
(2011) 02 DEL CK 0462

In the Delhi High Court

Case No : Regular First Appeal No. 151 of 2001

Dy. Conservator of Forests and Another

APPELLANT

Vs

Tomar Chemicals Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 96
Limitation Act, 1963 — Section 9

Citation : (2011) 02 DEL CK 0462

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This case is on the Regular Board of this Court since 3.1.2011. This case is effective item No. 4 on the Regular Board of this Court today. No one appears for the parties. I have therefore perused the record and I am proceeding to dispose of the matter.

2. The challenge by means of this Regular First Appeal u/s 96 Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 7.2.2001 whereby the suit of the Respondent/plaintiff was decreed for Rs. 4,29,000/- along with the interest and costs. The recovery was claimed on account of work done of plantation of saplings and also their maintenance.

3. The facts of the case are that the Respondent/plaintiff alleged that the work of plantation was completed on 31.7.1996 and a bill dated 31.7.1996 for Rs. 2,46,000/- was given to the Appellant. The Respondent also gave a further bill for Rs. 39,000/- to the Appellant for maintenance charges and which was received by the Appellant on 6.9.1996. It was alleged that on account of non-payment by the Appellant, a composite bill of Rs. 4,29,000/- was further raised on 1.7.1997 and on account of non-payment of this composite bill, the suit for

recovery came to be filed. The Appellant appeared and contested the suit and one of the objections raised was that suit was time barred. It was also alleged that the Respondent did not do any work of maintenance and had raised a false bill.

4. After completion of the pleadings, the trial court framed the following issues:

(1) whether suit of the plaintiff is barred by time? OPD

(2) Whether no amount is due from the Defendants to the plaintiff? OPD

(3) Whether plaintiff is entitled to the amount claimed? OPP

(4) Whether the suit of the plaintiff is barred for want of non-issuance of notice u/s 80 CPC ? OPD

(5) Whether plaintiff is entitled to interest if so at what rate and for which period? OPP

(6) Relief.

5. With respect to issue No. 1, the trial court has held that the suit is within limitation. The trial court has held that the suit was filed on 2.6.2000 i.e. within three years from raising of the last composite bill dated 1.7.1997.

I am afraid that the trial court has clearly misapplied itself and committed a gross illegality. The bills in question issued with respect to plantation of saplings and their maintenance are dated 31.7.1996 and 6.9.1996. Suit with respect to the claiming of amount for plantation of saplings ought to have been filed within three years from the bill dated 31.7.1996 i.e. by 30.7.1999. With respect to the claim for maintenance of saplings the suit ought to have been filed by 5.9.1999 as the bill for maintenance was submitted to the Appellant on 6.9.1996. Suit has admittedly been filed only on 2.6.2000. In my opinion the suit is therefore clearly barred by time. Merely because a composite bill has been subsequently raised, it cannot change the fact that the payment became due to the Respondent once the bills dated 31.7.1996 and 6.9.1996 were received by the Appellant. Merely by raising subsequent bills, limitation cannot arise afresh. As per Section 9 of the Limitation Act, 1963, once time has begun to run no subsequent disability or inability to institute the suit stops the period of limitation. In my opinion the suit was clearly therefore time barred and the suit is therefore dismissed as time barred. I have gone through the terms and conditions of the execution of the work and there is no clause that the bill will be paid after a particular date or after a particular period for postponing the commencement of limitation. Limitation therefore, will have to necessarily begin from the date of bills or date of their submission to the Appellant.

6. On the issue of maintenance charges, I also feel that the suit was liable to be dismissed on merits. This is because the Appellant had rightly pleaded that no work was done for maintenance of the saplings. In fact, the Appellant claimed to have terminated the contract by issue of a show cause notice. A reference to the

judgment of the trial court, as also the trial court record which has been perused by me, shows that no proof whatsoever was filed by the Respondent to show that Respondent did the work for maintenance of the saplings. In a case like this where monetary liability is sought to be imposed, mere oral statement of maintenance is not good enough. The Respondent/plaintiff had deposed that he used to maintain the plants by water tanker, however, no details with respect to what was the numbers of the water tankers, who were the employees employed by him and what payments were made to them, other documentary evidence to substantiate actual maintenance, were filed in the trial court. The Respondent/plaintiff was therefore even on merits not entitled to the sum of Rs. 39,000/- claimed towards the maintenance of the saplings.

7. In view of the above, the appeal is accepted. The impugned judgment and decree is set aside by accepting the appeal and the suit of the Respondent/plaintiff shall stand dismissed. Decree sheet be prepared. Interim orders are vacated. Trial court record be sent back.