IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No.28/2007

Judgment pronounced on February 28th, 2011

M/s Jain Motor Company Pvt Ltd .... Appellant
Through: Mr. Adarsh B. Dial, Sr. Advocate with Mr. Rajiv Nanda and Ms. Sumati Anand, Advocates

Versus

$ M/s Maharashtra State Road Transport Corporation ... Respondent
Through: Mr. R.S. Hegde, Advocate

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment? **YES**
2. To be referred to the Reporter or not? **YES**
3. Whether the Judgment should be reported in the Digest? **YES**

G.S. SISTANI, J. ORAL

1. Present appeal has been filed by the appellant under Section 96 of the Code of Civil Procedure (herein after referred as "CPC") against the judgment and decree dated 27.09.2006 passed by the learned trial court dismissing the suit of the appellant as barred by limitation.

2. The brief facts necessary to be noticed for the disposal of the present appeal are that the plaintiff (appellant herein) was dealing in manufacture and sale of different types of auto parts, accessories and PV foams and the like. The defendants (respondents herein) purchased PV foams from the appellant through various bills as per their requirements and the supplies were made accordingly. The total supplies made by the appellant to the respondents amounted to Rs. 25,46,030.56 P out of which

the respondents had paid an amount of Rs. 21,51, 786.30 P leaving an outstanding amount of Rs. 3,94,244.26P. Despite service of a legal notice dated 01.08.1988, the respondents failed to pay the outstanding amount and thus, the appellant was forced to file a suit for recovery of Rs. 3,94,244.26 P along with interest @ 23% per annum w.e.f 26.09.1985 according to the agreement , market custom and the prevailing usage. The total recoverable amount from the respondent @23% interest is Rs.7,35,314.26 P.

3. On the basis of the pleadings of the parties and material on record, the learned trial court framed the following issues on 30.01.1996:

    1. Whether the plaintiff proves that the defendant purchased PV Foams worth Rs. 3,94,244.26 P as averred in the plaint para 3?
    2. Whether the plaintiff is entitled to interest @ 23% per annum as averred in plaint para 4?
    3. Whether the suit claim or any part of it barred by limitation?
    4. Whether the defendants prove that the plaintiff is not entitled to the difference in freight charges amounting to Rs. 1, 11,625.20 P?
    5. Whether the defendants prove that the amount of Rs. 5,93,039.77 P are liable to be adjusted as alleged extra payment, as averred in para 6 of the written statement?
    6. To what relief, if any, the plaintiff is entitled to?
    7. What order and decree?

4. Evidence was led by both the parties. The plaintiff (appellant herein) examined PW 1 Sh. Amit Jain, Managing Director of the appellant company whereas the defendants (respondents herein) have examined DW 1 Sh. Devi Dass Kanhaiya, Senior Store Officer of the respondent at Aurangabad. The learned trial court, while deciding issue nos. 1, 2, 4 and 5 in the favour of the

appellant, dismissed the suit of the appellant on the ground that the suit was barred by limitation. This has led to the filing of the present appeal. The counsel for the appellant has restricted his prayer with regard to the issue of limitation alone.

5. The counsel for the appellant submits that judgment of the trial court on the issue of limitation is contrary to the facts and law. The counsel further submits that the learned trial court has failed to appreciate that the minutes of the meeting dated 19.03.1987 (exhibited at Ex. P4) were duly signed by the representatives of the respondents as well as of the appellant. It is further contended that the aforesaid minutes were admitted by the respondents during the admission denial of the documents and it amounts to acknowledgment of liability by the respondents within the meaning of sections 18 and 19 of the Limitation Act which is sufficient to extend the period of limitation.

6. The counsel for the appellant, while drawing the attention of this court to the contents of para 4 of Ex P4, further submits that the contents of para 4 makes it clear that the respondents have unequivocally acknowledged that the respondents have to settle a claim of the plaintiff appellant after due verification thereby admitting the jural relationship of debtor and creditor between the appellant and the respondents. It is contended that trial court has erred in holding that the expression 'after due verification' imposes a condition to the claim of the plaintiff. The counsel submits that an acknowledgment must indicate an admission of jural relationship of a debtor and creditor though it need not specify the exact nature of the transaction or right. To

support his contention, the counsel places reliance in the case of ***Food Corporation of India v. Assam State Cooperative Marketing & Consumer Federation Ltd. and Others*****,** reported in (2004)12 SCC 360 and more particularly at paras 14 and 15 which read as under:

> "**14.** 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 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 by implication.
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> **15.** 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 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 *Lakshmirattan Cotton Mills Co. Ltd.* v. *Aluminium Corpn. of India Ltd.*) 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."

7. It is further contended by the counsel for the appellant that the letter dated 13.03.1986 which is referred to in Ex P4 was not in the possession of the appellant and the said letter was produced by the respondents only after a notice was issued by the appellant to them and therefore, the letter has to be relied upon. The counsel further submits that the letter dated 13.03.1986 exhibited as Ex D-12 has to be read along with the minutes of the meeting dated 19.03.1987 exhibited as Ex P4. During the course of hearing, the counsel for the appellant has drawn the attention of the court to Exhibits P1 to P3 which are admitted documents to advance his contention that the respondents have acknowledged their liability towards the appellant.

8. It is strongly urged by Mr.Dayal, counsel for the appellant that a perusal of the documents would make it clear that the last transaction between the appellant and the respondent was on 25.09.1985 and since then, there have been no business dealings. It is further pointed out by the counsel that the minutes exhibited as Ex P4 are with regard to refunds and that there was never a dispute that some amount was payable by the respondents to the appellant but that the dispute was only regarding the quantum of the amount.

9. The counsel for the appellant contends that the trial court has lost sight of the fact that the running account existing between the appellant and the respondents which makes it apparent that the last transaction between the appellant and the respondents took place on 25.09.1985 which is the starting point of the period of limitation. The limitation period was further extended by the

acknowledgment of the respondents on 19.03.1987 and the suit was filed on 13.07.1989 which is within the period of limitation of three years. Reliance is sought on **Syndicate Bank v. Channaveerappa Beleri and Others** reported in (2006)11 SCC 506 and more particularly at para 15 which reads as under:

> "**15.** The respondents have tried to contend that when the operations ceased and the accounts became dormant, the very cessation of operation of accounts should be treated as a refusal to pay by the principal debtor, as also by the guarantors and, therefore, the limitation would begin to run, not when there is a refusal to meet the demand, but when the accounts became dormant. By no logical process, we can hold that ceasing of operation of accounts by the borrower for some reason, would amount to a demand by the Bank on the guarantor to pay the amount due in the account or refusal by the principal debtor and guarantor to pay the amount due in the accounts."

10. The counsel for the appellant further submits that the trial court has grossly erred in holding that the contents of para 4 of Ex P4 is not even remotely related to the claim of the plaintiff in the suit. Admittedly, there were business relations between the parties as has been admitted in the pleadings. The nature of transactions has also been admitted. The meeting dated 19.03.1987 took place between the appellants and the respondents in view of the payments due to the appellant. All this was recorded in the minutes of the meeting which mention the details of the bills for which the claim was made by the appellant. The counsel for the appellant contends that perusing the contents of Ex. P4 would show that the respondents agreed to pay the amounts due to the appellant after due verification if the appellant issued certified duplicate copies of bills of back

squabs with the non-payment certificate, thereby admitting the jural relationship of debtor and creditor between the respondent and the appellant.

11. The counsel for the respondent submits that there is no infirmity in the judgment of the learned trial court. The claim in the suit is in respect of transactions for which bills dated 21.04.1984 to 25.09.1985 were issued. Since the last transaction between the appellant and the respondents was on 25.09.1985, the suit, having been filed on 03.07.1989, was clearly barred by limitation.

12. It is further submitted by the counsel for the respondent that at the stage of the arguments, the appellant cannot place reliance on Ex P4 to advance his case. Merely because the respondent has admitted the document, no benefit can be conferred on the appellant when the appellant has specifically denied Ex P4 in its pleadings. It is argued by the counsel for the respondent that the appellant has denied the existence of Ex P4, which are the minutes of the meeting held on 19.03.1987, by a denial of the existence of any meeting dated 19.03.1987 between the appellant and the respondent. It is further pointed out by the counsel for the respondent that PW 1 has denied the existence of document exhibited as Ex P4 and has also denied the identity of the person who has signed the aforesaid document on behalf of the appellant. As per Ex P4, representative of the appellant company is one Mr. Ravi Shourey who signed Ex P4 on behalf of the appellant. The appellant in its replication before the trial court has denied that Mr. Ravi Shorey acted as the representative of the appellant. The counsel contends that the

appellant at this stage, is estopped from raising a claim based on Exhibit P4 which has been specifically denied by him. To support his argument, the counsel for the respondent places reliance on **Maqboolunnisa v. Mohd. Quaraishi** reported in (1998)9 SCC 585 and particularly at para 3 which reads as follows:

> " **3.** It is an admitted case of the parties that during the pendency of the proceedings in the trial court, a shop adjacent to the demised premises, also measuring 10' x 15' was vacated by one Shri Sukumaran. The appellant did not amend the pleadings to assert that the shop which had been vacated by Shri Sukumaran was not sufficient for her son to shift his business. Even at the trial no such plea was raised. The fact position is that the shop from which the son of the appellant was to shift measured only 4' x 4' while the shop which had been vacated by Shri Sukumaran measured 10' x 15'. At the trial, during her evidence, the appellant went on to say that by breaking the wall between the suit shop and the shop vacated by Shri Sukumaran the entire area can be converted into one big shop to enable the son to carry on his business. That such evidence should not have been allowed to be let in since it was beyond the pleadings admits of no exception. But even if we ignore that infirmity, we find that the assertion itself does not establish a genuine bona fide need. It is not stated by the appellant in her evidence that the shop vacated by Shri Sukumaran was not sufficient accommodation to enable her son to carry on the business. The "desire" to have a very large shop cannot be equated with a "genuine bona fide need" to have the premises. The landlady, thus, has failed to establish the bona fide need to have the scheduled property vacated. The High Court while considering this aspect observed:
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> "The scheduled premises as admitted by Smt Maqboolunnisa is about 10' x 15'. It is also admitted by her that adjacent premises occupied by Shri Sukumaran has been vacated and it is lying vacant. The vacancy of this premises occurred during the pendency of the proceedings for eviction. The vacation of the premises by Sukumaran is admitted by PW 2 Shri Munner Ahamad. With regard to the area and dimensions of the shop vacated by Sukumaran, Smt Maqboolunnisa PW 1 admits as under:
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> 'The scheduled shop and adjacent shop are of same measurement. It may be little less than 10' x 15'.'
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> Though PW 2 stated that the scheduled shop is 6' x 6', on further cross-examination admitted as under:

‘I do not know whether the shop fallen vacant is 10' x 15'. Again I say it is of similar size as that of the scheduled shop.’ ”

The High Court then concluded:

“From these admissions of the respondent and her witness, it is obvious that subsequent to the institution of the eviction petition against the revision petitioner she has come into possession of the premises measuring about 10' x 15' that is almost equal in dimensions of the scheduled premises.”

13. Reliance is also placed on **State Bank of India v. SN Goyal** reported in (2008)8 SC 92 and more particularly on paras 19, 20, 21 and 22 which read as under:

“***Re: Question (ii) — Effect of absence of pleading***

19. The plaint did not contain any plea that the order of removal by the appointing authority (Chief General Manager) was vitiated on account of his consulting and acting on the advice of the Chief Vigilance Officer of the Bank. Nor did it contain any allegation that the appointing authority acted on extraneous material in passing the order of removal. In the plaint, the challenge to the order of removal was on the ground that the enquiry by the enquiry officer was opposed to principles of natural justice that is: (*i*) the charge was vague and not established; (*ii*) he was not given reasonable opportunity to defend himself; (*iii*) material witnesses were not examined; (*iv*) documents relied on were not formally proved; (*v*) burden of proof was wrongly placed on him; (*vi*) findings in the enquiry report were based on surmises and conjectures; and (*vii*) the enquiry officer was prejudiced. The respondent had also averred that the appointing authority had approved the recommendation made by the disciplinary authority for imposition of penalty of removal without application of mind and without giving him a hearing. He alternatively contended that the punishment imposed was severe and disproportionate to the gravity of the proved charge. But there was absolutely no plea with reference to the advice/recommendation of the Chief Vigilance Officer of the Bank. However, during the examination of the Bank’s witness DW 1 (T.S. Negi, Deputy Manager) it was elicited that on 18-1-1995, the disciplinary authority had put up a recommendation to impose the penalty of reduction of pay by four stages by taking a lenient view; that the appointing authority had by its note dated 18-1-1995 accepted the said recommendation; that subsequently, on 2-2-1995, the appointing authority had informed the Chief Vigilance Officer of the Bank about the enquiry and proposed punishment; and that after receiving the comments of the Chief Vigilance Officer, the appointing authority on the

recommendations of the disciplinary authority had reconsidered the question of punishment and imposed the penalty of removal. The respondent-plaintiff did not amend the plaint to include the averments and grounds to challenge the order of removal on the said additional ground. No issue was framed in that behalf. No amount of evidence on a plea that was not put forward in the pleadings can be looked into. In the absence of necessary pleading and issue, neither the trial court nor the appellate court could have considered the contention and recorded a finding thereon.

20. The learned counsel for the respondent submitted that the order of removal was challenged on the ground that it was opposed to principles of natural justice and the averments in the plaint were sufficient to enable the plaintiff to establish any ground in support of it and it was not necessary to separately plead each and every fact or ground in support of his contention that the order of removal was vitiated. While there is no need to plead evidence, the grounds of challenge and the facts in support of each ground will have to be pleaded. In this case, the minimum pleading that was necessary was that the appointing authority acted on extraneous material in arriving at the decision or acted on the advice or recommendation of an authority which was not concerned with the enquiry.

21. In the absence of appropriate pleading on a particular issue, there can be no adjudication of such issue. Adjudication of a dispute by a civil court is significantly different from the exercise of power of judicial review in a writ proceedings by the High Court. In a writ proceedings, the High Court can call for the record of the order challenged, examine the same and pass appropriate orders after giving an opportunity to the State or the statutory authority to explain any particular act or omission. In a civil suit parties are governed by rules of pleadings and there can be no adjudication of an issue in the absence of necessary pleadings.

22. The learned counsel for the respondent submitted that the respondent was unaware of the earlier order dated 18-1-1995 or about the consultation with the Chief Vigilance Officer when he filed the suit and therefore could not make necessary averments in the plaint in that behalf. But that is no answer. The Code of Civil Procedure contains appropriate provisions relating to interrogatories, discovery and inspection (Order 11 Rules 1, 12 and 15) to gain access to relevant material available with the other party. A party to a suit should avail those provisions and if any new ground becomes available on the basis of information

> secured by discovery a party can amend its pleadings and introduce new facts and grounds which were not known earlier. The difficulty in securing relevant material or ignorance of existence of relevant material will not justify introduction of such material at the stage of evidence in the absence of pleadings relating to a particular aspect to which the material relates. If a party should be permitted to rely on evidence led on an issue/aspect not covered by pleadings, the other side will be put to a disadvantage. For example, in this case, if there had been a plea and issue on the question whether extraneous material was taken into account, the Bank could have examined the appointing authority to explain the context in which he informed the Chief Vigilance Officer about the matter or explain how his decision was not dependent upon any extraneous material. Therefore, the courts below committed a serious error in holding that the order of removal was based on extraneous material (the advice/recommendation of the Chief Vigilance Officer) and therefore invalid."

14. The counsel for the respondent submits that the entire claim of the alleged acknowledgment of debt and admission of jural relationship is purportedly based on the contents of para 4 of the minutes of the meeting exhibited as Ex P4 which refers to two letters dated 21.08.1985. Both the letters dated 21.08.1985 have not been produced on record by the appellant. The said letters are not part of the trial court record nor the aforesaid letters are relevant as these letters do not deal with the subject matter of the suit. The counsel further points out that the said letters have been issued with reference to specific supply of "back squabs" whereas the claim of the appellant in the suit relates to alleged supply of "PV Foams" which is a different commodity and that the claim of the appellant is not under the letters dated 21.08.1985. The appellant has nowhere in his plaint or evidence has referred to the said letters.

15. It is strongly urged by the counsel for the respondent that the contents of para 4 do not constitute an acknowledgment of

liability by the respondents nor is there any admission of jural relationship by the respondents in the said para. It is argued by the counsel for the respondent that the statement in para 4 of Ex P4 is a conditional statement and the appellant neither pleaded in plaint nor has led any evidence to prove that the said condition has been performed. It is further contended by the counsel for the respondent that the letter dated 13.03.1986 is not part of the evidence since the original letter was not produced by the appellant. The letter was brought on record only after the directions of the court and when produced, it was denied by the plaintiff appellant. The counsel further submits that the appellant never pleaded any ground based on letter dated 13.03.1986. To further this argument, the Counsel for respondent relies on **FDC Ltd v. Federation of Medical representatives Association India (FMRAI) and Others** reported in AIR 2003 Bombay 371 and more particularly at paras 7,8,9,19,20,21 which read as under:

> "7. It is to be noted that the legislature being fully aware about the provision of law contained in Rule 5 which was already there even prior to the amendment to Rule 4, has amended the Rule 4 with effect from 1.7.2002 specifically providing thereunder that the examination in chief "in every case" shall be on affidavit. One has to bear in mind the decisions of the Apex Court in the case of **Dadi Jagannadham v. Jammulu Ramulu** reported in 2001 (7) SCC 71 on the settled principles of interpretation of statutes that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intend to and the court as far as possible should adopt construction which will carry out obvious intention of legislature, and in **East India Hotels Ltd., and Anr. v. Union of India and Anr.** reported in (2001) 1 SCC 284 that "An act has to be read as a whole, the different provisions have to be harmonised and the effect has to be given to all of them". The harmonious reading of

Rules 4 and 5 of Order XVIII would reveal that while in each and every case of recording of evidence, the examination in chief is to be permitted in the form of affidavit and while such evidence in the form of affidavit being taken on record, the procedure described under Rule 5 is to be followed in the appealable cases. In non appealable cases, the affidavit can be taken on record by taking resort to the provisions of law contained in Rule 13 of Order XVIII. In other words, mere production of the affidavit by the witness will empower the court to take such affidavit on record as forming part of the evidence by recording the memorandum in respect of production of such affidavit taking resort to Rule 13 of Order XVIII in all cases, except in the appealable cases wherein it will be necessary for the Court to record evidence of production of the affidavit in respect of examination in chief by asking the deponent to produce such affidavit in accordance with Rule 5 of Order XVIII. Undoubtedly, in both the cases, for the purpose of cross-examination, the court has to follow the procedure prescribed under Sub-rule 2 of Rule 4 read with Rule 13 in case of non-appealable cases and the procedure prescribed under Sub-rule 2 of Rule 4 read with Rule 5 in appealable cases.

8. In other words, in the appealable cases though the examination in chief of a witness is permissible to be produced in the form of affidavit, such affidavit cannot be ordered to form part of the evidence unless the deponent thereof enters the witness box and confirms that the contents of the affidavit are as per his say and the affidavit is under his signature and this statement being made on oath to be recorded by following the procedure prescribed under Rule 5. In non appealable cases however, the affidavit in relation to examination in chief of a witness can be taken on record as forming part of the evidence by recording memorandum of production of such affidavit by taking resort to Rule 13 of Order XVIII. The cross-examination of such deponent in case of appealable cases, will have to be recorded by complying the provisions of Rule 5, whereas in case of non appealable cases the court would be empowered to exercise its power under Rule 13.

9. In fact Rule 4, either unamended or amended makes no difference between appealable or non appealable cases in the matter of method of recording of evidence. Such differentiation is to be found in Rule 5 and 13. The Rule 4, prior to the amendment, provided that when witness would appear before the court, his testimony would require to be recorded in the presence of and under the personal direction of the Judge which was required to be done in appealable cases as well as in non appealable cases. Only method of recording

testimony in appealable cases that was to be in terms of Rule 5 whereas in other cases in terms of Rule 13. Now, in terms of Rule 4, after its amendment, it provides that recording of evidence in relation to examination in chief shall be in all cases by way of affidavits. However, as already observed above, in appealable cases the same to be admitted in evidence or to be made part and parcel of the evidence by following the method prescribed under Rule 5 and in other cases, the one prescribed under Rule 13.

19. As regards the evidence in relation to documents, undoubtedly, though such documents are produced alongwith the affidavits the admissibility thereof is to be decided in accordance with the provisions of law contained in Order 13 Rule 4 thereof. Such decision has necessarily to be at the time of taking the affidavit alongwith such documents on record and before such documents are being marked as exhibits in evidence as has already been held by this court in un-reported decision in the matter of Shri Durgashankar S. Trivedi and Ors. v. Shri Babubhai Bhulabhai Parekh in writ Petition No. 7094 of 2002 decided on 22nd January, 2003.

20. As regards the evidence in the form of affidavit it is also to be borne in mind that such evidence can only be in relation to the fact or the facts required to be proved by the parties in a suit. Affidavits by very nature are the statement of facts known to the deponent either on the basis of his personal knowledge or on account of information derived by him from certain records or received from some other source and it is necessary for the deponent in cases of statement of facts made on the basis of such information to disclose the source of information otherwise the statement based on information can have no evidentiary value. Infact, the law on the point of the contents of the affidavit is very clear from Rules 1 and 3 of Order XIX of CPC. The Rule 1 read that "Any court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the court thinks reasonable." The Rule 3(1) thereof provides that "Affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove, except or inter-locutory applications, on which statement of his belief may be admitted; provided that the grounds thereof are stated."

21. In case of evidence in the form of affidavit in a suit to be considered for the decision on merits, it should confine to the facts known to the deponent either of his

personal knowledge or based on information which the deponent has reason to believe. Albeit, in later case the source of information as well as the reason to believe has to be disclosed in the affidavit, otherwise, the statement based on information without disclosure of the source and the reason to believe cannot have any evidentiary value. There can also be facts based on belief. However, grounds of belief are necessarily to be stated wit sufficient particulars to enable the court to judge whether it would be safe to rely upon the deponent's belief. (Vide: Barium Chemicals Ltd., v. Company Law Board reported in AIR 1967 SC 295 and in Sukhwinder Pal Bipan Kumar v. State of Punjab reported in AIR 1982 SC 65"

16. The counsel submits that acknowledgement within the meaning of section 18 of the Limitation Act has to be a conscious acknowledgment and any statement made without intending to admit the existence of jural relationship cannot be said to be admission. To support this argument, the counsel for respondent places reliance on **State of Kerala v. TM Chacko** reported in (2000)9 SCC 722 and more particularly at paras 8 and 10 which read as under:

"**8.** From a perusal of sub-section (1) of Section 18 it is evident that to invoke this provision:

(*1*) there must be an acknowledgement of liability in respect of property or right;

(*2*) the acknowledgement must be in writing signed by the party against whom such right or property is claimed (or by any person through whom he derives his title or liability; and

(*3*) the acknowledgement must be made before the expiration of the period prescribed for a suit or application (other than application for the execution of a decree) in respect of such property or right.

The effect of such an acknowledgement is that a fresh period of limitation has to be computed from the time when the acknowledgement was so signed."

"**10.** It may be noted that for treating a writing signed by the party as an acknowledgement, the person acknowledging must be conscious of his liability and the

commitment should be made towards that liability. It need not be specific but if necessary facts which constitute the liability are admitted an acknowledgement may be inferred from such an admission."

17. Reliance is also placed on ***Lakhsmirattan Cotton Mills Company Ltd and M/s Behari lal Ram Charan v. The Aluminium Corporation of India Ltd*** reported in (1971)1 SCC 67 and particularly at para 9 which reads as under:

> "**9.** It is clear that the statement on which the plea of acknowledgment is founded must relate to a subsisting liability as the section requires that it must be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for, an acknowledgment does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course does not mean that where a statement is made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and far-fetched reasoning. (See *Khan Bahadur Shapoor Fredoom Mazda* v. *Durga Prasad Chamaria*[1] and *Tilak Ram* v. *Nathu*[2]). As Fry, L.J., *Green* v. *Humphreys*[3] said "an acknowledgment is an admission by the writer that there is a debt owing by him, either to the receiver of the letter or to some other person on whose behalf the letter is received but it is not enough that he refers to a debt as being due from somebody. In order to take the case out of the statute there must upon the fair construction of the letter, read in the light of the surrounding circumstances, be an admission that the writer owes the debt". As already stated, the person making the acknowledgment can be both the debtor himself as also a person duly authorised by him to make the admission. In *Khan Bahadur Shapoor Fredoom Mazda case* the Court accepted a statement in a letter by a mortgagor to a second mortgagee to save the mortgaged property from being sold away at a cheap price at the instance of the

prior mortgagee by himself purchasing it as one amounting to an admission of the jural relationship of a mortgagor and mortgagee, and therefore, to an acknowledgment within Section 19. Also, an agreement of reference to arbitration containing an unqualified admission that whoever on account should be proved to be the debtor would pay to the other has been held to amount to an acknowledgment. Such an admission is not subject to the condition that before the agreement should operate as an acknowledgment, the liability must be ascertained by the arbitrator. The acknowledgment operates whether the arbitrator acts or not. (See *Tejpal Saraogi* v. *Lallanjee Jain*[4], approving *Abdul Rahim Oosman & Co.* v. *jamshee Prushottamdas & Co.*[5])"

18. Further reliance is placed on **Hansa Industries (P) limited v. M/s MMTC Ltd and Anthr** reported in 113(2004) DLT 474 and more particularly at para 18 and 19 which read as under:

> "18. Elaborating further the principle contained in Shapoor Freedom Mazda (supra) , the Supreme Court in the case of M/s Lakshmiratan Cotton Mills Co. Ltd. Vs. The Aluminium Corporation of India Ltd. reported in AIR 1971 SC 1482 while acknowledging that a liberal construction of the statement contained alleged acknowledgment, is to be given, the court held that that would not mean where a statement is made without intending to admit the existence jural relationship such intention should be fastened on the person in the case of making the statement by an involved and far-fetched reasoning.
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> 19. We can deduce the following principles from the aforesaid judgments which shall have to be applied in a given case to ascertain as to whether writing constitutes an acknowledgment or not:
>
> (a) Acknowledgment means an admission by the writer that there is a debt owed by him either to the receiver of the letter or to some other person on whose behalf it is received. It is not enough he refers to a debt as being due from somebody. He must admit that he owes the debt.
> (b) The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature of the specific character of the said liability may not be indicated in words.

(c) Words used in the acknowledgment indicate the circumstances of jural relationship between the parties such as that of debtor and creditors.
(d) It must appear that statement is made with the intention to admit such jural relationship.
(e) Such intention can be implied and need not be expressed in words. In construing the words used in the statement, surrounding circumstances can be considered although oral evidence is excluded.
(f) Although liberal construction is to be given to such statement but where a statement was made without intending to admit the existence of jural relationship, the court cannot fasten such intention on the maker by an involved or far-fetched process of reasoning.
(g) In deciding the question in a particular case, it is not useful to refer to judicial decision and one has to inevitably depend upon the context in which words are used."

19. The counsel for the respondent next submits that the trial court has wrongly held that the respondent has not proved issue No.4. Admittedly the supply was to be made by FOR and price quoted was FOR Delhi by rail. The purchase orders which is the basis for supply does not provide for transportation by road. The fact that the materials were to be supplied by rail only is admitted in Exhibit P4 [para 4(a)]. The appellant has specifically agreed that the defendant should not pay the difference of rates between road and rail charges in respect of the supplies made by them under the purchase orders referred to therein. The counsel contends that the learned Judge has completely ignored the admission made by the appellant and has also failed to consider that when prices were quoted in FOR by rail the burden was on the plaintiff appellant to prove that there was change in the arrangement. The counsel further submits that the respondents have paid in excess a sum of Rs. 1,11,625.20 towards difference in freight charges which the appellant is not entitled to.

20. The contentions of the appellant can be summarised as under:

- The suit was within the period of limitation
- Ex P4 constitutes a valid acknowledgment under section 18 of the Limitation Act whereby the respondents have unequivocally admitted the jural relationship of debtor.
- Letter dated 13.03.1986 can be relied on since it was not in the possession of the appellant and was produced by the respondents only after a notice was issued by the appellant to the respondents.

21. The contentions of the respondent can be summarised as under:

- The suit is barred by limitation
- Appellant cannot base his claim on Ex P4 which is specifically denied by it in pleadings and by PW 1 in his cross-examination
- Ex P4 does not constitute a valid acknowledgment under section 18 of the Limitation Act, as it does not deal with the subject matter of the suit nor has the respondent admitted any liability.
- Letter dated 13.03.1986 is not a part of the trial court record.

22. I have heard the counsels for the parties and have perused the entire evidence on record.

23. The main thrust of the arguments of the counsel for the appellant is that the respondents acknowledged their liability towards the appellant vide Exhibits P1 to P3 and more particularly Ex P4 which is refuted by the counsel for respondents on the ground that the exhibits do not amount to a valid acknowledgment under section 18 of the Limitation Act nor do the exhibits deal with the subject matter of the suit. I have carefully perused the aforesaid exhibits. Ex P1 dated 27.12.1986 is a letter sent by the respondents to the appellant with regard to some overdue payments and nowhere does it even mention of any liability of the respondents to pay any outstanding amount to

the appellant. Ex P2 dated 21/25.10.1987 refers to a telegram sent by the respondents to the appellant in regard to a meeting on 14th and 15th of October, 1987. This exhibit too nowhere refers to any acknowledgment of liability by the respondents. Ex P3 dated 15.03.1987 is a letter sent by the respondents to the appellant regarding the settlement of dues. The subject matter of the letter deals with the difference in price offered to the respondents and the price offered to the ASRTU. It further deals with exorbitant transportation charges and supply of goods without obtaining the PO from the respondents. The text of the exhibit does not indicate any acknowledgment of liability by the respondent.

24. The appellant mainly relies on Exhibit P4 dated 19.03.1987 and particularly the contents of para 4 of the aforementioned exhibit to establish that the defendant respondents acknowledged their liability towards the appellant to pay the outstanding amount as claimed by the appellant. It is contended by the respondents that did does not amount to acknowledgment as it does not deal with the subject matter of the suit nor the letters dated 21.08.1985, which are the subject matter of para 4, are part of the record. Exhibit P4 is the minutes of the meeting dated 19.03.1987 that took place between the representatives of the respondents and the appellant. A bare reading of this document makes it clear that the document pertains to a para wise discussion on a letter dated 13.03.1986. Para 2 of Exhibit P4 deals with the refusal of the respondents to pay some balance amount during the period from 5.7.1984 to December, 1985. Para 3 of the exhibit mentions

of an agreement by the appellant to produce duplicate copies of certain bills along with non-payment certificate. Para 4 mentions that the representative of the appellant was requested to produce duplicate certified copies of the bills of the back squabs in accordance with a letter dated 21.08.1985 along with the non-payment of certificates. Para 4 mentions about two letters dated 21.08.1985. Both the letters have not been produced by the appellant and do not form part of the court record. The text of Exhibit P4 does not deal with the claim of the appellant in the suit. Applying the settled law laid down in **Shapoor Freedom Mazda v. Durga Prasad Chamaria** reported in AIR 1961 SC 1236 that the acknowledgment must be in respect of a right or property in question, I find no force in the contention of the appellant that Exhibit P4 constitutes acknowledgment by the respondents so as to extend the period of limitation.

25. The counsel for the appellant submits that a combine reading of Exhibit P4 with the letter dated 13.03.1986 would make it evident that the respondents acknowledged their liability to pay some outstanding amount to the appellants and that Ex P4 is an acknowledgment in regard to the subject matter of the suit. The counsel for respondent refutes that the appellant cannot base the entire claim on Exhibit P4 since the aforesaid exhibit has been denied by the appellant in its pleadings as well as by PW 1 Sh Amit Jain who is the Managing Director of the appellant company. The counsel for the respondent has further contended that the letter dated 13.03.1986 does not form part of evidence since it was not produced by the appellant and when produced

by the respondents, the letter was denied by the appellant. I find force in the contention of the counsel for the respondent. The appellant in their replication have denied that any meeting took place between the appellant and the respondents on 19.03.1987. The relevant extract from the replication of the appellant reads as under:

> "3. ..... It is wrong and denied that the plaintiff is not entitled to the differences in freight charges between the rail and road charges as alleged. It is also wrong and denied that it has been admitted by any authorised representative of the plaintiff in any joint meeting held on 19.03.1987. In fact, no such meeting was ever held on 19.03.1987."

26. Exhibit P4 has been signed by one Sh Ravi Shorey acting as the representative of the appellant company. PW1 Sh. Amit Jain stated in his cross-examination that:

> "Sh. Ravi Shorey is not our agent/Representative at Aurangbad. I cannot say Ex P4 has been signed by Sh. Ravi Shorey as representative of the plaintiff (appellant herein) as I do not recognise his signatures"

27. Further, the appellants have failed to produce the letter dated 13.03.1986 on record. Applying the law laid down in **State Bank of India v. SN Goyal** (***supra)*** and **Maqboolunnisa v. Mohd. Quaraishi *(supra),*** I am of the view that since the letter dated 13.03.1986 does not form part of the record and thus cannot be look into by this court. The appellant, having been specifically denying the existence of any meeting dated 19.03.1987 and consequently denying the minutes of the meeting exhibited as Exhibit P4, cannot base its claim on Exhibit P4 . In the absence of

the letter dated 13.03.1986, it is not possible to find out the subject matter of the minutes of the meeting dated 19.03.1987.

28. As far as the plea of difference in freight charges is concerned, I concur with the view of the trial court. Exhibit D4 is an admitted document, which is a letter dated 16.05.1984 sent by the appellant to the respondents quoting their rates for seat cushion and back rest. The aforesaid exhibits also state "the above price are FOR Delhi by rail but if, by road transport, difference of freight will be extra". I have also carefully perused the purchase orders placed on record by the defendant. In none of the purchase orders has it been specified that the good had to be transported by rail only. The respondents are, therefore, not entitled to the difference in freight charges paid by them to the appellant.

29. Thus, I find no infirmity in the judgment of the trial court by virtue of which the trial court has dismissed the suit of the plaintiff appellant being barred by limitation.

G.S. SISTANI, J.

February 28, 2011.
"ssn'"