Mageba Bridge Products Pvt. Ltd. Vs. M/s. Trade Centre

Civil Appeal No. 10658 of 2026 arising out of SLP (C) No. 24861 of 2025 · Supreme Court of India · 2026-08-12 · J. B. Pardiwala · K. Vinod Chandran · F2J-C-1109

Full judgment text

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[Civil Appeal No. 10658 of 2026 arising out of SLP (C) No. 24861 of 2025]

K. Vinod Chandran, J.

1. Leave granted.

2. A suit filed by the respondent was dismissed finding that the plaintiff's status as a registered partnership firm was not proved before the Trial Court; the suit being hit by Section 69(2) of the Indian Partnership Act, 1932. An appeal was filed contending that the Trial Court ignored the legal effect of Exhibit- 8, a Memorandum of Registration exhibited by the plaintiff, conclusively proving the registration of the firm.

The First Appellate Court accepted the same, and after considering the merits of the matter decreed the suit, directing the defendant to pay the appellant a sum of Rs.24,36,105/- along with interest @ 6% per annum from the date of filing of the suit till realization of the amount. The appellant herein, who was the defendant, is challenging the judgment and decree passed by the First Appellate Court, primarily on the contention that the suit claim was barred by limitation and also on valid proof having not been produced with respect to the registration of the plaintiff-firm. We refer to the parties from their status in this appeal.

3. We have heard Sri Nikhil Nayyar, learned Senior Counsel for the appellant and Sri Manish Goswami, learned Senior Counsel for the respondent.

4. On a perusal of the impugned judgment, we are inclined to hold that there was sufficient evidence to find the registration of the respondent-firm. Exhibit-8 also produced herein, is a memorandum issued by the Registrar of Firms, West Bengal, acknowledging receipt of documents and it is also an intimation that the documents have been filed/recorded/registered pursuant to the Indian Partnership Act, 1932. It also indicates the Registration No.L73931 allotted to the respondent-firm, clearly showing that the firm was registered at least on 14.05.2010; the date revealed from Exhibit-8. The court also went on to look at the document produced under Order XLI Rule 27(1) and found it to be a certified copy of Form-VIII of the Registrar of Firms, duly certified by the Registrar of Firms, West Bengal, whereby it was reiterated that the Registration number of plaintiff-firm is L73931, as it appears from Exhibit-8 and date of registration 14.05.2010 is also in consonance.

5. In addition to the finding that Exhibit-8 by itself proved the registration, it was also held that the application to produce additional document has to be allowed since it would further the cause of justice and enable the court to pronounce judgment especially since the document produced corroborates Exhibit P8.

6. We find no reason to uphold the order of the Trial Court rejecting the suit, finding the plaintiff to be not a partnership firm.

7. Now we come to the issue of limitation. The suit as we noticed is for recovery of money and the plaint is produced at Annexure P-27. The recovery sought is on the strength of the bills raised, with respect to the supplies made by the respondent to the appellant totalling Rs.23,41,693/-. The bills upon which the claim was raised were shown with the details of date, invoice number, particulars, weight and amount, in the body of the plaint and the Schedule; in a tabular form. Immediately, we have to notice that the suit is filed on the strength of the bills raised against the defendant and not based on any running account, though, the parties are said to be having numerous transactions.

Though, the transactions with the respondent is admitted by the appellant before the Company Court also, where the respondent had first approached for winding up, and in the suit, the appellant resisted the monetary claim on the ground that one of his employees had fraudulently created documents to show receipt of goods, as allegedly raised by the respondents, except with respect to two bills which were admitted and paid up on receipt of notice.

8. Be that as it may, the respondent claimed that the cause of action arose on 03.06.2008 when there was an admission of debt and part payment. The ground of limitation is resisted on the strength of the admission made on 02.09.2008, when part payment was made, also with reference to Annexure P-18 dated 01.08.2008, the communication addressed by the appellant in response to the demand raised by the respondent.

9. It is also argued that the Company Court, before whom the respondent had filed an application for winding up within the limitation period, had permitted the suit to be filed within three months from the date of disposal of the Company Petition.

10. Before we look into the question of limitation, which is a mixed question of law and facts, we have to peruse the relevant decisions, a host of which were placed before us by both sides.

11. The respondent/plaintiff relies on Kalpraj Dharamshi and Anr. v. Kotak Investments Advisor Limited and Anr.1, wherein on an application by the corporate debtor, Corporate Insolvency Resolution Process was initiated and the Resolution Professional appointed, invited resolution plans. The appellant before this Court, submitted its Resolution Plan after the last date as specified by the RP, who invited all the applicants to file a Revised Resolution Plan which led to the appellant's plan being accepted.

The respondent before this Court who had applied on time and had also furnished a Revised Resolution Plan, challenged the acceptance of the appellant's Resolution Plan before the High Court. The High Court disposed of the writ petition finding an alternate and efficacious remedy of filing an appeal before the NCLAT. Going by the date on which the appellant received the order of the NCLT, the appeal was delayed by 16 days. The argument that the writ court was not a wrong forum, was not accepted. This Court held so in Paragraph 64 of the said decision as under:-

"64. Thus, this Court relying on the earlier judgments in Bhudan Singh v. Nabi Bux [Bhudan Singh v. Nabi Bux, (1969) 2 SCC 481], J. Kumaradasan Nair v. Iric Sohan [J. Kumaradasan Nair v. Iric Sohan, (2009) 12 SCC 175: (2009) 4 SCC (Civ) 656] and Consolidated Engg. Enterprises [Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169] observed, that the object of enacting the legislation is to advance public welfare. The entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation.

It has been held by this Court, that in the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe, that it represents the legislative intent. It is further observed, that the provisions contained in Sections 5 and 14 of the Limitation Act are meant for grant of relief, where a person has committed some mistake. In J. Kumaradasan Nair [J. Kumaradasan Nair v. Iric Sohan, (2009) 12 SCC 175 : (2009) 4 SCC (Civ) 656] , it has been observed, that when sub-section (2) of Section 14 of the Limitation Act per se is not applicable, the same would not mean, that the principles akin thereto would not be applicable."

12. It was also found that the petitioner had pleaded breach of principles of natural justice since, before the NCLT the matter was heard by a Member (Judicial) sitting single, while the order was passed by a Division Bench. The delayed appeal before the NCLAT was found to be possible of consideration since the appellant was bona fide prosecuting a remedy before the High Court, with due diligence.

13. Apposite would also be reference to Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari2, which is almost on similar lines. Therein the question was as to whether the period spent in pursuing an insolvency proceedings can be reckoned as the period eligible for condonation under Section 14 of the Limitation Act, when a delayed execution petition is filed. It was categorically held that "There could be no exclusion of the time occupied by the insolvency proceedings which clearly was not for the purpose of obtaining the same relief (sic). The eventual recovery in such a proceeding was held to be a 'mere consequence or result'. The relief was found to be different and so was the procedure widely divergent.

In Jignesh Shah and Anr. v. Union of India and Anr.3 a converse situation was considered. The filing of a civil suit was projected as a ground for the delayed winding up petition filed before the High Court, which was sought to be transferred to the NCLT. It was categorically held that the filing of a suit for recovery based upon a cause of action, that is within limitation cannot in any manner impact the separate and independent remedy of a winding up proceeding. The converse position applies squarely to this case that the initiation of a winding up proceeding, which may or may not enable recovery, will not impact the limitation for the separate remedy of suit for recovery of money.

14. We are of the opinion that on the facts of this case Yeswant Deorao Deshmukh2 & Jignesh Shah3 apply squarely. In this context, we also have to notice that the Company Petition filed was not entertained since it was found that, though slightly delayed, the appellant issued a reply alleging that the substantial part of the claim made by the respondent, was apparently 'at the behest and with the connivance of the erstwhile associates of our company' (sic).

Hence, there was a clear dispute raised and it was in the context of the appellant having undertaken to provide security for two bills i.e. TC/152 and TC/153, which were found in their accounts too, that the respondent was relegated to the civil remedy, further directing that deposit of Rs.12,38,000/- covered by the bills bearing Nos.TC/152 and TC/153 be secured before the Civil Court within 3 weeks; to facilitate which, the company proceeding was kept in abeyance till the security is furnished, failing which the Company Petition was entitled to be revived for the sum of Rs.12,38,000/- with interest @ 8% per annum.

The acceptance of the bills was not an admission, giving up the plea of limitation. There was also no extension of limitation by the Company Court, which in any event, the Court was not competent so to do. Hence, the clear finding was that there is no scope of winding up of the appellant, the demand having been disputed by the appellant. The decisions of this Court with respect to finding a clear distinction between a winding up proceeding and a suit for recovery of money simpliciter, applies squarely.

15. Be that as it may, we have to notice from the order of the Company Court that the petition filed before it was affirmed on 07.02.2009 and filed on 10.02.2009. The suit was filed with the cause of action arising on 03.06.2008; when a demand was raised by the respondent, on 01.08.2008; when it was responded by Annexure P-18 and on 02.09.2008; when part payment was made. However, Annexure P-18 indicates that there was no acknowledgment of debt and the payment made was not a part payment but the payment with respect to three invoices, admitted as remaining due, by the appellant/defendant. The appellant by Annexure P-18 admitted TC No.32/07-08, TC No.33/07-08 and TC No.64/07-08, which was paid by the appellant, one of which; TC No.64/07-08 dated 24.08.2007, did not even figure in the schedule of the claim, as revealed from the plaint, which stood already paid on 12.12.2007 before the notice of demand was issued.

16. It is also to be specifically noticed that the appellant had agreed to provide security only for two bills i.e., TC/152/05-06 and TC/153/05-06 dated 30.01.2006 before the Company Court. To surpass the limitation to file a suit for recovery of money as covered by the bills dated 30.01.2006, it should have been filed before 29.01.2009. Even if the date on which the Company Petition was filed, is taken for the purpose of determining limitation, reckoning the period spent in prosecuting the Company Petition under Section 14 of the Limitation Act, the date of filing the Company Petition i.e., 10.02.2009, falls outside the limitation period making academic the discussion on whether Section 14 can be applied or not, at least with respect to the said bills. As for the other bills, the last of them is dated 06.03.2007, which remains unpaid and the suit was filed on 05.06.2010 after the limitation expired; to find which Yeswant Deorao Deshmukh2 and Jignesh Shah3 are relevant.

17. We categorically find that Annexure P-18 did not acknowledge the debt as sought to be recovered by the respondent, evidenced by the bills, more fully described in the schedule to the plaint. The suit as we found was filed on the strength of the invoices raised and not on the basis of a running account. The mere deduction shown with respect to the payment of the admitted bills, in the schedule to the plaint, will not make it a running account. The notice of demand, the reply issued or the payment made on admission of two bills, with disputes raised with respect to the other bills, demolishes the case set up by the respondent-plaintiff on cause of action as emanating from the plaint.

18. We find absolutely no reason to sustain the order of the High Court in the First Appeal and, hence, reverse the same to the extent of granting the relief of recovery, despite our finding that the suit was properly instituted by a partnership firm, whose registration has been proved in accordance with law. The claim for recovery is hit by limitation. The suit, hence, stands dismissed for that reason.

19. The appeal stands allowed.

20. Pending application(s), if any, shall stand disposed of.

..................J. (J. B. Pardiwala)

..................J. (K. Vinod Chandran)

New Delhi;

August 12, 2026.

1 (2021) 10 SCC 401

2 1950 SCC 766

3 (2019) 10 SCC 750