dismissed as time barred as the suit was not filed within limitation period of

three years and the letter of the respondent/defendant dated 19.09.2012 does not fall under the acknowledgment of liability under Section 18 of the

Limitation Act.

8. There is no merit in this appeal. Dismissed.