

Order Below Exh. 12

[1] Read this application and reply given by the plaintiff vide Exh. 16 and record of this case. I also heard Ld. Advocates for both the sides.

[2] The present application filed by the defendant, asking relief that the suit is required to be dismissed on the ground that the suit is barred by S. 84 of the Limitation Act as the suit is not filled within three years from the bill dated 30/07/2008 and filed suit with malafide intention to harass the Plaintiff and filled written argument vide Exh. 33 where in he has contended that Supplementary bill was issued on date 24/11/2007 and it was reconsidered on date 29/07/2008 and revised bill was issued on 30/07/2008 and notice for bill was issued on 12/07/2010 and the present suit was filled on date 4/03/2013. Hence the suit is clearly barred by law and therefore, requested to reject the plaint with cost.

In support of his case he has relied on 1) 1977 AIR SC page 2421 between T. Arivandandam V/s. T.V. Satyapal, 2) 2007 (0) GLHEL-SC 39274 between Hardesh Ores Pvt. Ltd. V/s. M/s. Hede And Com. 3) IV (2008) CLT 320 between Amrit Kaur V/s. Sarabjeet Singh 4) II (2008) CLT 219 between Kamlesh Babu V/s. Lajpat Rai 5) 2007 (0) GLHEL-HC 217477 between State of Gujarat V/s. Gangaben Polabhai 6) 1990 (2) GLH 219 between Smt. Patasibai V/s. Ratanlal 7) 1998(2) GLH 823 between Maharaj Shri Manvendrasinhji V/s. Rajmata Vijakunverba 8) 1989(0) GLHEL-SC 13 between A.b.c. Laminart Pvt. Ltd. V/s. Andhra Pradesh Agencies 9) 1983 GLH 1045 between Navnitlal Girdharlal V/s. Avadhut Transport Com. where in it

was laid down by Apex Court and High Courts that when from bare reading of Plaint it appears that the suit is barred by provision of Limitation Act or cause of action for suit is not mentioned then the plaint be rejected and mere part payment of certain amount without anything more indicating acknowledgement of the debt in writing will not extent period of limitation from such payment.

[3] The Ld. Advocate for the Plaintiff has stated that the suit is filled for recovery of amount of bill for specific period hence, the suit is filled within limitation as prescribed in Limitation Act and without providing opportunity to lead evidence to Plaintiff the suit can not be rejected, and issues are already framed vide Exh. 9 prior to this application and in issue no. 4 Court has framed issue regarding limitation. Hence, this application is required to be dismissed.

[4] I have heard Ld. Advocate for both the side and perused the case record. Looking to the prayer of the suit is quite clear that the Plaintiff has filled the suit for recovery of amount of bill for specific period ie 5/5/2010 to August 2012 with delay payment charges and and the suit is filled on 25/02/2013 Defendant has also paid Rs. 2,00,000/- on 5/5/2010 and so far as the issue regarding the limitation is concerned it is mix question of law and fact in present case and without taking evidence and it can not decide. So far as the cases cited by the Applicant and looking to the facts of present case, the same are not apply to present case. Therefore, at this stage, contentions raised by Defendant can not be decided and it can be decided after recording evidence only. Issue regarding the same is already framed by the Court and after taking evidence from both the parties, then it will be decided after affording sufficient opportunities to

the both parties. Hence, considering above facts and circumstances, this application deserved to be rejected. Hence, I pass following order in the interest of justice:

: O R D E R:

- 1 This application at Ex-12 is hereby rejected.
- 2 No order as to cost.

Signed and Pronounced in the open Court today on this 13th day of December, 2017

Date: 13-12-17
Place: Halol

(K N Sarvaiya)
Additional Senior Civil Judge,
Halol