
(2015) 06 GAU CK 0076
In the Gauhati High Court
Case No : RFA No. 14 of 2009

Basant Jain

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 80
Limitation Act, 1963 — Section 14

Citation : (2015) 4 GLT 968

Hon'ble Judges : Nishitendu Chaudhury, J.

Bench : Single Bench

Advocate : G.N. Sahewalla, Sr. Advocate and B. Sarma, Advocate, for the Appellant; S. Sarma, Advocate, for the Respondent

Judgement

Nishitendu Chaudhury, J.—Judgment and decree dated 10.12.2008 passed by learned Civil Judge in the district of Sonitpur at Tezpur in Money Suit No. 4/2000 has been challenged in the present first appeal. By that judgment, learned trial court dismissed the suit of the plaintiff, inter alia, holding that the court does not have territorial jurisdiction to try the suit. One Basant Jain, as plaintiff, instituted Money Suit No. 4/2000 in the court of learned Civil Judge (Sr. Divn.) at Tezpur on 11.2.2000 for recovery of money due from the defendants to the tune of Rs. 14,93,023/-. The pleaded case of the plaintiff is that the defendant No. 3 had a telephonic conversation with the plaintiff on 04.03.1996 asking him to supply materials at Bolen in Arunachal Pradesh at the rate indicated by him. Plaintiff readily accepted the proposal and pursuant thereto he met defendant No. 3 at Pashighat on 06.03.1996 and thereupon defendant No. 3 issued as many as 5 (five) work orders to the plaintiff on 06.03.1996 for a total sum of Rs. 9,84,083/-. Plaintiff supplied the materials on 10.02.1997 to the defendant No. 5 at Bolen in Pashighat through his Junior Engineer and in receipt thereof the Junior Engineer gave his signature on the body of challan dated 08.02.1997. Although, plaintiff became entitled to a sum of Rs. 14,93,023/- thereby yet despite repeated requests, the defendants did not make any payment Situated

thus, the plaintiff issued notice to the defendants on 06.04.1999 under section 80 of the Code of Civil Procedure not only for the aforesaid amount but also for interest thereon at the rate of 24% per annum. Eight months after receipt of the notice defendants gave a reply to the same and claimed that the supply was made without there being any order by the defendants and so the plaintiff was not entitled to any amount Compelled, plaintiff instituted the suit for realization of Rs. 14,93,023/- along with interest at the rate of 24% per annum on the decretal amount from the date of institution till realization.

2. On being summoned, the defendants appeared and submitted written statement contesting the claim of the plaintiff. Apart from denying the claim made by the plaintiff, the defendants pleaded that there being no contract at all between the plaintiff and defendants, there was no question of making any supply to the defendants at Pashighat on 06.03.1996. Besides, the suit has been instituted to the court which has no territorial jurisdiction, the plaint is liable to be returned. This objection was taken specifically in paragraph 3 of the written statement. The defendants, however, denied all the averments made in the plaint in entirety.

3. On the basis of the aforesaid pleadings of the parties, the learned trial court framed as many as 7(seven) issues as follows:--

- 1) Whether there is cause of action for the suit?
- 2) Whether the suit is maintainable in its present form?
- 3) Whether the suit is within the territorial jurisdiction of this court?
- 4) Whether the plaintiff supplied goods on credit to the defendants?
- 5) Whether the suit is barred by limitation?
- 6) Whether the plaintiff is entitled to any relief, if so, to what extent?
- 7) To what other reliefs the parties are entitled?

In course of hearing, plaintiff examined himself as P.W. 1 and adduced documentary evidence while defendants did not adduce any evidence at all.

4. After hearing the learned counsel for the parties and on perusal of the evidence led by the parties, the learned trial court decided issue No. 3 in the negative holding that the court does not have territorial jurisdiction to try the suit. The Court found that supply was made at Bolen in the State of Arunachal Pradesh and that supply order was also issued from Pashighat as per averments made in the plaint itself. Although it has been claimed in the body of the plaint that prior to supply of articles, there was a telephonic conversation between the defendant No. 3 and the plaintiff on 04.03.1996 and that such discussions had taken place at Tezpur but the same could not be proved. The learned trial court considered the judgment of the Hon'ble Supreme Court passed in the case of Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co. and

Others, and held that the reported case does not have any similarity with the facts of the case in hand. Having noticed that as per averments made in the plaint, supply order was issued from Pashighat and the supply was made at Bolen at Pashighat, the learned trial court held that none of the causes of action had arisen at Tezpur and consequently, the court did not have any territorial jurisdiction to try the suit.

5. After having decided the issue No. 3 in the negative that the Court does not have any territorial jurisdiction to try the suit, the learned trial court proceeded to decide the suit on merit and eventually dismissed the same on merit as well by deciding issues No. 2 and 3 against the plaintiff. Thus, the suit of the plaintiff stands dismissed not only on the point of maintainability but also on merit. It is this judgment which has been brought under challenge in the present appeal.

6. I have heard Mr. G.N. Sahewalla, learned senior counsel assisted by Ms. B Sarma for the appellant and Ms. S Sarma, learned counsel for the respondents in this case. I have perused the impugned judgment along with evidence led by the plaintiff.

7. Mr. G.N. Sahewalla, learned senior counsel submitted that once the learned trial court came to a finding that it does not have any jurisdiction to try the suit, it was not open to the court to enter into the merit of the case and it would have been just and proper to return the plaint to the plaintiff. I have perused the written statement. In paragraph 3 of the written statement, it was the case of the defendants that the trial court does not have any territorial jurisdiction to try the suit and so it was a fit case for return of the plaint. The learned trial court has relied on the averments made in the plaint as well as the oral evidence of the plaintiff and was satisfied that the plaintiff could not establish that there was a telephonic discussion at Tezpur with the defendant No. 3 leading to supply of goods to the defendants. Having perused evidence led by the plaintiff, I do not find that plaintiff has succeeded to prove his assertion as to having telephonic conversation with defendant No. 3 as claimed in the body of the plaint. Plaintiff did not make any attempt to bring the call records to prove that there was a telephonic discussion on the relevant day between him and the defendant No. 3 and that such a discussion was held in Tezpur. Nobody has been examined as a witness to the event and so such finding of the learned trial court that plaintiff could not prove his case of holding telephonic discussion with the defendant No. 3 at Tezpur, cannot be brushed aside. Now the question arises if finding of the learned trial court on issue No. 3 is upheld in that case, can whole of the judgment of the learned trial court be sustained?

8. In the case of Kiran Singh and Others Vs. Chaman Paswan and Others, the Hon"ble Supreme Court held that when a court entertains a suit or an appeal over which it has no jurisdiction in that event, decree passed by the court would be wholly without jurisdiction and a nullity. The learned trial court, therefore, committed error in entering into the merit of the case and deciding the merit particularly on issues No. 2 and 4, inasmuch as, the findings on those issues

amount to nullity. Such a finding has also put the plaintiff in a disadvantageous position. Thereby plaintiff has become precluded from instituting a fresh suit in proper court. The just and proper course the learned trial court could have pursued under such circumstances, was to return the plaint to the plaintiff for presenting before a proper court having territorial jurisdiction over the subject matter. Same was the prayer of the defendant as well in paragraph 3 of the written statement. Considering this aspect of the matter, this court is of the opinion that the findings of the learned trial court on any other issue other than decision on issue No. 3 is nullity and so that part of the judgment requires to be set aside. Accordingly, findings of the learned trial court in regard to issues other than issue No. 3 are hereby set aside. Consequently, the matter is sent back to the learned trial court with a direction to return the plaint to the plaintiff under order VII Rule 10 of the Code of Civil Procedure by fixing a particular period for the purpose of presenting the plaint in proper court. Since, the suit was instituted well within time and the parties pursued before the trial court as well as in this court in spite due diligence, there is no question of bar of limitation to the plaintiff because of operation of Section 14 of the Limitation Act. If plaintiff presents the plaint before a proper court within fixed time to be stipulated by the learned trial court, the said learned court shall proceed in accordance with law.

9. Parties shall appear before the learned trial court on 3rd August, 2015 to receive necessary order(s).

10. Registry shall transmit the records in the mean time so that a proper order can be passed on 03.08.2015. Send down the records.