
(2000) 03 PAT CK 0120

In the Patna High Court

Case No : Appeal from Original Decree No. 85 of 1986 (R)

Fertilizer Corporation of India, Sindri Unit

APPELLANT

Vs

Koya Colliery Private Ltd.

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 BLJR 1698

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—The defendant-appellant has impugned the Judgment and decree dated 6.3.1986 passed in Money Suit No. 210 of 1975 allowing the claim of the plaintiff-respondent in part with future interest as well as costs.

2. The appellant being erstwhile owner of Kuya and Khas Kuya collieries filed a suit for realisation of Rs. 2,37,115.09 paise for the price of coal supplied to the defendant including transport charge and security. The amount of security having been received by the plaintiff in view of order dated 2.1.1986, the relief was confined to realisation of Rs. 2,17,715.09 paise.

3. The case of the plaintiff, inter alia, is that since 1956 it was supplying coal of Grade-I to the defendant and the defendant by its letter dated December, 1971 agreed to buy five thousand tonnes per month from January 1972 up to June 1972 from the plaintiff. In pursuance of certain contract the plaintiff has supplied coal to the defendant as under;

2nd fortnight of April, 1972...2659. 190 M.T. 1st fortnight of May, 1972...991.720 M.T and 2nd fortnight of June, 1972...1885.050 M.T.

4. Some dispute over the bill was raised by the defendant contending that the M/s Superintendence (India) Pvt. Ltd. had drawn samples and analysed and had

found ash content to the extent of 31.30% in respect of the first bill and ash content to the extent of 27.80% in respect of the second bill. The plaintiff, however, denied the statement asserting that the sampling and analysis of the coal in respect of the two bills was done by M/s Superintendence (India) Pvt. Ltd. at unloading point and the defendant consumed the coal before analysis and the results were not known to them. The correctness of the analysis report was also denied by the plaintiff. The plaintiff raised various grounds relating to genuineness of the said analysis report and contended that the defendant was liable to pay the price in terms of clause of the contract at the rate of Rs. 29/- per M.T. It was also contended that if the analysis report is taken to be true even then the plaintiff was entitled to get the same market price which was for coal having ash content above 25% at the relevant period. Further case was that so far as the supply of coal in the second fortnight of June 1972 is concerned, the analysis report revealed the ash content to be less than 23% and there was no dispute regarding the quality of such consignment of coal. On the request of the defendant, between February and June 1972, the plaintiff transported the quantity of coal from the colliery Pit Head to the stockyard of the defendant at the agreed rate of Rs. 7.50 paise per M.T. In respect of transport charges, the plaintiff also submitted certain bills. Besides this, the plaintiff also prayed for interest at the rate of 12% per annum from July 1972 till realisation of the said amount. According to the plaintiff, the cause of action arose in August 1972 when the defendant made the payment but refused to make further payment.

5. The defendant in his written statement, apart from taking usual defence of non-maintainability of the suit, limitation, waiver, estoppel and acquiescence has asserted that the plaintiff never used to work "O" Seam which was Grade-1. It is also denied that the plaintiff's colliery was low moisture non-coking coal or its ash percentage was 17% to 20%. The plaintiff, according to the defendant, supplied inferior quality of coal in violation of the terms and conditions of the contract. As both the parties accepted the terms and conditions of the agreement and executed the same with eyes open, those terms could not be violated. Denying other assertions made in the plaint, it is contended that the price was paid to the plaintiff as per the agreement. It has been stated that during the period 8.2.72 to 11.4.72, no sampling and analysis could be done by M/s Superintendence Co. (India) Ltd. due to strike and the same was done by the defendant as per the standard practice. The bills were adjusted as per the ash percentage and, as such, the plaintiff was not entitled to get Rs. 59, 996.61 paise for the supply of coal of second fortnight of June 1972. Similarly, transport charge was taken into consideration when the bills were paid after necessary adjustment keeping in view the ash percentage. It was also contended that the Coal Mines (Taking-over of Management) Act 1973 (hereinafter referred to as "the Management Act") does not save the limitation and thus, the suit is barred by limitation. Similarly, no cause of action arose in August 1972 or on any other date as stated by the plaintiff. The defendant thus prayed for dismissal of the suit.

6. The learned trial Court after considering the pleadings formulated the

following issues for determination;

- (1) Is the suit maintainable?
- (2) Is the suit barred by limitation?
- (3) Is the plaintiff entitled to get decree for the supply of the coal?
- (4) Is the plaintiff entitled to get decree for transport charge?
- (5) Is the defendant justified in deducting the amount from the bills?
- (6) To what relief or reliefs the plaintiff is entitled?

7. While considering issue No. 2, the learned trial Court on the concession made by the defendant came to a finding that the suit filed by the plaintiff was not barred by limitation u/s 11 of the Management Act. Issue No. 3 was also decided in favour of the plaintiff and the learned Court below has come to a finding that the cumulative result of the discussion of the evidence leads to hold that the plaintiff was entitled to get decree for the supply of coal. Regarding relief for transport charge, the trial Court also held that the plaintiff was entitled to get a decree for the same. It has also held that in the facts and circumstances, the defendant was not justified in deducting the amount from the bills. However, regarding grant of interest, the learned trial Court has decreed the suit with interest at the rate of 6% per annum.

8. Mr. Keshav Prasad, learned Counsel appearing on behalf of the appellant, has contended that only because the lawyer appearing on behalf of defendant-appellant conceded on a point of law, the trial Court was not justified in holding that the suit was not barred by Section 11 of the Management Act. According to him, the said Act came into force on 31.3. 1973 and the appointed date was fixed 31.1.1973 and, as such, all provisions of the Act were to be made applicable from the appointed date as contemplated u/s 3 of the Act. Attacking on the finding of facts arrived at by the Court below, Mr. Prasad has argued that though the plaintiff asked for a decree for certain amount for supply of coal fortnightly and thirty days, time was there to pay the amount from the date of submitting the bills, the plaintiff had not specifically averred as to how much amount was paid in August 1972 and against which bill. The suit was filed on 29.7.1975 and, according to the plaintiff, cause of action arose in August 1972 when some payment was made but balance amount was refused and, thus, a vague description for cause of action has been given to save the limitation. Continuing his argument, Mr. Prasad contends that Section 11 of the Act only saves the Central Government and does not give any immunity to private owner. Alternatively, he urged that the right and liability of a private owner is protected u/s 11 of the Act from the appointed date, i.e., 31.1.1973 and, thus, the transaction, if any, by the private owner with any other person prior to 31.1.1973 is not saved. No blanket relief, argument ran, can be granted to a private owner in a suit filed for recovery of money, which was due, for example, in 1969 because Section 11 says that during which this Act is in force shall be excluded

which, according to the learned Counsel, does not mean that if the Act is still in existence a much time-barred claim can be granted.

Referring to the agreement Ext. 1(a) between the parties, it is submitted that the agreement does not mention anywhere that the supply has been made fortnightly and the bill was to be submitted for one transaction at a time. It is also his contention that Clause-13 binds the plaintiff inasmuch as this clause says that an independent agency has been appointed for sampling and analysis of coal at the unloading point, which means that analysis is to be made at a place where coal was unloaded. It is further contended that the trial Court has decided the issues in favour of the plaintiff-respondent totally ignoring the terms and conditions of the contract.

Reverting back to the point of limitation, Mr. Prasad urged that in view of Clause-12 of the agreement, the payment was to be made fortnightly within thirty days of receipt of the bill on the basis of the analysis report for the relevant fortnight and, therefore, by no stretch of imagination, it could be said that there was any credit facility in respect of such transaction. If this being the factual position, he urged Article 14 of the Limitation Act will apply and the suit was required to be filed within three years from the date of delivery of goods. In support of his contention, he has relied on the decision reported in 1925 Patna 806 and 1961 Madras 388.

9. Mr. B.B. Sinha, learned Counsel appearing on behalf of the plaintiff-respondent, however, countered the argument by submitting that the learned trial Court has rightly come to a finding that the suit of the plaintiff was not barred by Section 11 of the Management Act. According to him, the Management Act came into operation with effect from 31.1.1973 and appointed date of Nationalisation Act is 1.5.1973 and this period between 31.1.1973 and 30.4.1973 will be excluded and benefit must go to the owner of the colliery. Referring to the factual aspect of the matter, Mr. Sinha has urged that in view of Clause 11 of the agreement the defendant, could have withheld the security amount if it was failure on part of the plaintiff due to improper performance of the contract. But when admittedly security amount was refunded during the pendency of the suit the defendant-appellant cannot be allowed to say that the terms and conditions of the agreement were violated by the plaintiff-respondent. Referring to Clause 12 of the said agreement, it is contended that the payment for the coal accepted was required to be made fortnightly within thirty days of receipt of the bill on the basis of the analysis report for the relevant fortnight and, thus, the limitation has to be counted from the expiry of date of credit, that is thirty days from the receipt of the bill and, therefore, Article 15 of the Limitation Act will be applicable.

10. First point which is to be decided in this case is as to whether the plaintiff's suit was barred by limitation or limitation was saved in view of Section 11 of the Management Act? This point was considered by a learned Single Judge of this Court in the case of United Collieries Ltd. v. Coal India Limited and Ors. First Appeal No. 151 of 1986 (R), which was disposed of on 9th September, 1998,

interpreting different provisions of the Coal Mines (Nationalisation) Act, 1973 (hereinafter referred to as "Nationalisation Act") and provisions of Management Act, his Lordship has held that "after the mines are vested in the Central Government then the Central Government became the absolute owner of the erstwhile collieries and then, the question of Coal Mines (Taking-over of Management) Act remaining in force has no meaning at all. But, it is true that by any clear words in the Coal Mines (Nationalisation) Act, or by any Act afterwards, the Coal Mines (Taking-over of Management) Act, 1973, has not been repealed. In my view, such repealing is not necessary because this Act has been promulgated by the Legislature only as stop-gap arrangement towards nationalisation of the mines. Further more, this Act cannot have any application after the vesting of the mines with the Central Government...". This Court was of the opinion that since the appointed day of the Nationalisation Act, i.e., 1.5.73, the ownership of the plaintiff-Company was changed to Government Company and from that date, the Management Act has no application in it. Similarly, in view of Section 18 being included within the Management Act, there remains no question of repealing this Act because it has got no application on the Government Companies and for that reason, the Legislature did not feel it proper to repeal the Management Act as the repealing provisions have already been included within the Act itself by inclusion of Section 18. In that case, applying general law of limitation, this Court held that the suit was barred by limitation.

11. In the present case, on the contrary even applying general law of limitation, it can be safely said that the suit filed by the plaintiff was not barred by limitation inasmuch as cause of action arose in August 1972, whereas suit was filed on 29.7.1975, i.e., within the period of limitation. Thus, the contention of Mr. Prasad that the suit was barred by limitation, in my view, is not sustainable.

12. However, the matter does not rest there. The main question, which was required to be decided by the trial Court, in my view, was as to whether the erstwhile owner of a Coal Mines is entitled to claim the outstanding dues from its debtor after coming into force of the Nationalisation Act. Though no argument was advanced on behalf of the parties either before the trial Court or before this Court on this point but in my opinion, the point being a pure question of law can be gone into in this appeal without remanding the matter to the trial Court for a fresh decision.

13. In almost similar circumstances, in the case of New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others, this point was considered by the Hon"ble Supreme Court with reference to various sections of Nationalisation Act, 1973. The appellant before the Supreme Court filed a petition under Article 226 of the Constitution in the Delhi High Court for issuance of a writ or direction in the nature of mandamus in regard to the New Satgram Engineering Works but at the hearing stage before the High Court submissions ranged over a much wider field, It was urged before the High Court that until April 30, 1973, i.e., prior to the appointed day, Messrs Shethia Mining and

Manufacturing Corporation were the owners of the two coal mines, and as on that day, the outstanding dues from sundry debtors were Rs. 68.74 lakh, further that from January 31, 1973 to April 30, 1973, i.e., during the period of management, the Central Government had dispatched coal from the aforesaid two mines and a sum of Rs. 7,28,342.45 was still outstanding as on 30th April, 1973, towards subsidy receivable from the erstwhile Coal Board on account of hard-rock mining and stowing operations. Other reliefs were claimed with which we are not concerned in this appeal. Their Lordships with reference to Section 2(h), Sub-section (1) of Section 3, Sub-sections (3) and (4) of Section 19 and other corresponding Sections have observed that the Central Government or the Government Company was exclusively entitled to receive the money in question to the exclusion of other persons up to the specified date and to utilize the same in discharge of the liabilities of the coal mine which could not be discharged by the appointed day. Referring to provisions as laid down in Sub-section (1) of Section 3 of the Nationalisation Act, their Lordships have held as follows:

"By reason of Sub-section (1) of Section 3 of the Act, the right, title and interest of the owners in relation to the coal mines specified in the Schedule stand transferred to, and vest absolutely in the Central Government free from all incumbrances. Parliament instead of providing that the word "mine" shall have the meaning assigned to it in the Mines Act, 1952 has given an enlarged definition of "mine" in Section 2(h) so that not merely the colliery but everything connected with the mining industry should vest in the Central Government, i. e., not only that part of the industry which consisted of raising, winning and getting coal but also that part of it which consisted in the sale of coal and its supply to customers both of which are a part of an integrated activity. This is manifested by Sub-clause (1) to (xii) of Clause (h) of Section 2, i.e., all the assets belonging to a mine vest in Central Government. As against this, the liabilities are not taken over. Section 7 of the Act provides that every liability of the owner, agent, manager or managing contractor of a coal mine, in respect of any period prior to the appointed day shall be the liability of such owner, agent, manager or managing contractor, as the case may be, and shall be enforceable against him and not against the Central Government or the Government Company. Thus, there was no question of setting up a Tribunal for adjudication of title to the properties vested. Parliament by an enlarged definition of mine as contained in Section 2(h) of the Act has indicated the nature of the properties that vests, and the question whether a particular asset is taken within the sweep of Section 2(h) depends on whether it answers of description given therein. Where there is a dispute as to whether a particular property vests or not, the dispute undoubtedly is a civil dispute and must, therefore, be resolved by a suit."

14. Similarly interpreting Section 19 of the Act, their Lordships have held that under the scheme of the Act, the owner of the coal mine which has vested in the Central Government under Sub-section (1) of Section 3 is entitled to receive, besides the compensation amount as determined u/s 8, additional compensation amount under Sub-section (1) of Section 9, simple interest thereon at 4% per

annum for the period specified therein, together with "such amount as may become due" to the owner of the coal mine in relation to the period during which the management of the coal mine remained vested in the Central Government as provided by Sub-section (2) of Section 18.

15. On this legal background, if the case of the plaintiff-respondent is considered, in my view, the plaintiff will not be entitled to realise the dues from the defendant because after vesting of the colliery the same stand transferred to and vest absolutely in the Central Government free from all incumbrances not only that part of the industry which consisted of raising, winning and getting coal but also that part of it which consisted in the sale of coal and its supply to customers both of which are a part of an integrated activity.

16. As this appeal can be disposed of on pure question of law interpreted by their Lordships in the aforementioned decision, it is not necessary to discuss the evidence on record.

17. For the reasons stated above, I am of the view, that the defendant-appellant must succeed in this appeal because in view of the law laid down by the Supreme Court, the plaintiffs suit could not have been decreed by the trial Court.

18. In the result, this appeal is allowed. The Judgment and decree passed in Money Suit No. 210 of 1975 dated 6.5.1986 is set aside. No order as to costs.