
(2011) 02 DEL CK 0329

In the Delhi High Court

Case No : Regular First Appeal No. 31 of 2011

Shree Lakshmi Venkatesh Cargo Movers and Consultants

APPELLANT

Vs

Ambuja Cement Rejasthan Limited

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Limitation Act, 1963 — Article 113, 22, 18

Citation : (2011) 122 DRJ 497

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.N. Choudhri and Rajiv Mehra, for the Appellant; Anil Kumar Sethi and Mithun K.S. Rathore, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The challenge by means of the present Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 9.11.2010 whereby the suit of the Appellant/Plaintiff was dismissed as being barred by time by deciding the issue as a preliminary issue. For arriving at a conclusion that the suit is barred by time, the trial Court held that the suit for recovery of the deposit was not governed under Article 22 of the Limitation Act, 1963 but was in fact governed by the Article 113 of the said Act and that the acknowledgement of debt dated 7.3.2001, was not an acknowledgment of debt within the meaning of Section 18 of the Act because it referred to a deposit existing in the books of account on a date before three years.

2. The facts of the case are that the Appellant/Plaintiff was appointed as a C& F agent of the Respondent cement company vide an agreement dated 21.1.1997. This Agreement was admittedly for a period of two years. Security deposit of Rs. 6 lacs was paid by the Appellant to the Respondent under Clause 4 of this Agreement and which reads as under:

Clause 4 Security Deposit:

In consideration of the due performance of the terms and conditions of this agreement, the C & F Agent will provide security deposit in favour of the Company for such amount which will be intimated to the C & F Agent by separate letter. The deposit will be proved by way of Demand Draft/pay order in favour of the Company. Company will pay interest on the security deposit at such rate and at such intervals as may be intimated from time to time. The security deposit may be forfeited to recovery any amount from the C&F Agents which is outstanding beyond the stipulated credit period or in the event of violation of any terms and conditions of this agreement. The security deposit may also be forfeited in case, the C&F Agent does not start functioning as C&F Agent, in terms of this agreement, effective from the date intimated to him by the Company.

3. There was no business which was conducted between the parties after 31.3.1998. The Appellant/Plaintiff sent its notice of demand claiming back payment of the security deposit by means of a letter dated 29.11.2002 and since the same did not bring positive result the suit was filed on 15.9.2003.

4. As already stated, by the impugned judgment and decree, the trial Court has held that the Article 22 of the Limitation Act, 1963 does not apply because in the subject Agreement, it is not provided that the deposit is repayable on demand. The conclusion, therefore, arrived at by the trial Court was that the amount deposited as security became due at the end of the period of the agreement viz on 21.1.1999.

5. I am afraid the findings, conclusions and the legal position as enunciated by the trial Court is wholly illegal and perverse. In law, there is a vital difference between an amount paid as a deposit without a fixed date of repayment and other amounts which are otherwise payable to the Plaintiff either towards loan or otherwise. By the very nature of a deposit the same is not repayable on a specific date and therefore it becomes repayable only on a demand being issued. The crucial difference between a deposit and any other amount which is payable is that the entitlement for refund of the security amount given as a deposit is that since the security deposit is deposited without any repayment date being fixed, it is necessary to raise a demand to seek repayment of the deposit. It is, therefore, not required to be stated in an agreement that the deposit has to be "payable on demand" inasmuch as this is very much implicit in a deposit which is made with respect to which there is no specific date of repayment. I may state that in an agreement such as the present there is intentionally not stated a date of repayment because after the contract comes to an end there is always a reconciliation of accounts and it is only after reconciliation of accounts that it is known that whether security deposit has become repayable or not i.e. whether it is or is not to be adjusted towards any dues of the person with whom the deposit is made. The findings and conclusions of the trial Court are therefore set aside where it holds that the Article 22 of the Limitation Act does not apply. Since in

the present case demand was made on 29.11.2002 and the suit was filed on 15.9.2003 is very much within limitation. During the course of arguments, I put it to the learned Counsel for the Respondent as to whether after the period of agreement came to an end on 21.1.1999, whether any letter/notice was issued by the Respondent to the Appellant that the security deposit amount was forfeited and was therefore not repayable. Learned Counsel for the Respondent had no option but to concede that no such letter/notice was written by the Respondent to the Appellant for forfeiture of the deposit. If that be so, the security deposit amount would lie with the Respondent either till there is an actual settlement of account between the parties or a denial to repay the amount or failing which a demand is raised by the Appellant upon the Respondent, which in this case was made on 29.11.2002 and therefore the suit filed on 15.9.2003 was clearly within limitation.

6. The second finding of the trial Court that the letter dated 7.3.2001 does not amount to an acknowledgment of debt as per the parameters of Section 18 of the Limitation Act, is once again wholly illegal and perverse. In order to appreciate the respective arguments, it is necessary to refer to this letter and which reads as under:

Dated 07/03/2001

Shri Lakshmi Venkatesh Cargo

7, Sanyogita Colony

Indore-452001

Re: Confirmation of balance as on 31.03.98

Sir,

Please confirm the following:

1. Receipt of deposit by us during financial Year 1997-98: Rs. 200,000/- 2. Closing balance as on 31.03.1998: Rs. 600,000/- The same is required for our income tax assessment proceedings u/s 143(2) for financial year 1997-98 (Assessment year 1998-99). In case we do not get any reply from you till 15.03.2001, above details will be deemed to be confirmed. Please also mention your Pan No. GIR No. & Ward/Circle where you are assessed.

Thanking You,

For Ambuja Cement Rajasthan Limited

Authorised Signatory.

7. The trial Court has held that since this letter showed the liability only on 31.3.1998, the suit which was filed on 15.9.2003 was barred by limitation. Learned Counsel for the Respondent, before this Court, placed reliance upon the decision of the learned Single Judge of this Court in the case of R.K. Chemicals

Vs. Kohinoor Paints Faridabad Pvt. Ltd. (P) Ltd. and Another, to canvass that acknowledgment must be of a subsisting liability and that the letter dated 7.3.2001 does not talk of a subsisting liability but talks of a liability only due on 31.3.1998 and not on 7.3.2001. Learned Counsel for the Respondent has placed further reliance upon the decision of the Division Bench of Bombay High Court reported as Kashinath v. New Akot Ginning and Pressing Company Limited 1949 Indlaw MUM 111 and which was upheld by the Supreme Court in the case bearing the same title and reported as Kashinath Sankarappa Wani v. New Akot Cotton Ginning and Pressingco., Limited 1958 Indlaw SC 21.

8. The argument of the learned Counsel for the Respondent relying upon the aforesaid decisions is clearly misplaced because a reference to the letter dated 7.3.2001 talks not of past liability but of an existing liability because reference is to a deposit existing in the books on 31.3.1998. A reference to a deposit, by its very nature, therefore, means reference was made to an amount due and payable, unless, the Respondent was able to show that the liability towards the deposit was denied at any subsequent point of time. Admittedly, liability with respect to the deposit which was made during the financial year 1997-98 and was therefore a closing balance on 31.3.1998 which was due and payable as a liability towards the depositor and the aforesaid letter dated 7.3.2001 cannot by means of any stretch of imagination be interpreted to refer to a past liability. The expression "past liability" is a very specific expression which deals with a specific liability which has become time barred. The very nature of the closing balance on 31.3.1998 being of a deposit is a clear cut indication that the acknowledgment is of a liability of a deposit, and which liability cannot become time barred unless the suit is not filed within three years of the date of making of a demand or within three years of refusal to make the payment of the same by the Respondent so done by a letter/notice of forfeiture or seeking to refuse payment on any other ground. The decision of the Division Bench of the Bombay High Court in Kashinath (supra), and which was carried up in appeal in Supreme Court, has no application to the facts of the present case because in the said case deposit was repayable on a specific date of the end of a 12 month period, and hence it was not a deposit within the meaning of this expression as found in Article 22 of the Limitation Act, 1963.

9. In view of the above, the impugned judgment and decree is set aside. The suit of the Appellant/Plaintiff is held to be within limitation. Nothing contained in this judgment will, however, prejudice the right of the Respondent to plead and prove its entitlement for forfeiture of the said amount if the need so arises on the accounts being taken between the parties. I, of course, hasten to add that this would be an issue which will have to be pleaded and proved by the Respondent in the trial Court.

With the aforesaid observations, the appeal is disposed of as allowed. Parties are left to bear their own costs. Trial Court record be sent back.

10. Parties to appear before the trial Court on 15th March, 2011.