

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1505 of 2019

Plaintiff: Ejaz Spinning Mills Ltd.
Through Barrister Amar Saeed Sheikh.

For orders as to maintainability of this Suit.

Dates of hearing: 02.10.2019.

Date of Order: 02.10.2019.

ORDER

Muhammad Junaid Ghaffar J. This is a Suit for Recovery of Rs.33,538,028/- along with cost of funds and damages. On 25.09.2019, an objection was raised by this Court directing the Counsel for the Plaintiff to satisfy as to how this Suit is within limitation. Today, I have heard the learned Counsel on the maintainability of this Suit.

2. Learned Counsel for the Plaintiff submits that this is a Suit for Recovery in respect of supply of various categories of goods against commercial invoices on cash and letter of credit basis, whereas, the defendant No.1 has defaulted in making payments against supply of such goods. On the issue of limitation he submits that though the last delivery was made somewhere in 2005; but thereafter in response to various letters of the Plaintiff in respect of payment of the outstanding dues, on 09.06.2007, the defendant No.1 acknowledged payment of the outstanding amount. According to him, thereafter the correspondence continued and lastly the Plaintiff wrote on 27.10.2018 to defendant No.1 reminding for payment of the long outstanding dues; hence the

Suit is within limitation and it has to be counted from this letter dated 27.10.2018. He has also read out Para-13 of the Plaint and submits that there were various verbal discussions as well as meetings in Lahore and Karachi, wherein, the debt was acknowledged, and therefore, the Suit is within limitation. In support he has relied upon the cases of ***Haji Adam v. Levant Line and two others*** reported as **PLD 1959 (W.P.) Karachi 364**, ***Sheikh Mehboob Ahmed v. Mst. Zahida Begum and 6 others*** reported as **2006 YLR 711** and ***The Government of Sind and 3 others v. Masood Jan*** reported as **1984 MLD 957**.

3. I have heard the learned Counsel for the Plaintiff and perused the record. The only correspondence placed on record on behalf of defendant No.1 in respect of the alleged dues is dated 09.06.2007 and even if this letter is treated as an acknowledgement within the contemplation of Section 19 of the Limitation Act, which provides that where before the expiration of the period prescribed for a Suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing, signed by the parties against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. Even if for the sake of argument, such letter dated 9.6.2007 is considered as the crucial date of acknowledgement of debt; then the three years period provided in Article 52 of the Limitation Act, 1908 stands expired in 2010. Admittedly, there is nothing on record insofar as acknowledgement of any further nature by defendant No.1. In fact the Plaintiff's own letters have been addressed much after expiry of the limitation

period applicable in this case. The reliance on the case law, as above is also irrelevant and does not apply to the facts of the present case. On the other hand, there is a series of judgments, which has settled the law that if a case falls within Section 19 of the Limitation Act, then the acknowledgement to pay a debt has to be issued before the expiry of the limitation period, and if so, only then the limitation would be counted from the date of such acknowledgement and stand extended for a further period from such date.

Moreover, the case of the Plaintiff even otherwise does not fall within Section 25(3) of the Contract Act, which caters to promises made to pay a time barred debt. Here there is only one letter, which even otherwise is not even an acknowledgement within the contemplation of Section 19(ibid) and is definitely not a promise to pay a time barred debt, as provided under Section 25(3) of the Contract Act. The Hon'ble Supreme Court in the case of ***Behlol v Quetta Municipal Corporation and another*** (1997 SCMR 536) has very expressly settled this proposition. Similar view has been expressed by a learned Division Bench of this Court in the case of ***Habib Bank Limited v Shamim Qureshi*** (PLD 1988 Karachi 481).

Section 3 of the Limitation Act provides that every Suit instituted after the period of limitation prescribed under the First Schedule to the Limitation Act, shall be dismissed although limitation may not have been setup as a defence, and therefore, in these circumstances it is the onerous duty of the Court itself to take note of the question of limitation. Reliance in this regard may

be placed on the case of ***Hakim Muhammad Buta and another v Habib Ahmed and others*** (PLD 1985 SC 153).

Therefore, I am of the view that since the bar of limitation is clearly apparent on the face of the record and no further inquiry has to be made, therefore, this Suit being barred under limitation is hereby dismissed with pending applications.

Judge