

1958

*Present : Basnayake, C.J., and de Silva, J.*

H. M. CAROLIS APPUHAMY and others, Appellants, and  
FORD FOOTWEAR LTD., Respondent

*S. C. 240—D. C. Colombo, 37,383/M*

*Prescription Ordinance (Cap. 55)—Section 8—“ After the debt shall have become due ”—  
Action for goods sold and delivered—Computation of prescriptive period.*

In an action to recover money due as balance on account of goods sold and delivered, the defendant claimed that the plaintiff's claim was barred by prescription. The evidence disclosed that the plaintiff sold goods on credit to the

defendant and that there was no definite limit as to the period of credit and that, so long as the defendant made payments on account, credit was continued until payment was demanded.

*Held*, that, in such a case, the defendant must, in order to succeed in a plea of prescription, prove that there was a definite period of credit and that at the end of that period the debt became payable and that the date on which the debt became payable was more than a year prior to the date of institution of the action.

**A**PPEAL from a judgment of the District Court, Colombo.

*A. L. Jayasuriya*, with *Colin Mendis*, for Defendants-Appellants.

*P. Somatilakam*, for Plaintiff-Respondent.

*Cur. adv. vult.*

February 27, 1958. BASNAYAKE, C.J.—

This is an action for a sum of Rs. 645 being balance due on account of goods sold and delivered by the plaintiff, a limited liability company, to the defendants who at the relevant period carried on business in partnership. The 2nd defendant gave evidence and denied that any money was due to the plaintiff and alternatively claimed that the plaintiff's claim was barred by prescription. The learned District Judge has disbelieved the 2nd defendant and held that the claim is not prescribed. We are not disposed to disturb the learned Judge's findings of fact. We propose only to consider the question of prescription. Section 8 of the Prescription Ordinance provides that "no action shall be maintainable for or in respect of any goods sold and delivered, or for any shop bill or book debt, or for work and labour done, or for the wages of artisans, labourers, or servants, unless the same shall be brought within one year after the debt shall have become due."

The onus of establishing that the plaintiff's action is barred by the above section is on the defendants. They must prove that the debt claimed by the plaintiff became due over a year before the institution of the action. This they have failed to do. They have not proved what the terms of credit were. The account filed with the plaint shows that the plaintiff supplied goods to the defendants from time to time and that the latter made payments on account from time to time. The last of such payments the learned Judge finds was made on 19th April 1955, less than eight months before the institution of the action. In June 1955 when the defendants were sent a letter of demand they wrote back asking for a detailed statement of their account. It was sent in October 1955. But as no payment was made in November 1955 the plaintiff asked for a cheque either in part payment or in full settlement but as there was no response to this request this action was instituted on 8th December 1955. The evidence discloses that the plaintiff sold goods on credit to the defendants and that there was no definite limit as to the period of credit and that so long as the defendants made payments on account,

credit was continued until payment was demanded. In such a case the defendants must in order to succeed in their plea prove that there was a definite period of credit and that at the end of that period the debt became payable and that the date on which the debt became payable is more than a year from the date of institution of the action.

There is no such proof in this case. The appeal is therefore dismissed with costs.

DE SILVA, J.—I agree.

*Appeal dismissed.*

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