

(2006) 09 RAJ CK 0056

In the Rajasthan High Court

Case No : Civil Regular First Appeal No. 62 of 1990

Board and Boards Pvt. Ltd.

APPELLANT

Vs

Himalaya Paper (Machinery) Pvt. Ltd.

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Limitation Act, 1963 — Article 13, 24, 47

Citation : AIR 2007 Raj 1 : (2006) 4 RLW 3255

Hon'ble Judges : Khem Chand Sharma, J

Bench : Single Bench

Advocate : Sudhanshu Kasliwal, for the Appellant; Manoj Sharma, for the Respondent

Final Decision : Allowed

Judgement

Khem Chand Sharma, J.—The plaintiff filed a suit against the defendant for recovery of a sum of Rs. 2 lacs, with the averments that plaintiff company intended to install a Straw Board Mill at Alwar and for that purpose, it entered into correspondence with the defendant and ultimately the parties entered into a contract on 17th October, 1974. The plaintiff incorporated the terms and conditions of the contract in a letter and handed it over to the defendant. Pursuant to the contract, the plaintiff, at the first instance, paid Rs. One lac to the defendant through bank draft dated 6.11.1974. The plaintiff further paid Rs. One lac in two installments of Rs. 50,000/- each through bank drafts dated 1.7.1975 and 2.9.1975: In all, the plaintiff paid Rs. 2 lacs to the defendant as an advance against the cost of plant. As per the contract, the defendant company was required to supply machinery within 14 months and/or at the maximum, within 15 months from the date of contract. It is averred that despite repeated requests, the defendant company did not manufacture the machines. Ultimately, the plaintiff had no option but to terminate the contract and got served a notice dated 8th January, 1979 on the defendant, through their advocate. It was in these circumstances, the plaintiff filed a suit for recovery of Rs. 2 lacs along with

interest @ 12% p.a.

2. The defendants denied the averments of the plaint by Tiling written statement. The trial court, on the basis of pleadings of the parties framed issues and the parties led evidence on all the issues. However, at the conclusion of trial, the trial court decided the only issue relating to limitation and accordingly dismissed the plaintiff's suit only on the ground of it being barred by limitation in view of the provisions of Article 24 of the Limitation Act, which provides a period of three years from the date the money is received by the defendant, for the plaintiff's use. While applying the provisions of Article 24 of the Limitation Act, the learned trial court came to a finding that since the last receipt of the advance was of 2.9.1975 and the suit was filed on 16.1.1979, therefore, obviously a period of more than 3 years had already elapsed. The court below concluded that amount of Rs. 2 lacs as claimed by the plaintiff was only an advance towards the supply of entire machineries and therefore, the fact remains that the suit is for refund of the money advanced by the plaintiff which is payable by the defendant if a particular portion of the contract is not fulfilled. Since the suit was filed on 16.1.1979 which was obviously a period beyond limitation of three years in view of the last receipt of 2.9.1975, therefore, it was barred by limitation.

3. Mr. Kasliwal, appearing for the plaintiff appellant strenuously contended that the trial court has committed grave error in applying the provisions of Article 24 of the Limitation Act. In fact, in the facts and circumstances of the case, the provisions of Article 47 of the Limitation Act are attracted in the instant case. Learned Counsel argued that no doubt, the period of limitation under Article 47 is also 3 years, but it applies to the suit for recovery of money paid upon an existing consideration, which afterwards fails. In the instant case, money was paid in pursuance of a contract which ultimately failed and therefore the date of reckoning the period of limitation is the date of failure of consideration as provided under Article 47 of the Limitation Act. In support of his argument, Mr. Kasliwal has relied upon Haryana State and Another Vs. Babu Singh, and Bhabhoot Singh Vs. Ghanshyam Durga Prasad,

4. On the other hand, Mr. Manoj Sharma, appearing for the defendant respondent has supported the impugned judgment and argued that the learned court has rightly dismissed the plaintiff's suit on the ground of it being barred by limitation. According to him, since it was a suit for recovery of money the plaintiff should have brought it within a period of three years from the date of receipt of money by the defendant, inasmuch as the period of limitation under Article 24 is to be reckoned from the date when the money is received by the defendant. Since the defendant had received the last payment as against advance on 2.9.1975, therefore, the suit filed on 16.1.1979 was barred by limitation.

5. I have considered the rival submissions. To decide the controversy, I consider it just and appropriate to refer the provisions of Articles 24 and 47 of the Limitation Act, which read as under:

Article 24 of the Act:

Description of suit period of time from which limitation begins to run

for money payable Three years The date of the by the defendant to failure plaintiff for money received by the de- fendants for the plaintiffs use

A glance at the above provisions makes it clear that if the money is received by the defendant for the use of the plaintiff, the suit for recovery of such money will be governed by Article 24 of the Limitation Act.

Article 47 of the Act: Description of suit period of time from which limitation begins to run for

money paid upon Three years When the money is an existing consid- received eration which af- terwards fails

6. It is thus clear that if money is paid by the plaintiff to the defendant upon a consideration, which was in existence at the time of payment and such cosnideration afterwards failed, the suit filed for recovery of such money would be governed by Article 47 of the Limitation Act.

7. A combined reading of Articles 24 and 47 of the Limitation act would make it clear that both the articles provide same period of limitation i.e. 3 years for filing a suit. The period of limitation under Article 24 of the Act would be reckoned from the date when the money is received by the defendant, whereas under Article 47 of the said Act, the date of reckoning the period of limitation would be the date of failure of consideration.

8. In some what similar facts and circumstances of the case, the question of applicability of Article 24 and 47 of the Act came to be considered by the Punjab and Haryana High Court in Babu Singh's case (supra), wherein the Court first quoted the following conditions necessary for the applicability of Article 24 of the Act as enumerated by the Apex Court in Vankata Subbarao etc. v. The State of Andhra Pradesh etc. AIR 1965 SC 1973:

1. The suit must be for money received by the defendant.
2. The money must in justice and equity, belong to the plaintiff at the time of such receipt.
3. The circumstances under which the money is received by the defendant must be such that, in the eye of the law, the receipt is by the defendant for the use of the plaintiff.

Then, the Punjab and Haryana High Court having quoted Article 47 of the Act observed:

There is catena of authorites where it has been held that this article applies to

suits for the recovery of money paid, based on the failure of consideration which existed at the time of such payment. The words "paid upon an existing consideration" would imply that the money has been paid in the pursuance of a contract between the parties.

9. In the case referred case, there was a contract of lease for excavation of minor minerals between Babu Singh and the appellants therein and an agreement to that effect containing terms and conditions of the lease was entered into between the parties. The lease was for the period from 6.12.1971 to 31.3.1973 and Babu Singh was to pay Rs. 2000 as lease money. He paid Rs. 500/- as security and another sum of Rs. 500/- was paid by him as first quarterly instalments. He also deposited second quarterly instalment of Rs. 500/- after three months of the execution of the agreement as per the terms and conditions contained therein. It was nowhere pleaded in the written statement that possession of the area, subject matter of lease was delivered to Babu Singh. It was not in dispute that when Babu Singh went to the spot, he was not permitted by the villagers to undertake mining work and they filed suit for declaration that they were the owners of the quarry and for permanent injunction against the appellants and Babu Singh. Their suit was decreed. The appeal filed by the State also failed and it was held that the State Government had no right to give the quarry on lease. It was in these facts and circumstances of the case, the Punjab and Haryana High Court held as under:

From the above, it is clearly proved that when the money was paid by Babu Singh, the consideration was subsisting which afterwards failed on the date i.e. June 10, 1974 when the civil court declared that the Government had no power to grant the lease of the area, subject matter of the contract between the appellants and the respondents. Therefore, in the facts and circumstances of the case in hand, the District Judge, Guargaon, rightly came to the conclusion following the law laid down in *Nathulal Vs. Sualal and Others*, and *Narsingh Skivbakas marwadi v. Pachu Rambakas Marwadi* ILR 37 Bom 538, that it is Article 47 and not Article 24 of the Limitation Act, which is applicable to the controversy in question and as such Babu Singh had filed the suit within limitation of three years.

10. In the case at hand, the parties had entered into a contract on 17th October, 1974 with certain terms and conditions, according to which the defendant had agreed to supply machineries to the plaintiff within a period of 15 months from the date of agreement, so as to enable the plaintiff to set up the plant. Pursuant to the said agreement, the plaintiff paid Rs. 2 lacs in three installments, the last being the installment of Rs. 50,000/- dated 2.9.1975. The defendant received the advance amount and extended receipts to the plaintiff. The amount was paid as an advance against the price settled between the parties. It appears that despite repeated requests, the defendant did not fulfill the contract, inasmuch as the defendant neither allowed inspection of the machineries nor it supplied to the plaintiff and ultimately the plaintiff had no option but to serve upon the

defendant a notice dated 8.1.1979 through his advocate for payment of Rs. 2 lacs paid to the defendant as an advance against the said agreement which was in existence. Thus, in my considered view, all the three ingredients of Article 47 of the Limitation Act are fulfilled viz., (i) the suit was for recovery of money which was paid by the plaintiff to the defendant (ii) the money was paid by the plaintiff as an advance upon a consideration which was in existence at the time of payment and such consideration later on failed inasmuch as the defendant failed to supply the machineries within the maximum period of 15 months from the date of entering into the contract on 17.10.1974. It is well settled principle of law of limitation that where two articles of such law may be wide enough to cover a given right of suit and it can be postulated of neither of them that the one applies more specifically than the other, then the court should lean in favour of the application of the provision which would keep the right of suit alive in preference to that which would destroy it. Judging from this angle also, I feel strongly perusaded to think that the appropriate article which should be applied in the instant case is Article 47 and not 24, inasmuch as it is clearly proved that when the money was paid by the plaintiff, the consideration was subsisting which afterwards failed on 8.1.1979, when the plaintiff got served a notice on the defendant. Reference may also be made to a decision of this Court in Natu Lal's case (supra).

11. In view of above, the argument as to the application of Article 24 of the Act has no legs to stand and hence rejected. It must be observed that Article 24 applies only where the money received by the defendant is for the plaintiff's use. As stated above, money was paid by the plaintiff as an advance for the due performance of a contract. Since the contract failed, therefore the plaintiff claimed return of money paid as security and as such the money received by the defendant was not for plaintiff's use. Hence the provisions of Article 24 of the Limitation Act would not be applicable in the facts and circumstance of the present case. Reference may also be made to U. Sein Po v. U. Phyu and Ors. AIR 1930 Rang 21; Pt. Narsingh Pande v. Mathura Nath Pande and Ors. AIR 1935 Pat 159 and Madhavdas Parmanand v. Jan Mahomed Ghulam Hyder AIR 1942 Sind 37. The ratio of these judgments is that money paid as consideration or part consideration in a contract of sale is not money paid for the use of the payer.

12. So far as applicability of Article 13 of the Limitation Act, as argued by the counsel for the respondent is concerned, suffice it to observe that this article applies only where the suit is for recovery of balance due from the defendants. Present one is not a suit for recovery of balance due from the defendant. It was the amount paid in advance as against the contract, which on failure of contract was claimed by the plaintiff. I have also gone through the law laid down in Rohtas Industries Ltd. Vs. Sukhmoy Moitra, and Bhanwarlal Vs. The State and Others, and in my considered view the law laid down in these cases has no application to the facts and circumstances of the present cae as the facts in the cases cited at the bar are entirely different than those involved in the instant case.

13. For the reasons aforesaid, it must be held that the suit filed by the plaintiff is within limitation in view of the provisions of Article 47 of the Limitation Act. The trial court has erred in dismissing the plaintiff's suit on the ground of it being barred by time by application of Article 24 of the Act. Having held that suit is within limitation, the appeal must succeed and the impugned judgment and decree deserve to be set aside.

14. Consequently, this appeal is allowed. The impugned judgment and decree passed by the learned trial court are set aside and the suit of the plaintiff is restored to its original number. The trial court is directed to proceed with the trial of the suit. The parties are directed to appear before the trial court on 27.10.2006.

15. In the facts and circumstances of the case, the parties are left to bear their own costs.