

(2010) 05 DEL CK 0280

Delhi High Court

Case No: Regular First Appeal 365 of 2007 and C.M. 18764 of 2009

Tinna Overseas Limited

APPELLANT

Vs

KRM International Ltd. and
Another

RESPONDENT

Date of Decision: May 28, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, Order 39 Rule 2A
- Contract Act, 1872 - Section 72
- Limitation Act, 1908 - Article 62
- Limitation Act, 1963 - Article 113, 24, 32, 3

Citation: (2010) 6 ILR Delhi 267

Hon'ble Judges: Reva Khetrapal, J

Bench: Single Bench

Advocate: M. Dutta, for the Appellant; M.R. Chawla, for the Respondent

Judgement

Reva Khetrapal, J.

This appeal is directed against the judgment dated 13.02.2007 whereby the suit of the plaintiff (the appellant herein) for recovery of Rs. 6,96,062/- along with interest was dismissed by the learned Additional District Judge.

2. The facts of the case, as alleged in the plaint, are as follows:

The plaintiff had placed orders on the defendant No. 1 for the purchase of 12,000 sq.ft. of Cow Softy Finished Leather. The quantity of goods was subsequently increased to 24,000 sq.ft. of the said leather. It was agreed between the parties that the plaintiff will obtain a Letter of Credit in favour of the defendant No. 1 (the respondent No. 1 herein) for the payment of the goods to be supplied by the defendant No. 1. The goods were to be supplied by the defendant No. 1 as per the specifications of the plaintiff and the payment was to be obtained by the defendant

No. 1 by invoking the said Letter of Credit, the invocation being commensurate to the value of the goods supplied by the defendant No. 1, after adjusting all rejections and goods returned by the plaintiff to the defendant No. 1.

3. On 07.07.2000, at the instance of the plaintiff, the defendant No. 2-Bank issued a Letter of Credit in favour of the defendant No. 1 of the value of Rs. 9,36,600/- for the supply of 12,000 sq.ft. of leather. By an amendment dated 15.07.2000 to the same, the value of the said Letter of Credit was enhanced to Rs. 18,73,200 for the supply of 24,000 sq.ft. of leather. Among other documents, the defendant No. 1, for the negotiation of the said Letter of Credit was required to annex a Certificate of Quality Specification issued by the plaintiff or its representatives. The said Certificate of Quality Specification was required to ensure that the goods supplied by the defendant No. 1 were as per the ordered specifications. Payment was to be released to the defendant No. 1 only on certification by the plaintiff that the goods were as per the specifications. Thus according to the plaintiff, there was no obligation under the said Letter of Credit to make payment for any substandard goods, which were not as per the specifications.

4. It is further alleged in the plaint that the defendant No. 1 supplied the goods to the plaintiff through various invoices from 08.07.2000 till 20.07.2000, some of which were returned to the defendant No. 1 not being entirely as per the specifications of the plaintiff. The plaintiff intimated the defendant No. 1 about the defects in the goods supplied by the defendant No. 1 and returned by the plaintiff. The total value of the goods returned by the plaintiff is alleged to be Rs. 4,51,988/- only. Consequent to the return of the said goods, it is alleged in the plaint that the defendant No. 1 issued credit notes to the plaintiff for the value of the returned goods. The details of the credit notes issued by the defendant No. 1 to the plaintiff are set out in the plaint. It is the plaintiff's case that the credit notes having been issued by the defendant No. 1 to the plaintiff, the payment of the aforesaid sum of money could not be taken by the defendant No. 1 by invoking the Letter of Credit, which was a conditional one.

5. By its letter dated 13.10.2000, the plaintiff intimated the defendant No. 2 about the return of the goods supplied by the defendant No. 1 and informed the defendant No. 2 that the defendant No. 1 had issued credit notes in the sum of Rs. 4,51,988/- in favour of the plaintiff. The defendant No. 2 was requested by the plaintiff not to make payment in respect of the aforesaid goods to the defendant No. 1 for which credit notes were issued by the said defendant and that the balance amount of Rs. 1,97,609/- in all after adjustment of credit notes be paid to the defendant No. 1 under the aforesaid Letter of Credit. Initially, the defendant No. 2-Bank did not remit the payment of the sum of Rs.6,49,597/- under the Letter of Credit to the defendant No. 1. But subsequently, the defendant No. 2 Bank intimated the plaintiff that it was under a legal obligation to make payment as the amount was being demanded by the bankers of the defendant No. 1.

6. Thereupon the plaintiff requested the defendant No. 1 not to press for the release of money under the Letter of Credit to the extent of the value of the credit notes, but the defendant No. 1 was unyielding. Consequently, the plaintiff, in order to restrain the defendant No. 1 from encashing the amount under the Letter of Credit filed a suit for injunction, being Suit No. 2374/00 titled "Tinna Oversees Limited v. K.R.M. International and Anr.". In the said suit, this Court passed an ex-parte ad-interim injunction in favour of the plaintiff and against the defendant. Upon receipt of notice from this Court in the said suit, the defendant No. 2 took the stand that it had made the payment to the defendant No. 1 by a demand draft dated 20.10.2000, which was sent to the bankers of the defendant No. 1 on 22.10.2000, and that the payment against the said demand draft had been realised by the bankers of the defendant No. 1 on 30.10.2000.

7. It is the case of the plaintiff that it was only upon the filing of the written statement by the defendants that the plaintiff for the first time came to know that the defendant No. 1 had realised the entire amount including the amount of Rs. 4,51,988/-, thereby unjustly enriching itself. In view of the deliberate and wilful violation of the injunction order of the High Court, the plaintiff initiated proceedings against the defendants by filing an application under Order XXXIX Rule 2A of the Code of Civil Procedure. However, in order to avoid any technical objection later, the plaintiff filed the present suit seeking recovery of the sum of Rs. 4,51,988/-, which, according to the plaintiff, the defendant No. 1 is liable to pay back to the plaintiff with interest @ 18% p.a. from 30.10.2000, i.e., the date when the defendant No. 1 actually realised the said sum of money by illegally invoking the Letter of Credit till the date of actual payment of the aforesaid sum to the plaintiff. The total liability of the defendants on account of interest is alleged to be in the sum of Rs. 2,44,074/-. Thus, the defendants are stated to be liable to pay to the plaintiff a sum of Rs. 6,96,062/- along with pendente lite and future interest @ 18% p.a., till the date of actual realisation of the aforesaid amount.

8. Both the defendant No. 1 and the defendant No. 2 contested the suit by filing their respective written statements. Apart from raising preliminary objections to the maintainability of the suit, the defendant No. 1 disputed the fact that the goods supplied were returned by the plaintiff to the defendant No. 1. The defendant No. 2 in its written statement submitted that it was under a legal obligation to honour its commitment by making the payment under the Letter of Credit, which it had done. It was also submitted by the defendant No. 2 that it was not concerned in any manner with any dispute between the seller and the purchaser.

9. On the pleadings of the parties, the following issues were framed by the learned trial court:

(1) Whether the suit is barred by limitation? OPD 1 and 2

(2) Whether the suit of the plaintiff is barred under Order 2 Rule 2 CPC?

(3) Whether plaint is signed and verified by a duly authorised person? OPD-1

(4) To what amount, if any, is the plaintiff entitled to recover from the defendants?
OPP

(5) Relief.

10. The learned Additional District Judge rendered his findings on issue No. 1 alone, holding the suit to be time barred, having been filed beyond the period of three years and, accordingly dismissed the suit on that ground alone. Aggrieved by the said findings, the present appeal has been preferred by the plaintiff-appellant contending that the suit was filed well within the period of limitation, and the impugned judgment is liable to be set aside by this Court.

11. The counsel for the parties Mr. M. Dutta, Advocate on behalf of the appellant, and Mr. M.R. Chawla, Advocate on behalf of the respondents have been heard and the records perused. In order to appreciate the rival contentions of the parties, it would be appropriate to reproduce paragraph-28 of the plaint pertaining to the cause of action, which reads as under:

28. That the cause of action to file the present suit has accrued to the plaintiff when portion of the goods were returned by the plaintiff to the defendant No. 1. It further arose on 6/10/2000 when the letter of credit matured for payment. It further arose on 10/10/2000 when the credit notes were issued by the defendant No. 1. The cause of action further arose on 18/10/2000 when the entire payment under the letter of credit became due on 18/10/2000 and the defendant No. 2 expressed its inability to withhold payment under the same. The cause of action arose on 22/10/2000 when the defendant No. 2 dispatched the demand draft to the banker of the defendant No. 1. It also arose on 27/10/2000 when the said demand drafts were presented by the banker of the defendant for payment. The cause of action lastly arose on 30/10/2000 when the payment was released by the defendant No. 2 in favour of the defendant No. 1. The suit is within the period of limitation. There is no other impediment for which the present suit cannot be maintained or tried and disposed off by this Hon"ble Court.

12. It is the contention of Mr. M. Dutta, the learned Counsel for the appellant that the starting point of limitation will be from 30.10.2000 when the payment was released by the defendant No. 2 in favour of the defendant No. 1, as alleged in paragraph-28 of the plaint. The learned Counsel for the appellant pressed into service the provisions of Article 24 of the Limitation Act, 1963 in support of his aforesaid contention, which for the sake of convenience is reproduced hereunder:

Description of suit	Period of limitation	Time from which period begins to
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run

24. For Three When the
money years money is
payable by received.
the defendant
to the
plaintiff for
money
received
by the
defendant
for the
plaintiff's
use.

13. Reliance was also placed by Mr.Dutta upon the judgments rendered in the following cases in support of his contention that Article 24 of the Limitation Act was applicable to the present case:

(i) [Ranendra Narayan Sinha and Others Vs. State of West Bengal,](#)

In this case the plaintiff was claiming in the suit filed by him the amount of revenue recovered in excess of the amount due from him and he claimed declaration that the revenue stood abated. The High Court was of the view that the claim made by the plaintiff was barred by the law of limitation. Setting aside the judgment of the High Court and affirming the judgment of the trial court, the Supreme Court held that the right to collect the revenue, which is not due cannot be acquired by prescription, and if the plaintiff had been compelled to pay sums of money which he was not liable to pay, the claim could properly be made within three years from the date on which the payment was made.

(ii) [State of Haryana Vs. Bharat Steel Tubes Ltd.,](#)

In this case the Delhi High Court ruled that in a suit for recovery of money, in which the plaintiff was demanding received by the defendant, for the plaintiffs use the refund of money paid by the plaintiff to the defendant, the time will run from the date the defendant's refusal to pay the amount came to the knowledge of the plaintiff.

(iii) The T.S.H.W. Co-operative Society Ltd. v. S. Sundaram Mudaliar AIR 1957 TC 61

The Division Bench of the Travancore-Cochin High Court, while delineating on the scope of Article 62 of the Limitation Act, 1908 (equivalent to Article 24 of the Limitation Act, 1963) held that where a suit is brought for realisation of excess amount illegally exacted by the defendant from the plaintiff by way of freight for the supply of yarn, it is Article 62 that will apply to the suit, and that the expression

"money received by the defendant for the plaintiff's use" used in Article 62 is used in the sense in which it was used in English Common Law as a count of action. In that sense, the article will apply to all cases in which "the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which in law render the receipt of it a receipt by the defendant for the use of the plaintiff." In that case it will apply to suits "for money got through imposition (express or implied) or extortion or oppression or an undue advantage taken of the plaintiff's situation", and to cases in which "money is paid by the plaintiff in discharge of a demand illegally made under colour of an office.

(iv) [Kasturchand Okaji Marwadi Vs. Hari Govind Wagle,](#)

The Bombay High Court in this case held that Article 62 applies to suits for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use, and approved the dicta laid down by the Calcutta High Court in *Mahomed Wahib v. Mahomed Ameer* (1905) 32 Calcutta 527 and the remarks of Mookerjee, J. (p-533) :

It seems to me to be clear, as pointed out by Markby, J., in 2 Cal. 303 (2) that the Article (Article 62), when it speaks of a suit for money received by the defendant for the plaintiff's use, points to the well-known English action in that form; consequently the Article ought to apply wherever the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which in law render the receipt of it a receipt by the defendant to the use of the plaintiff. As pointed out by Lord Mansfield, C.J., in 2 Burr 1005 (3) this form of action lies for money paid by mistake, or upon a consideration, which happens to fail, or for money got through imposition (express or implied) or extortion or oppression or an undue advantage taken of the plaintiff's situation contrary to laws made for the protection of persons under those circumstances; in other words, this form of action would be maintainable in cases in which the defendant at the time of receipt, in fact or by presumption or fiction of law receives the money to the use of the plaintiffs.

(v) [Hanutaram Vs. Kumbharam and Others,](#)

The Rajasthan High Court relying upon the judgment rendered in *T.S.H.W. Co-operative Society's* case by the High Court of Travancore-Cochin (supra) and its earlier judgment in [Jain Brothers and Company, Bundi Vs. The State of Rajasthan,](#) , held that Article 62 governs suits for money had and received not only where the defendant may have actually received money for the use of the plaintiff as his agent or in a like capacity, but it also governs suits for money whereof it can be rightly postulated that the defendant has received money which he had no right to receive and the receipt whereof by the defendant therefore amounts in law or by a legal fiction to a receipt by him for the plaintiff's use.

(vi) [Union of India \(UOI\) and Another Vs. Hem Chandra and Others,](#)

In this case, the Allahabad High Court while laying down the principles for interpretation of the Articles of the Limitation Act, held as follows:

In interpreting the Articles of the Limitation Act certain well-established principles have to be borne in mind, e.g., (i) an interpretation which is penal should be avoided; (ii) if possible, the interpretation which does not bar the suit should be preferred to the one which bars the suit; (iii) if there is a specific Article applicable to the facts of the case, the residuary Article should not be applied; and (iv) all the columns of the Article should be construed. That these principles are well established would be evident from the following cases:

(1) [Makhanlal Roy Pramanick and Others Vs. Pramathanath Basu and Others,](#)

(2) [K.S. Ramaswami Iyer Vs. S.V. Krishna Iyer and Others,](#)

14. Mr. Kulwant Rai Chawla, the learned Counsel for the respondents, sought to distinguish the aforesaid judgments on the ground that the said judgments dealt with cases where the money had been paid by mistake or cases where there was extortion, coercion, etc. For the provisions of Article 24 of the Limitation Act to apply, he contended, there should be money lawfully due and payable to the plaintiff by the defendant. The learned Counsel further contended that the instant case is not covered by Article 24 of the Limitation Act, in that it is based entirely on the Credit Notes dated 10.10.2000 and accordingly, is barred by limitation by a period of 11 days (the suit having been filed on 22.10.2000 as held by the learned trial court and not on 19/20.10.2003 as alleged by the plaintiff). His further contention is that Section 72 of the Contract Act and Article 24 of the Limitation Act must be read together and read in this manner, it is Article 113 of the Limitation Act, 1963, which will apply to the instant case. For the sake of convenience, the said Article is reproduced hereunder:

Description of suit	Period of limitation	Time from which period begins to run
113. Any suit for which no	Three years	When the right to sue
period of limitation is provided elsewhere in this Schedule.		accrues.

15. In the alternative, Mr.Chawla contended that the cause of action in the instant case arose on 06.10.2000 when the goods were returned, it further arose on 10.10.2000 when the Credit Notes were issued by the defendant in favour of the plaintiff and finally, on 18.10.2000 when the entire payment became due under the Letter of Credit. Thus calculated, according to him, the last date of limitation would be 19.10.2003, i.e., three years after the payment became due under the Letter of Credit on 18.10.2000, whereafter there was no further accrual of the cause of action as the defendant No. 2-Bank was under a legal obligation to make payment to the defendant No. 1 under the Letter of Credit, for the goods supplied by the defendant No. 1 to the plaintiff.

16. Reliance was placed by Mr. Chawla on the judgments of the Supreme Court reported in [A. Venkata Subba Rao Vs. State of Andhra Pradesh](#), ; [Tilokchand and Motichand and Others Vs. H.B. Munshi and Another](#), [Tilokchand and Motichand and Others Vs. H.B. Munshi and Another](#),

17. In the case of Venkata Subbarao and Ors (supra), the questions for consideration of the Supreme Court were:

(1) Does Article 62 embody the essential elements of the action known in English Law and pleading as the "action for money had and received to the plaintiff's use?"

(2) Does the fact that at the moment of receipt the defendant intended to receive the money for his own benefit and not for the use of the plaintiff render the Article inapplicable?

After considering the matter at some length, it was held by the Supreme Court that in order to attract Article 62, it is not necessary that at the moment of the receipt of money, the defendant should have actually intended to receive it for the use of the plaintiff and that it was sufficient if the receipt was in such circumstances that the law would impute to him an obligation to retain it for the use of the plaintiff and refund to him when demanded. The Supreme Court further held that Article 62 most nearly approaches the formula of "money had and received by the defendant for the plaintiff's use", if read as a description and apart from the technical qualifications imported in English Law and Procedure. However, if the right to refund does not arise immediately by the defendant, but arises by reasons of facts transpiring subsequently, Article 62 cannot apply, for it proceeds on the basis that the plaintiff has a cause of action for instituting the suit at the very moment of the receipt. The learned Counsel for the respondents was not able to demonstrate how the aforesaid dicta laid down by the Supreme Court was of any avail to the respondents.

18. Reliance is next placed on the Supreme Court judgment in the case of Tilokchand Motichand and Ors. (supra) to contend that a claim for money paid under coercion is covered by Article 113 of the Limitation Act, 1963. A close reading of the decision rendered by the Supreme Court, however, shows that this view was expressed by only one of the five Judges of the Supreme Court who rendered the aforesaid

judgment (Mitter, J.) on the premise that the facts negated any claim of payment under a mistake of law and were only consistent with the claim for money paid under coercion. The majority view (including that of Mitter, J.) was that there was no question in the said case of a mistake of law entitling the petitioner to invoke the analogy of the Article in the Limitation Act. A dissenting view was expressed by two of the Judges (Sikri, J. and Hegde, J.), who held the view that the petitioner acted under a mistake of law and that there was no delay on his part in coming to the Court. The aforesaid observations were made on a petition filed under Article 32 of the Constitution and it is not discernable as to how the decision rendered thereon is of any assistance to the respondent.

19. Reliance placed upon the recent decision rendered by the Supreme Court in Krishna Gopal Kakan's case (supra) by the learned Counsel for the respondents is also, in my view, wholly misplaced, as the Supreme Court in the said case was dealing with a case for settlement of accounts in which the applicability of the provisions of Section 3 and Article 113 of the Limitation Act were considered by the Court in the context of the recovery of surplus auction-sale proceeds of an import consignment jointly held by the appellant and the respondent. This judgment, in my view, is wholly inapplicable to the facts of the instant case.

20. In the instant case, in my considered opinion, even assuming the suit to have been filed on 22.10.2003, as held by the learned trial court, it cannot be held to be barred on the ground of limitation. It has been specifically averred in the plaint that the cause of action lastly arose on 30.10.2000 when the payment was released by the respondent No. 2 in favour of the respondent No. 1. There is no denial from the side of the respondents that the payment was received by the respondent No. 1 on 30.10.2000 and as a matter of fact, there is on record the statement of Mr. C.P.B. Nair, Chief Manager, Syndicate Bank, Mayapuri Branch recorded in Suit No. 2374/2000 to the effect that :

The payment was made to Canara Bank by Syndicate Bank on 30.10.2000 in clearing.

If that be so, then according to the respondent No. 2 Bank itself, the payment was made to the respondent No. 1 not before 30.10.2000. As such, the suit filed by the plaintiff-appellant on 22.10.2003 was clearly within the period of limitation prescribed by Article 24 of the Limitation Act, 1963.

21. Even assuming for the sake of arguments that Article 113 of the Limitation Act is the governing Article in the instant case, under that Article limitation prescribed is three years from the time when the right to sue accrues. The payment having been made by the defendant No. 2 to the bankers of the defendant No. 1 on 30.10.2000, certainly the right to sue accrued to the plaintiff-appellant on the aforesaid date. Thus, in any view of the matter, the suit filed by the plaintiff is within the period of limitation.

22. There is yet another aspect of the matter. The courts have consistently taken the view that in giving effect to a Statute of Limitation, if two Articles limiting the period for bringing a suit are wide enough to encompass the same cause of action, the Article which keeps alive rather than that which bars the right to sue, ought to be preferred on the ground of equitable considerations. All the more so, when both the Articles can be said to be applicable and neither one of them can be said to be more specifically applicable than the other. This is without prejudice to the contention of the appellant, in the instant case, which has been upheld by this Court, that Article 24 of the Limitation Act is most certainly applicable to the case at hand and the present suit falls within the ambit of Article 24 and the residuary Article 113 cannot, therefore, be applied.

23. In view of the aforesaid, the appeal succeeds. The impugned judgment and order of the learned trial court is set aside and the suit is remanded to the learned trial court for deciding the remaining issues in accordance with the law.

RFA No. 365/2007 and CM No. 18764/2009 stand disposed of accordingly.