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**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE &
ACJM, BHARUCH AT ANKLESHWAR**

**Sp. C.S No. 60/2015
EXH. :**

**Plaintiff : 1) Nileshkumar Vallabhdas Shah Proprietor of
M/s Ramco Organics
Add : 403, shreeji Arcade, S. V. Road Junction
& M. G. Road, Kandiwali (West), Mumbai.**

Versus

**Defendants : 1) M/s. Pure Chem Pvt. Ltd
Add : 4717, GIDC Estate, Nr. Telephone
Exchange, Ankleshwar-393002**

**2) Mr. Bharat Bhushan Datta
Add : B/55, Kamal Pushpa Housing Society,
Bandra Reclamation, Mumbai-400050.**

3) Mr. Desai Jayeshbhai Babubhai

**4) Mrs. Bhartiben Jayeshbhai Desai
Def. No. 3 & 4 residing at : 1002, Jay Shiva
Apartment, Opp. Azad Society, Ambawadi,
Ahmedabad-380015.**

**5) Mr. Rohitkumar Bhagwanbhai Dholakia
Add : 149, Tejendra Park Society, Khodiyar
Nagar Road, Varachha Road, Surat-395008.**

6) Mr. Hareshbhai Nanjibhai Lathiya

Add : 109, Balvantnagar Society, Katargam S.
Road, Surat-395004

Subject: To recover Rs. 25,26,753.74/- being the amount of interest due and recoverable for the delayed payments of the goods supplied and for permanent injunction.

Appearance :

Ld. Advocate Mr. N. A. Shaikh.....for the plaintiff.

Ld. Advocate Mr. J. D. Solanki.....for Defendant Nos. 1,5 & 6.

Ld. Advocate Mr. S. I. Patel.....for Defendant No. 2.

:: J U D G M E N T ::

1. The Plaintiff are Importer, Exporter and Dealers in Chemical Solvents, Pharmaceuticals Raw Materials and General Merchant and Commission Agent carrying on business at the above address. Defendant No.1 is a private limited company incorporated under the Indian Companies Act, 1956, having its registered office at 4717, GIDC Estate, Near Telephone Exchange, Ankleshwar-393002, Dist. Bharuch, Gujarat, engaged in manufacturing and selling Chemical Intermediates and related Chemical Items.
2. Defendant No.1 through its Directors and Representatives approached the Plaintiff for supply of ferrous fumarate and other chemical raw materials on credit and assured prompt payment of bills, invoices and challans along with interest @ 21% per annum on delayed payments. Accordingly, the Plaintiff supplied ferrous fumarate and other chemical goods as per the requirements and

purchase orders of Defendant No.1 since 2005 under various bills, invoices and challans. No dispute regarding quality, quantity or price was ever raised by Defendant No.1. A running credit account was maintained in the books of the Plaintiff and yearly ledger statements were sent for confirmation, to which no objection was raised regarding principal or interest amounts.

3. As per the ledger accounts for the year 2012-2013, as on 01.04.2013 an amount of Rs.16,29,138/- towards principal and Rs.18,18,667.03 towards interest @ 21% per annum were due and payable by Defendant No.1 to the Plaintiff, totaling Rs.34,31,703.03. Since the said amount remained unpaid despite repeated demands, the Plaintiff issued a Statutory Notice dated 27.05.2013 under the Indian Companies Act, 1956 calling upon the Defendants to pay Rs.34,31,703.03 within three weeks from receipt of the notice. As the Defendants neither replied nor complied with the notice, the Plaintiff filed Company Petition No.190/2013 under Sections 433 and 434 of the Companies Act, 1956 before the Hon'ble High Court of Gujarat for winding up Defendant No.1 company for failure to pay its liability and for having become commercially insolvent.
4. Defendant No.1, Defendant No.5 and Defendant No.6 appeared in the proceedings, while Defendant Nos.2, 3 and 4 remained absent though duly served. During the proceedings, the Plaintiff and Defendant Nos.1, 5 and 6 mutually agreed to settle the dispute regarding principal and interest amounts claimed in the petition, pursuant to which oral order dated 17.06.2015 was passed by the Hon'ble High Court of Gujarat.

:: ORAL ORDER ::

1. This petition is filed by the petitioner for winding up of respondent company under the provisions of Section 433 read with Section 434 of the companies Act, 1956. This Court issued notice to the respondents. In pursuant to the notice issued by this Court, learned advocate Mr. MI Merchant has appeared on behalf of the contesting respondent Nos. 5 and 6. Pleadings are also over. Today, when the matter is called out, learned advocate Mr. MI Merchant for the respondent Nos. 5 and 6 submitted that respondent Nos.5 and 6 are ready and willing to give three different cheques bearing Cheque No.113136 dated 01.07.2015 of Rs.5,50,000/-, Cheque No. 113137 dated 01.09.2015 of Rs.5,50,000/- and Cheque No. 113138 dated 01.11.2015 of Rs. 5,28,898/-for total amount of Rs. 16,28,898/-. The aforesaid three different cheques would be handed over to the learned advocate Mr. N.A. Shaikh for the petitioner during the course of the day. The said cheques are for the principal amount. The learned advocate Mr. N.A.Shaikh for the petitioner submitted that the petitioner is ready and willing to accept the said cheques and at this stage the petition be disposed of with a liberty to the petitioner to file appropriate proceedings before the appropriate forum with regard to the amount of interest and also with liberty to revive this petition in case of difficulty.
2. It is open for the petitioner to file such proceedings before the appropriate forum. The rights and contentions of both the parties are kept open. As and when such proceedings are initiated, it is open for the concerned court to pass appropriate order in accordance with law after taking into consideration

the contentions which may be taken by both the parties.

3. In view of the aforesaid observations, learned advocate for the petitioner seeks permission of this Court to withdraw this petition with aforesaid liberty.

4. Permission as prayed for is granted. The petition is disposed of as withdrawn.

5. The Plaintiff accepted the aforesaid three cheques issued by Defendant No.1 company subject to realization. Out of the said cheques, Cheque No.113136 dated 01.07.2015 for Rs.5,50,000/- was honoured and realized by the Plaintiff on or about 03.07.2015 through its bank. Without prejudice to its rights regarding the remaining two cheques towards the principal amount claimed in the company petition before the Hon'ble High Court of Gujarat, the Plaintiff issued Notice of Demand dated 30.07.2015 claiming interest on delayed payments amounting to Rs.25,21,753.74 as on 01.11.2015 and called upon the Defendants to pay the said amount within three weeks from receipt of the notice, failing which the Plaintiff will be constrained to file such proceedings for recovery along with costs and consequences thereof.

6. The Defendants duly received the Notice of Demand dated 30.07.2015, but neither complied with nor replied to the same, hence the present suit filed for recovery. The Plaintiff submits that Defendant No.1 company is deemed unable to pay its debts and that its management is attempting to dispose of, transfer, alienate, encumber or create third party rights in respect of its assets and properties, which would seriously prejudice the interests of unsecured creditors like the Plaintiff.

7. The Plaintiff further submits that to safeguard and protect its interest, it is just and necessary that pending hearing and final disposal of the suit, a Receiver or other fit person be appointed as Provisional Receiver of the assets, properties and income of Defendant No.1 company, and that Defendant No.1 company be restrained by injunction from dealing with, disposing of or parting with possession of its assets, properties or shares. The Plaintiff submits that unless such relief is granted, it shall suffer grave prejudice and hardship. Since Defendant No.1 company has failed to comply with its statutory obligations, the Plaintiff is also constrained to seek permanent injunction and interim reliefs under Order 39 Rules 1 and 2 and Order 40 Rule 1 of the CPC for temporary injunction and appointment of Receiver.
8. After service of summons, Defendant Nos.1, 5 and 6 appeared through Advocate and filed their written statement at Exh. 23, in which they submitted that the suit of the Plaintiff is without any cause of action and is liable to be dismissed. The suit of plaintiff is barred by law of limitation as the Plaintiff has claimed interest for the period from 03.07.2007 to 31.03.2009 and the present suit for recovery of interest has been filed after more than six years. No application for condonation of delay has been filed and no sufficient cause has been shown for such delay. Therefore, the suit is clearly barred by limitation, because U/s 25 of the Limitation Act, the limitation period for recovery of interest is three years.
9. The plaintiff has filed false petition for appointment of Liquidator, in which the defendant Nos. 1,5 & appeared and settled the matter by making payment of principal amount to

plaintiff. Consequently, the plaintiff has withdraw the case. Thereafter the plaintiff issued notice dated 30.07.2015, to which respond by Defendant Nos. 1,5 & 6 through Ld. Advocate. Despite of replied the notice with true facts, the plaintiff has filed the present suit, in order to usurp money wrongly from defendant.

10. The true facts are that, Defendant No.1 company had entered into a Preliminary Agreement to Take Over Business dated 17.01.2013 with Defendant Nos. 2, 3 and 4 and since then Defendant Nos. 5 and 6 had taken over possession and management of Defendant No.1 company. The said agreement was came to be implemented from 31.12.2012 and accordingly amount of secured loans and unsecured loans, government dues, labour dues, P.F., E.S.I., bonus dues and other outstanding liabilities were paid. However, there was no provision in the said agreement regarding payment of interest on outstanding amounts and therefore Defendant Nos.5 and 6 were not liable to pay any such interest amount. It is further contended that there was no agreement between the Plaintiff and the Defendants regarding payment of delayed payment interest and therefore the Plaintiff's claim is not maintainable.
11. The Defendants have further stated that, Defendant Nos.5 and 6 repeatedly demanded C-Forms and H-Forms from the Plaintiff through telephone calls and personal meetings, but the Plaintiff failed to provide the same. Thereafter, the Plaintiff wrongly issued notice dated 04.05.2013. The Defendant Nos.5 and 6 had already paid the outstanding principal amount of Rs.16,28,898/- by sending two Demand Drafts bearing No.206451 dated

21.06.2013 for Rs.7,28,898/- and No.206452 dated 21.06.2013 for Rs.9,00,000/- through Gopal Tailor, but the Plaintiff refused to accept the same and wrongly filed Company Petition No.190/2013 before the Hon'ble Gujarat High Court.

12. In the said proceedings, Defendant Nos.1, 5 and 6 filed an affidavit and undertook to pay the principal amount of Rs.16,28,898/- in three installments by cheques and accordingly the said amount was paid to the Plaintiff and accepted by the Plaintiff. In Company Petition No.190/2013 filed before the Hon'ble Gujarat High Court, Hon'ble Justice Mr. Vipul M. Pancholi passed the following order in paragraph 4: **“Permission as prayed for is granted. The petition is disposed of as withdrawn.”** Thus, the Plaintiff himself withdrew Company Petition No.190/2013 from the Hon'ble Gujarat High Court and no direction was issued by the Hon'ble High Court regarding payment of interest. Therefore, the present suit filed by the Plaintiff is liable to be dismissed with costs and the Defendants have prayed that costs of Rs.2,00,000/- be awarded against the Plaintiff.
13. The parties have produced below mentioned oral as well as documentary evidence in support of present suit.

Oral Evidence of plaintiff.

Sr. No.	Particulars	Date	Exh.
1	Deposition of plaintiff.	11/08/2021	40

Documentary evidences of plaintiff.

Sr. No.	Particulars	Date	Exh.
1	Certified copy of Petition u/s 433 & 434 against the defendants.	25/06/2013	52
2	Tax invoice No. 1672/2008-09.	29/11/2008	53
3	Tax Invoice No. 1673/2008-09.	29/11/2008	54
4	Tax Invoice No. 1674/2008-09.	29/11/2008	55
5	Tax Invoice No. 1806/2008-09.	30/03/2009	56
6	Letter of Def. No. 01 enclosing the purchase order for 200 Kgs Thiourea.	05/03/2009	57
7	Retail Tax Invoice No. 80.	13/02/2012	58
8	Ledger of defendant No. 01.	19/07/2005 to 07/03/2006	59
9	Ledger of defendant No. 01.	01/04/2006 to 31/03/2007	60
10	Ledger of defendant No. 01.	01/04/2008 to 31/03/2009	61
11	Ledger of defendant No. 01.	01/04/2007 to 31/03/2008	62
12	Interest calculation sheet.	01/04/2008 to 31/05/2013	63
13	Letter of defendant No. 01 for payment details of cheques.	09/04/2011	64
14	Copy of notice issued to defendants.	04/05/2013	65
15	Copy of statutory notice issued to defendants.	27/05/2013	66

16	Copy of grouping forming part of balance sheet of def. No. 01.	31/03/2012	67
17	Delayed interest calculation sheet against the def. No. 1.	03/07/2007 to 01/11/2015	68

Oral Evidence of Defendant :

Sr. No.	Particulars	Date	Exh.
1	Deposition of Def. No. 5.	31/01/2024	80

Documentary evidences of Defendant Nos. 1,5 & 6.

Sr. No.	Particulars	Exh.
1	Copy of balance sheet issued by former Director of plaintiff firm.	95
2	Copy of ledger account details of year 2006-07 & 2012-13.	96
3	Copy of mail sent by plaintiff.	97
4	Copy of Demand Drafts sent to plaintiff.	98
5	Copy of bank statement regarding part payment as per order of Hon'ble Gujarat High Court.	99
6	Copy of reply given of plaintiff's notice.	100
7	Copy of agreement dated 17/01/2013.	101

14. The plaintiff has produced evidence closing pursis at Exh.109 Whereas the defendant Nos. 1,5 & 6 have produced evidence closing pursis at Exh. 108. Further, this Court has closed the evidence right of defendant Nos. 2,3 & 4 by passing order below Exh. 92 on 06/12/2024.
15. This Court has carefully read and considered the written argument

produced at Exh. 94 by Ld. Advocate for the plaintiff and written argument produced at Exh. 105 by Ld. Advocate of defendant Nos. 1,5 & 6.

16. For the final disposal of the suit, following issues were framed by my Predecessor Judge at Exh. 38.

1. Whether the plaintiff proves that, he is entitled to recover an amount of Rs. 25,21,753.03/- from the defendants ?
2. Whether the plaintiff is entitled to get reliefs as claimed ?
3. What order & decree ?

17. My findings on above issues are as under :

1. In Negative.
2. In Negative.
3. As per final order.

:: REASONS ::

Issue No. 01 :

18. The plaintiff has filed the present suit to recover the amount of interest due and recoverable for the delayed payments of the goods supplied by the plaintiff to the defendants and for permanent injunction. The plaintiff has deposed himself at Exh. 40 as per the provisions of CPC. The plaintiff has stated in his suit as well as in his deposition recorded at Exh. 40 that, total Rs. 34,31,703.03/- with interest was outstanding on defendants, which was not cleared by the defendants despite of issuance of legal demand notice. Due to such act of plaintiff, he was compelled to file Company Petition before the Hon'ble High Court of Gujarat u/s 433 & 434 of the Indian Companies Act, 1956 against the defendants for winding up the defendant

company and during the trial of such petition, the defendant Nos. 5& 6 has made payment of principal amount of Rs. 16,28,898/- of outstanding dues to the plaintiff. Consequently, the said proceeding was withdraw by plaintiff with a liberty to file appropriate proceedings before the appropriate forum with regards to amount of interest, and filed suit before this Court for recovery of interest amount.

19. Further, in support of his suit, the plaintiff has produced documentary evidences at Exh. 52 to 68. Upon perusing the documentary evidence of Exh. 53 to 56, it transpires that the plaintiff has sought interest on tax invoices of year 2008-09 and the present suit has been filed by the plaintiff on 10.09.2015 i.e. after lapsing the stipulated time period as prescribed under Article 14 & 15 Limitation Act. Further, Section 18 of Limitation Act provides as under ;

18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

20. Section 18 protects a plaintiff when the defendant, before limitation expires, admits in writing and signs an

acknowledgment of an existing liability. Such acknowledgment gives the plaintiff a fresh limitation period starting from the date of acknowledgment. If the acknowledgment document is undated, oral evidence may be used only to prove when it was signed, not its contents.

21. In the case on hand the plaintiff has not produced any cogent evidence, including acknowledgment signed by defendant before limitation expires and orally admitted by defendant. Even during the course of cross examination, the plaintiff itself has admitted that, he has filed the present suit on the basis of tax invoices produced at Exh. 53 to 56, which are between the period from 2007 to 2009, and such invoices does not bears sign of defendants. He further admitted that he has not mentioned about interest in his ledger account, and that there is no agreement on record regarding the interest between the parties. Therefore, the relief regarding the interest as claimed in suit is improper and invalid in accordance with law.
22. Now if we considered the section 25(3) of Indian Contract Act, then the same provides as under ;
“25(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits”.
23. This section states that, an agreement without consideration is void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law. Neither the plaintiff has produced any

agreement executed between the parties nor has produced any acknowledgment, from which it appears that he is entitled to claim interest even after lapsing of stipulated time period.

24. Further, the plaintiff has already received the principal amount of outstanding dues from the defendants by filing the petition before Hon'ble Gujarat High Court, hence now the plaintiff is not entitled for amount of interest from defendants as his suit is barred by law of limitation. Therefore I answered Issue No.1 in Negative.

Issue No. 02 :

25. While deciding the present issue, the findings recorded while determining Issue No.1 are required to be taken into consideration. As already discussed, the plaintiff has filed the present suit for recovery of money being the amount of interest after lapsing of its stipulated time period as provided under Article 14 & 15 of Limitation Act. Therefore, the basic condition necessary for granting a decree of recovery suit is not satisfied.
26. Upon consideration of the pleadings, evidence on record, and the submissions advanced by the parties, this Court finds that the cause of action arose in year of 2009 and the present suit, however, came to be instituted in year of 2015, beyond the period prescribed under the Article 14 & 15 of the Limitation Act. The plaintiff has failed to establish any sufficient ground for exclusion or extension of the limitation period.
27. It is a settled principle of law that a suit instituted after the expiry

of the prescribed period of limitation is liable to be dismissed, notwithstanding the merits of the claim. The law of limitation mandates the Court to reject claims brought beyond the statutory period. Accordingly, this Court holds that the present suit is barred by limitation and is therefore not maintainable in law. Consequently, Issue No. 02 is decided in Negative as the plaintiff has remained failed in proving his entitlement for the claim as prayed in suit.

Issue No. 03 :

28. In view of the findings recorded while deciding Issue No. 1 & 2 order below Issue No. 3 is as follow:-

:: ORDER ::

1. The present suit of plaintiff is hereby dismissed on merits.
2. Pending applications of the suit, if any, is hereby disposed of accordingly.
3. No order as to costs.
4. Decree be drawn up accordingly.

(Pronounced in the open court on 10/06/2026)

Place : Ankleshwar
Date : 10/06/2026

: Yogesh Narendrakumar Patel :
Principal Sr. Civil Judge & A.C.J.M
Ankleshwar, Dist. Bharuch
Judge Code : GJ00664

: Seema ::