
(2013) 07 UK CK 0007
In the Uttarakhand High Court
Case No : S.A. No. 72 of 2002

G.P. Dhyani (Dead) through L.Rs.	Vs	APPELLANT
U.P. State Power Corporation Ltd.		RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2013) 100 ALR 568 : (2013) 100 ALR 104 : (2013) 120 RD 834

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Pradeep Chamiyal and J.S. Bisht, for the Appellant; B.D. Upadhyay and Sunil Upadhyay, for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 100 of Code of Civil Procedure, 1908, is directed against judgment and decree dated 16.5.2002, passed by Additional District Judge/1st Fast Track Court, Nainital, in Civil Appeal No. 11 of 2000, whereby said Court has allowed the appeal and decreed the suit for recovery of Rs. 3,17,303 paise 76 against the defendant, with costs. Heard learned Counsel for the parties, and perused the Lower Court record.

2. Brief facts of the case are that defendant G.P. Dhyani (since died) was Store Keeper of the plaintiff-organisation (U.P. State Power Corporation Ltd. Lucknow), between the period 1979 to 1982. He was entrusted movable property of the plaintiff-organisation, which was found in the year 1990, misappropriated. An explanation was sought from him for causing loss of Rs. 3,59,751.64/-. After perusal of his explanation the employer (plaintiff) found that the defendant G.P. Dhyani, Store Keeper, failed to explain the loss of movable property valued Rs. 3,46,259. 40/- out of which Rs. 18,472/- was recovered from the arrears of his salary, whereafter, he was placed under suspension. In the year 1991, a suit was instituted for recovery of the remaining sum i.e., Rs. 3,17,303.76/- by the UP. State Power Corporation Ltd., Lucknow, against the defendant G.P. Dhyani.

3. Defendant G.P. Dhyani contested the suit and filed his written statement. He

pleaded that the Executive Engineer, who signed the plaint, was not an authorised person, to sign the plaint on behalf of the plaintiff. It was further pleaded by him that the suit was barred by time. It was further pleaded by the defendant G.P. Dhyani that other officers of the plaintiff-Corporation were responsible for the loss.

4. On the basis of the pleadings of the parties, following issues were framed by the Trial Court:

(1) Whether the defendant is liable to pay Rs. 3,17,303.76/- to the plaintiff?

(2) Whether the suit is not maintainable for non-compliance of Rule 1 of Order XXIX of Code of Civil Procedure, 1908, as alleged in Para 1 of the written statement?

(3) Whether the suit is barred by time?

(4) To what relief, if any, the plaintiff is entitled?

(5) Whether the defendant has committed negligence during the course of his employment, as alleged in paras 3 and 4 of the plaint? If so its effect?

5. After recording evidence and hearing the parties, the Trial Court took up issue Nos. 1 and 5 together and decided the same against the plaintiff holding that other officers were also responsible for the loss. However, on issue Nos. 2 and 3 the findings were recorded in favour of the plaintiff. On the basis of findings on issue Nos. 1 and 5, the Trial Court decided issue No. 4 in favour of the defendant and dismissed the suit with costs.

6. Aggrieved by said judgment and decree dated 27.4.2000, passed by the Trial Court [Additional Civil Judge (Senior Division)/Additional Chief Judicial Magistrate, Nainital], in Suit No. 200 of 1991, Civil Appeal No. 11 of 2000, was filed by the plaintiff before the 1st Appellate Court. Hence, this second appeal by the defendant. During the pendency of the suit, defendant G.P. Dhyani died and his heirs were substituted.

7. Though, this second appeal was admitted on the substantial questions of law mentioned in memorandum of appeal, but only on following two substantial questions of law involved in this appeal, arguments were advanced on behalf of the appellant:

(1) Whether the suit was barred by time?

(2) Whether the suit was not maintainable in view of Rule 1 of Order XXIX of Code of Civil Procedure, 1908?

8. Answer to substantial question of law No. 1:

Learned Counsel for the appellant argued that the movable property regarding which, the plaintiff (employer) has alleged that the defendant G.P. Dhyani (employee) has misappropriated the same was said to have been entrusted to

the said defendant during the period 1979-1982. It is pointed out on behalf of the appellant that the suit was filed after nine years for recovery of alleged loss for an amount of Rs. 3,17303.76/-. On its basis, it is contended that the suit was barred by time, as the period of limitation provided under the Limitation Act, 1963, was only three years.

9. I have considered the arguments advanced on behalf of the appellant. Article 68 of Schedule of the Limitation Act, 1963, provides three years" period of limitation for filing the suit for the loss of specific movable property or dishonest misappropriation or conversion. But last column of the Article in the schedule shows that the period of limitation would start from the date when the plaintiff first learnt about the possession and the loss. The Trial Court as well as the Lower Appellate Court has rightly held that since the departmental proceedings were on, against the defendant G.P. Dhyani and actual amount to be recovered could be known only within three years of filing of the suit, as such, the suit filed on 16.10.1991 was not barred by time. I have no reason to disagree with the said finding. In the opinion of this Court Articles 68, 69 or 70 of Schedule of the Limitation Act, 1963, cannot be interpreted to mean that the period of limitation should be calculated from the date when the plaintiff had not been even knowledge about the wrong committed by the defendant.

10. Therefore, the substantial question of law No. 1 on the point of limitation is answered in favour of the plaintiff/respondent.

11. Answer to substantial question of law No. 2:

Rule 1 of Order XXIX of Code of Civil Procedure, 1908, provides that in a suit by or against a Corporation, any pleading may be signed and verified on behalf of the Corporation by the secretary or by any Director or other principal officer of the Corporation who is able to depose to the facts of the case. Admittedly, the plaint was signed on behalf of the U.P. State Power Corporation Ltd. Lucknow (plaintiff) by Pitambar Joshi, Executive Engineer of the plaintiff-Corporation. Both the Courts below have given a concurrent finding that the Executive Engineer, who signed the plaint, was authorised to file the suit. The defendant failed to show that said officer was not the principal officer of the plaintiff Corporation.

12. Assuming for a moment that the Trial Court has erred in law, in recording the finding on issue No. 2 in favour of the plaintiff, since the defendant did not challenge said finding before the First Appellate Court within one month, by filing cross-objection under Rule 22 of Order XLI of the Code of Civil Procedure, 1908, (as amended vide Act No. 104 of 1976), in the appeal filed by the plaintiff, as such, the Lower Appellate Court has rightly rejected the contention of the defendant.

13. For the reasons as discussed above, this substantial question of law stands answered in favour of the plaintiff/respondent. In the above circumstances, this Court finds no force in this appeal, which is liable to be dismissed. Accordingly, the appeal is dismissed. However, no order as to costs of the second appeal.