

(2015) 01 SC CK 0070

In the Supreme Court Of India

Case No : C.A. No. 249 of 2015 (Arising out of SLP(C) No. 10018 of 2013)

B.K.S. Marulasiddaiah and Company

APPELLANT

Vs

Madras Pakku Mandy

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 84(1), 84(4)

Citation : (2015) 1 SCALE 685

Hon'ble Judges : H.L. Dattu, C.J.; Arjan Kumar Sikri, J.

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted. This civil appeal is directed against the judgment and order passed by the High Court of Karnataka at Bangalore in RFA No. 97 of 2003, dated 16.08.2012, whereby the High Court has remanded the matter back to the learned Trial Court for its reconsideration in accordance with law.

2. Briefly stated, the admitted facts in the present appeal are: the Plaintiff/ Respondent herein and the Defendant/Appellant herein are traders dealing in Areca nuts. The Respondents had purchased 40 bags of Areca nuts from the Appellants for a given amount of money, however it was alleged that the Appellants had failed to pay for the said transaction, dated 13.09.1991. Therefore, the Respondent herein had filed Original Suit No. 117 of 1993, before the Principal Civil Judge (Senior Division), Shimoga, for recovery of the given amount along with interest. It is to be noticed that before filing the said suit on 06.09.1993, the prior sanction, as required Under Section 84(4) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (for short, "the APMC Act") had not been obtained by the Respondents. It is also an admitted fact that such a sanction was obtained during the pendency of the said suit on 22.07.2002, that is, after a period of about 11 years from the date of cause of action.

3. The learned Trial Court, taking into consideration the relevant provisions of the

Limitation Act, 1963, took the date of sanction as the relevant date for the purpose of ascertaining whether the said suit was barred by limitation. It was observed that, taking the date of sanction as the date on which the suit was duly instituted, the said suit was not within the prescribed period of limitation, that is, it was not duly instituted within 3 years from the date of cause of action. The learned Trial Court, therefore, had come to the conclusion that the suit filed by the Plaintiff is barred by limitation, vide order dated 05.10.2002.

4. Aggrieved by the said order, the Plaintiff had approached the High Court by filing RFA No. 97 of 2003. We have already noticed that the High Court has allowed the appeal and has remanded the matter back to the learned Trial Court, by its order dated 16.08.2012.

5. We have heard the learned Counsel for the parties to the lis. We have also perused the record and the judgment(s) and order(s) passed by the High Court and the courts below.

6. The only question that arises for the consideration and decision of this Court is whether the High Court was justified in allowing the regular first appeal and thereby remanding the matter back to the Trial Court for fresh disposal in accordance with law, in particular the law of limitation as regards the filing of the said suit for recovery.

7. To appreciate the issue in the present lis, it would be profitable to reproduce Section 84(4) of the APMC Act. It reads as follows:

"Notwithstanding anything contained in any law, no suit or other legal proceeding shall be entertained by any Court in respect of disputes referred to in Sub-section (1), without the previous sanction of the market Committee." 8. The aforesaid provision clearly shows that for filing of a suit for the enforcement of certain provisions under the APMC Act, the "prior sanction" of the Market Committee, as established under the APMC Act, is mandatory. It may be noticed that the term "shall" has been used in the aforesaid provision. It is well-settled that the term "shall" indicates that compliance of the given provision is mandatory. Therefore, this Court is of the view that the said suit could not be entertained without the said mandatory prior sanction.

9. In the instant case, we have already noticed the admitted fact that, at the time of filing the suit for recovery, the Plaintiff/Respondent herein did not have the mandatory sanction as required Under Section 84(4) of the APMC Act.

10. This Court, on a perusal of the record, would notice that it has been stated in the plaint itself, that the cause of action for the suit had arisen on 13.09.1991 and that the suit was filed on 06.09.1993. However, it is an admitted fact that the sanction was applied for only in the year 2002, and consequently granted on 22.07.2002. In other words, the prior sanction as required Under Section 84(4) of the APMC Act was applied for and obtained after a period of about 11 years from the date of cause of action. These dates clearly indicate that at the time of

filing of the suit the Plaintiff did not even apply for the prior sanction from the Market Committee as contemplated by Section 84(4) of the APMC Act.

11. Further, we are of the view that the learned Trial Court rightly applied the law under the Act, 1963 and took the date of sanction as the relevant date to determine the question of limitation. As noticed hereinabove, the cause of action arose in the year 1991 and the sanction was obtained only in the year 2002. That is to say, the said suit was delayed by a period of about 11 years and therefore is clearly barred by limitation.

12. Therefore, this Court is of the considered opinion, that the learned Trial Court rightly observed that the said suit could not be treated as having been duly instituted within the prescribed time period, as under the Act, 1963. In view of the above, the High Court was not justified in interfering with the orders passed by the learned Trial Court. Therefore, the civil appeal is allowed and the judgment and order passed by the High Court is set aside.

Ordered accordingly.