

(2012) 05 DEL CK 0462

Delhi High Court

Case No: Regular First Appeal No. 446 of 2004

M/s. Lalit Associates

APPELLANT

Vs

Reckkit and Benkiser (India)
Limited

RESPONDENT

Date of Decision: May 1, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96
- Limitation Act, 1963 - Article 1, 18

Citation: AIR 2012 Delhi 108

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Arvind Kumar Gupta and Mr. Rahul Mangla, for the Appellant;

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.

The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 24.4.2004 dismissing the suit of the appellant/plaintiff and also the counter claim filed by the respondent/defendant. Whereas the appellant/plaintiff claimed a sum of Rs. 3,07,228/-, the respondent/defendant made counter claim of Rs. 4,71,822/-. Both the suit as well as counter claim have been dismissed by the Court as being barred by limitation. Following are the observations of the Court under the issue No. 1 as to whether the suit of the plaintiff is within time:-

Issue No. 1

6. The onus to prove this issue was on the plaintiff. This suit was filed by pltf. on 5.3.03. A perusal of the plaint shows that distributorship of the pltf. was terminated in the year 1998. The documents filed by parties in this case show that goods were last sent to defendant only in the year 1998. The list of damaged stock filed by the

pltf. is also of the year 1998. All letters etc. are either of 1998 or prior to 1998. The suit for recovery of dues the pltf. could have been filed within three years from the date, when the amount became due. Even if it is considered that the pltf. was having mutual running and current account with the defendant, the suit could have been filed within three years from the close of financial year. It has not been stated as to what was the financial year of the defendant. Presuming that financial year of the deft. was from 1st April to 31st March of the next year, which is the normal financial year, the period of three years of limitation would have started from 1.4.99 and would have ended on 31.3.02. The limitation could be saved by acknowledgment of the deft. about the amount due, if made within the period of limitation. Plaintiff's witness PW.1 Gajanand, who is partner of the pltf. firm, in his examination in chief filed by way of affidavit has stated in para 17 that plaintiff requested may a times to deft. company for settlement of claims but of no avail. However, after persistent requests, deft. company supplied the account statement dt. 12.1.01, which was exhibited as Ex.PW1/B. According to the statement, the credit balance in favour of pltf. was Rs. 1,49,425.78/-. A perusal of Ex.PW1/B shows that it is a computerized sheet of paper showing some accounts. It is not signed by any person. The correctness of this account sheet has not been established by the pltf. by summoning the accounts of the defendants or by serving any notice to defendant for filing the ledger accounts. No question has been put to defendant's witness in cross examination that Ex.PW1/B was supplied by deft. company to the pltf. Two documents Ex.DW.1/P1 and DW.1/P2 which have been filed by defendant have been admitted by the defendant's witness and it has been stated by this witness that defendant's internal sales year used to be from 1st January of every year to 1st February of the next year DW.1 stated that these two documents show the transactions made with the pltf. A perusal of these two documents show that these were the ledger sheets as maintained in the computer of defendant company. The entries were w.e.f. Jan. 1999 onwards to Oct. 1999 and the credit amount show in Ex.DW.1/P2 as on October 1999 was Rs. 22,48,099.47, while the debit account was Rs. 26,00,664.42. Thus a debit balance of Rs. 3,52,564.95 was shown as against the plaintiff. These entries do not help the plaintiff in saving the limitation. Even the last date as shown in the ledger was October, 1999. If there had been some amount recoverable, the suit could have been filed maximum by October, 2002. Ex.PW.1/B which is stated to be the account sheet of the defendant cannot be considered as a proved document, as it has not been proved as to who provided this document to pltf. and whether this was correct record of the accounts of the defendant. In the absence of any acknowledgment given on the part of defendant of the due amount, the suit of the plaintiff is barred by limitation. The issue is decided against the plaintiff.

2. A reading of the aforesaid paragraph shows that the dealership agreement between the parties was terminated in the year 1998. The claims of the appellant/plaintiff pertain to period prior to the year 1998. Each of the claims will be

a separate cause of action and therefore will have to be filed within three years from arising of such cause of action/claims, and since the suit has been filed much later on 5.3.2003, obviously all claims prior to the year 1998 were ex facie time barred in the year 2003. Appellant/plaintiff has also not filed its statement of account to show that the account was open, mutual and current account. Even if I assume that the account was open, mutual and current, limitation of three years under Article 1 of the Limitation Act, 1963 would have commenced w.e.f. 1.4.1999 and therefore limitation for filing of the suit would have expired on 30.3.2002, and therefore the suit filed on 5.3.2003 was barred by limitation. The appellant/plaintiff relied in the trial Court upon the statement of account issued by the respondent-company dated 12.1.2001, Ex.PW1/B for extending the limitation, however, the trial Court has disbelieved this document because it is only a computerized sheet of paper and is not signed by any person. The trial Court has observed that correctness of this account sheet has not been established by the plaintiff by summoning the account of the defendant or serving any notice to the defendant for filing of the ledger accounts.

3. I completely agree with the aforesaid conclusions of the trial Court inasmuch as the suit was clearly barred by time on account of the fact that claims of the appellant/plaintiff were of the year 1998 and prior and the suit was filed much later than three years i.e. on 5.3.2003. The statement of account, Ex.PW1/B, cannot be an acknowledgment of debt u/s 18 of the Limitation Act, 1963 inasmuch as an acknowledgment of debt u/s 18 has necessarily to be signed by the person against whom it is sought to be proved and admittedly the statement of account, Ex.PW1/B, is an unsigned document. I also agree with the finding and conclusion of the trial Court that the said statement is not proved. A reference to the paras 14 of the plaint and written statement shows that when statement was made by the plaintiff with respect to this statement of account, the respondent denied this in the written statement.

4. In view of the above, I do not find that the trial Court has committed any illegality and perversity in holding the suit to be barred by limitation. Looking at from any angle for the claims of the year 1998, the suit could not have been filed on 5.3.2003 even assuming that the suit was based upon an open, mutual and current account, under Article 1 of the Limitation Act, 1963 and which in any case, it is not. In view of the above, there is no merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.