



2024:DHC:4098



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 10 April 2024**
Judgment pronounced on: 20 May 2024

+ C.R.P. 69/2022 & CM APPL. 22206/2022

M/S VOIR INDIA ELECTRONICS PVT. LTD. THROUGH
ITS DIRECTOR Petitioner

Through: Mr. Amit Singh and Mr.
Gaurav Dubey, Advs.

versus

M/S POLYBLEND (INDIA) PVT. LTD. THROUGH ITS
DIRECTOR Respondent

Through: Mr. Hukam Chand Sukhija and
Ms. Anurag Vashisht, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This is a revision petition filed in terms of Section 115 of the Civil Procedure Code, 1908¹ by the petitioner, who is the defendant in the main suit bearing No. 379/2018² instituted by the respondent/plaintiff before the learned Additional District Judge-08 (West District), Tis Hazari Courts, New Delhi³, assailing the impugned order dated 21.02.2022, whereby the learned Trial Court has dismissed the application under Order VII Rule 10 & 11 of the CPC filed by the petitioner/defendant.

¹ CPC

² Civil suit



2. Shorn of unnecessary details, the respondent/plaintiff is a Private Limited company incorporated under the Companies Act, 1956, having its registered office at C-134, Mansarovar Garden, New Delhi-110015 and is engaged in the business of manufacturing and trading of Plastic *Dana* of different colours, polypropylene etc. and supplying the same to its customers.

3. The petitioner/defendant had business dealings with respondent/plaintiff under which the petitioner purchased the materials of plastic *dana* of different colours/reinforced-ABS etc. from time to time on a credit basis and made payments to the invoices raised. Due to the aforesaid business transactions, there arose a debit balance of Rs.10,25,916/-, which became payable by the petitioner/defendant along with interest @ 18% per annum as per the terms of the agreement between the two parties. The said amount was not paid despite a legal notice dated 16.01.2018, which was sent on 18.01.2018, and thus, a suit for recovery was filed on 03.04.2018 by the respondent/plaintiff against the petitioner/defendant before the learned Trial Court.

4. Succinctly put, the learned Trial Court in the impugned order dated 21.02.2022, comprehensively dealt with the expression 'cause of action'. Further, insofar as the issue of territorial jurisdiction is concerned, it was observed that as per the Memorandum of Association (MoA), the registered office of the plaintiff i.e. M/S

³ Trial Court



Polyblends India Pvt. Ltd. is situated in Delhi. However, as per the invoices, the address of the plaintiff is shown in Gurgaon, Haryana and that of the defendant in Greater Noida. Referring to Order VII Rule 10 of the CPC and considering the fact that a plaint is to be taken at its face value, the learned Trial Court held that it has the jurisdiction to entertain the present suit.

5. As regards the period of limitation, the learned Trial Court was of the view that the plaintiff received the last payment on 12.03.2015 and the legal notice was issued on 16.01.2018, which implies that the amount was demanded by the plaintiff on 16.01.2018. Further, the suit before the learned Trial Court was filed on 03.04.2018, which was well within three years from the date of issuance/service of legal notice and thus, the suit was well within the limitation period.

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

6. During the course of arguments, it was pointed out by learned counsel for the respondent that last part payment of Rs. 25,000/- was received by them from the petitioner on 12.03.2015 and thereafter, no payment was made and, in this regard, a reply was also filed by the respondent/plaintiff. *Per Contra*, the petitioner in its written statement alleged that the last bill was raised on 31.01.2014 and thereafter, no goods were ever purchased by the petitioner from the respondent for the sole reason that the respondent started supplying defective and sub-standard quality of goods and there has been no dealing after 31.01.2014. The learned counsel for the petitioner relied



upon a decision in the case of **Snam Abrasives Pvt. Ltd. v. San Sun Enterprises.**⁴

7. It was further averred by learned counsel for the petitioner that in the suit filed before the learned Trial Court, the period of limitation of three years started from 02.03.2014, which would have been ended on 01.03.2017 and the respondent had filed the suit on 03.04.2018, which is barred under Article 15 of the schedule under the Limitation Act, 1963 and in this regard, reliance was placed on the decision in the cases of **Micrographics India v. The Govt. of NCT of Delhi**⁵ and **Rakman Industries Limited v. Sumaja Electro Infra Private Limited**⁶. *Per Contra*, learned counsel for the respondent, referring to the ledger account starting from 1st April, 2015 to 31st March, 2016, averred that the three cheques bearing No. 057043, 057044 and 057045 for a sum of Rs. 75,000/- each issued by the petitioner, were dishonoured by the Bank with the remark '*Cheq Return*'. Learned counsel for the respondent placed reliance upon a decision in the case of **Hindustan Apparel Industries v. Fair Deal Corporation**⁷ wherein, it was held that payment by cheque, which is dishonoured, would amount to an acknowledgement of debt and liability.

ANALYSIS AND DECISION:

8. Having heard the learned counsels for the rival parties and on perusal of the record, at the outset, this Court finds that the present

⁴ MANU/KA/8413/2019

⁵ 2018 SCC OnLine Del 8448

⁶ MANU/DE/4399/2022

⁷ 2000 SCC OnLine Guj 137



revision petition is bereft of any merits. Evidently, the last of the bill/invoice by which the delivery of goods was made to the petitioner/defendant, was on 31.01.2014. The plea that the limitation period started running from the due date i.e. 02.03.2014 and would have expired after 3 years, is misconceived since, it is brought on the record that a payment of Rs. 25,000/- was made by the petitioner/defendant on 12.03.2015 towards the running account between the parties as *prima facie* brought out on appreciating the entries in the ledger of the respondent/plaintiff, which forms a part of the plaint. Further, the three cheques dated 07.05.2015 for a sum of Rs.75,000/- each had been issued by the petitioner/defendant towards part payment of the bills/invoices, which on their presentation were dishonoured. That being the case, the payment made by the petitioner/defendant through cheques, which got dishonoured, would tantamount to *an acknowledgment of debt and liability* and the period of limitation would stand extended by virtue of Section 18⁸ of the

⁸ **18. Effect of acknowledgment in writing.**—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,



Limitation Act, 1963.

9. The plea taken by the learned counsel for the petitioner/defendant that certain post dated cheques issued to the respondent/plaintiff have been misused, does not cut much ice, for which, reference can be invited to a decision by the Division Bench of this Court in the case of **Bharat Skins Corporation v Taneja Skins Company Private Limited**⁹, wherein, it has been held as under:-

“9. The doctrine of implied acknowledgement in cases of accounts between non-merchants and the exception in the statute of limitation as regards actions on accounts between merchants were abolished in England, by Lord Tenterden's Act, 1828 and Mercantile Law Amendment Act, 1857 respectively. In 1859 the Legislature in India, however, enacted in Section 8 of the Limitation Act 1859, the principle of *Catling's* case (supra), as between merchants and traders and provided that ‘in suits for balances of accounts current between merchants and traders, who have had mutual dealings, the cause of action shall be deemed to have arisen at, and the period of limitation to be computed from, the close of year in the accounts of which there is the last time admitted or proved indicating the continuance of mutual dealings.’ Article 1 of the Schedule to the Limitation Act, 1963 corresponds to Section 8 of the Limitation Act, 1859 and reads as under: -

“No. Description of Suit Period of Limitation Time From Which Period Begins to Run

1 For the balance due on a mutual, open and current account where there have been reciprocal demands between the parties The close of the year in which the last item admitted or proved is entered in the account; such year Three years to be computed as in the account.”

10. Insofar as the case laws cited by the learned counsel for the

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right

⁹ 2011 SCC OnLine Del 5523



petitioner/defendant is concerned, the same have no bearing on the present facts and circumstances of the case and are clearly distinguishable. In the case of **Micrographics India (supra)** relied upon by the learned counsel for the petitioner, the goods and services were provided by the plaintiff as per the rates mentioned in the invoices between 1995 to 1997 and there was a letter from the defendant dated 22.01.1999 whereby, the claim of the plaintiff was challenged by the Dy. Director (Operation), based on the rates disclosed in the invoices/bills and evidently, the suit was filed beyond the period of three years. In the said context, it was held that there was no acknowledgement of liability in writing on behalf of the defendant with respect to the right/property and the benefit of Section 18 of the Limitation Act, 1963 was not accorded.

11. Further, the case of **Rakman Industries Limited (supra)** relied upon by the learned counsel for the petitioner was one where it was held that the correspondence that was exchanged between the parties was not sufficient to extend the period of limitation and once the right to sue had accrued, the limitation to file could not have been extended by sending reminders or other communications. It was held that if the said proposition is accepted, the limitation to file a suit would never end and would be extended by sending repeated demand notices.

12. Likewise, the case of **Snam Abbrasives Pvt. Ltd. (supra)** was one where a decision was given after appreciation of the entire evidence brought on the record by the parties and it was found that the plaintiff, despite being in possession of the purchase order, which was acknowledged by the defendant from time to time, had not placed the



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same on the record and it was further found that no evidence was led that the defendant was liable to pay the 'C' Form differences for the purposes of Commercial Tax. Applying the rigors of Article 113 of the Limitation Act, 1963, the suit which was instituted beyond the period of three years was held to be barred by limitation. None of the aforesaid situations came for decision in the present matter.

13. In view of the foregoing discussion, the present revision petition is dismissed with cost of Rs. 25,000/-, which be deposited with the Delhi High Legal Services Committee, New Delhi.

14. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

15. The present revision petition, along with the pending application, stands disposed of.

DHARMESH SHARMA, J.

MAY 20, 2024/*Sadiq*