
(2015) 06 GAU CK 0077
In the Gauhati High Court
Case No : RFA No. 13 of 2008

Siotia Steels Ltd.

APPELLANT

Vs

National Building Construction Corporation Ltd. and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 16, 151, 80
Contract Act, 1872 — Section 25, 25(3)
Evidence Act, 1872 — Section 3, 34
Limitation Act, 1963 — Section 18

Citation : (2015) 4 GLT 686

Hon'ble Judges : Nishitendu Chaudhury, J.

Bench : Single Bench

Advocate : S.P. Roy, Advocate, for the Appellant; A. Thakur, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Nishitendu Chaudhury, J.—This regular first appeal is directed against the judgment and decree dated 12.07.2007 passed by learned Civil Judge (Sr. Divn. No. 1) at Guwahati in Money Suit No. 192/2000 dismissing the suit of the plaintiff in entirety. Present appellant, as plaintiff, instituted Money Suit No. 192/2000 stating that it is a company registered under the Companies Act, 1956 and "a registered S.S.I., unit under the Directorate of Industries, Government of Assam vide No. 020504450. It has manufacturing units of M.S. Rods, TOR steels of various sizes at Dharapur at Guwahati and is engaged in sale and supply thereof to various buyers including the departments of the Government of Assam. The Chief Project Manager of the defendant No. 2 invited sealed quotations from manufacturers/suppliers for supply of steel and cement on 29.01.1993 and plaintiff submitted quotations on 09.02.1993 whereupon the Chief Project Manager of defendant No. 2 placed supply orders on various dates for supply of steels at different working sites of defendants No. 1 and 2 as per the supply orders. The defendants assured the plaintiff of making payment within

14 days from the date of delivery of goods. Accordingly, plaintiff supplied goods on various dates from 24.02.1993 upto 26.05.1993 on as many as 44 occasions. Plaintiff also submitted bills w.e.f. 24, 26/02/1993 till 27.05.1993 against individual supply orders. Plaintiff served to the defendant No. 2 the copies of letters dated 12.03.1993 of Steel Authority of India (SAIL) along with their letters dated 12.03.1993, 13.03.1993, 20.03.1993 and 22.03.1993 claiming the payment of local freight for materials delivered within Guwahati and also to make the payment due to increase in price of materials w.e.f. 27.02.1993. But despite repeated requests by the plaintiff and assurances from the defendant No. 2, the payments were not made. Plaintiff wrote letters to the defendants on 23.03.1993, 04.03.1995, 14.03.1995, 25.08.1995, 06.10.1995, 03.11.1995, 24.05.1996, 20.07.1996, 15.02.1997, 31.03.1997, 29.04.1997, 04.06.1997, 14.07.1997, 22.06.1998 and 20.10.1999 requesting for payment of outstanding bills and ultimately by letter dated 20.10.1999 plaintiff informed the defendants that an amount of Rs. 23,697.45 was yet payable by the defendants. By that letter plaintiff contradicted that the defendant No. 2 had wrongly described the unpaid amount to be Rs. 14,012.15 and Rs. 2,500/- for supplies to Agartala and Naltoli work sites of the defendant No. 2. Payment of Rs. 33,199/- to the plaintiff was also due to increase in price as condition No. 10 and 11 of the quotation of the plaintiff. Defendant No. 2 by letter dated 22.02.1997 informed the plaintiff that the earnest money of Rs. 5,000/- would be refunded for which cheque is ready for collection by the plaintiff. By that letter defendant No. 2 informed the plaintiff that he was going to write letters to the units at Agartala, Biswanath Chariali and Naltoli for examining the claims of the plaintiff and to settle the claims. By letter dated 13.05.1997, the Manager Finance of the defendant No. 2 asked the plaintiff to correspond directly to the unit in-charges where supplies were made for outstanding payments. Thereafter by letter dated 30.06.1997, defendant No. 2 informed the plaintiff that units in-charges of the defendant No. 2 have already been requested to release the pending dues to the plaintiff and by letter dated 11.11.1999 unit in-charge of Agartala was also accordingly requested. Plaintiff manufactured and supplied the goods to defendants by taking loan from S.B.I., Main Branch and paid interest at various rates between the period from 1992 to 2000 and thereupon obtained certificates on 23.02.1996, 03.08.1998, 02.12.1998 and 22.06.1999 showing the rates of interest charged by the bankers on various dates. Plaintiff claimed that business transactions with defendants are duly maintained by them in their respective Books of Accounts in ordinary course of transactions of the business and that the accounts are running and continuous. The claim of the plaintiff, therefore, is within the period of limitation. Plaintiff also claimed interest under "The Interest on Delayed Payment to a Small Scale & Ancillary Undertaking Act, 1992". Accordingly, a demand notice was sent to the defendants under section 80 of the Code of Civil Procedure which was duly received by them. But as no payment has been made, plaintiff instituted the suit for realization of Rs. 23,968/- being the principal amount for materials supplied to the defendants, Rs. 33,199.30 being the price of escalation, Rs. 18,060.23 being the local freight charges, Rs. 14,06,052.48 being the

interest upto 31.07.2000 as per the provisions contained in the Interest on Delayed Payment to a Small Scale and Ancillary Undertaking Act, 1992 and also for pendente lite and future interest.

2. On being summoned, the defendants appeared and submitted written statement. They also submitted additional written statement after the plaint was amended by the plaintiff. The pleaded case of the defendants is that there is no cause of action, that the suit is not maintainable, that the suit is barred by limitation, that there was no assurance from the defendants in any point of time to make payment within 2 (two) weeks of the supply and/or to make payment immediately of 90% on there despatched documents. The defendants specifically asserted that whatever bills were submitted by the plaintiff was paid keeping no balance and there was no further bill to be submitted and paid. The defendants denied that Rs. 23,968/- or any other amount is lying outstanding. Defendants denied to have admitted any outstanding amount of Rs. 14,012.15 or Rs. 2,500/- as freight charges for supplies to Agartala and Naltoli. Defendants also denied that plaintiff was entitled to Rs. 33,199.30 as price escalation. According to the defendants, there was no ordinary dealing or business between the plaintiff and defendants and there was no open and mutual Books of Accounts between them. They also denied that there was any running and continuous accounts. According to them, such a statement was merely concocted for the purpose of making out case on limitation. The defendants denied that they have violated any of the provisions of the Interest on Delayed Payment to a Small Scale and Ancillary Undertaking Act, 1992 and so they denied their liability of making any payment under this Act. It was specifically asserted that defendants received payments against their respective bills without any objection for any alleged delay and so claim on interest to the tune of Rs. 11,07,817.83 was untenable. In paragraph 22 of the written statement the defendants totally denied their liability to make any payment. In paragraph 25 of the written statement it is pleaded that there is no amount which is still outstanding in favour of the plaintiff against supply of materials and all bills were paid in full to the final satisfaction of the plaintiff without any iota of objection. Supplies were made in the year 1993, bills were prepared accordingly but the suit having been instituted in the year 2000, plaintiff is not entitled to any relief. In paragraph 28 of the written statement the defendants claimed that the system of alleged supplies against orders does not require keeping of Books of Accounts so as to enable the plaintiff to bring a suit at the time when it suits to it. With these averments, defendants prayed that the suit be dismissed with exemplary cost. In the additional written statement, defendants reiterated that the entire claim of the plaintiff is barred by limitation and that plaintiff is never a small scale or ancillary industrial undertaking. It was reiterated that mutual, open and running account between the plaintiff and defendant did not exist and each supplies is an independent one without any relation with the other.

3. Upon such rival contentions of the parties, the learned trial court framed as many as 10 (ten) issues and subsequently, an additional issue being additional

issue No. 10(A) was framed. The issue No. 8 was re-cast on 10.07.2007. All these issues as on the date of final hearing are as follows:-

- (1) Whether the suit is maintainable in its present form?
- (2) Whether there is cause of action for the suit?
- (3) Whether the plaintiff is SSI Unit or not?
- (4) Whether the defendants have placed supply orders to the plaintiff for supply of steel to the different working sites of defendant No. 1 and 2 or not?
- (5) Whether the plaintiffs have supplied the steel to the defendants as per their supply orders and to their satisfaction or not?
- (6) Whether the plaintiffs had submitted the bills for Rs. 55,35,570.50 towards supply of steel to the defendant No. 2 or not?
- (7) Whether the defendants had failed to pay the principal bill amount of Rs. 23,968/- to the plaintiff or not and whether the defendants had failed to pay the freight charges and price escalation amount to the plaintiff or not against the supply of bills?
- (8) Whether the plaintiff is entitled to get interest under the provision of the Interest on Delayed payment to Small Scale and Ancillary Industrial Undertaking Act, 1993?
- (9) Whether the plaintiff is entitled to get a decree as prayed for (as amended or not)?
- (10) To what other relief/reliefs the parties are entitled?
- (10A) Whether the suit is barred by limitation?

4. Both the sides examined one witness each in support of their claim. Plaintiff adduced and exhibited as many as 150 documents while defendants did not adduce any documentary evidence. Considering this evidence on records, the learned trial court passed impugned judgment and decree dated 12.07.2007 deciding issue No. 1, 2, 3, 4, 5, 6 and 10A in favour of the plaintiff but issue No. 7, 8, 9 and 10 against the plaintiff. Consequently, the suit of the plaintiff has been dismissed in entirety.

5. Coming to the question of limitation under issue No. 10A, the learned trial court did not accept the contention of the defendants that there was no valid acknowledgment of liability by the defendants within the period of limitation. According to the learned trial court, Ext. 60 shows that last supply was made on 26.05.1993 and the period of credit expired on 09.06.1993. Limitation started running from that date for 3 years but beyond the period of limitation on 20.02.1997, the defendants acknowledged liability vide Ext. 29 and thus in view of provision of section 25(3) of the Contract Act a fresh contract as well as a new cause of action arose on that date i.e. 20.02.1997. But within 3 years from that

date on 11.11.1999, defendants acknowledged the liability vide Ext. 132 though it was not addressed to the plaintiff. The suit having been instituted on 18.08.2000 within a period of 3 years from 11.11.1999, it was well within the period of limitation and consequently issue No. 10A was decided in favour of the plaintiff. While deciding issue No. 7 against the plaintiff, the learned trial court noticed that plaintiff claimed Rs. 23,946/- being the principal amount for materials supplied, Rs. 33,199/- being the price escalation and Rs. 18,620.23 towards local freight charges. PW 1 exhibited all supply orders vide Exts. 8 to 16, all delivery challan vide Exts. 17 to 60 and all bills as Exts. 61 to 107. By Exts. 109 to 110 defendants were intimated about the increase of price and by Ext. 111 dated 23.03.1993 defendants were requested by the plaintiff to amend the purchase order. The learned trial court further noticed in Ext. 111 that there was no clause for price escalation and Ext. 112 did not disclose as to whether defendants were required to make payment of freight for materials delivered and unloaded within Guwahati. Since the plaintiff made the supply knowing all the clauses, it is not entitled to price escalation or reimbursement of freight charges. Considering the exhibited documents, the learned trial court did not find anything to show that any bill remained unpaid whereas by Ext. 141 which is lawyer's notice dated 09.03.2000 plaintiff claimed Rs. 56,897.30. The suit was instituted on 18.08.2000 for a sum of Rs. 75,787.53 as the outstanding principal. Accordingly, the learned trial court arrived at the finding that plaintiff could not prove its claim of Rs. 23,968/- towards principal.

6. Issue No. 8 relates to claim of the plaintiff under the provision of the Interest on Delayed Payment to Small Scale and Ancillary Undertaking Act, 1993. Having noticed that plaintiff is not entitled to get any amount towards price escalation, the learned trial court summarily decided the issue against the plaintiff and in the negative. This being the position, issue No. 9 and 10 were also decided against the plaintiff. It is this judgment which has been brought under challenge in the present appeal.

7. In view of the facts and circumstances stated above, the points that fall for determination in this appeal are as follows:-

(i) Whether findings of the learned trial court that plaintiff is not entitled to any amount as unpaid bill, as price escalation or as freight reimbursement are erroneous?

(ii) Whether the finding of the learned trial court that plaintiff is not entitled to any amount under provision of the Interest on Delayed Payment to Small Scale and Ancillary Undertaking Act, 1993 is incorrect? If so, to what amount is the plaintiff entitled?

(iii) Whether the learned trial court erred in holding that the suit of the plaintiff is not barred by limitation?

8. I have heard Mr. SP Roy, learned counsel for the appellant/plaintiff and Mr. A Thakur, learned counsel for the respondents. I have perused the pleadings, the

depositions and the exhibits adduced before the learned trial court as well as the judgments relied on by the learned counsel for the parties.

9. Mr. SP Roy, learned counsel for the appellant, submits at the threshold that assuming for the time being that the learned trial court decided other issues correctly, finding as against issue No. 8 and consequently against, issue No. 9 and 10 are vitiated for non application of mind. The learned trial court has not made any discussion as to how the claim of the plaintiff under the provisions of the Interest on Delayed Payment to Small Scale and Ancillary Undertaking Act, 1993 is not tenable. Calling attention of the court to Ext. 4 which is the N.I.T. dated 29.01.1993, the learned counsel asserted that it was published in the North East Times and it shows that sealed quotations from manufacturers/suppliers were invited thereby for supply of steel and cement. This N.I.T. provides that rate should be quoted inclusive of all taxes and transportation charges from Guwahati to Agartala and Biswanath Chariali. Ext. 4 available on record, however, does not indicate that it was published in the N.E. Times and the document is also not available in entirety. Similarly, Ext. 5 has been relied on by the learned counsel which is a letter dated 09.02.1993 addressed to the Chief Project Manager of defendant No. 2 by the plaintiff. Seal indicated at the foot of the document shows that the Ext. 5 was compared with original by Sheristadar of the court on 15/09. This is a letter whereby the plaintiff claims to have submitted documents also discloses that the plaintiff shall allow a cash discount of Rs. 50/- in case bulk orders are placed with it. The rates quoted were stated to have valid upto 30.09.1993. Typed sheets annexed to this exhibit contained the price of steels of various sizes and it also contained a note that transportation charges from Guwahati to Agartala and Biswanath Chariali shall be respectively Rs. 1100/- and Rs. 300/- per MT. It may be noted that although at the foot of the document, the same is certified to be compared with the original by the Sheristadar of the court but the exhibited documents appear to be a one from the custody of the plaintiff only and so it was really an office copy. Ext. 6 is yet another office copy of letter dated 10.02.1993 informing that cash discount amount in tender letter was enhanced from Rs. 50/- to Rs. 350/- and other terms and conditions remained unchanged. Ext. 7 is letter dated 15.02.1993, a similar office copy of letter of the plaintiff addressed to the defendants. Supply orders are Ext. 9 to Ext. 16. Ext. 9 has been relied on by the learned counsel to show that payment term was: 2 (two) weeks from the date of delivery. Exhibits 17 to 60 are the office copies of the delivery challans which are also certified to be compared with the original by the Sheristadar of the court. The records, of course, show that they were produced from the custody of the plaintiff only. Exts. 61 to 107 are invoices sent by the plaintiff to the defendants on various dates. This document contains description of the materials supplied and the price against each of such items. Ext. 108 is letter dated 12.03.1993 addressed to the defendant No. 2 by the plaintiff enclosing copy of letter dated 12.03.1993 from the Steel Authority of India Limited (SAIL) indicating hike in ex-stockyard price by Rs. 80/- per MT due to increase in excise duty w.e.f. 27-28/02/1993 and this

added with 4% A.F.T., the amount would be Rs. 83.20 per MT w.e.f. the said date. This letter is also certified to be compared with the original by the Sheristadar of the court. But it also appears to have been produced from the custody of the plaintiff. Ext. 109 is the letter dated 12.03.1993 sent by Steel Authority of India Limited (SAIL) to the plaintiff on 12.03.1993 which shows that stockyard price has been increased because of excise duty rationalization by Rs. 80/- per MT w.e.f. 27-28/02/1993. Ext. 110 is another letter of the plaintiff addressed to the defendant No. 2 on 13.03.1993 in regard to enhancement of stockyard price at the behest of the Steel Authority of India Limited (SAIL). By Ext. III which is letter dated 20.03.1993 plaintiff requested the Chief Project Manager of defendant No. 2 to amend the supply order pressed by him in regard to enhancement of price because of hike in excise duty/levies/taxes etc. The learned counsel has also called attention of the court to Ext. 112, a letter dated 22.03.1993 addressed to the Chief Project Manager of the defendant No. 2 requesting to amend the supply order so as to allow the plaintiff to avail local freight for materials delivered within Guwahati and also to arrange for reimbursement of the unloading charges. Ext. 114 and Ext. 115 are the letters dated 04.03.1995 and 14.03.1995 respectively requesting for payment at an early date. These two letters are also certified to be compared with the original by the Sheristadar of the court. But records indicate that they were produced from the custody of the plaintiff only although the letters were addressed to the defendants. Ext. 127 is yet another demand letter dated 20.10.1999 by the plaintiff to the defendant No. 2 for Rs. 33,199.30 in all. This included outstanding of Rs. 23,697.45 as per conditions No. 10 and 11 of the offer dated 09.02.1993 and interest on the amount at the rate of 2.5% per month with monthly raised on the payment made after the appointed day of 14 days as mentioned in letter dated 16.02.1993. Ext. 127(4) is a statement of increase in rate due to increase in price of bill by Steel Authority of India Limited (SAIL) w.e.f. 27-28/02/1993 by Rs. 83.20 per MT. Thus, this claim was pursuant to Ext. 109 and Ext. 110 for which plaintiff had requested the defendants to amend the supply order vide Exts. No. 111 and 112. The learned counsel has placed much reliance on Ext. 127(4) to show that Rs. 33,199.30 was supposed to be paid by the defendants due to increase in price by the Steel Authority of India Limited w.e.f. 27-28/02/1993 by Rs. 83.20 per MT. However, learned counsel did not produce any material to show that the supply order had been subsequently amended by the defendants pursuant to request made by the plaintiff vide Ext. III and Ext. 112. To show that plaintiff has succeeded to establish its claim in regard to outstanding as well as interest due to delayed payment, the learned trial court has placed reliance on Ext. 140 and 150 which are statements allegedly prepared from respective ledger books. By these exhibits learned counsel for the appellant wanted to establish that bill were not paid in time but were paid beyond the appointed dates and so calculations were made by the plaintiff in regard to interest on delayed payment keeping in view the bank rates at relevant period of time. By calling attention of the court to Ext. 129 which is a letter dated 20.02.1997 and Ext. 130, the learned counsel would argue that defendant No. 2

wrote these letters to me plaintiff on 20.02.1997 and 13.05.1997 respectively. By Ext. 129, defendant No. 2 informed the plaintiff that cheque of Rs. 5,000/- for releasing earnest money deposit was ready and that plaintiff could arrange to collect the same. The plaintiff was also informed that the Chief Project Manager was going to write letters to Agartala, Biswanath Chariali and Naltoli units of the defendant No. 2 for examining the claims of the plaintiff and to settle the dues. The plaintiff was also assured that Biswanath Chariali unit was being asked to look into the discrepancy of Rs. 1,287.15 and to release the same if it was due. Ext. 131 is yet another letter by defendant No. 2 to the plaintiff informing the plaintiff that respective unit in-charges have been provided with copy of letter dated 28.04.1997 and 29.04.1997 to release the pending bills, if any, of the plaintiff under intimation to the issuing office. The learned counsel has placed reliance on Ext. 133 to 138 which are certificates issued by State Bank of India showing the rate of interest for working capital advances for limit upto Rs. 25,00,000/-. These exhibits do not show to whom were the certificates addressed. Be that as it may, all these certificates are certified by the Sheristadar of the court with the original. However, PW 1 who is one of the Directors of the plaintiff company, has proved signatures of the issuing authority himself without, however, examining the concerned issuing officers. Ext. 139 is a letter of the Resident Engineer issued on 25.09.2000 to the plaintiff enclosing a demand draft for Rs. 1686.60 against supply of Steel at FMTTI Project. However, this letter appears to be beyond pleading as there is no mention of this letter or its contents either in the original plaint submitted on 18.08.2000 or in the amended plaint presented on 03.11.2003. In this connection it is to be mentioned here that by order dated 30.09.2003, plaintiff was permitted to amend the plaint as per his prayer and consequently he submitted the amended plaint on 03.11.2003. It is significant to note here that despite amendment as prayed for on 30.09.2003 on other points plaintiff, for reasons best known to it, did not make any prayer for amendment of the plaint to incorporate any statement in regard to Ext. 139 and consequently the same remained beyond pleadings till the suit was disposed of. The examination-in-chief in the form of affidavit was submitted by the plaintiff on 15.09.2005.

10. Mr. SP Roy, learned counsel for the appellant, submits that it is apparent from Ext. 139 that the plaintiff made part payment after institution of the suit and so the objection raised by the defendants on the point of limitation was untenable. Relying on Ext. 140 and Ext. 150, the learned counsel would argue that the said exhibits clearly show the dates of supply orders, the date of delivery of goods and the date of partial payment made by the defendants. Accordingly, plaintiff made the calculation of the amount of interest accrued due to delayed payment and the learned trial court committed error in not considering the same while deciding issue No. 8. According to the learned counsel, suit of the plaintiff ought to have been decreed on the basis of Ext. 140 and Ext. 150 only for interest on delayed payment.

11. Per contra, Mr. AK Thakur, learned counsel for the respondents would argue

that the suit of the plaintiff is barred by limitation. The defendants never admitted liability within the meaning of section 18 of the Limitation Act. There was no admission of liability in Ext. 129 or Ext. 130 at all as argued by the learned counsel for the appellant and so the provision of section 25(3) of the Contract Act cannot arise in the case in hand. The learned trial court committed error in deciding issue No. 10A in favour of the plaintiff. According to the learned counsel for the respondents, there being no acknowledgment of liability by the defendant in any point of time either by Ext. 129 or Ext. 130 or by any other document, the learned trial court ought to have decided the issue in the affirmative and against the plaintiff thereby dismissing the suit in entirety. According to him, Ext. 139 being beyond pleading cannot be taken into consideration by the court for the purpose of adjudication of the matter and this being the position, there is no way to establish that suit has been instituted within the period of limitation.

The learned counsel would further argue that summary of statements furnished by the plaintiff as Ext. 140 and Ext. 150 are not documentary evidences at all as the same are mere extracts from various ledgers which have not been produced and proved by the plaintiff. In this connection, the learned counsel called for attention of the court to petition No. 836/2006 dated 24.03.2006 submitted by the plaintiff under Order XI Rule 16 read with section 151 of the Code of Civil Procedure. By that letter the plaintiff prayed that direction be issued to the defendants to produce the original copies of documents and in case failure on the part of the defendants to produce the same, the copies of the documents filed by the PW1 along with evidence on affidavit be treated as secondary evidence of the plaintiff. On the basis of the application dated 24.03.2006, an order was passed by the learned trial court on 20.05.2006 directing the defendants to produce the documents on or before 28.06.2006. But on 28.06.2006 defendants by filing petition No. 1566/2006 informed the court that the defendants do not possess letter dated 15.03.1993 as mentioned in petition No. 836/2006.

12. On perusal of petition No. 836/2006, it appears that a letter being No. SSL/92-93/6 dated 15.02.1993 was written by plaintiff to the defendant No. 2 and also there was statement of account prepared by the defendants regarding steels supplied by the plain-tiff and the amount due thereon upto 30.06.1994 and that original of these two documents are lying in possession of the defendants. While petition No. 836/2006 mentions about writing of letter to the plaintiff by the defendant on 15.02.1993, neither the examination-in-chief nor the petition No. 836/2006 shows as to who had prepared the alleged statement of account and as to how the defendant could get hold of it for submitting along with the examination-in-chief. By reply dated 28.06.2006 vide petition No. 1566/2006, the defendant informed the court that letter dated 15.02.1993 was not available with the defendants. But the learned trial court passed an order on the same date for exhibiting secondary evidence of both documents, namely, letter dated 15.02.1993 as well as the statement of account. This is how Ext. 150 came into existence. Showing these facts, the learned counsel for the

respondents would argue that even if the documents have been brought on record, the same cannot amount proof of content thereof and so the endorsement made in the Ext. 140 and Ext. 150 not having been proved it is not open to accept the contents of the document and consequently the sole basis for claim of the delayed payment of the plaintiff remained unsubstantiated. According to the learned counsel, plaintiff was required to prove the respective cheques as well as the forwarding letters, if any, to prove that payments were made beyond the appointed dates and this not having been proved plaintiff cannot get a decree for interest on delayed payment. According to the learned counsel, the authors of Ext. 133 to 135 not having been examined by the plaintiff lending rates of S.B.I. also was not proved by the plaintiff to get a decree. With these submissions, the learned counsel prays that appeal be dismissed with cost.

13. I have perused the pleadings and the evidence on record as well as all the judgments relied on by both sides to understand their respective contentions.

14. The claim of the plaintiff for principal amount of Rs. 23,946/- towards price on the materials supplied and of Rs. 33,199/- being the price escalation and of Rs. 18,620.23 towards local freight charges have been considered by the trial court while deciding issue No. 7. Ext. 8 to 16 are the supply orders placed by the plaintiff and Ext. 17 to 60 are the delivery challans against these supplies. Plaintiff submitted bills vide Ext. 61 to 107 to the defendants. The plaintiff relied on Ext. 109 and Ext. 110 on assertion of its claim for escalation. Thereafter vide Ext. III, plaintiff requested the defendants on 20.03.1993 to amend the purchase order. Perusal of Ext. 111 shows that plaintiff requested the Chief Project Manager of the defendant to amend this purchase order in view of increase in excise duties/levies/taxes etc. According to the plaintiff, as communicated vide Ext. 111, it had clearly indicated at Sl. No. 10 and 11 of its quotation about the quoted price being on prevailing date and there is indication about increase in excise duties/levies etc. The plaintiff was aware that those conditions were not indicated in the supply order placed by the defendants and so requested the defendants to incorporate escalation clause in the supply order by amending the same. The learned trial court held that the plaintiff made the supply knowing well about the content of the supply orders and so it was not entitled to escalation charges. This is because plaintiff made a request to the defendants for amending the supply orders for the purpose of incorporating escalation clause. There is nothing on record to show that such amendment was made by the defendants on the request of the plaintiff and so the learned trial court committed no error in holding that plaintiff is not entitled to escalation charge. Similarly vide Ext. 112 plaintiff made request to the Chief Project Manager of the defendant No. 2 to amend supply order for allowing local freight for materials delivered within Guwahati and to arrange for unloading charges. For the same reason as applicable to the claim of escalation charges, the request for local freight was also found to be untenable in the absence of corresponding and consequent amendment of the supply orders. Ext. 111 and Ext. 112 go to show that prayer for escalation and prayer for local charge, unloading charge were made by the

plaintiff subsequent to issuance of the supply orders and so it cannot be said that defendants agreed to pay these charges before placing the order for supply. Learned counsel for the appellant could not give any convincing reply against such findings of the learned trial court recorded against issue No. 7. I have perused these exhibits and thereupon I could not find out any reason as to why the view taken by the learned trial court in this regard should be reversed.

15. The plaintiff apart from proving the supply orders, the delivery challans and the bills did not prove any other document issued by the defendants to show the payments made by the defendants from time to time. Defendants made payments by cheque and so there would have been no difficulty on the part of the plaintiff to call for relevant documents including the cheques or their forwarding letters so as to establish the dates of payment against respective bills of the plaintiff. In the examination-in-chief, the PW 1 has claimed that Ext. 140 and 150 are the statements prepared from respective ledgers to show delivery of materials to sites of the defendants and the total amount involved therein. In paragraph 21 of the examination-in-chief, plaintiff claimed to have received photocopy of statement of account regarding supply of steel to the defendants by the plaintiff and Ext. 140 is the said statement. It is claimed that it is in the possession of the defendants. In paragraph 30 of the examination-in-chief, PW 1 has not given any description as to how Ext. 150 calculation charts were prepared and by whom. It is claimed that Ext. 150 has been proved in original. Ext. 150 forms the only basis of the plaintiff for claiming payment both on account of the principal as well as of the interest. I have perused Ext. 150 which is claimed to have been proved in original. Ext. 150, as claimed, is only a calculation chart prepared by the defendants. This is prepared for claiming outstanding amount, the price escalation, the local freight and the interest accrued thereon. It contains as many as five columns in the second page regarding serial No. date of Bill, amount of Bill, cheque amount and remarks. The PW 1 remained silent as to the source of the informations furnished in these five columns at Page 2 of Ext. 150. In page 3 and 4 of this exhibit there are 6 (six) columns in regard to the calculation of interest for the period beyond 14 days from the date of bill. For instance, on 20.03.1993 the interest started for a principal of Rs. 13,523.05. There was delay of 1 day in making payment and so interest period was for one day only. The rate is furnished as 24.75 at the fifth column and the interest amount has been calculated at 9.17 in the sixth column. Thus a total of Rs. 14,81,840.01 has been calculated as total interest and shown at page 1 of this exhibit. Now question arises what is the source from which plaintiff claimed there was delay of 1 day in making payment of Rs. 13,523.05. Mr. SP Roy replied to the pointed question in this regard that the chart has been prepared from the ledger maintained by the plaintiff. If there is a ledger and the same is prepared in regular course of business, plaintiff is duty bound to exhibit the ledger and the entries made therein by a competent person who had made the entries. There is no evidence to that regard. The Ext. 150 if considered from that angle, does not appear to satisfy the requirements of section 34 of the

Evidence Act.

16. Section 3 of the Evidence Act defines document as any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter. Evidence has been classified into oral evidence and documentary evidence in the same section. Documentary evidence is a document including electronic records produced for the inspection of the court. Here in this case, plaintiff produced some sheets of papers containing calculation charts of interest and marked them as Ext. 150. Now if court is required to inspect into the correctness or otherwise of the endorsements made therein, the basic documents from which they have been derived shall be required. This is because Ext. 150 is not a document which has been prepared in regular course of business and no evidence has been led to establish the same as a Book of Account. At best a ledger may be maintained by the plaintiff for recording day to day accounts and if such ledgers are produced in accordance with law and the endorsements made therein are proved, in that event those ledgers may get the status of evidence under section 34 of the Evidence Act. But the set of loose sheets containing calculation charts of interest though marked as exhibit by the plaintiff cannot elevate it to the status of admissible evidence merely because of such marking. In the case of Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya and Others, it is held by the Hon'ble Supreme Court any statement has to be proved as a matter of fact. Proof of document does not amount to proof of facts and the contents of a document have to be proved. In the case of Alamelu and Another Vs. State represented by Inspector of Police, , the Hon'ble Supreme Court held that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the evidence of those persons who can vouchsafe for the truth of the facts in issue. The content of the Ext. 150 in the present case has not been proved by the plaintiff by leading any admissible evidence at all and in that view of the matter its contents have not been proved. The result of this finding is that plaintiff has failed to establish not only the claim of principal but also of the claim of the interest calculated from various dates as presumingly mentioned in Ext 150.

17. The plaintiff has made the calculation of the interest on the basis of some certificates issued by the State Bank of India vide Ext. 133 to 138. These certificates/letters are issued by Assistant General Manager or Manager of the State Bank of India about rate of interest in respective periods of time. For the reasons recorded above, these documents may be marked and exhibited by the court but the contents of these documents could have been proved only by examining the person who had issued the same. In that view of the matter it is also difficult to hold that lending rate of State Bank of India has been duly proved by the plaintiff in accordance with law. Accordingly, the first two points for determination are decided against the plaintiff.

18. Now the crucial question arises as to whether the suit of the plaintiff has been filed within the period of limitation though this point has been decided by the learned trial court in favour of the plaintiff vide issue No. 10A. The learned trial court found that vide Ext. 60, last supply was made by the plaintiff on 26.05.1993 and the period of credit expired on 09.06.1993. According to learned trial court beyond the period of 3 (three) years from 09.06.1993, the defendants acknowledged liability vide Ext. 129 and so a fresh cause of action and fresh contract came into being w.e.f. 20.02.1997 when Ext. 29 was issued by the defendants by operation of section 25(3) of the Contract Act. Thereafter on 11.11.1999 defendants acknowledge liability vide Ext. 132 and so the suit instituted on 18.08.2000 was well within the period of limitation. Mr. AK Thakur, learned counsel for the respondents, has vehemently argued that the defendant did not acknowledge liability either by Ext. 129 or Ext. 130 at all and so there is no question of applying the provision section 25(3) of the Contract Act. To decide the veracity of this argument it is necessary to have a look at Ext. 129 and Ext. 130.

19. Ext. 129 is a copy of letter dated 20.02.1997 issued to the plaintiff by Chief Project Manager of the defendant No. 2. It appears by this letter the Project Manager invited the plaintiff to collect security money of Rs. 5,000/- from his office. Plaintiff was also informed that the branch units were being intimated to examine the claim of the plaintiff and to settle the dues. The plaintiff was also informed that the discrepancy in regard to Rs. 1,287.15 was being brought to the notice of Biswanath Chariali unit with request to release the same under intimation to his office, if due. The language of the letter does not conclusively disclose any commitment about entitlement of the plaintiff. The Chief Project Manager only assured the plaintiff of payment if the same was due. Both section 18 of the Limitation Act as well as section 25 of the Contract Act speaks of the expression made in writing to pay wholly or any part of any debt. Section 25(3) speaks of a promise made in writing and signed by a person to be charged therewith or by his agent generally or specially authorized on behalf to pay wholly or in part of a debt to which the creditor might have enforced payment but for limitation of suit. Here in the present case, the issuing authority of Ext. 129 is not the person authorize to pay wholly or in part any of the claims of the plaintiff and this is why by paragraph 2 and 3 he intended to request the Agartala/Biswanath Chariali and Naltoli units for examining and settling the claims of the plaintiff and that too, if the same was due. So it is really the Agartala/Biswanath Chariali/Naltoli units are the authorities liable to pay the debt, if any. Any promise, therefore, if any specifically made by those units can only constitute a promise within the meaning of Section 25(3) of the Contract Act. Even if it is assumed for the time being that Chief Project Manager who is the issuing authority of Ext. 129, is the person or agent authorize to pay on behalf of the defendants even then question would remain as to whether there was any promise to pay at all. Promise within the meaning of section 25(3) of the Contract Act has to be a promise to pay a time barred debt. Does the recital

of Ext. 129 reveal any promise? To get the reply, it is better to have a look at the language of the letter. The text of Ext. 129 is quoted below:-

"Dear Sir,

With reference to your letter cited above, we are releasing you EMD amount of Rs. 5,000/- and cheque is ready which may please be collected.

We are writing letters to our Agartala/Biswanath Chariali and Naltoli Units for examining your claims and to settle your dues.

As regard to discrepancy of Rs. 1,287.15,23 are also writing to RE, FMTTI Works, Biswanth Chariali and release the same under intimation to this office if due.

Thanking you,

Yours faithfully T. Bhattacharjee (Chief Project Manager)"

20. A perusal of the letter (Ext. 129) shows that promise, if there be any, is of writing letter to Agartala/Biswanath Chariali/Naltoli Units of the defendant No. 2 for examining and settling claim of the plaintiff provided the same was due. It does not appear to be any promise to pay at all. The letter shows intention of the concerned officer to get the claim of the plaintiff verified. If upon such verification it was found that plaintiff has a valid claim, then the question of making of payment would arise. Such conditional statement does not appear to be a promise to pay within the meaning of section 25(3) of the Contract Act to bring into force a fresh cause of action or contract.

21. Ext. 130 is yet another letter issued by Manager Finance of the defendant No. 2 on 13.05.1997. By that letter plaintiff has been requested to make correspondences directly to the Unit in Charges for outstanding payments as all those pending bills relate to out station units. The author of this letter has not accepted responsibility of considering the claims and so he cannot be held to be the person or agent authorized to pay. He has not accepted that there are payable amounts at all. What he has done is only a request to the plaintiff to take up the matter with appropriate authority who are the persons authorized to pay. This letter does not show that there is a commitment or promise to pay any amount even by those authorities.

22. Section 25 of the Contract act deals with agreement without consideration unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation. It provides that any amount without consideration is void unless, inter alia, it is a promise made in writing and signed by the person or by his agent generally or specially authorized to pay wholly or in part a debt which is time barred. To constitute such a promise there has to be a debt which has become time barred and even thereafter the debtor, his authorized person or agent must make a promise to pay such debt and that too, in writing and signed by such person or agent. In both Ext. 129 and Ext. 130, referred to above, no amount has been admitted to be as debt. The

letters were issued only assuring to examine as to whether a debt exists. Neither of these exhibits are written or signed by the persons authorized to pay and there is no promise at all to make such payment. Thus, none of the ingredients of Section 25(3) does appear to exist in the present case and so finding of the learned trial court in regard to issue No. 10A that because of promise made by the defendants a fresh cause of action and contract came into being from the date of execution of Ext. 129 and Ext. 130 and that suit has been filed within time cannot be sustained.

23. Mr. SP Roy, learned counsel for the respondents, has also argued that independent of Ext. 129 and Ext. 130, the suit of the plaintiff can be construed to have been instituted in time. Learned counsel has called attention of the court to Ext. 139 which is a letter issued on 25.09.2000 by T.K. Sen, the resident engineer of the defendant No. 2 to the plaintiff enclosing a demand draft of Rs. 1686.60 lying in his account against supply of steels at FMTTI Project. The suit was instituted on 18.08.2000 whereas this letter was issued on 25.09.2000 i.e. more than a month after the suit was instituted. As pointed out above plaintiff got the plaint amended on 03.11.2003 for which prayer was made on 30.09.2003 by filing an application under Order VI Rule 17 of the Code of Civil Procedure. But neither in the original plaint nor in the amended one did the plaintiff make any whisper about payment made by the defendants on 25.09.2000. The fact as to payment subsequent to institution of suit whether can save the suit from the bar of limitation may be a different point but this fact undoubtedly remains out of pleading although out. It is settled law that no amount of evidence which is beyond pleading can be considered by court. In that view of the matter Ext. 139 may not be a fit document for being taken into consideration. Even if the document is considered beyond pleading, the fact that suit of the plaintiff was beyond the period of limitation cannot be cured. Had the plaint been amended to incorporate the fact in that event perhaps there would have been a possibility of applying the doctrine of relating back but since the plaintiff did not make any attempt to get this matter admitted into the pleading by way of amendment, such possibility has also ceased to exist.

24. In view of the discussions made above, particularly in regard to Ext. 129 and Ext. 130, it has become clear that there was no promise to pay by the defendants after the debt had become time barred on 11.06.1993 as per the observation made by the learned trial court. Since letter dated 20.02.1997 has not constituted a fresh contract or promise to pay, new cause of action did not arise on that date or thereafter and consequently, filing of the suit on 18.08.2000 is clearly beyond limitation. The argument of Mr. AK Thakur, the learned counsel for the respondent, has force. It is accordingly, accepted. Consequently, the findings of the learned trial court in regard to limitation vide issue No. 10A stands reversed. Suit of the plaintiff is held to be time barred.

25. All the points for determination in this appeal having been found against the appellant, the appeal is dismissed. No order as to costs.