

IN THE HIGH COURT OF SINDH, KARACHI

Second Appeal No.03 of 2022
[Nina Industries Limited vs. Bhanero Textile Mills]

Dates of hearing : 10.01.2024 and 24.01.2024

Appellant
[Nina Industries Limited] : Through M/s. Waqar Ahmed and
Abdullah Azzam Naqvi,
Advocates.

Respondent
[Bhanero Textile Mills] : Through M/s. Danish Nayyer,
Zahid Ali Sehto and Qubra Ali,
Advocates.

J U D G M E N T

Muhammad Faisal Kamal Alam, J: This is the Second Appeal against the concurrent findings of the learned Trial and Appellate Courts, whereby Recovery Suit, filed by present Respondent, was decreed.

2. It is contended by the Appellant's Counsel, that the present Appeal involves a legal controversy relating to period of limitation, in view of Sections 3, 19 and 52 of the Limitation Act, 1908. Contends that the Suit was based on five different Contracts (*undisputed*), *inter alia*, for supply of Fabric/Cloth by the Respondent to the Appellant, against which payment was to be made as per the terms of the Contract(s); referred to Paragraph-14 of the Impugned Judgment, and states that it has based its reasoning on the three documents, appended with the Objections, filed by the present Respondent to the Appeal, which were never exhibited, thus the Appellate Court decided the matter beyond pleadings, consequently, the impugned Judgment may be set-aside; *secondly*, the Document/Correspondence dated 27.11.2010 (*at Page-97 of the Court File*) is not an acknowledgment of any liability, but it is stated in the said Letter {on behalf of the Appellant} that

the concerned person from the Accounts Department was on leave; even otherwise, the said Correspondence cannot extend the period of Limitation, in view of Section 19 of the above Law. Since issue of limitation was overlooked by both the Courts, in violation of Section 3 of the above Law, therefore, both the impugned Decisions cannot be maintained, but to be set at naught. He has relied upon the Judgment-**PLD, 2016 Supreme Court-872** (*Khushi Muhammad through L.Rs and others vs. Mst. Fazal Bibi and others*), **2010, SCMR-1408** (*Government of N.-W.F.P. and others vs. Akbar Shah and others*), **2006 CLD-258 [Karachi]** (*Sahibzadi Shah Bano Khan vs. Messrs Citibank N.A.*), **PLD 2012, Karachi-182** (*M.S. Port Services (Pvt.) Ltd., vs. Port Qasim Authority*).

3. While opposing the above line of arguments, the learned Counsel for the Respondent has stated that Article 52 of the Limitation Law will not apply and the above Correspondence of 27.11.2010 by the Appellant is an acknowledgment. Further contended by referring to the Written Statement of the Appellant (at page-137) in particular Paragraphs-4 and 25 thereof, wherein it is stated that payment upto 24.05.2008 has been made by the Appellant to the Respondent (Plaintiff), and that after the above Correspondence of 27.11.2010, several unsuccessful meetings were held between the Parties hereto. Conversely, it is contended that Article-115 of the Limitation Law will apply, which provides three years' time to file a case for compensation for the breach of Contract.

4. Arguments heard and record perused.

5. Gist of the cited Case Law (by the Counsel of the Appellant) is that Law of Limitation is a substantive law, which should be strictly interpreted and complied with, thus, there is no room for the exercise of any imagined judicial discretion, no matter whatever hardship may result. Suit of the respondents was decreed, accepting the plea that additional land was

acquired by the Appellant-Provincial Government, which was maintained up to the revisional stage; it is held that, the Courts failed to look into the point of limitation in terms of Section 3 of the Limitation Act; consequently, the suit was held to be time-barred, and all the earlier Decisions of the Courts were set aside. Credit Card of the Appellant (of the reported case – Shah Bano *supra*) was suspended in June, 1998, where after on 19.02.1999, she addressed a letter to the Respondent Bank, but no further Correspondence was addressed between the parties, nor any transaction took place, where after, after three years, Respondent Bank addressed a Notice to the Appellant on 2nd March 2002, for recovery of amount, followed by exchange of Correspondences between the parties, leading to the filing of recovery suit, which was decreed; but, set aside in Appeal; **held**, that the above Letter of 19.02.1999 was not an unequivocal acknowledgement. In Port Qasim Case (*ibid*) while interpreting Section-19 of the above Law, this Court is of the view that acknowledgement of liability in pursuance of Section-19 has to be made within the period of limitation, in order to get the extension of a fresh period of limitation; but once the period of limitation itself expired, then such an acknowledgment cannot allow a fresh limitation period to begin.

6. Undisputedly the last delivery / dispatch is of 20.04.2007 (at page-289, produced in the evidence as Exhibit-P/40). However, the matter has not ended there and the undisputed record shows, discussed hereinabove, that the Parties were negotiated in settling the dispute, though unsuccessfully. In the Written Statement (Paragraphs-4 and 25) not only factum of the Letter dated 30.10.2010 [addressed by the Respondent], for payment of outstanding amounts is accepted, but its Reply of 27.11.2010, **also**. If the arguments of Appellant's Counsel is accepted that the Correspondence of 27.10.2010 is not an acknowledgement in terms of

Section 19 of the Limitation Law, because it does not specify any outstanding amount, but only states that the Accounts Officer is on leave, and limitation will run from the last delivery of the consignment [*supra*], even then, the pleading / Written Statement of the Appellant cannot be ignored, wherein this fact has been mentioned that the Parties were engaged in negotiations, so also that **up to 24. 5.2008**, payment of Rs.407,215,766/- (*rupees four hundred seven million two hundred fifteen thousand seven hundred sixty-six only*) paid by the Appellant to Respondent (Plaintiff) for delivery of Consignments / Fabric.

In view of the above discussion, in the present *Lis*, in fact the Written Statement of the Appellant is an acknowledgment, in terms of Section 19 of the Limitation Act. Time period of three years as envisaged in Article 52 [*ibid*] will run from the above **Letter dated 30.10.2010**. Suit No.1335 of 2011 was filed on 23.11.2011, which is within time. Had the facts mentioned in the above two Paragraphs [4 and 25] of the Written Statement not existed, the period of limitation could have been calculated from the date of the last dispatch / delivery of the consignment [*supra*], followed by the consequence mentioned in the Case Law cited by the Appellants' Counsel, but, to the facts of present Appeal, the rule laid down in the above Decisions do not apply.

7. Looking at the facts of present case from another angle. Unpaid legitimate claim of a person/ party is also an asset, that is, a property, which is protected under Article 24 of the Constitution of Pakistan, *inter alia*, because under Article 260 of the Constitution, 'property' includes, both, moveable and immoveable. Thus, a person or an entity cannot be deprived of his/her/its property on the basis of some legal technicalities, except in accordance with law [as envisaged in Article 24, *ibid*].

8. Both Courts have not erred in not applying Section 3 of the Limitation Act. Both the Courts have properly appraised the evidence, while handing down the Decisions. No other illegality has been successfully pointed out by the learned Counsel for the Appellant, justifying interference in the impugned Decisions.

9. Consequently, this Second Appeal is dismissed, with no order as to costs.

JUDGE

Karachi,

Dated: 24.01.2024.

M Javaid / P.A.