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SooperKanoon Citation : sooperkanoon.com/907590

Court : Delhi

Decided On : Dec-22-2010

Judge : V.K. Jain, J.

Acts : Code of Civil Procedure (CPC) - Order II Rule 2; Limitation Act - Section 19

Appeal No. : I.A. No.5613/2010 (O.II R. 2 & O.VII R. 11 CPC) IN CS(OS) No. 1520/2009

Appellant : Shri Sanjeev Behl

Respondent : M/S Silvertone Motors Pvt. Ltd.

Advocate for Def. : Mr. Vijay Kumar Singh, Adv.

Advocate for Pet/Ap. : Mr. Sameer Dewar, Adv.

Judgement :

This is a suit for recovery of Rs.28,74,316.24p. The case of the plaintiff is that he has been selling material to the defendant, on credit, since 2nd August, 2003 and the defendant company has been making payment in account to him. A sum of Rs.25,84,708.14p is alleged to be due from the defendant company towards balance price of the goods sold to it by the plaintiff. The plaintiff has claimed that amount from the defendant along with interest thereon @12% p.a. amounting to Rs.2,89,608.10p.

2. Before filing this suit, the plaintiff had filed a suit against the defendant before the learned District Judge, Delhi for recovery of price of the goods sold by him to the defendant during the period from 20th March, 2008 to 29th June, 2009. The case of the defendant is that since the present suit is based on invoices for the period from 2nd August, 2003 to 30th June, 2009, it is barred under Order II Rule 2 CPC. It is further alleged that the amount alleged to be overdue since the years 2003-04 to 2006-07 is barred by limitation since Article 14 of the Limitation Act provides a limitation of 3 years from the date of delivery of the goods.

3. The application has been opposed by the plaintiff. It is alleged in the reply that the suit filed before the learned District Judge was with respect to price of the goods supplied to the defendant at its Gurgaon (Haryana) unit/showroom whereas the present suit pertains to price of the goods supplied to the defendant at their Okhla unit. It is also alleged that the dealings between the parties with respect to Okhla and Gurgaon units were distinct, separate and independent, orders on the plaintiff used to be placed by Gurgaon office as well as by Okhla office and separate accounts were maintained by him with respect to the supply made to Gurgaon office and the supply made to Okhla office. As regards limitation, it is alleged that there was a running account between the parties and in any case, part payment or payment in account was also made by the defendant to the plaintiff, which saves the period of limitation.

4. Order II Rule 2 CPC to the extent it is relevant provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action and where he omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. The explanation below this Rule to the extent it is relevant provides that successive claims arising under the same obligation shall be deemed to constitute one cause of action.

5. The expression 'cause of action', in the context of Order II Rule 2 of CPC would mean all those facts which the plaintiff in order to obtain judgment will have to prove, if disputed by the defendant. In order to succeed in a suit for price of goods sold and delivered, the plaintiff will have to prove (i) the order placed by the

defendant with him for supply of goods, (ii) delivery of the ordered goods to the defendant, (iii) the price of the goods sold to the defendant and (iv) failure of the defendant to make payment of the price of the goods. When different orders are placed from time to time and the goods are supplied pursuant to those different orders, each order for supply of goods and delivery of those goods by the plaintiff to the defendant would constitute a distinct and separate cause of action. If, however, the goods are supplied on different dates but under a common/umbrella contract/order for supply of goods, all the supplies pursuant to that contract/order may constitute a common cause of action despite the goods being delivered on different dates. But, where the orders are distinct, it cannot be said that all of them constitute a common cause of action. In order to succeed in this suit, the plaintiff will be required to prove each and every order placed by the defendant with him for supply of goods from time to time as also the supply of goods to the plaintiff pursuant to those different orders. In a given case, the parties may agree that despite distinct orders being placed on different dates and goods against those orders being supplied on different dates, all the supplies will constitute one common cause of action or will be deemed to be part of a one unified contract for supply of goods. However, in the present case, this is not the case of the parties that either goods supplied by the plaintiff to the defendant on various dates were supplied under a common contract/order placed by the defendant on the plaintiff nor do they claim they had agreed to treat the orders placed on different dates as a common/unified contract, thereby converting it into a common cause of action.

6. The case of the plaintiff is that it was maintaining two separate accounts in its ledger, one for the goods supplied to Gurgaon unit/showroom and the other pertaining to Delhi units/showrooms of the defendants. The plaintiff has placed on records the copies of two separate accounts which were being maintained by him, one with respect to the goods supplied to Gurgaon unit and the other with respect to the goods supplied to Okhla unit. Thus, this is not a case where the parties decided to treat the goods supplied on different dates as one common transaction of supply of goods. Maintenance of two separate ledger accounts rather indicates that the parties were treating the goods supplied to Gurgaon unit altogether distinct from the goods supplied to Okhla unit of the defendant Company. Had the plaintiff not been maintaining two distinct accounts one with respect to goods

supplied to Okhla unit and the other with respect to Gurgaon Unit even that could not have made any difference since the supply of goods by the plaintiff to the defendant on different dates and against different orders constitute distinct causes of action and, therefore, the bar of Order II Rule 2 of CPC does not apply to the present suit.

7. In *K.E.A.K. Ahmed Sahib & Co. v. M.K. Pakir Mohamed Rawther*, 1924 Rangoon 145, a Division Bench of the High Court was of the view that each order and delivery of goods is a separate transaction and a separate cause of action, unless they are successive claims arising under the same obligation within the explanation at the end of rule 2 of Order 2. It was further observed that the question is really dependent on the contract between the parties. If all the goods were supplied under a single contract, it would be within the explanation, unless there was an express stipulation that each delivery or each month's deliveries should be deemed to be a separate contract. It was also observed that it was possible that in a particular case, there may be either a contract, or a course of dealing from which an implied contract might be inferred to the effect that the entire series in a particular month or for other specific period should be treated as a single cause of action. However, in the case before this Court, neither there is any contract between the parties to treat all the transactions as a single contract giving rise to single cause of action nor is it the case of the parties that the goods were supplied by the plaintiff to the defendant on different dates under a single contract.

8. In *Star Paper Mills Ltd. v. Behari Lal Madan Lal Jaipuria and others*, 2007 (95) DRJ 723, the plaintiff used to sell papers to defendant No.1. The plaintiff supplied goods to the defendant No.1 under different consignments. The goods were supplied to defendant No.1 from Delhi as well as Saharanpur. One suit was filed with respect to the supplies made from Delhi whereas the other suit was filed with respect to the supplies made from Saharanpur. The defendants took the plea that the suit was barred by Order II Rule 2 CPC. One of the grounds on which the plea of the defendant was negated by this Court was that the supplies originated from two different places. In the case before this Court, though the supply has originated from one source, the points of supply being different and different

accounts being maintained by the plaintiff, one with respect to the supplies made to Gurgaon unit of the defendant and the other to Okhla unit, this is yet another reason why the supplies made to Okhla unit constituted all together different cause of action. I, therefore, hold that the suit is not barred under Order II Rule 2 CPC.

9. With respect to the plea of limitation, a perusal of the statement of account filed by the plaintiff would show that the defendant has been making part payments from time to time. I will refer only to certain lump sum payments made by the defendant. The statement of account would show that one payment of Rs.30,000/- was made on 5th January, 2005 vide Cheque No.956364. Section 19 of the Limitation Act, to the extent it is relevant, provides that where payment on account of debt or interest is made before the expiry of the prescribed period, by the person liable to pay the debit or by his duly authorized agent, fresh period of limitation shall be computed from the time when the payments were made. Hence, a fresh period of limitation commenced from 5th January, 2005 with respect to the amount, which had fallen due by that date. Another payment of Rs.80,000/- is stated to have been made on 14th September, 2007 vide cheque No.974807. A fresh period of limitation commenced from that date with respect to the amounts which had become payable on that date. There are further part payments also. Rs.1,00,000/- are stated to have been paid on 3rd June, 2008. Rs.15,412/- were paid on 12th June, 2008, Rs.1,00,000/- were paid on 21st July, 2008. Rs.1,00,000/- were paid on 16th October, 2008. Rs. 1,50,000/- were paid on 8th November, 2008. Rs. 2,00,000/- were paid on 17th December, 2008. Rs.1,50,000/- were paid on 27th December, 2008. Rs.1,00,000/- were paid on 29th December, 2008. Rs.1,00,000/- were paid on 30th January, 2009. Rs. 1,00,000/- were paid on 16th February, 2009 and Rs.2,00,000/- were paid on 18th April, 2009. All these payments have been made by cheques which amounts to payment in writing. Computed in terms of these payments, the suit is well within the prescribed period of limitation.

10. For the reasons stated in the preceding paragraphs, I find no merit in the application and the same is, accordingly, dismissed.