

Before Mahesh Grover, J

M/S AMAR COMPANY, FARIDABAD CITY,—Appellant

versus

**M/S RADHEY MAL RAM LAL, OLD
FARIDABAD,—Respondent**

R.S.A. No. 2596 of 2006

15th April, 2009

Limitation Act, 1963—Art. 1 Part I, Art. 14 Part II—Code of Civil Procedure, 1908—Respondent supplying goods to appellant—Appellant failing to make payment—Accounts between parties not open, mutual and current—Transactions between parties fall within ambit of Art. 14 of Part II—Period of limitation—3 years for filing a suit would start running from time when goods were last delivered and bill raised—Respondent held entitled to recover amount of bill for goods within period of limitation—Suit held to be barred by limitation qua rest of bills.

Held, that in so far as the question of the suit for recovery of entire amount, being within limitation is concerned, the same is to be answered with reference to the Schedule attached to the 1963 Act, wherein under Parts-I and II, the manner in which the period of limitation has to be computed for the purpose of filing a suit has been detailed. Part-I pertains to the suits relating to accounts, whereas Part II speaks of suits relating to contracts. The last bill is dated 14th December, 1995 for a sum of Rs. 36,667.12, whereas the suit was filed on 12th December, 1998. Thus, only this amount falls within three years from the date it fell due.

(Paras 14 & 15)

Further held, that when the transactions inter se between the parties are tested in the light of law laid down by the Supreme Court and various High Courts, it becomes amply clear that the same do not fall within the ambit of Article I of Part I and rather, they come within the fold of Article 14 of Part II of the Schedule attached to the 1963 Act. The period of limitation of three years for filing a suit would, thus, start running from the time when the goods were last delivered and bill raised, i.e. 14th December, 1995.

(Para 22)

Further held, that the nature of transactions do not clearly indicate that the accounts were mutual, open and current, as there is no reciprocity of demands between the parties. It was simpliciter a case where the goods were being supplied to the appellant by the respondent. It was merely a case where the goods were being supplied and delivered and the accounts between the parties being not open, mutual and current, Article 14 of Part-II of the Schedule of the 1963 Act would govern the same.

(Para 24)

C.B. Goel, Advocate, *for the appellant*.

Nitin Kumar, Advocate, *for the respondent*.

MAHESH GROVER, J.

(1) This Regular Second Appeal is directed against the judgments and decrees, dated 21th October, 2005 and 8.3.2006 passed respectively by the Additional Civil Judge (Senior Division), Faridabad (hereinafter described as 'the trial Court') and the District Judge, Faridabad (referred to hereinafter as 'the First Appellate Court') whereby the suit of the plaintiff-respondent was decreed and the appeal of the defendant-appellant was dismissed.

(2) The respondent had filed a suit for recovery of Rs. 3,19,810.43 against the appellant. It was pleaded that the appellant had been purchasing Hina leaves from the respondent on credit basis with effect from the year 1992 and that the credit account was maintained in the accounts books in the usual course of business. It was further pleaded that the appellant had purchased Hina leaves,—*vide* bill No. 224, dated 14th December, 1995 for a sum of Rs. 36,667.12 duly acknowledged and ST-15 Form bearing No. 0003981, dated 1st April, 1996 was issued. The appellant was said to have made part payments from time to time which were duly shown in the statements of account and as on 1st April, 1996, a total balance of Rs. 2,34,364.43 was outstanding. It was averred that the appellant, after reconciliation of the accounts, paid a sum of Rs. 10,000 in cash to the respondent on 4th November, 1996 and another sum of Rs. 10,000 on 5th November, 1996, leaving a balance of Rs. 2,14,364.43 on that day. The respondent had also averred that the appellant was requested a number

of times to make the payment, but no heed was paid to its request and hence, the suit was filed for recovery of the aforesaid principal amount along with interest to the tune of Rs. 1,05,446 calculated at the rate of 18% per annum from 1st April, 1996 to 1st December, 1998.

(3) Upon notice, the appellant put in appearance and filed its written statement. A number of preliminary objections were taken. It, however, admitted its dealing with the respondent, but denied that Hina leaves were ever purchased on credit. The liability to pay the amount claimed in the suit was denied and it was stated that each transaction was independent and no amount was due.

(4) On the pleadings of the parties, the trial Court framed the following issues :—

- (1) Whether the plaintiff is entitled to recovery a sum of Rs. 3,19,810.43 along with interest ? OPP
- (2) Whether plaintiff has no *locus standi* to file the present suit ? OPD
- (3) Whether the suit of the plaintiff is not maintainable in the present form ? OPD
- (4) Whether suit is hit by Section 69 of Partnership Act ? OPD
- (5) Whether suit is time barred ? OPD
- (6) Whether plaintiff has no cause of action to file the present suit ? OPD
- (7) Whether Civil Court has no jurisdiction to entertain the present suit ? OPD
- (8) Relief

(5) After appraisal of the entire evidence on record, the trial Court decreed the suit of the respondent with costs and held it entitled to recover from the appellant a sum of Rs. 2,14,364.43 as principal sum along with interest at the rate of 10% per annum w.e.f. 5th November, 1996 till realisation.

(6) Feeling aggrieved, the appellant filed an appeal which was dismissed by the First Appellate Court. Hence, this Regular Second Appeal.

(7) Learned counsel for the appellant contended that the findings recorded by the Courts below are perverse and deserve to be set aside. It was further contended that there was complete misreading of evidence as the testimony of witnesses established that the amount had already been paid. Reference was made to the statement of PW2—Sohan Lal to contend that this witness admitted the payment of disputed bills Exhibits D1 to D5. In this view of the matter, nothing survived as the amount due had already been paid. It was next contended that the suit is beyond limitation and the findings recorded by the Courts below treating it within limitation are erroneous. Learned counsel for the appellant further submitted that Article 1 of the Limitation Act, 1963 (for brevity, 'the 1963 Act') would not apply in this case and instead Article 14 of the 1963 Act would be attracted.

(8) On the other hand, learned counsel for the respondent contended that the findings recorded by the Courts below are just and proper as it was established beyond doubt that the appellant had to pay the amount in question. It was further contended that the suit perfectly within limitation and it has been rightly held to be so as the appellant himself had acknowledged the amounts due by filing the sale tax returns which are on record as Exhibits D1 to D5 issued on 26th March, 1996 and 1st April, 1996, which ought to be treated as written acknowledgments of the appellant as he had signed the same accepting his liability.

(9) To support his contentions/submissions, learned counsel for the respondent placed reliance on **Messers Durga Das Janak Raj versus Messrs, Preete Shah Sant Ram (1) State of Bank of India versus Tarlok Singh and others, (2) Mohan Raja versus Karan Chand and others (3) and M/s Roshan Industries and others versus M/s Mohan Lal (4).**

(1) AIR 1959 Punjab 530

(2) AIR 1992 Delhi 76

(3) 2003 (1) Civil Court Cases 103 (Rajasthan)

(4) 2004 (3) P.L.R. 182 (P&H)

(10) I have thoughtfully considered the rival contentions and have perused the impugned judgments, as also the case law referred to by the learned counsel for the respondent.

(11) As noticed above, the learned counsel for the appellant made strenuous reference to the testimony of PW2—Sohan Lal to say that this witness had admitted the signatures of Hira Lal, one of the partners of the respondent firm, on Exhibits D1 to D5 and which proves that the amount due was received. However, a perusal of the statement of PW2 reveals that the contention of the learned counsel for the appellant is incorrect. The said witness has merely stated that he recognises the signatures of Hira Lal at the bottom of these documents, but the ones which are encircled thereon are not of Hira Lal. It is these encircled signatures which are being referred to by the learned counsel for the appellant to say that the payment has been admitted. This is clearly a mis-conception of the learned counsel for the appellant, therefore, has to be rejected outrightly.

(12) In so far as the amount due to the respondent is concerned, it has proved the following bills, i.e., Exhibits P1 to P5, on record against which the amount was due :—

Sr. No.	Exhibit No.	Date of Bill	Date of ST Form	Amount of Bill
1	P1	14.12.1995	01.04.1996	36,667.12
2	P2	13.05.1995	01.04.1996	20,888.02
3	P3	01.02.1995	26.03.1996	65,827.48
4	P4	06.01.1995	26.03.1996	32,292.73
5	P5	18.07.1994	26.03.1996	28,725.90

(13) Admittedly, the appellant used to purchase Hina leaves from the respondent.

(14) In my opinion, in so far as the question of the suit for recovery of entire amount mentioned above, being within limitation is concerned, the same is to be answered with reference to the Schedule attached to the 1963

Act, wherein under Parts-I and II, the manner in which the period of limitation has to be computed for the purpose of filing a suit was been detailed. Part-I pertains to the suits relating to accounts, whereas Part-II speaks of suits relating to contracts. For the purposes of reference, the relevant portion of Part-I and Part-II of the Schedule aforesaid, on which the learned counsel for the parties have placed reliance, is extracted below :—

“THE SCHEDULE

PERIODS OF LIMITATION

[See sections 2 (j) and 3]

FIRST DIVISION—SUIFS

Description suit	Period of Limitation	Time from which period begins to run.
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PART-I SUITS RELATING TO ACCOUNTS

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

6. TO 13.xx xx xx xx xx xx xx xx

14. For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Three years	The date of the delivery of the goods.
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xx xx xx xx xx xx xx xx xx”

(15) As noticed above, the last bill, Exhibit P1, is dated 14th December, 1995 for a sum of Rs. 36,667.12, whereas the suit was filed on 12th December, 1998. Thus, only this amount falls within three years from the date it fell due.

(16) Now, the question that is to be considered is as to whether the account between the parties was mutual, open and current so as to come within the ambit of Article 1 of Part-I or the transactions between them fell within the ambit of Article 14 of Part-II of the Schedule of the 1963 Act.

(17) In *The Financing Syndicate Ltd. versus Chandra Kamal Bez Barua*, (5), the Calcutta High Court considered the provisions of Article 85 of the Limitation Act, 1908 (corresponding to Article 1 of Schedule attached to the Limitation Act, 1963) and Rankin, C.J., while speaking on behalf of the Division Bench, observed as under :—

“There can, I think be no doubt that the requirement of reciprocal demands involves, as all the Indian cases have decided following Holloway, Ag. C.J., transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side, those on the other being merely complete or partial discharges of such obligations.....”

(18) In *V.K. Abraham versus N.K. Abraham*, (6), the Madras High Court noticed the aforementioned judgment along with other various judgments including that of the Supreme Court in *Hindustan Forest Company versus Lal Chand and others*, (7), which also related to the interpretation of the provisions of Article 85 of the Limitation Act, 1908. The question which was considered in that case was whether the transaction between the plaintiff and the defendant therein can be said to fall within the category of mutual, open and current account described in Article 1 of the 1963 Act? After thorough discussion, it was observed in paragraph 12 of the judgment as under :—

“12. The defendant has been asking for amounts not necessarily as advance for the supply of rubber. For instance in Ex. A-54,

(5) AIR 1931 Calcutta 359

(6) AIR 1978 Madras 56

(7) AIR 1959 S.C. 1349

dated 18th December, 1965, the defendant has asked for a sum of Rupees 10,000 being sent per bearer as he was urgently in need of that amount. He does not say that this amount was needed as and by way of any advance or towards any particular supply of rubber. Similarly, in Ex. A-129 the defendant had asked for "Carboyot formic acid", being sent per bearer. The plaintiff sent it and had to recover the amount due therefor. There are similar items of stores required by the defendant for which indent was made to the plaintiff. There are certain other transactions in which the defendant has stated that the amount could be adjusted against the rubber to be delivered. In one of the letters the defendant has acknowledged the receipt of some manure and has asked for a sum of Rs. 2,000 being sent per bearer one Padmanabha Pillai. It was mentioned that this amount could be adjusted by next week. He has also asked for another load of rubber mixture by 18th July and stated that the amount could be adjusted by two weeks. There were repayments by the defendants in cash on 27th November, 1964 and 24th December, 1965. the correspondence and the accounts go to show that the transactions here falling in those categories of rubber sales, estate store supplies, and loans are clearly independent transaction in the nature of a mutual, open and current account. The decision of the Court below that the suit is not barred by limitation is thus correct."

(19) In **Hindustan Forest Company versus Lal Chand and others** (*supra*) their Lordships of the Supreme Court quoted with approval the observations of Rankin, C.J. in **The Financing Syndicate Ltd. versus Chandra Kamal Bez Barua** (*supra*) and held as under :—

"The requirement of reciprocal demands involves transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side, those on the other side merely complete or partial discharges of such obligations."

(20) The same principle was followed in **Kesharichand Jaisukhalal versus Shillong Banking Corporation Ltd., Shillong, (8)**.

(21) In **Attadi Venketi versus M/s Bharatam Ramulu and Sons (supra)**, a Single Bench of Orissa High Court considered the provisions of Articles 1, 14 and 26 of Schedule attached to the 1963 Act in the light of the law laid down in aforementioned judgments of the Supreme Court and that of the Calcutta High Court and it was held that Article 1 was not applicable to the facts of that case and rather, Article 14 was attracted thereto. A perusal of the judgment reveals that therein the plaintiff was a wholesale dealer in cloth. He filed the suit on the allegation that the defendant, who was a dealer in ready-made garments used to purchase cloths from him on credit and make payments from time to time in due discharge of the credit account. Last purchase was made by the defendant on 16th August, 1973 and the last payment was made by him on 28th September, 1973. Thereafter, the defendant discontinued his business transaction with the plaintiff. A sum of Rs. 1,476.67 paise was left unpaid by the defendant. He did not pay up the dues despite demands. Hence, the suit for recovery of Rs. 1474.67 paise with interest at 12 per cent per annum was filed.

(22) When the transactions *inter se* between the parties herein are tested in the light of the above reproduced law laid down by the Supreme Court and various High Courts, it becomes amply clear that the same do not fall within the ambit of Article 1 of Part-I and rather, they come within the fold of Article 14 of Part-II of the Schedule attached to the 1963 Act. The period of limitation of three years for filing a suit would, thus, start running from the time when the goods were last delivered and bill raised, i.e. 14th December, 1995.

(23) Moreover, the nature of transactions, in the instant case, do not clearly indicate that the accounts were mutual, open and current, as there is no reciprocity of demands between the parties. It was simpliciter a case where the goods were being supplied to the appellant by the respondent.

(24) The question of law that arises in the present appeal is as to “whether in an account which is not open and mutual between the parties, the provisions of Article 1 of Part-I or Article 14 of Part-II of the Schedule attached to the Limitation Act, 1963 would apply for computing the period of limitation in a business transaction in which the goods are purchased and delivered” and for the reasons which have been given out in the above discussion, the same is answered to conclude that because it was merely a case where the goods were being supplied and delivered and the accounts between the parties being not open, mutual and current, Article 14 of Part-II of the Schedule to the 1963 Act would govern the same.

(25) In so far as the sale tax forms are concerned on which the respondent has placed reliance in order to say that the suit, which was filed on 12th December, 1998, was within limitation as the appellant had acknowledged its debt on 26th March, 2006 and 1st April, 1996 the same cannot be treated as acknowledgments of debt for the simple reason that the account between the parties was not mutual and open and the documents referred to are between the Sales Tax Department and the appellant.

(26) Therefore, the respondent is held entitled to recover the amount of bill, dated 14th December, 1995 (Exhibit P1), i.e., Rs. 36,667.12 and *qua* the rest of the bills, its suit is barred by limitation.

(27) Accordingly, this appeal is partly accepted, the impugned judgments and decrees are modified to the above extent and the suit of the respondent is decreed to the effect that it shall be entitled to recover Rs. 36,667.12 along with interest at the rate of 10% per annum from the date it became due till its realisation.

R.N.R.