allowed the appellant's application for the renewal of his lease under r. 47 of the Mineral Concession Rules of 1949. The argument is wholly untenable. That rule provides that a mining lease granted by a private person shall be subject to certain conditions therein specified. The first condition thus laid down is that the term of the lease should be renewed at the option of the lessee for one period not exceeding the duration of the original lease. The effect of this rule is, as it were, to insert statutorily some new terms in the lease itself. In other words, this rule does not do anything more than add some terms to the lease. When, however, the lease is determined under the second proviso, these terms must also fall with it.

No other point has been urged before us and for reasons stated above, we think that these appeals should be dismissed with costs and we order accordingly.

*Appeals dismissed.*

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## THE HINDUSTAN FOREST COMPANY

*v.*

## LAL CHAND AND OTHERS



(S. R. DAS, C.J., S. K. DAS, A. K. SARKAR, K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

*Limitation—Mutual account—Reciprocal demands—Contract for supply of goods—Delivery of goods and payments, whether independent obligations—Jammu and Kashmir Limitation Act, 1995 (Jammu and Kashmir IX of 1995), art. 115—Indian Limitation Act, 1908 (9 of 1908), art. 85.*

Under a contract for the sale of goods, the buyer paid an advance amount towards the price of the goods to be supplied and various quantities of goods were thereafter delivered by the sellers. The buyer from time to time made various other payments towards the price of the goods after they had been delivered. The last delivery of goods was made on June 23, 1947, and the suit was brought on October 10, 1950, by the sellers for the balance of the price due for goods delivered. The sellers pleaded that the suit was within time and relied on art. 115 of the Jammu and Kashmir Limitation Act under which the period of limitation was six years for a suit "for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties."

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*Held*, that art. 115 was not applicable to the case as there was no mutual account based on reciprocal demands. The payment made by the buyer after deliveries had been given to it were in discharge of the obligations to pay the price due on account of these deliveries; the amount paid in advance was paid under the contract in discharge of obligations to arise, none of such payments created an independent obligation in the sellers towards the buyer.

*Tea Financing Syndicate Ltd.* v. *Chandrakamal Bazbaruah*, (1930) I.L.R. 58 Cal. 649, approved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 161 of 1955.

Appeal from the judgment and decree dated 4th Jeth 2011, of the Jammu and Kashmir High Court in Appeal No. 1 of 2009, arising out of the judgment and decree dated the 2nd Magh 2008, of the said High Court in original suit No. 40 of 2007.

*S. K. Kapur* and *N. H. Hingorani*, for the appellant.

*Bhawani Lal* and *K. P. Gupta*, for the respondents.

1959. August 19. The Judgment of the Court was delivered by

*Sarkar J.*

SARKAR J.—This appeal arises out of a suit filed in the High Court of Jammu and Kashmir for recovery of price of goods sold and delivered. The only point involved in it is whether the suit was governed by art. 115 of the Jammu and Kashmir Limitation Act. The courts below have held, and this has not been disputed in this appeal, that if that article did not apply, the suit would fail on the ground of limitation.

Sometime in November 1946, the parties entered into an agreement in writing for the supply by the sellers, the respondents, to the buyer, the appellant, of 5,000 maunds of maize, 500 maunds of wheat and 100 maunds of Dal at the rates and times specified. The agreement stated that on the date it had been made the buyer had paid to the sellers Rs. 3,000 and had agreed to pay a further sum of Rs. 10,000 within ten or twelve days as advance and the balance due for the price of goods delivered, after the expiry of every month. It is admitted that the said sum of Rs. 10,000 was later paid by the buyer to the sellers.

Various quantities of goods were thereafter delivered by the sellers to the buyer and though such deliveries had not been made strictly at the times specified in the contract, they had been accepted by the buyer. The buyer in its turn made various payments towards the price of the goods delivered but not month by month and had not further paid it in full. The last delivery of goods was made on June 23, 1947, and the suit was brought on October 10, 1950, for the balance of the price due.

The learned Judge of the High Court who heard the suit held that art. 115 had no application and dismissed the suit as barred by limitation. The sellers went up in appeal which was heard by two other learned Judges of the High Court. The learned Judges of the appellate bench of the High Court held that art. 115 of the Jammu & Kashmir Limitation Act applied and the suit was not barred. They thereupon allowed the appeal and passed a decree in favour of the sellers. The buyer has now come up in appeal to this Court.

Article 115 of the Jammu and Kashmir Limitation Act which is in the same terms as art. 85 of the Indian Limitation Act except as to the period of limitation, is set out below:

| Description of suit | Period of Limitation | Time from which period begins to run |
|---|---|---|
| For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties. | Six years. | The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. |

If the article applied the suit would be clearly within time as the last item found to have been entered in the account was on June 23, 1947. The only question argued at the bar is whether the account between the parties was mutual.

The question what is a mutual account, has been considered by the courts frequently and the test to determine it is well settled. The case of the *Tea Financing Syndicate Ltd.* v. *Chandrakamal Bezbaruah* (1) may be referred to. There a company had been

(1) (1930) I.L.R. 58 Cal. 649.

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advancing monies by way of loans to the proprietor of a tea estate and the proprietor had been sending tea to the company for sale and realisation of the price. In a suit brought by the company against the proprietor of the tea estate for recovery of the balance of the advances made after giving credit for the price realised from the sale of tea, the question arose as to whether the case was one of reciprocal demands resulting in the account between the parties being mutual so as to be governed by art. 85 of the Indian Limitation Act. Rankin, C.J., laid down at p. 668 the test to be applied for deciding the question in these words:

> "There can, I think, be no doubt that the requirement of reciprocal demands involves, as all the Indian cases have decided following Halloway, A.C.J., transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side, those on the other being merely complete or partial discharges of such obligations. It is further clear that goods as well as money may be sent by way of payment. We have therefore to see whether under the deed the tea, sent by the defendant to the plaintiff for sale, was sent merely by way of discharge of the defendant's debt or whether it was sent in the course of dealings designed to create a credit to the defendant as the owner of the tea sold, which credit when brought into the account would operate by way of set-off to reduce the defendant's liability."

The observation of Rankin, C.J., has never been dissented from in our courts and we think it lays down the law correctly. The learned Judges of the appellate bench of the High Court also appear to have applied the same test as that laid down by Rankin, C.J. They however came to the conclusion that the account between the parties was mutual for the following reasons:

> "The point then reduces itself to the fact that the defendant company had advanced a certain amount of money to the plaintiffs for the supply of grains. This excludes the question of monthly

payments being made to the plaintiffs. The plaintiffs having received a certain amount of money, they became debtors to the defendant company to this extent, and when the supplies exceeded Rs. 13,000 the defendant company became debtors to the plaintiff and later on when again the plaintiff's supplies exceeded the amount paid to them, the defendants again became the debtors. This would show that there were reciprocity of dealings and transactions on each side creating independent obligations on ther other."

The reasoning is clearly erroneous. On the facts stated by the learned Judges there was no reciprocity of dealings; there were no independent obligations. What in fact had happened was that the sellers had undertaken to make delivery of goods and the buyer had agreed to pay for them and had in part made the payment in advance. There can be no question that in so far as the payments had been made after the goods had been delivered, they had been made towards the price due. Such payments were in discharge of the obligation created in the buyer by the deliveries made to it to pay the price of the goods delivered and did not create any obligation on the sellers in favour of the buyer. The learned Judges do not appear to have taken a contrary view of the result of these payments.

The learned Judges however held that the payment of Rs. 13,000 by the buyer in advance before delivery had started, made the sellers the debtor of the buyer and had created an obligation on the sellers in favour of the buyer. This apparently was the reason which led them to the view that there were reciprocal demands and that the transactions had created independent obligations on each of the parties. This view is unfounded. The sum of Rs. 13,000 had been paid as and by way of advance payment of price of goods to be delivered. It was paid in discharge of obligations to arise under the contract. It was paid under the terms of the contract which was to buy goods and pay for them. It did not itself create any obligation on the sellers in favour of the buyer; it was not intended to be and did not amount to an independent transac-

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tion detached from the rest of the contract. The sellers were under an obligation to deliver the goods but that obligation arose from the contract and not from the payment of the advance alone. If the sellers had failed to deliver goods, they would have been liable to refund the monies advanced on account of the price and might also have been liable in damages, but such liability would then have arisen from the contract and not from the fact of the advances having been made. Apart from such failure, the buyer could not recover the monies paid in advance. No question has, however, been raised as to any default on the part of the sellers to deliver goods. This case therefore involved no reciprocity of demands. Article 115 of the Jammu and Kashmir Limitation Act cannot be applied to the suit.

The learned Judges appear also to have taken the view that since the goods were not delivered at the times fixed in the contract, and the prices due were not paid at the end of the months, the parties clearly indicated their intention not to abide by the contract. We are unable to agree with this view. Such conduct only indicated that the parties had extended the time fixed under the contract for delivery of the goods and payment of price, leaving the contract otherwise unaffected.

The learned Judges also observed that the contract did not provide how the amount advanced was to be adjusted. But it seems clear that when the contract provided that the advance was towards the price to become due, as the learned Judges themselves held, it followed by necessary implication that the advance had to be adjusted against the price when it became due. So there was a provision in the contract for adjusting the advance.

We think it fit also to observe that it is somewhat curious that any question as to the application of art. 115 was allowed to be raised. The applicability of that article depends on special facts. No such facts appear in the plaint. There is no hint there that the account was mutual. We feel sure that if the attention of the learned Judges of the High Court had been

drawn to this aspect of the matter, they would not have permitted any question as to art. 115 being raised, and the parties would have saved considerable costs thereby.

We therefore come to the conclusion that the appeal must be allowed. The judgment and order of the learned Judges of the appellate bench of the High Court are set aside and those of the learned Single Judge of the High Court are restored. The appellant will be entitled to the costs in this Court and of the hearing of the appeal before the High Court.

*Appeal allowed.*

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## SHIVA JUTE BALING LIMITED

*v.*

## HINDLEY AND COMPANY LIMITED

(B. P. SINHA, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

1959

*August 21.*

*Arbitration—Contract—Award passed pending legal proceedings challenging the existence and validity of contract—Validity—Breach of contract—Contract providing for penalty as liquidated damages—Award granting maximum—Legality—Indian Contract Act, 1872 (9 of 1872), ss. 73, 74—Arbitration (Protocol and Convention Act, 1937 (6 of 1937) s. 7(e)—Arbitration Act, 1940 (10 of 1940), ss. 33, 35.*

The appellant company, incorporated in India, entered into a contract on June 18, 1945, for the supply of five hundred bales of jute, with the respondent company which was incorporated in England and which had its registered office in London. The contract, *inter alia*, provided that in the event of default of tender or delivery, the seller shall pay to the buyer as and for liquidated damages 10s. per ton plus the excess (if any) of the market value over the contract price, the market value being that of jute contracted for on the day following the date of default. There was a provision for arbitration, under which any claim or dispute whatever arising out of, or in relation to this contract or its construction or fulfilment shall be referred to arbitration in London in accordance with the bye-laws of the London Jute Association. Disputes having arisen regarding the performance of the contract the respondent referred the matter to the arbitration of the London Jute Association, who appointed two of its members as the arbitrators. The appellant did not reply to the notice given by the arbitrators but filed an application on