GJAH030044232022

Small Cause Court No.: SMST-S No.374/2022
City Civil Court No: Sum. Suit No.95/2013
Small Cause Court Fil. No:SMST-S No.374/2022
City Civil Court Fil. No.:Sum. Suit No.95/2013
City Civil Court Filed on: 11.01.2013
Small Cause Court Filed on :22.12.2022
Decided On : 18.03.2026
Duration : DD- MM- YY-
Exh.________

IN THE SMALL CAUSE COURT NO.8
AT AHMEDABAD

REG. SUMMARY SUIT NO.374 OF 2022.

Plaintiff/s:

1. *Kashyap Vaishnav*
   Kalptaru Logistics
   Address:- 2A, Sanubhai Chambers, Opp. V. S. Hospital, Ellisbridge, Ahmedabad

VERSUS

Defendant/s:

1. *ORBIT Shipping and Logistics*
   Address :- 14/20, Plaza Centre, Plot No. 117, Sector-8, Gandhidham Sector-1, Kutch, Gujarat-370201.

2. *Bharat Haribhai Umraniya*
   Partner of Orbit shipping & Logistics
   Add.:- TCX-S-95,
   Gandhidham, Kutch, Gujarat-370201.

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad

3. ***Ashish Haribhai Umraniya*** *partner of*
   ORBIT Shipping and Logistics
   Address :- 14/20, Plaza Centre, Plot No.
   117, Sector-8, Gandhidham Sector-1,
   Kutch, Gujarat-370201.

4. ***Tarun Purshottam Joshi***
   Shree Mangal Sadan,
   TRS-43, Ward-4-A,
   Adipur, Kutch,
   Gujarat-370 205.

Appearance :-

Ld. Adv. for plaintiff/s.	***Mr. M. L. Rangras***
Ld. Adv. for defendant/s.	***Mr. R. R. Deliwala***

Coram :- Nirav Rameshbhai Vyas, Judge

- ::: JUDGMENT :::-

1) *That, the plaintiff has filed the present suit against the defendant/s under the provisions of Order XXXVII of The Code of Civil Procedure, 1908 (hereinafter referred to as "The Code" for short) inter alia praying for decree to recover Rs.6,40,946/- along with interest at the rate of 24% p.a till the realization of the said amount. The facts leading the plaintiff to file this suit are as under.*

It is the case of the plaintiff that plaintiff is doing business of Freight Forwarding & Clearing in the name and style of "Kalptaru Logistics. The defendant had approached the plaintiff in the year of 2008 as defendant shipment of

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad

scrap is likely to be coming from USA through plaintiff. It is the case of the plaintiff that the plaintiff came into contact with one Mr. Tarun Joshi who is actively serving in the defendant company at a relevant point of time while doing business with defendant firm. Relying on defendant's words, the defendant had agreed for the custom clearance of scrap material of defendant and it was being cleared by plaintiff by drawing invoices, the details of which is mentioned in para-9 of the amended plaint. It is further stated that total amount of Rs.6,40,946/- remains outstanding in the accounts of defendants. The plaintiff has frequently visited the defendant's office for remittance of said outstanding amount. However, the defendant's office bearer Mr Tarun Joshi has made a humble urge that to wait further as the amount is likely to be settled from other parties. Despite of several reminders and facts communicated to defendant, the defendant has not paid the outstanding which inclined plaintiff to issue legal demand notice through Advocate on dated 10.12.2012 and hence, the present suit is filed to recover the outstanding amount of Rs.6,40,946/- along with interest at the rate of 24% p.a. as per prayer made in para-19 of the plaint.

2) *That, the court has taken cognizance of the suit of the plaintiff and has issued process as per the provisions of law to the defendant/s, which was duly served upon him and thereafter, on perusal of the records, it appears that the* *defendant has appeared before the court through their advocate and tendered leave to defend application at exh.13 against the summons for judgment filed by plaintiff at exh.09. After hearing both the parties, my predecessor has granted the unconditional leave in favour of defendant. As such, the leave to defend application tendered by defendant is treated as their written statement accordingly. At the outset, the defendant has denied all the statements and contentions raised by the plaintiff against the defendant and further contended that the plaintiff has no cause of action to file the summary suit in city civil Court. The defendant has further submitted that the plaintiff's suit is barred by law of limitation and hence, not maintainable and tenable at law. He has also submitted that the suit of the defendant is barred by jurisdiction as no part or part of alleged as or action has arisen within the jurisdiction of this Court. He has also submitted that, there is no privity of contract with regard to the alleged transaction between the plaintiff and the defendant as there is no debtor – creditor relation between the plaintiff and the defendant. It is also submitted that, the defendant is not liable or responsible for the alleged due as mentioned in the suit and they have never entered into any alleged transaction as referred in the suit. He has also submitted that, when there is never any transaction between the plaintiff and the defendant, so no question does arise of paying any interest at the rate of 24% p.a to the plaintiff at all, arising even otherwise in the absence of any contract to pay any alleged interest. It is further submitted* *that the plaint of the plaintiff deserves to be rejected with costs.*

The plaintiff has further filed rejoinder affidavit at exh.15 wherein the plaintiff has denied the facts contended by defendant in its leave to defend application and reiterated its contentions raised in summons for judgment.

3) *Upon above facts, the following issues together with my findings emerges for determination at exh.28 :*

Sr. No	Issues	Findings
1.	Whether the plaintiffs proves that he is entitled to get the amount as prayed for towards legal dues from the defendant?	Does not Survive
2.	Whether the plaintiff is entitled to get interest as alleged? If yes, at what rate?	Does not Survive
3.	Whether this suit is barred by law of limitation?	In Affirmative.
4.	Whether this court has jurisdiction to try and decide the present suit?	Does not Survive
5.	Whether this suit is maintainable under the provisions of Order-37 of C.P.C.?	Does not Survive

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad

6. *Whether the plaintiff is entitled to get relief as prayed for?* **In Negative**

7. *What order and decree?* **As per final order.**

4) *The plaintiff has filed the following evidences :-*

[A]. Oral evidence :-

Sr. No.	Description	Exh
1.	Chief examination of the plaintiff, Kashyap D. Vaishanav.	47

[B]. Documentary evidence :-

Sr. No.	Description	Exh
1.	Xerox copy of bill reference no.KL/08-09/IMP002.	54
2.	Xerox copy of bill reference no.KL/08-09/IMP02.	55
3.	Xerox copy of bill reference no. KL/08-09/IMP002A.	56
4.	Xerox copy of bill reference no.KL/08-09/IMP003.	57
5.	Xerox copy of bill reference no.KL/08-09/IMP004.	58
6.	Xerox copy of bill reference no.KL/08-09/IMP005.	59
7.	Xerox copy of bill reference no.KL/08-09/IMP006.	60
8.	Xerox copy of bill reference no.KL/08-09/IMP007.	61
9.	Xerox copy of reminder issued by the plaintiff.	62
10.	Xerox copy of covering letter.	63

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad

11.	*Xerox copy of reminder issued by the plaintiff.*	*64*
12.	*Xerox copy of legal demand notice issued by plaintiff.*	*65*
13.	*Closing pursis.*	*53.*

5). *It is pertinent to note here that my predecessor has allowed the application of leave to defend on part of defendant. However, the defendant has not taken part during the course of trial nor cross-examined the plaintiff witness. It reveals from the record that the stage of the defendant is been closed and hence, there is no oral and documentary evidence on record in support of the defence.*

6). *Heard the Learned Advocate Mr. M. L. Rangras for the plaintiff. The stage of final argument on the part of defendant is been closed after affording sufficient opportunities to the defendants.*

7). *My reasons to the above finding are as under.*

-:::R E A S O N S:::-

1. *Before adverting to the merits of the rival claims of the parties, it is necessary for this court to determine the question of limitation, as it goes to the very root of the maintainability of the suit. The law is well settled that the issue relating to limitation is a preliminary issue of law and if the court finds that the suit is barred by limitation, the court need not enter into the merits of the controversy between the parties.*

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad

In this regard, reference may be made to Section 3 of the Limitation Act, 1963, which mandates that every suit instituted after the prescribed period, shall be dismissed, even though limitation has not been set up as a defence. Thus, the provision casts a statutory duty upon the court to examine the issue of limitation at the threshold. The mandate of Section 3 of the Limitation Act is peremptory in nature, and the court is bound to dismiss a suit instituted beyond the prescribed period of limitation irrespective of pleas raised by the parties. In catena of judgments, it has been observed that where the issue goes to the root of the jurisdiction or maintainability of the suit, such issue should be decided at a earlier stage. However, in present set of facts the issue of limitation, is framed at exh.28 and upon framing of issues the trial is conducted. In view of the statutory mandate and the settled principle of law, this court consider it appropriate to first determine the issue of limitation before examining the other issues arising in the present suit. Only if the suit is found to be within the period of limitation would it be necessary to proceed to adjudicate the remaining issues on merits.

Issue No.3 :-

2. *At the outset, it reveals from the pleadings that plaintiff is doing business of Freight Forwarding & Clearing in the name and style of "Kalptaru Logistics. The said business is a service business in the field of logistics and transportation. Such type of business usually do not transport goods* *themselves but coordinates with shipping lines, airlines, transporters and warehouses. A clearing agent generally handles customs formalities for goods entering or leaving country. Admittedly, the suit is for recovery of charges for services rendered as fright forwarding and clearing agent pursuant to work done by the plaintiff for defendant at his request. For a suit to recover payment against the service or work done by the plaintiff for defendant, Article 18 of the Limitation Act prescribes period of three years and time begins to run from the date when the work is done. Article 18 is reproduced hereunder.*

For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	*Three years*	*When the work is done.*

Therefore, the aforesaid provision in clear terms, mandates that the period of limitation wold start running rom the date when the work is done. As per the bills produced by plaintiff from exh.54 to exh.61, it reveals that the last bill drawn of dated 30.01.2009. Therefore, the period of limitation would start under Article 18 of the Indian Limitation Act when the work is done. It can be presumed that on the day of drawing of the bill or before such date the service has already been provided to the defendant. As such considering the bills produced from exh.54 to exh.61, if we consider the latest bill which is drawn by plaintiff in such case as well, the period of three years begins to start from *dated 30.01.2009. It is the case of the plaintiff that between the period from 31.01.2009 till filing of the suit ie 11.01.2013, the parties were having several communications between them. Admittedly, the demand was made on dated 10.04.2009 by sending reminders at exhs.62 and further on dated 08.07.2011 vide exh.64 and lastly on dated 10.12.2012 by issuance of legal notice at exh.65. These all are communications/ reminders on part of plaintiff to the defendants which seems neither replied nor complied by defendants. The issuance of notice through advocate on dated 10.12.2012 is the last communication. It is established proposition of law that the period of limitation cannot be extended by writing communications. On the day, which the work is done by the plaintiff, the period to institute a suit for recovery of payment would start running and as per above said proposition, the latest date of work done can be identified as date of drawing of last bill ie. 30.01.2009.*

At a same time, in certain set of facts, if the plaintiff has filed the suit on the basis of running accounts between plaintiff and defendant, the limitation period of three years commence to run from the close of the year in which the last item is admitted or proved in the account under Article - 1 of the Limitation Act. However, it is not a case of the plaintiff that the present suit is instituted on relying on the accounts maintained by the plaintiff nor the plaintiff has produced the copy of ledger accounts maintained by the plaintiff.

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad

3. On considering the date of the bill produced at exh.6 ie 30.01.2009, as per the Article 18 of the Limitation Act, the plaintiff is required to institute a suit for recovery of payment for work done on or before dated 30.01.2012 (ie within three years). Perusing the plaint, it reveals that present suit is admittedly filed on dated 11.01.2013 ie almost after one year from the day after passing of prescribed limitation period.

4. On the issue of limitation, this court has heard Learned Advocate Mr. Rangras for the plaintiff in length. Learned Advocate for the plaintiff has vehemently argued that the limitation period, in present set of facts, will commence from dated 08.07.2011 ie a letter/reminder written to the defendant for settlement the outstanding as mentioned in the exh.64. In other words, the plaintiff has sought to compute the period of limitation from the date of letter/ reminder allegedly issued to defendant for settlement of accounts. Such contention is legally untenable. Under the scheme of the Limitation Act, limitation begins to run from the date when the right to sue first accrues and not from the date of issuance of reminder or demand notice by claimant. A unilateral communication or reminder sent by the plaintiff cannot extend or revive the limitation period once it has commenced. The reliance placed by the plaintiff upon Section 18 an acknowledgment must be made in writing and sign by the party against whom such right is claimed before the expiration of the prescribed period of limitation. In the present case, the alleged letter or

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad

reminder produced at exh.54, is admittedly issued by the plaintiff and not by the defendant and therefore, does not constitute an acknowledgment of liability within the meaning of Section 18. Consequently, such communication cannot operate to extend the limitation period. It is settled proposition of law that an acknowledgment to extend limitation must be made by the debtor and must indicate a conscious admission of subsisting liability. The limitation cannot be extended merely on the basis of unilateral correspondence or demands made by the plaintiff. As such the date of reminder at exh.64 relied upon by the plaintiff cannot be treated as the starting point of limitation and the suit, having been instituted beyond the prescribe period, is clearly barred by limitation.

5. *The plaintiff has further relied upon a legal notice dated 10.12.2012 vide exh.65 demanding payment and has attempted to reckon the period of limitation from the said notice. Such contention is also legally unsustainable. In present case, the limitation period of three years had expired on dated 30.01.2012 whereas the notice at exh.65 relied upon by plaintiff was issued subsequently on dated 10.12.2012. Such a unilateral act of the plaintiff cannot extent or revive the limitation period. A notice issued by the plaintiff after the expiration of limitation does not constitute acknowledgment of liability and therefore, the said notice also cannot be treated as starting point of limitation and therefore, the claim* *is clearly barred by Law of Limitation.*

6. *Learned Advocate for the plaintiff relied on the following citations :-*

(1). ***Shapoor Fredoom Mazda V/s. Durga Prosad Chamaria*** *reported in* ***AIR 1961 SC 1236.***

(2). ***Food Corporation of India V/s. Assm State Co. Op. Marketing*** *reported in* ***2004 (12) SCC 360.***

(3). ***Gujarat Industrial Investment V/s. Suresh M. Mehta*** *reported in* ***2019 (3) G.L.H. (UJ) 6.***

(4). ***Jyotsna K. Valia V/s. T. S. Parekh & Co.,*** *reported in* ***2007 (3) BCR 772.***

(5). ***Pramod Kumar Jain V/s. Municipal Corporation of Delhi & Anr.*** *reported in* ***2025 (O) AIJEL-DL 1396531.***

7. *On relying on abovesaid judicial precedents, in support of the contention that limitation stands extended on the basis of correspondence at exh.64 and notice issued for settlement of account. However the said authorities are clearly distinguishable on facts and therefore, are not applicable to the present case. In the cited decisions, the courts have considered circumstances were there existed a clear and unequivocal acknowledgment of liability made by a debtor in writing within the meaning of Section 18 of the Limitation Act. In such factual background, the courts have held that limitation would stand extended from the date of such acknowledgment.*

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad

Further, in case of ***Pramod Kumar Jain V/s. Municipal Corporation of Delhi & Anr.*** *reported in* ***2025 (O) AIJEL-DL 1396531,*** *Hon'ble Delhi High Court has reiterate the relevant passage of the judgment pronounced in case of* ***N. Balakrishnan V/s. M. Krishnamurthy*** *reported in* ***1998 7 SCC 123,*** *wherein the following is held :*

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During th3 efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period of launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation of thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finislitium (it is for the general welfare that a period be put to litigation). Rules of limitation mare not meant to destroy the rights of the parties. They are meant to see that parties do not report to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

With abovesaid background, in the present case, however, no such acknowledgment of liability by the defendant is brought on record. The documents relied upon by the plaintiff are merely notice/ reminder issued unilaterally by the plaintiff demanding settlement of accounts. Such a document cannot by any stretch of

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad

imagination to be treated as an acknowledgment of debt by defendant as contemplated under Section 18 of the Limitation Act. It will be worth to reiterate that for attracting Section 18, the acknowledgment must be made by the party against whom the right is claimed, in writing and signed by such party, and must be made before the expiry of the prescribed period of limitation. In absence of any such acknowledgment by defendant the principle laid down in the authorities relied upon by the plaintiff do not advance the plaintiff's case.

Thus, the citations relied upon by the plaintiff proceed on a different factual foundation involving admitted or proved acknowledgment of liability by debtor, whereas in present case, no such acknowledgment exists. Consequently, the said authorities are not applicable to the facts of the present case and the contention of the plaintiff regarding extension of limitation deserves to be rejected. As such present suit is clearly out of prescribed limitation period and therefore, this court is having no hesitation to held that the suit is barred by Law of Limitation. Hence, reply for ***Issue No.3*** *given in* ***"Affirmative"****.*

<u>Issue Nos.1,2, 4 to 7 :-</u>

8. *Since the court has come to the conclusion that the present suit is barred by limitation under Section 3 of Limitation Act, the suit itself becomes liable to be dismissed on that ground alone. Once the suit is found to be barred of limitation, adjudication of other issues on merits would* *unnecessary and merely academic. The law is well settled that the court must dismiss a suit instituted beyond prescribed period irrespective of the defence taken by the parties. Therefore, in view of the finding on the issue of limitation, the remaining issues framed at Sr. No. 1, 2, 4 and 5 in the present suit are replied as* ***"Does not survive"*** *for determination and are answer accordingly and further plaintiff is not entitled to get any relief as the suit is barred by law of limitation. Hence, reply for* ***Issue No.6*** *is given in* ***"Negative"*** *and I pass following final order for* ***Issue No.7*** *in the interest of justice.*

-:::O R D E R::: -

1. *Plaintiff's suit is hereby dismissed.*
2. *Interim application pending (if any) stands disposed off accordingly.*
3. *Parties shall bear their own costs.*
4. *Decree be drawn accordingly.*

Signed and Pronounced in the open Court to-day i.e. 18th day of March, 2026

Date : 18.03.2026 ***(Nirav Rameshbhai Vyas)***
Place: Ahmedabad. ***Judge, Small Cause Court No. 8, Ahmedabad***
Judge Code :- GJ01060

Gadhavi

(Nirav R. Vyas)
Judge, SMCC No.8
Ahmedabad