FOOD CORPORATION OF INDIA AND ORS. A

v.

M/S. BABULAL AGRAWAL

JANUARY 5, 2004

[BRIJESH KUMAR AND ARUN KUMAR, JJ.] B

Indian Contract Act, 1872/Indian Registration Act; Section 17/Transfer of Property Act; Sections 106 & 107:

Agreement between Food Corporation and a firm for construction of plinths and handing over to Corporation on monthly rent as per terms of the agreement—Corporation gave notice and vacating plinths before expiry of the period agreed for—Suit for damage for breach of terms—Trial Court awarded damages and decreed the suit in favour of the firm—High Court modified decree by reducing damages—On appeal, Held: Corporation could not back out from the promise held out and thus cannot escape from liability for breach of the terms of the contract—Agreement deed is not a lease deed in itself—On execution it creates a right/another document in respect of immovable property—Hence an executory agreement—Thus, agreement/lease deed not compulsorily require registration—It could appropriately be classified as monthly lease deed—However, appellant could not make it a ground to escape from its liability for breach of terms of agreement—One who holds out a promise, if backs out, he would have to compensate the other party who acted bonafidely on the basis of promise made—Hence, Food Corporation liable to pay compensation. C D E

Limitation Act, Article 55: F

Plea of limitation—Raising of—Held: it must be raised at least at the appellate stage if not raised earlier—Since suit was filed within three years of vacating the premises, not barred by time.

Appellant-Corporation invited tenders for hiring plinths for storing foodgrains. Tender of Respondent-firm was accepted. Consequently, appellant-Corporation and the respondent-firm entered into an agreement. As per terms of the agreement, the firm had to construct plinths which would be hired by the appellant-Corporation initially for a period of three G H

A years extendable to another year on payment of monthly rent. Accordingly, the firm had performed its part of the agreement and handed over the plinths to Corporation. Later, the Corporation after serving notice to the firm vacated the plinths. The firm filed a suit for damages. Trial Court decreed the suit awarding damages with interest thereon. On appeal, High Court modified the decree by reducing amount towards damages. Hence the present appeal and the cross appeal.

It was contended for the appellant-Corporation that since no registered lease deed was executed for a period of three years, tenancy was created on a month to month basis and it could validly be terminated by giving notice; that in the facts and circumstances of the case, the Corporation was not liable for damages; that the agreement deed being an unregistered document would not be admissible in evidence; and that the suit for damages was time barred.

On behalf of the respondent-firm, it was submitted that since the Corporation vacated the plinths before the expiry of period of three years in breach of the terms of the agreement, it was liable for damages at the rate equivalent to rent for the plinths.

Dismissing the appeal and allowing the cross appeals, the Court

HELD: 1.1. The Trial Court and the High Court have rightly held that in the absence of any lease deed or a registered lease deed, the nature of the lease would only be that of a monthly lease. But it does not mean that it would deprive the firm of damages for breach of terms of an agreement in accordance with which the firm had performed its part of the obligation by creating a liability against it by taking loan from bank. The plinths were constructed in accordance with the design and specification given by the Corporation. It may be of no use to any other person and for any other purpose. In this background as what was held out by the Corporation, assumes importance and in case one who holds out a promise, backs out, will have to compensate the party who acted *bonafidely* on the basis of the promise made. [138-B-D]

1.2. Respondent-firm filed a suit for damages for the breach of contract. It was not a suit for specific performance of the contract. A promise was definitely held out by the Corporation to the firm, for occupying the premises for a period of three years at a given rate of rent. The premises were in fact constructed in accordance with the instructions

and specifications of the Corporation. For raising the construction the firm had raised loans from the bank. Everything happened in accordance with the terms of the contract except that the period of tenancy was interdicted before three years of taking over of the possession by the Corporation; that even a monthly lease may last for more than a year and for any longer period. Everything was acted upon according to the agreement except the execution of lease deed, hence there was termination of tenancy on 15 days' notice. The firm was not insisting that the Corporation must retain possession for the remaining period or that the tenancy was not terminable but termination of the tenancy would not necessarily mean that they would also not be liable for compensating for the breach of promise held out in terms of the agreement which lead the firm to undertake the construction and invest money by raising loan. Therefore, it would not be of much consequence as to whether a lease deed for a lease of three years was executed and registered or not. The firm did not pray for relief of specific performance. Hence, the defence put up by the Corporation is not legally tenable. [137-G-H; 138-A-B; E-H]

Union of India and Ors. v. *M/s. Anglo—Afghan Agencies etc.*, AIR (1968) SC 718; *M/s. Motilal Padampat Sugar Mills Co. Ltd.* v. *State of U.P. and Ors.*, AIR (1979) SC 621 and *Delhi Cloth and General Mills* v. *Union of India*, AIR (1987) SC 2414, relied on.

Anthony v. *K.C. Ittoop & Sons and Ors.*, [2000] 6 SCC 394, distinguished.

1.3. The Board of Directors of the Corporation had considered the question of premature termination of the lease and realized that though, may be legal, it would be unjust and unfair. Hence, they issued a Circular stating that wherever guarantee period of three years has not expired the hiring of plinths may be continued upto the date of expiry of three years by reducing its liability at least to the extent of 5% in the amount of rent, through negotiations with the owners of the plinths. They themselves were well aware of promise of three years "guarantee period"; therefore, only wanted reduction in rent. [139-G-H]

1.4. The agreement would squarely be covered by clause (v) of sub-section (2) of Section 17 of the Registration Act, 1905. Since it merely creates a right to obtain another document which, when executed, would create such a right. Clause 8 of the agreement only talks of execution of a lease deed between the parties in a prescribed proforma under which the

A Corporation would be entitled to get possession of the premises on completion. The necessary stamp duty was to be borne by the firm. It is thus clear that the agreement itself is not a lease deed requiring registration. It only creates a right of getting another document executed creating rights and liabilities in respect of immovable property. [141-A-C]

B *Trivenibai and Anr.* v. *Smt. Lilabai,* AIR (1959) SC 620, relied on.

1.5. Clause 8 of the agreement did not create any right in *praesenti* nor there was any immediate demise of the property. It was only an executory agreement. It is evident that no possession, right or title had C passed on in *praesenti* at the time of execution of the agreement, and there were many prior conditions attached thereto. Such an agreement has been rightly held to be only an executory agreement and not an agreement creating rights in the immovable property, hence not compulsorily required to be registered. It was a mere agreement between the parties which was not registered but was admissible in evidence. [142-B-E]

D

1.6. No issue was framed on the question of limitation. That point was not raised even before the High Court nor in this Court too. It is only in the list of dates/synopsis it is vaguely stated that the suit was time barred. It is true that the Court may have to check at the threshold as to whether the suit is within limitation or not. There is always an office report E on the limitation at the time of filing of the suit. But in case the Court does not *prima facie* find it to be beyond time at that stage, it would not be necessary to record any such finding on the point much less a detailed one. In such a situation at least at the appellate stage, if not earlier, it would be desired of the Corporation to raise such a plea regarding limitation. F In the present case except for making a passing reference in the list of dates/synopsis no such ground or question has been raised or framed on the point of limitation. It is quite often that question of limitation involves question of facts as well which are supposed to be raised and indicated by the Corporation. The objecting party is not supposed to conveniently keep quiet till the matter reaches the Apex Court and wake up in a non-serious G manner to argue that the Court failed in its duty in not dismissing the suit as barred by time. The defendant vacated the premises on 10.10.1988. This is the date when the contract was broken and cause of action also accrued. The suit had been filed on 4.10.1991 i.e. within three years of vacating the premises. Hence, there is no merit in the argument that the H suit of the firm was barred by time. [142-G-H; 143-B-D]

Ittavira Mathai v. *Varkey Varkey & Anr.*, **[1994] 1 SCR 495, relied on.** A

1.7. Once the measure of damages has been accepted as the amount of monthly rent of the plinths, unless there was some logical and cogent reason to reduce the same, it could not be done. The order of modification of the decree passed by the Trial Court was not called in question. However, the decree has been modified without assigning any cogent B **reason for the same. Hence, the judgment passed by the High Court to that extent is set aside and the decree passed by the Trial Court is restored. [144-E-G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3484 of 1997. C

From the Judgment and Order dated 18.9.1996 of the Madhya Pradesh High Court at Jabalpur in F.A. No. 6 of 1995.

WITH

C.A. No. 3485 of 1997. D

M.R. Rajendran Nair and Shakil Ahmad Syed for the Appellant.

G.K. Banerji, S. Bhatnagar, Saurabh Agarwal for Ms. Ruby Singh Ahuja for the Respondent.

E

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. Civil Appeal No.3484 of 1997 has been preferred by the Food Corporation of India and others against the judgment and decree passed by the Madhya Pradesh High Court only partly allowing their appeal and modifying the decree of the Trial Court to a limited extent F to the effect that the respondent would be entitled to damages to be calculated after deducting 6% of the amount payable. The rest of the judgment and decree as passed by the Trial Court has been upheld.

Whereas Civil Appeal No.3485 of 1997 has been preferred by M/s. Babulal Agarwal (the plaintiff), against the same judgment and order passed G by the Madhya Pradesh High Court, partly modifying the decree of the Trial Court permitting deduction of 6% from the amount of damages as decreed by the Trial Court. For the sake of convenience, the parties shall be referred as plaintiff and defendant as in the original suit filed by M/s.Babulal Agrawal.

The Food Corporation of India (for short 'FCI') invited tenders for H

A hiring plinths for storing foodgrains. The plaintiff submitted his tender which was ultimately accepted vide letter dated 11.6.1985. The rent was to be @40 paisa per sq.ft. The acceptance of tender and the conditions of contract had again been confirmed by the letter dated 19.8.1985 written by the Regional Manager. An agreement dated 12.2.1986 was entered into between the parties. The case of the plaintiff is that the defendant had given out to hire the plinths B for a period of three years with an option to the defendant to extend by another year. The construction of plinth etc. could not be constructed within the time as agreed. However, ultimately it is undisputed that the same were completed and handed over to the defendant on 24.1.1987. No formal lease deed was executed. The defendant on 26.9.1988 gave 15 days' notice for C vacating the plinths and vacated the same on 10.10.1988. The rent upto the said period was paid. According to the plaintiff it amounted to breach of the terms of the contract by the defendant, hence filed a suit for damages for an amount of Rs.17 lacs and odd. The Trial Court decreed the suit for a total sum of Rs. 17,32,709 with an order for refund of the security and interest thereon. The plaintiff was also allowed interest on the decreetal amount @6% D p.a. from the date of suit namely, 4.10.1991 till the date of payment.

Before entering into the points raised before us by the parties, it will be worthwhile to peruse the relevant conditions of the contract dated 12.2.1986. The plinths were to be constructed by the plaintiff over the land owned by E him. The relevant conditions of the agreement are as under :-

"1. The opposite party no.1 would be solely responsible for obtaining necessary permission from the land ceiling authority and sanction for the plan of plinths and other facilities to be constructed from the local bodies like municipal authorities or any other competent F authority before proceeding with the constructions.

2. The size and height of the plinths and other facilities will be as per specifications laid down in Appendix 'A'.

3. The party no.1 shall be responsible for providing services like electricity, water supply, inner and approach road, fencing at the G site as per instructions of the party no.2 to be given from time to time and no extra charges would be claimed for the provision thereof. However, the charges for consumption of electricity would be met by the corporation (party no.2) during the period plinths alongwith other facilities remain on lease with the party no. 2. The maintenance of the electric motor utilized for the H

supply of water will be the liability of the party no.1 on failure of water facility through well or tube well the alternative arrangement for supply of portable water shall be made by the party no.1 at his court.

4. xxxx xxxx xxxx

5. The layout plan indicating the plinths proposed to be constructed, roads, office block etc. should be got approved by party no.2 before commencement of the work.

6. The opposite party no.2 will have full right to inspection the construction undertaken by the party no.1 through his agents/ servants/contractors etc. The party no.1 shall extend full facilities to the party no.2 and its officer to inspect the work while in progress to check the specification.

7. xxxx xxxx xxxx

8. Upon completion of the construction of plinths and other facilities referred to above in all respects and after obtaining a completion certificate from the party no.2 or any of its officer nominated by party no.2 is this behalf, party no.1, would hand over the plinths and other facilities to the party no.2 under lease agreement to be executed between the parties in the prescribed proforma prescribed by the party no.2. The necessary stamp duty as per requirement for execution of lease deed shall be borne by the party no.1.

9. It is understood that the time is evince of this agreement. In the event of any delay the completion of the plinth and other facilities or if there is a faulty workmenship or the structure is found to be defective, the party no.2 would not be bound to take the plinths on lease and the earnest money deposited by the party no.1 shall be forfeited. The decision of the opposite party no.2 would be final in this regard and shall not be questioned by the party no.1. The earnest money shall also be forfeited in case the party no.1 alters, modifies the terms of the agreement, withdraws the offer, charges, etc.

The construction of the ownership and/or fails to complete the construction of plinth and other facilities within the time stipulated for constructions.

10. to 11 xxx xxx xxx

A 12. The period of lease will be three years from the date of taking possession of the lease property. The party no.2 will be entitled to extend it by a further period up to one year on the same rates, terms and conditions applicable to the lease."

The case of the plaintiff was that the claim of the plaintiff for damages B is based on breach of conditions of the agreement dated 12.2.1986 since the defendant instead of occupying the plinth/platform for a period of three years, vacated the same on 10.10.1988 after having taken the possession only on 24.1.1987. Therefore, the defendant was liable to damages at the same rate as the rent for the plinth. The case of the defendant has been that no registered C lease deed, as envisaged in the agreement, was executed for a period of three years, hence it was only a tenancy for month to month and under the provisions of Section 106 of the Transfer of Property Act it was legally open for the defendant to terminate the tenancy on fifteen days' notice and vacate the premises. On the pleadings of the parties the court framed issues. We are concerned with only issue nos. 3 and 4 in respect of which arguments have D been advanced before us, which are reproduced below:—"

"3. Whether in the absence of the registration of the alleged lease for three years the tenancy between the parties was monthly and it was liable to termination by notice?

E 4. Whether the defendants were bound to pay rent for three years on the principle of 'Promissory Estoppel'?"

On both issues noted above the Trial Court has recorded findings in affirmative but in respect of issue no.3 it has been further held that there was a breach of contract on the part of the defendant. The Trial Court has made a detailed F discussion while recording the findings as indicated above and came to a conclusion that once the plaintiff had performed his part of the contract and altered his position, namely, having constructed the plinth according to specification of defendant, on a condition given out by the defendant that on completion of the construction they would hire the premises for a period of three years, the defendant could not later on back out from such a promise. G It has been noted, and rightly so, that in the tender notice as well as in the correspondence it had been clearly given out time and again that the defendant would utilize the plinths constructed by the plaintiff for a period of three years. As a matter of fact, on completion of the construction the defendant did occupy the plinth and had been paying rent as agreed but terminated the H tenancy by serving a notice of 15 days' as per the provisions of Section 106

of the Transfer of Property Act and vacated the premises on 10.10.1988. In connection with this point it may be worthwhile to notice that the defendant itself had admittedly written a letter dated 16.10.1986 to the United Commercial Bank mentioning therein that the lease was a period of three years and the rent payable to the plaintiff would be directly remitted to the bank as against the loan advanced to the plaintiff.

Learned counsel for the respondent has also taken us through the correspondence showing that there was an arrangement for deposit of the amount of rent by the defendant in the bank to adjust the loan taken by the plaintiff from the bank for construction of the plinths. The construction was also made in accordance with the design and specifications as provided and prescribed by the FCI. Considering all such facts as were clearly indicated and given out by the defendant for occupying the premises initially for a period of three years and the plaintiff having arranged for the money accordingly by taking loan from the bank, the Trial Court, in our view, has rightly held, referring to the earlier decisions of this Court that the defendant could not back out from the promise held out and cannot escape when the liability for damages for breach of the terms of the contract.

We may, however, point out that the learned counsel for the defendant-appellant has laid much emphasis mainly on three points. The first point is that there being no registered lease deed it was a monthly tenancy and could validly be terminated by giving 15 days' notice and since the tenancy was terminated accordingly, there was no occasion to saddle the defendant appellant with liability of damages. In absence of a registered lease deed, it is contended that it could not be held that the property leased out to the defendant appellant was for a period of three years. The other objection which has been raised is that the agreement dated 12.2.1986 required registration under the provisions of the Indian Registration Act. The unregistered agreement would not be admissible in evidence, hence it could not be acted upon. Yet another objection which has been raised is that the suit was filed beyond the period of limitation. In support of the first contention a reference has been made to Section 107 of the Transfer of Property Act, according to which the parties had to execute a registered lease deed but the same was never done. We find that the High Court has rightly dealt with the question while holding that the plaintiff had not filed the suit for enforcement of agreement of lease. It was a suit filed for damages for the breach of contract. It was not a suit for specific performance of the contract. A promise was definitely held out by the defendant to the appellant, for occupying the premises for a period of three

A years at a given rate of rent. The premises were in fact constructed in accordance with the instructions and specifications of the defendant. For raising the construction the plaintiff had raised loans from the bank. Everything happened in accordance with the terms of the contract except that the period of tenancy was interdicted before three years of taking over of the possession by the defendant. It may be observed that even a monthly lease may last for B more than a year and for any longer period. In our view, the Trial Court and the High Court have rightly held that in absence of any lease deed or a registered lease deed the nature of the lease would only be that of a monthly lease. But it does not mean that it would deprive the plaintiff of damages for breach of terms of an agreement in accordance of which he had performed C his part of the obligation by creating a liability against himself by taking loan from bank later only to be told that it all will be of no consequence as agreed in the agreement since no lease was executed and registered. The plinths were constructed in accordance with the design and specification given by the defendant. It may be of no use to any other person and for any other purpose. In this background as what was held out by the defendant, assumes D importance and in case one who holds out a promise, backs out, will have to compensate the party who acted *bonafidely* on the basis of the promise made. As indicated earlier, even the tender notice, besides other correspondence, all gave out that the defendant would occupy the premises for a period of three years. Everything was acted upon according to the agreement except the E execution of lease deed, hence there was termination of tenancy on 15 days' notice. The plaintiff is not insisting that the defendant must retain possession for the remaining period or that the tenancy was not terminable but termination of the tenancy would not necessarily mean that the defendant would also not be liable for compensating for the breach of promise held out in the terms of the agreement which lead the plaintiff to undertake the construction and F invest money by raising loan. Therefore, in our view, it would not be of much consequence as to whether a lease deed for a lease of three years was executed and registered or not. The execution of the agreement and its existence and its terms and conditions are not disputed. Nor it has been disputed that it was held out by the defendant that it would occupy the G premises for a period of three years extendable by one year at its option on the rate of rent as agreed between the parties. In the case in hand, the plaintiff is not praying for relief of specific performance. In this view of the matter, we find that the defence put up by the defendant appellant is not legally tenable. The Trial Court and the High Court have rightly relied upon the decisions of this Court reported in AIR (1968) SC page 718 in the case of H *Union of India and Ors.* v. *M/s.Anglo-Afghan Agencies etc.*, where it was

held that non-execution of the contract in terms of Article 299 of the Constitution of India does not militate against the applicability of the doctrine of promissory estoppel against the government. We also find that a reference to some other decisions of this Court namely, AIR (1979) SC p.621, *M/s. Motilal Padampat Sugar Mills Co. Ltd.* v. *State of U.P. and Ors.* and AIR (1987) SC p. 2414, *Delhi Cloth and General Mills* v. *Union of India*, has been rightly made for the proposition of liability of a party on backing out of a promise held out, after making the other party to alter his position.

On behalf of the appellant, a reference has also been made to a decision of this Court reported in (2000) 6 SCC 394, *Anthony* v. *K.C. Ittoop & Sons and Ors.* An unregistered lease deed intended to be operative for a period of 5 years, it was held that being an unregistered deed, hence it could not create lease right in view of provisions as contained in Section 107 of the Transfer of Property Act and Sections 17(1) and 49 of the Registration Act, 1908. This decision, therefore, would not help the appellant in the instant case since it is nobody's case that right of tenancy was created by virtue of agreement dated 12.2.1986. The said agreement only provided for execution by a registered sale deed. The agreement has never been treated as a lease deed by any Court or the respondents. What has been found material in this case is that right from the beginning with the publication of the tender notice till the end, it was given out, including in the agreement, that the appellant shall hire the premises for a period of three years. This period of three years has been described as guarantee period by the appellant itself during which lease was to continue. We have already held earlier that agreement dated 12.2.1986 itself not being a lease deed was not registerable. The case basically hinges on the undisputed fact that a promise was held out by the appellant to the respondent to hire the premises for three years in response whereof the respondent had parted his possession, as held earlier.

It may also be worthwhile to point out that the Board of Directors of FCI considered the question of premature termination of the lease and in its meeting it realized that though, may be legal, it would be unjust and unfair, hence, issued a circular dated 4.5.1989 saying that the matter was considered in its 194th meeting and it was decided that wherever guarantee period of three years has not expired the hiring of plinths may be continued upto the date of expiry of three years by reducing its liability at least to the extent of 5% in the amount of rent, through negotiations with the owners of the plinths. The defendant itself was well aware of promise of three years "guarantee period", therefore, only wanted reduction in rent.

A The next submission made on behalf of the respondent is that the agreement dated 12.2.1986 which provided for execution and registration of lease for a period of three years, was itself required to be registered according to Section 2(7) of the Registration Act, 1908. Sub-section (7) of Section 2 is quoted below :

B "2. Definitions—.In this Act, unless there is anything repugnant in the subject or context,—

xxx xxx xxx

(7) "lease" includes a counterpart, kabuliyat, an undertaking to cultivate
C or occupy, and an agreement to lease;"

It is submitted that since there was an agreement for lease it was therefore, liable to be registered. In this connection two other provisions, Section 17(1)(d) and Section 17(2)(v), which may be relevant for the purposes of dealing with this point may also be perused. Section 17(1)(d) reads as under :

D "17. *Documents of which registration is compulsory.*(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian
E Registration Act, 1877, or this Act came or comes into force, namely,

xxx xxx xxx

(d) lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;"

F The other relevant provision is clause (v) of sub-section (2) of Section 17, which reads as under :

"17(2) Nothing in clause (b) and (c) of sub-section (1) applies to —

G xxx xxx xxx

(v) "any document other than the documents specified in sub-section (1A)" not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to
H obtain another document which will, when executed, create, declare,

assign, limit or extinguish any such right, title or interest; or...." A

The agreement dated 12.2.1986 would squarely be covered by clause (v) of Sub-section (2) of Section 17 quoted above. Since it merely creates a right to obtain another document which will when executed would create such a right. It would be necessary to refer to the conditions of the agreement at this juncture. Clause 8 of the agreement quoted earlier is clear, in providing that B upon completion of the plinths etc. the premises would be handed over to the defendant under a lease agreement to be executed between the parties in the prescribed proforma. Thus clause 8 only talks of execution of a lease deed between the parties in a prescribed proforma under which the defendant would be entitled to get possession of the premises on completion. The C necessary stamp duty was to be borne by the plaintiff. It is thus clear that agreement dated 12.2.1986 itself is not a lease deed requiring registration. It only creates a right of getting another document executed creating rights and liabilities in respect of immovable property. The Trial Court as well as the High Court, has, in this connection placed reliance upon a decision reported in AIR (1959) SC p.620, *Trivenibai and Anr.* v. *Smt. Lilabai.* Paragraph 15 D of the judgment reads as under :

> "15. In construing this document it is necessary to remember that it has been executed by laymen without legal assistance, and so it must be liberally construed without recourse to technical considerations. The heading of the document, though relevant, would not determine E its character. It is true that an agreement would operate as a present demise although its terms may commence at a future date. Similarly it may amount to a present demise even though parties may contemplate to execute a more formal document in future. In considering the effect of the document we must enquire whether it F contains unqualified and unconditional words of present demise and includes the essential terms of a lease. Generally if rent is made payable under an agreement from the date of its execution or other specified date, it may be said to create a present demise. Another relevant test is the intention to deliver possession. If possession is given under an agreement and other terms of tenancy have been set G out, then the agreement can be taken to be an agreement to lease. As in the construction of other documents, so in the construction of an agreement to lease, regard must be had to all the relevant and material terms; and an attempt must be made to reconcile the relevant terms if possible and not to treat any of them as idle surplusage." H

A It is thus clear that if the agreement is such which may amount to a present demise even though the document may be contemplated to be executed later on it may be a document or agreement creating the rights. There must be demise of the property in *praesenti*. But an agreement for securing another agreement or deed in future would not be such an agreement or document which may require registration. Clause 8 of the agreement did not create any B right in *praesenti* nor there was any immediate demise of the property. It was only an executory agreement. The construction of the plinth it seems had yet to start with other facilities and amenities. On completion, such a certificate was to be obtained from the defendant. It was thereafter that the possession was to be handed over under the lease agreement which was to be executed C between the parties. The construction was to be strictly in accordance with the directions and specifications of the defendant. Condition no.9 also contemplated that if the structure was found defective or workmenship was faulty the defendant could refuse to take possession of the premises and the earnest money was liable to be *forfeited*. Hence it is evident that no possession, right or title had passed on *in praesenti* at the time of execution of the D agreement, and there were many prior conditions attached thereto. Such an agreement, in our view, has been rightly held to be only an executory agreement and not an agreement creating rights in the immovable property, hence not compulsorily required to be registered. It was a mere agreement between the parties which was not registered but was admissible in evidence.

E

The next contention has been raised that the suit filed by the plaintiff was barred by time. The tender was accepted by the appellant on 11.6.1985. The premises were handed over to the defendant on 24.1.1987. The defendant gave 15 days' notice to vacate the premises on 10.10.1988 on which date they vacated the premises paying the rent up to 10.10.1988. The suit was F filed on 4.10.1991.

In connection with this objection regarding limitation, learned counsel for the plaintiff has submitted that no such plea was ever raised by the defendant nor any facts or reasons were indicated as to in what manner the suit was barred by limitation. No issue was framed on the question of limitation. G That point was not raised even in the High Court nor in this Court too. It is only in the list of dates/synopsis it is vaguely stated that the suit was time barred. Learned counsel for the defendant appellant, however, relying upon Section 3 of the Limitation Act submits that it was the duty of the Court to see as to whether the suit was within limitation or not. A suit filed beyond H limitation is liable to be dismissed even though limitation may not be set up

as a defence. The above position as provided under the law cannot be disputed nor it has been disputed before us. But in all fairness it is always desirable that if the defendant would like to raise such an issue, he would better raise it in the pleadings so that the other party may also note the basis and the facts by reason of which suit is sought to be dismissed as barred by time. It is true that the Court may have to check at the threshold as to whether the suit is within limitation or not. There is always an office report on the limitation at the time of filing of the suit. But in case the Court does not *prima facie* find it to be beyond time at that stage, it would not be necessary to record any such finding on the point much less a detailed one. In such a situation at least at the appellate stage, if not earlier, it would be desired of the defendant to raise such a plea regarding limitation. In the present case except for making a passing reference in the list of dates/synopsis no such ground or question has been raised or framed on the point of limitation. It is quite often that question of limitation involves question of facts as well which are supposed to be raised and indicated by the defendant. The objecting party is not supposed to conveniently keep quiet till the matter reaches the Apex Court and wake up in a non-serious manner to argue that the Court failed in its duty in not dismissing the suit as barred by time. The Trial Court may not find the suit to be barred by time and proceed with the case but in that event the Court would not be required to record any such finding unless any plea is raised by the defendant. In this connection, learned counsel for the respondent has placed reliance upon a decision reported in [1964] 1 SCR p.495 at page 506, *Ittavira Mathai* v. *Varkey Varkey and Anr.*, wherein it has been held that if it is a mixed question of fact and law, a party would not be allowed to raise it later on, in case such an objection was not raised at the earliest. We, however, find that the period of limitation would be three years as the matter would be covered by Article 55 of the Limitation Act as pointed out by the learned counsel for the respondent. Article 55 reads as under :

Description of suit	Period of Limitation	Time from which period begins to run
55. For compensation for the breach of any contract, express or implied not herein specially provided for	three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or

A (where the breach is continuing) when it ceases."

In the case in hand, as indicated above, the notice terminating the contract is dated 26.9.1988 saying that "we are going to vacate your above B plinths by October 10, 1988". The plaintiff replied to the notice saying that the defendant could not vacate the premises before 23.1.1990. However, the defendant vacated the premises on 10.10.1988. This is the date when the contract was broken and cause of action also accrued. The suit had been filed on 4.10.1991 i.e. within three years of vacating the premises. In view of the C position indicated above, we do not find any merit in the argument raised on behalf of the appellant that the suit of the plaintiff was barred by time. In the result, we find no substance in the appeal preferred by the Food Corporation of India.

We also find no good reason to reduce the amount of damages to the D extent of 6% merely because the Board of Directors had decided that the premises hired for three years may be continued for the same period but negotiations may be held for reducing the liability which may be not less than 5%. The plaintiff appellant M/s.Babulal had never agreed to any such suggestion. Once the measure of damages has been accepted as the amount of monthly rent of the plinths, unless there was some logical and cogent E reason to reduce the same, it could not be done. The order of modification of the decree passed by the Trial Court was not called in question. In our view, the decree has been modified without assigning any cogent reason for the same. Hence, that part of the judgment passed by the High Court is liable to be set aside.

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In the result, Civil Appeal No.3484 of 1997 titled *Food Corporation of India and Ors.* v. *M/s. Babulal Agrawal* is dismissed and Civil Appeal No.3485 of 1997 titled *M/s. Babulal Agrawal* v. *Food Corporation of India and Ors.* is allowed and the decree passed by the Trial Court is restored. Parties to bear their own costs.

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S.K.S. C.A. No. 3484/97 dismissed.
C.A. No. 3485/97 allowed.