A FOOD CORPORATION OF INDIA

v.

ASSAM STATE CO-OPERATIVE MARKETING AND CONSUMERS FEDERATION LTD. AND ORS.

OCTOBER 26, 2004

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[R.C. LAHOTI, CJ. AND ASHOK BHAN, J.]

Evidence Act, 1872; Ss. 35 and 39:

C *Procurement of paddy—Payment of certain amount as advance by Food Corporation to supplier-Federation—Amount paid in excess of price of the paddy—Suit for recovery—Dismissed by trial Court on ground of limitation—Affirmed by High Court—On appeal, Held: Letters acknowledge receipt of the amount by the Federation from the Corporation, thus forming* D *part of the official correspondence entered into between the parties—Such official record itself is a relevant fact—Since the documents/letters were proved, their contents could be read in evidence.*

Limitation Act; Section 18:

E *Acknowledgement of liability in letters/correspondence between the parties—Effect on limitation—Held: Acknowledgement must relate to present subsisting liability and existence of jural-relationship between the parties as of debtor and creditor—Intention to attempt such relationship must be apparent and could be inferred by implication from nature of the admission and not necessarily be expressed in words—So long as the statement in the* F *documents amounts to an admission of liability, any assertion as to denial of liability thereof would be immaterial—Letters in question acknowledged liability and thus have the effect of extending the period of limitation for filing of the suit—Hence, the suit not barred by limitation—Suit decreed for recovery of the amount from the respondents.*

G **Respondents-Federation, procuring agent of Assam Government requested the appellant-Food Corporation of India to take over paddy procured by them, for which the price has to be fixed by the Government of India. Appellant agreed to pay 90 per cent of the purchase price of the paddy to the respondent-Federation in instalments and balance thereof to be paid after**

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fixation of the price of the paddy by the Government of India. On fixation of the price, it was found that certain amount paid by the appellant-Corporation to the respondent-Federation was in excess of the price. Appellant claimed the excess amount by entering into correspondence with the respondent-Federation and after serving a legal notice filed a suit for recovery. A

Dismissing the suit, Trial Court held that appellant was entitled to recovery of the amount in question from the respondents, but the claim could not be decreed as suit was barred by limitation. High Court dismissed the appeal. Hence the present appeal. B

Allowing the appeal, the Court C

HELD: 1.1. In both the letters written by the Respondent-Federation, it has disputed its liability to pay the amount to the appellant in view of certain disputes relating to settlement of accounts. The fact remains that both the letters acknowledge receipt of certain amount by the Federation from the appellant-Corporation. It is true that the letters were not written in the presence of PW1, who has also not deposed to any such facts as would amount to proof of execution of document. The fact remains that both these letters formed part of the official record of the appellant-Corporation and are placed as pieces or links found in the chain of long correspondence entered into between the parties. [638-H; 639-A-D] D

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1.2. The letters having been tendered in evidence without any demur by the respondents, the same coming from proper custody and forming part of official record of the appellant-Corporation and being part of the chain of correspondence can be said to have been proved by PW1 more so when his deposition to the effect that the letters were received from the Federation was not disputed by the Respondents-Federation either by directing any cross-examination on that part of the statement or by making any suggestion to the contrary indicating the respondent's case as regards the said letters. Hence, the documents/letters were proved and their contents can be read in evidence. [640-C, D, E] F

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P.C. Purushothama Reddiar v. *S. Perumal,* [1972] 1 SCC 9, relied on.

2.1. It is well-settled that to amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even by implication. [640-F-G] H

A **2.2. The statement providing foundation for a plea of acknowledgement must relate to a present subsisting liability, though the exact nature or the specific character of the said liability may not be indicated in words. The words used in the acknowledgement must indicate the existence of jural relationship between the parties such as that of debtor and creditor. The intention to attempt such jural relationship must be apparent. However, such intention can be**
B **inferred by implication from the nature of the admission and need not be expressed in words. [641-A-B]**

Shapoor Freedom Mazda **v.** *Durga Prasad Chamaria and Ors.,* **AIR (1961) SC 1236 and** *M/s Lakshmiratan Cotton Mills Co. Ltd. Etc.* **v.** *The*
C *Aluminium Corporation of India Ltd.,* **[1969] 1 SCR 951, relied on.**

2.3. Disputing the liability to repay the amount acknowledged to have been received does not dilute the fact of acknowledgement in so far as Section 18 of the Limitation Act is concerned. The two letters have the effect of extending the period of limitation prescribed for filing the suit and calculated
D **from the date of the latter of the two letters, the suit filed was well within the period of limitation. Hence, the view taken by the Trial Court and the High Court that the suit filed by the appellant was barred by limitation cannot be countenanced. [641-F-G-H]**

3. The Trial Court has found the appellant not entitled to any claim other
E **than the recovery of the amount paid in excess. The claim for interest was also found not liable to be sustained. This Court is not inclined to take a view different from the one taken by the Trial Court, more so when no plea other than that of limitation was pursued and pressed in the High Court. The judgments and decrees of the trial Court and the High Court are set aside,**
F **and the suit filed by the appellant is decreed against respondent Nos. 1 and 2 for recovery of the amount. [642-A, B, C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2259 of 1999.

From the Judgment and Order dated 3.12.98 of the Gauhati High Court
G. at Assam in F.A. No. 44 of 1996.

Y. Prabhakar Rao and J.P. Mishra for the Appellant.

P.K. Goswami, Rajiv Mehta, B. Aggarwala, Sanjay V.S. Choudhury, V.K. Siddharthan and Niraj Kumar for M/s. Corporate Law Group with him for the
H Respondents.

The Judgment of the Court was delivered by

R.C. LAHOTI, CJ. The Food Corporation of India, the appellant herein filed a suit for recovery of Rs. 79,82,105.44p. against four defendants (in fact two sets of defendants) namely (i) the Assam Cooperative Marketing and Consumer Federation Limited through its Managing Director; (ii) the General Manager of the Federation (comprising the first set); (iii) the State of Assam through its Chief Secretary; and (iv) the Secretary to the Government of Assam in the Supply Department (comprising the second set) respectively impleaded as defendant Nos. 1, 2, 3 and 4. Hereinafter, defendant Nos. 1 and 2 shall be referred to as the 'Federation' and defendant Nos. 3 and 4 shall be referred to as the 'State' for convenience sake.

According to the plaintiff, the State through its procuring agent, the Federation, requested the plaintiff through the Government of India to take over 20,000 metric ton of procured paddy of kharif season 1975-76 as per specification and price to be fixed by the Government of India. The request was acceded to by the plaintiff. It was also agreed that the plaintiff shall pay 90 per cent of the amount as advance in nine instalments on the condition that the balance 10 per cent will be paid after fixation of price by the Government of India. An amount of Rs. 1.8 crores was to be paid by way of ance. However, by mistake the plaintiff paid a sum of Rs. 2 crores as advance to the Federation during the period 16/2/76 to 27/2/76. In a meeting which took place on 20/9/1976, wherein the representatives of the parties and the Government of India were present, the price of paddy was fixed and it was resolved that the value of the paddy supplied by the Federation to the plaintiff was Rs. 1,60,63,190 as against an advance of Rs. 2 crores by the plaintiff to the Federation and thus there was an amount of Rs. 39,36,810 paid by the plaintiff to the Federation in excess.

Here itself, it may be mentioned that the plaintiff also claimed an amount of Rs. 7,03,541 from the Federation on account of quality cut. However, we do not propose to deal with that claim inasmuch as it has been negatived by the trial court itself and we do not find any reason to take a different view.

Correspondence ensued between the parties regarding the plaintiff's claim against the Federation. Several letters were exchanged. At the end, the plaintiff served a legal notice and filed the suit for recovery on 13/05/1980.

The defendants contested the suit. The principal defence raised in the written statement was that the suit was barred by time inasmuch as the cause

A of action, if any, had arisen to the plaintiff on 20/09/1976 and the suit was filed beyond three years from that date and as such was beyond the period of limitation. The defendants also expressed in the written statement a desire of pleading set-off and also of raising a counter claim but that was not done. After trying all the issues, the trial court held that the plaintiff was entitled to recovery of Rs. 39,36,810 only from the Federation, but even that claim B could not be decreed as the suit was filed beyond the prescribed period of limitation. Consequently, the suit was directed to be dismissed.

The plaintiff preferred an appeal in the High Court. The only issue agitated in the High Court was the one of limitation. The High Court found C no reason to take a view different from the one taken by the trial court and accordingly, directed the appeal to be dismissed. This is an appeal by special leave preferred by the plaintiff.

The issue as to limitation centers around two letters respectively dated 29/03/1977 and 30/07/1977 marked as Exhibits 8 and 9 (Annexures P4 and P5). D According to the plaintiff these two letters written by the Federation amount to acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963 and have the effect of extending the period of limitation. The trial court has found the letters not proved and also not amounting to such acknowledgement of liability as may attract the applicability of Section 18 of the Limitation Act. E

The first question which arises for consideration is whether the two letters have been proved. Madan Pathak-P.W.1 was Assistant Manager in Food Corporation of India at the relevant time. He deposed to all the relevant facts in issue and substantiated all the material plaint averments. During the F course of his deposition, he stated—"Exhibit 7 is the letter given by defendant No. 1 itself. In that letter defendant No. 1 admitted to have received Rs. 2 crores. Exhibits 8 and 9 are the letters given by defendant No. 1. We have filed this suit for non payment of money by defendant No. 1." There is no cross-examination directed on this part of the statement made by plaintiff. There is no suggestion given that such letters were not sent by or on behalf G of the Federation to the plaintiff.

Both the letters Exhibits 8 and 9 are written on the letter pad of the Federation. Both bear despatch numbers. The letter dated 29th March, 1977 has been written in response to plaintiff's D.O. No. E-1(7)/75-76/Proc./292 dated 14/03/1977. The letter dated 30th July, 1977 (Exhibit-9) has been written H in response to Plaintiff's D.O. No. ECM/FCI/P/76 dated 16/07/1977. In both

the letters, the Federation has disputed its liability to pay the amount in view of certain disputes relating to settlement of accounts. The fact remains that both the letters acknowledge an amount of Rs. 2 crores having been received by the Federation from the plaintiff. The letter dated 29/03/1977, marked as Exhibit-8, states *inter alia*—"We have already covered a sum of Rs. 1,77,64,923.89 leaving a balance of only Rs. 22,35,075.11." In latter part of the same letter the Federation has staked a claim of Rs.48,73,984.74p. against the plaintiff, as against the plaintiff's claim for the balance of Rs. 22,35,076.11p. and then states "loss balance amount against deposit of Rs. 2.00 crores".

In the letter dated 30/07/1977 against the same statement has been reiterated. The letter states at two places—"we have already covered a sum of Rs.1,77,64,923.89 leaving a balance of only Rs. 22,35,076.11" and "loss balance amount (Rs.22,35,076.11) against deposit of Rs. 2 crores". It is true that the letters Exhibits 8 and 9 were not written in the presence of P.W.1. He has also not deposed to any such facts as would amount to proof of execution of document. The fact remains that both these letters formed part of the official record of the plaintiff and are placed as pieces or links found in the chain of long correspondence entered into between the parties. According to Section 35 of the Evidence Act—an entry in any public or other official record stating a fact in issue or relevant fact and made by public servant in the discharge of his official duty is itself a relevant fact. Section 39 of the Evidence Act makes a reference to any statement of which evidence is given forming part of a connected series of letters or papers. In *P.C. Purushothama Reddiar* v. *S. Perumal*, [1972] 1 SCC 9, the question arose as to the admissibility and relevance of certain correspondence included in the official records. The Court observed

> "The learned advocate General did not support the exclusion of the last three on the ground that the copies of correspondence kept in the Collector's and taluk offices were not signed but contended that they were not admissible under Section 35 of the Indian Evidence Act. We think however that copies of actual letters made in registers of official correspondence kept for reference and record are admissible under Section 35 as reports and records of acts done by public officers in the course of their official duty and of statements made to them and that in the words of their Lordships in *Rajah Muttu Ramalinga Setupati* v. *Periyanayagum Pillai*, (1874) 1 Ind. App. 209 at p. 238, they are entitled to great consideration in so far as they supply information of material facts and also in so far as they are

A relevant to the conduct and acts of the parties in relation to the proceedings of Government founded upon them.

We are in agreement with the view taken by the Madras High Court in that case."

B The Court further held that once the document has been marked as exhibit without any objection from a party then such party cannot object to the admissibility of document and once a document is properly admitted the contents of that document are also admitted in evidence though those contents may not be conclusive evidence.

C The documents having been tendered in evidence without any demur by the defendants, the same coming from proper custody and forming part of official record of the appellant-Corporation and being part of the chain of correspondence can be said to have been proved by P.W.1 more so when his deposition to the effect that the two letters were received from the Federation was not disputed by the defendant-Federation either by directing any cross-
D examination on that part of the statement or by making any suggestion to the contrary indicating the defendant's case as regards the said two letters. In our opinion, the documents were proved and their contents can be read in evidence. Needless to say, there is no rebuttal of the letters on the part of the defendants by way of evidence adduced in the case.

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Once it is held that the two letters are proved then the next question which arises is as to their effect on limitation.

According to Section 18 of the Limitation Act, an acknowledgement of liability made in writing in respect of any right claimed by the opposite party
F and signed by the party against whom such right is claimed made before the expiration of the prescribed period for a suit in respect of such right has the effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed. It is well-settled that to amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, it need not be accompanied by a promise to pay either expressly or even
G by implication.

The statement providing foundation for a plea of acknowledgement must relate to a present subsisting liability, though the exact nature or the specific character of the said liability may not be indicated in words. The
H words used in the acknowledgement must indicate the existence of jural

relationship between the parties such as that of debtor and creditor. The intention to attempt such jural relationship must be apparent. However, such intention can be inferred by implication from the nature of the admission and need not be expressed in words. A clear statement containing acknowledgement of liability can imply the intention to admit jural relationship of debtor and creditor. Though oral evidence in lieu of or making a departure from the statement sought to be relied on as acknowledgement is excluded but surrounding circumstances can always be considered. Courts generally lean in favour of a liberal construction of such statements though an acknowledgement shall not be inferred where there is no admission so as to fasten liability on the maker of the statement by an involved or far-fetched process of reasoning. (See : *Shapoor Freedom Mazda* v. *Durga Prosad Chamaria and Ors.*, AIR (1961) SC 1236 and *"M/s Lakshmiratan Cotton Mills Co. Ltd. Etc.* v. *The Aluminium Corporation of India Ltd.*, [1969] (1) SCR 951. So long as the statement amounts to an admission, acknowledging the jural relationship and existence of liability, it is immaterial that the admission is accompanied by an assertion that nothing would be found due from the person making the admission or that on an account being taken something may be found due and payable to the person making the acknowledgement by the person to whom the statement is made.

The two letters dated 29/03/1977 and 30/07/1977 (Exhibits 8 and 9) clearly acknowledge the amount of Rs. 2 crores having been received by the Federation from the Food corporation of India whether by way of advance or by way of deposit. The letters also indicate that the amount of two crores was by way of advance or deposit against paddy procurement. This is admission of jural relationship of buyer and seller which stood converted into relationship of creditor and debtor on the failure of the principal transaction. However, the acknowledged liability is sought to be disowned by submitting that on an account being taken nothing would be found due and payable by the plaintiff to the Federation. Disputing the liability to repay the amount acknowledged to have been received does not dilute the fact of acknowledgement in so far as Section 18 of the Limitation Act is concerned. The two letters have the effect of extending the period of limitation prescribed for filing the suit and calculated from the date of the latter of the two letters i.e. 30/07/1977, the suit filed on 30/05/1980 was well within the period of limitation.

For the foregoing reasons, we cannot countenance the view taken by the trial court and the High Court that the suit filed by the appellant was barred by limitation.

A The trial court, as already indicated, has found the plaintiff not entitled to any claim other than the recovery of Rs. 39,36,810. The claim for interest was also found not liable to be sustained. We are not inclined to take a view different from the one taken by the trial court more so, when we find that no plea other than that of limitation was pursued and pressed in the High Court.

B The appeal is allowed. The judgments and decrees of the trial court and the High Court are set aside. Instead the suit filed by the plaintiff is directed to be decreed against the defendant respondent Nos. 1 and 2 for recovery of Rs. 39,36,810 with costs proportionate to that amount throughout. The plaintiff shall also be entitled to interest calculated at the rate of 6 percent per C annum from the date of the suit till realization.

S.K.S. Appeal allowed.