
(2022) 03 BOM CK 0114
In the Bombay High Court
Case No : Second Appeal No. 364 Of 2018

Forest Development Corporation Ltd	Vs	APPELLANT
Ranjeetsingh Babusingh Arora		RESPONDENT

Date of Decision : 29-03-2022

Acts Referred:

Limitation Act, 1963 — Article 18
Limitation Act, 1963 — Section 18, 18(1)

Citation : (2022) 03 BOM CK 0114

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : M.M.Sudame, A.M.Sudame, M.P. Khajanchi

Final Decision : Dismissed

Judgement

Manish Pitale, J

1. Heard by consent of the learned counsel for the rival parties.
- (2) Admit, on the questions of law framed by this Court by order dated 18/07/2018.
- (3) By this appeal the appellant (original defendant) has challenged concurrent orders passed by the two Courts below. The respondent (original plaintiff) had filed a suit for recovery of amount, declaration and injunction against the appellant. The appellant filed a counter claim. The Court of Civil Judge Senior Division Chandrapur (hereinafter referred to as the 'trial Court') partly decreed the suit, directing the appellant to pay an amount of Rs.1,86,340.30/- to the respondent. The counter claim of the appellant was dismissed. Aggrieved, the appellant as well as the respondent filed appeals before the District Court at Chandrapur. By judgment and order dated 15/01/2018, the District Court dismissed both the appeals, thereby confirming the decree passed by the trial Court.

(4) The respondent filed the aforesaid suit on the basis that as a transport contractor he was engaged by the appellant for transporting timber from different forest sections to the depot at Ballarshah. The transportation work was carried out during the period between January, 1986 to June, 1986. As per the agreement/contract, the respondent was to submit bills fortnightly.

(5) According to the respondent, the roads on which transport was undertaken were not traffic worthy, resulting in breakdown of machinery and further that the staff of the appellant was not cooperative. It was claimed that the challans issued by the forest department were defective. On this basis, the respondent claimed that he was entitled to recover amount from the appellant.

(6) While the appellant admitted outstanding amount of Rs.1,86,340.30/-, but it also claimed that it was entitled to recover certain amounts from the respondent. On this basis a counterclaim was filed on behalf of the appellant.

(7) By judgment and order dated 04/02/1999, the trial Court partly decreed the suit and dismissed the counter claim of the appellant. It was found that, while the suit was within limitation, the counter claim was barred by limitation. The appellate Court agreed with the findings rendered by the trial Court and accordingly dismissed the appeals filed by the rival parties.

(8) On 18/07/2018, this Court issued notice on the following two substantial questions of law:-

1. Whether the learned Courts below erred in law in holding that claim of the defendant was barred by law of limitation ?

2. Whether the learned Lower Court is correct in law in holding that Exh.80 is acknowledgment of debt by defendant and whether suit would be governed by Article 18 of the Limitation Act, 1963?

(9) While issuing notice, this Court directed that since the entire decretal amount was deposited by the appellant, there shall be interim stay to the decree. The appeal was finally heard upon the respondent entering appearance through counsel.

(10) Mr. Mohan Sudame alongwith Mr. Akshaya Sudame, learned counsel appearing for the appellant submitted that both the Courts below had erred in holding that the suit filed by the respondent was within limitation, while the counter claim filed on behalf of the appellant was barred by limitation. Attention of this Court was invited to Article 18 of the Schedule to the Limitation Act, 1963, to contend that since limitation started to run from 01/07/1986, as the contract ended on 30/06/1986, the period of limitation of three years under Article 18 of the Limitation Act ended on 30/06/1989. It was submitted that since the suit was filed on 01/01/1990 and it was registered on 02/01/1990, it was clearly beyond the period of limitation and the suit ought not to have been entertained by the trial Court. It was submitted that the Courts below erred in applying Section 18 of Limitation Act, 1963, pertaining to the effect of acknowledgment in writing to

the facts of the present case. A letter dated 03/09/1987 sent by the appellant was wrongly interpreted as an acknowledgment of the liability of the appellant to pay specific amount to the respondent, thereby erroneously extending the period of limitation.

(11) It was further submitted that, insofar as the limitation period for filing the counter claim was concerned, the same ought to have been calculated from 03/09/1987. The counter claim being filed on 28/08/1990 was certainly within the period of limitation and therefore, the substantial questions of law deserve to be answered in favour of the appellant. Therefore, the impugned order deserves to be set aside and the counterclaim ought to be decreed.

(12) On the other hand, Mr. M. P. Khajanchi, learned counsel appearing for the respondent submitted that the impugned judgments and orders would show that on the aspect of limitation, the application of Article 18 in the present case was unassailable. Section 18 of the Limitation Act was also correctly applied to the facts of the present case. The counter claim was actually barred by limitation, because letter dated 03/09/1987 or the subsequent letters by the appellant could not be said to be the trigger point of limitation. Even according to the appellant, due to the alleged failure of respondent to provide transportation vehicles for timber, departmental vehicles had to be used. Apart from the fact that there were no details forthcoming as to the expenses incurred in that regard, the cause of action for the appellant arose when it had to allegedly engage departmental vehicles for transportation of timber. On this basis, it was submitted that the appeal deserved to be dismissed.

(13) Since notice in the present appeal was issued only on the above quoted two substantial questions of law pertaining to the question of limitation, this Court has heard learned counsel for the rival parties on the said questions of law. No other substantial question of law arises in the present appeal.

(14) In order to examine whether the findings rendered by the two Courts below on the question of limitation can be said to be perverse or deserving interference, certain admitted facts need to be appreciated. There is no dispute about the fact that the period of agreement or the contract for transportation of timber between the parties was January, 1986 to June, 1986. The contract was over on 30/06/1986.

(15) The respondent claimed that it was entitled to recover amount from the appellant for the work of transportation done as per the contract and therefore, this Court finds that Article 18 of the Limitation Act applied in the present case, insofar as the suit of the respondent was concerned. Article 18 pertains to the period of limitation where a Plaintiff seeks price of the work done for the defendant where no time has been fixed for payment. Under the said Article, the period of limitation is of three years and the time from which it begins to run is when the work is done. In the present case, the contract was over on 30/06/1986. Hence, limitation started to run for the respondent from

01/07/1986, for a period of three years. The suit in the present case was admittedly filed on 01/01/1990 and it was registered on 02/01/1990. The period of three years from 01/07/1986 ended on 30/06/1989. Thus, on the face of it, the period of limitation of three years was over, by the time the suit was filed on 01/01/1990. But, the documentary material available on record shows that on 03/09/1987, the appellant itself sent a letter at Exh.80 to the respondent claiming that certain amounts were due from the respondent. In this letter it was categorically admitted by the appellant that an amount of Rs.1,86,431.30/- was to be paid by the appellant to the respondent. It is in this context that Section 18 of the Limitation Act comes into operation. The said provision reads as follows: -

Section 18. Effect of acknowledgment in writing -

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

(16) The Courts below took into consideration the said letter at Exh.80 dated 03/09/1987, to apply Section 18 of the Limitation Act, while calculating the period of limitation pertaining to the suit filed by the respondent. This Court has perused the said letter at Exh.80. There can be no dispute about the fact that it was clearly an acknowledgment in writing on behalf of the appellant that it was liable to pay an amount of Rs.1,86,431.30/- to the respondent. This letter at Exh.80 was issued on 03/09/1987, when the period of limitation as per Article 18 of the Limitation Act, available to the respondent for claiming recovery of amount for work done for the appellant, was yet to expire. Applying Sub Section (1) of Section 18 of the Limitation Act, a fresh period of limitation started to operate in favour of the respondent from 03/09/1987. When the period of three years of limitation is calculated from 03/09/1987, the suit filed by the respondent on 01/01/1990, was clearly within the period of limitation. Therefore, the two Courts below were justified in concurrently holding in favour of the respondent as regards the question of limitation, pertaining to the suit for recovery filed by the respondent.

(17) Insofar as rejection of the counter claim of the appellant on the ground of limitation is concerned, the learned counsel for the appellant has claimed that even for the appellant the period of limitation started to run from the aforesaid letter dated 03/09/1987 at Exh.80 and communications issued thereafter for recovery of amount from the respondent. To examine the said contention raised on behalf of the appellant, it would be necessary to appreciate as to when the

cause of action arose for the appellant to seek recovery of certain amounts from the respondent. It was the stated case of the appellant in its counter claim that certain amounts were to be recovered from the respondent for the expenses that the appellant was forced to incur due to alleged failure on the part of the respondent in providing proper transportation service in terms of the contract. It was claimed that when the respondent failed to provide transportation as agreed between the parties, the appellant had to engage departmental vehicles, leading to the appellant spending amounts towards fuel and other charges.

(18) This Court perused the original record and found that there was absence of pleadings and material to support the aforesaid claim of the appellant. There was absence of data to indicate as to on how many occasions, the appellant was required to engage departmental vehicles due to alleged failure of the respondent to provide transportation of timber and what was the quantum of expenses that the appellant was forced to incur in such circumstances. The counter claim of the appellant was on the basis of such pleadings and even if the case of the appellant for recovery of certain amounts from the respondent was to be considered, the cause of action for instituting proceedings for recovery of amounts from the respondent arose on such occasions when expenses were incurred due to failure of the respondent to provide service, or at least from the last occasion on which such expenses had to be incurred by the appellant.

(19) The appellant is not justified in claiming that the period of limitation was triggered on 03/09/1987, when the letter at Exh.80 was sent to the respondent. If the contention raised on behalf of the appellant is to be accepted, it would lead to a situation where the appellant could sit silently for any length of time and then wake up and send a letter or notice to the respondent claiming certain amounts and then it could claim that the limitation for filing the proceeding to recover the said amount stood triggered on the date on which first such letter or notice was issued. Such a contention cannot be accepted. Article 18 of the Limitation Act certainly does not apply to the claim of the appellant for recovery of certain amounts from the respondent.

(20) Therefore, it becomes clear that the counter claim filed by the appellant was barred by limitation and that the two Courts below were justified in concurrently holding against the appellant in that regard. A perusal of the impugned orders shows that the suit filed by the respondent was only partly allowed for the reason that the Courts below were conscious of the fact that considering letter dated 03/09/1987 at Exh.80 in favour of the respondent, the suit could be treated as within limitation only for the amount of Rs.1,86,431.30/- as acknowledged to be the outstanding amount by the appellant itself. But, for the rest of the amount, the suit was beyond limitation. Hence, it becomes clear that the decree passed by the trial Court and confirmed by the appellate Court does not deserve interference.

(21) In view of the above, the substantial questions of law are answered against the appellant and in favour of the respondent, thereby indicating that the appeal

deserves to be dismissed.

(22) Accordingly, the appeal is dismissed with no order as to costs.

(23) In view of the dismissal of the appeal, the decretal amount deposited by the appellant in the trial Court shall be disbursed in favour of the respondent, with accrued interest, if any.