

(2013) 03 GUJ CK 0007
In the Gujarat High Court
Case No : Second Appeal No. 57 of 2013

Gujarat Electricity Board and Another	APPELLANT
Vs	
Ahir Bhimshi Mepa through Poa Ramshi Mepa Ahir	RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Citation : AIR 2013 Guj 281

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Dipak R. Dave, for the Appellant; V.H. Kanara, for the Respondent

Judgement

N.V. Anjaria, J.—Even as the above-captioned two appeals arise from two different suits, since the subject matter of both the suits involved similar facts and identical issues, both the appeals were taken up for hearing simultaneously to be dealt with in this common judgment. Second Appeal No. 57 of 2013 arises out of Special Civil Suit No. 19 of 2000, whereas Second Appeal No. 58 of 2013 emanates from Special Civil-Suit No. 18 of 2000, both instituted before the Court of learned Civil Judge (S.D.), Jamkhambhaliya. The suits were instituted by the plaintiffs who are the respective respondents in the present appeals against the erstwhile Gujarat Electricity Board, now converted as Paschim Gujarat Vij Company Limited the appellant in both the appeals.

2. Setting out the relevant facts referable to Special Civil Suit No. 19 of 2000, the respondent-plaintiff instituted the said suit on 18th April, 2000 to recover Rs. 01,87,500/- (Rupees One Lakh Eighty Seven Thousand Five Hundred Only) by way of damages. It was the case of the plaintiff in the plaint that he was resident of village Vadvala of Jamjodhpur Taluka, and was owner of agricultural land situated thereat being Survey No. 46 paiki admeasuring 4 Acres and 10 Vigha, wherein he was doing agricultural work. In the year 1997-98, he had grown sugarcane which was ready for being reaped. It was averred in the plaint that in his agricultural field, Low Tension electricity line of 12 KV laid by the respondent-Board was passing across and over the crop. It was pleaded that the electricity

wires in the line had become weak because of non-maintenance and non-repair thereof by the respondent. According to his case, in the night of 18th February, 1998 or in early morning of 19th February, 1998, from the said line a live wire got snapped, fell on the sugarcane crop and due to the short-circuit generated, the ready crop was burnt to ashes, as a result of which damages to me tune of Rs. 01,50,000/- (Rupees One Lakh Fifty Thousand Only) were suffered. It was the case that crop of sugarcane was cultivated in 10 vighas of land and similar damage suffered in his brother's field and that both the brothers suffered loss to the extent of Rs. 03,00,000/- (Rupees Three Lakhs Only) for loss of sugarcane crop. One Ramshi Mepa Ahir intimated about the incident to the Police Station, Panchnama were prepared, and the defendant-Board was informed.

2.1 The other civil suit being Special Civil Suit No. 18 of 2000 was framed on the same lines with similar pleadings and the prayers. That suit was instituted by the brother of the plaintiff of the above-said suit. In both the suits the respective plaintiffs prayed for recovery of total Rs. 01,87,500/- (Rupees One Lakh Eighty Seven Thousand Five Hundred Only) towards damages, etc.

2.2 The suit-prayer came to be contested by the defendant-Board by filing a written statement (Exh. 6), contending inter alia that plaintiff" was not entitled to get any damages. It was denied that he was holding any Bagayat Agricultural land as alleged. It was denied that sugarcane crop was ready in the year 1997-98 in the said survey number as alleged. It was further contended that the Board was used to properly maintain the electricity lines, which were checked periodically and that there was no negligence on the part of the defendant-Board.

2.3 The Trial Court framed issues in both cases at Exhibit 7. The three main issues framed in the suits were firstly, whether plaintiff proved that his crop was burnt due to falling of live wire; secondly, whether there was negligence on the part of the defendant in maintaining the electricity lines and thirdly, whether the plaintiff had suffered loss of Rs. 01,50,000/- (Rupees One Lakh Fifty Thousand Only). All these three issues were answered in the affirmative. An issue was answered that plaintiff was entitled to get interest at 9%. The Trial Court, however, ultimately dismissed the suits on the ground of limitation, holding that Article 72 of the Limitation Act, 1963 would apply and in that view, the suit having been not brought within the period of one year from the date of accrual of cause of action, the same was time barred.

2.4 In the appeal being Regular Civil Appeal No. 216 of 2005 preferred by the original plaintiff against the aforesaid judgment, the lower Appellate Court held in favour of the plaintiff. It allowed the appeal and ordered that the plaintiff was entitled to recover amount of Rs. 01,50,000/- (Rupees One Lakh Fifty Thousand Only) with interest at the rate of 7.5% from the date of filing of suit from the defendant. The other Regular Civil Appeal No. 228 of 2005 similarly arising from Special Civil Suit No. 18 of 2000, which is subject matter of Second Appeal No. 58 of 2013, was also allowed in the same way.

3. While allowing the appeals as aforesaid, the lower Appellate Court concluded that the Trial Court committed error in applying Article 72, and held that instead of the said Article, Article 113 of the Limitation Act, 1963 would govern. As noted above, the Trial Court dismissed the suit on the ground of limitation as it was of the view that Article 72 would apply. However, the Trial Court so held without framing any issue in that regard. The issues were framed with regard to the entitlement of the plaintiff and the corresponding liability of the defendant for the damages, which were answered in favour of the plaintiff. No issue of limitation was framed. That was nevertheless the ground for dismissal of the suit. The exercise undertaken by the Trial Court in the above manner was not endorsable in law as it was required to frame necessary issue on limitation before dismissing the suit on that ground. Learned advocate Mr. Dipak R. Dave for the appellant in both the appeals tried to contend that Article 72 was correctly applied by the Trial Court, under which the period of limitation was one year and therefore, the suits were beyond the period of limitation. He submitted that the appellant is a statutory body to which the relevant electricity laws including the provisions of the Electricity Act, 2003 applies. According to him, supply of electricity by the defendant was governed by and was in pursuance of the said law. He, therefore, submitted that erection of electricity lines was in pursuance of the enactment in force. He also submitted that the first Appellate Court came to different conclusion with regard to aspect of limitation without framing a point of determination in that regard. On the aspect of quantum of compensation, learned advocate submitted in the alternative that there was no basis in the evidence to award any damages, nor there was any discussion as to how the said amount of compensation was arrived at.

4. On consideration and examination of the facts and the judgments of both the Courts below, it could be seen that the Courts considered whether the suit of the nature where the damages were resulting out of the falling of electricity wire were claimed, whether would be governed by Article 72 or the period prescribed under Article 113 of the Limitation Act would apply. The conclusion of the lower Appellate Court that Article 113 and not Article 72 of the Limitation Act, 1963 would apply to the subject matter suits, is correct or not may now be examined.

4.1 Article 72 of the Limitation Act, 1963 relates to the suits of the description which are for compensation for doing or omitting to do an act alleged to in pursuance of any enactment in force for the time being in the territories to which the Limitation Act extends. The period of limitation prescribed is one year. The time from which this period would begin to run is when an act or omission takes place. In the Limitation Act, 1908 (old), Article 2 corresponded to Article 72 and was *pari materia* except that the limitation prescribed was 90 days. Article 113 of the Limitation Act, 1963 is a residuary Article. It applies to any suit for which no period of limitation is provided elsewhere in the Schedule of the Act. The limitation period under this Article is three years, which will begin to run when right to sue accrues.

4.2 In *State of Punjab Vs. Modern Cultivators, Ladwa*, the original action by the plaintiff was of damages on the ground of inundation of his land because of breach of canal which was under the management of the defendant. The Court held that Article 36 of Limitation Act, 1908 would apply and not Article 2 of the Limitation Act, 1908, by observing that Article 2 cannot apply to cases where the act or omission complained of is not alleged to be in pursuance of statutory authority. Article 2 cannot apply to omission in following the statutory duties because it cannot be suggested that they are in pursuance of any enactment. Cases of malfeasance or nonfeasance may or may not have statutory protection. Act or omission which can claim statutory protection or is alleged to be in pursuance of a statutory command may attract Article 2 but the act of omission must be one which can be said to be in pursuance of an enactment. Here the suit was for compensation for damages consequent on a break in the canal of August 15, 1947. The only act or omission could be the opening and closing of the channel for silting operations. That was before June 1946. The third column of Article 2 provides the start of the limitation of 90 days when the act or omission takes place. The period of limitation in this case would be over even before the inquiry if that were the starting point. It was held,

Article 2 of the Limitation Act is not attracted to a case like the present where the damages sustained by the plaintiff are not the result of anything done by the State in pursuance of a statutory power exercised by it or by reason of an act which could properly be said to have been performed in the purported exercise of a statutory power.

4.3 Article 72 of the Limitation Act, 1963 (Article 2 of the Limitation Act, 1908) operates in altogether a different area. The said Article relates to a suit for compensation for doing or omitting to do an act alleged to be in pursuance of any enactment in force. The act or omission contemplated in this Article is one done in pursuance to a statutory authority. When a person acts under statutory power, he may erroneously exceed the powers or may not be able to adequately perform his duties under the statute, yet when he acts bonafide in discharge of his duties, he is entitled to protection for such act. The object of Article 72 is to protect such bonafide acts or omission of the persons acting under the statute. It would be far fetched to reason that falling of live wire resulting into damage to the crop could attract Article 72 for the purpose of limitation for suit of damages, because the electric wire was laid purportedly under the authority derived from the statute. Adopting such reason would mean connecting something which have no nexus either in fact or in logic.

4.4 The words "in pursuance of any enactment in force" in Article 72 are of vital importance. The expression indicates that the act or omission has to be in exercise of statutory power flowing from the enactment. Article 72 would thus apply in a specific situational context where an act or omission in discharge of a particular statutory duties, which again flow from enactment in force is pointed out. When a live wire falls or gets snapped, and causes damages, event could

not be connected as referable to or in pursuance of any duty or obligation under any enactment. Therefore, it cannot come within the purview of Article 72.

4.5 In *State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and Others*, *State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and Others*, the Apex Court discussed the conditions of applicability of Article 72 vis-a-vis Article 113 and stated that the two Articles apply in different way and to different situations. It observed thus:

These articles, namely, Articles 72 and 113 are applicable to different situations. In order to attract Article 72, it is necessary that the suit must be for compensation for doing or for omitting to do an act in pursuance of any enactment in force at the relevant time. That is to say, the doing of an act or omission to do an act for which compensation is claimed must be the act or omission which is required by the statute to be done. If the act or omission complained of is not alleged to be in pursuance of the statutory authority, this article would not apply. This article would be attracted to meet the situation where the public officer or public authority or, for that matter, a private person does an act under power conferred or deemed to be conferred by an Act of the legislature by which injury is caused to another person who invokes the jurisdiction of the court to claim compensation for that act. Thus, where a public officer acting bona fide under or in pursuance of an Act of the legislature commits a "tort", the action complained of would be governed by this article which, however, would not protect a public officer acting mala fide under colour of his office. The article, as worded, does not speak of "bona fide" or "mala fide" but it is obvious that the shorter period of limitation, provided by this article, cannot be claimed in respect of an act which was malicious in nature and which the public officer or authority could not have committed in the belief that the act was justifiable under any enactment. (Para 9)

4.6 Therefore, in a suit for compensation for the damages suffered by the plaintiff which was on the allegation of defendant's nonfeasance which was in the nature of omission in performing or discharging obligation, governing Article would be 113 which is a residuary Article, under which the period of limitation would be three years.

4.7 *State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and Others*, relied on *State of Punjab Vs. Modern Cultivators, Ladwa*, and also referred to the decision in *Mohamad Sadat Alikhan v. Administrator, Corporation of State of Lahore* (AIR 1945 Lah. 325 (FB)) and *Secretary of State Vs. Lodna Colliery Co., Ltd. and Others*, The Apex Court also referred to with the approval of the decisions of High Court on the aspect. The said observation may also be profitable extracted:

In *Jai Lal Vs. The Punjab State and Another*, it was held by the Delhi High Court that protection under Article 72 could be claimed only when the act was done under the colour of statutory duty but if the person acted with the full knowledge that it was not done under the authority of law, he could not claim the benefit of

the shorter period of limitation prescribed under this article. (Para 11)

In Jaques and Others Vs. Narendra Lal Das, it was held that this article would not protect the public officer acting mala fide under the colour of his office. To the same effect is the decision of the The State of Punjab and Others Vs. Lal Chand Sabharwal, In AIR 1927 72 (Privy Council) where the canal authorities cut the bank of a canal to avoid accident to the adjoining railway track and not to the canal and the plaintiff's adjacent mills were damaged, it was held that Article 2 was not applicable as the act alleged was not done in pursuance of any enactment. A Full Bench of the Allahabad High Court in Pt. Shiam Lal Vs. Abdul Raof held that if a police officer concocts and reports a false story, he is not protected by Article 2 of the Limitation Act, which would apply only where a person honestly believing that he is acting under some enactment does an act in respect of which compensation is claimed. But where the officer pretends that he is so acting and knows that he should not act, Article 2 would not apply" (Para 12)

4.8 Lastly, the contention that the lower Appellate Court has not formulated points of determination on the aspect of limitation may be considered. The learned advocate for the appellant relied on the decision in Babubhai Keshabhai Valand Vs. Rameshbhai Ramabhai Prajapati, , wherein it is held that the Appellate Court exercising jurisdiction u/s 96 of the Code of Civil Procedure, has to comply with the provisions of Order 41 Rule 31 of the CPC and would be required to determine its decision by formulating point of determination. However, on going through the judgment of the lower Appellate Court, it could be seen that even though points of determination are not framed, the Court has extensively considered the aspect of limitation and has decided it after elaborate discussion.

4.9 In G. Amalorpavam and Others Vs. R.C. Diocese of Madurai and Others, the Apex Court expressed itself to say that where it can be made out from the body of the judgment when there is sufficient compliance with the requirement of Order 41 Rule 31, CPC, merely because specific points for determination are not raised, the judgment and order of the lower Appellate Court need not be set aside. As to what could be said to be a substantial compliance, the Apex Court observed as under:

The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, any may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate Court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the

appellate Court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate Court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate Court, it would be a valid judgment even though it does not contain the points for determination. (Para 8)

4.10 It has been noticed from the judgment of the lower Appellate Court that limitation issue is considered with detail discussion and by referring to the pronouncement of the Court. The issue is properly highlighted and focused on the reasons recorded. In the circumstances, it could be safely said that though a specific point of limitation was not raised, there was sufficient compliance of Order 41 Rule 31, CPC.

5. From the judgments of both the Courts below, it is clear that incident of falling of a wire on the crop of the plaintiff has been established. It is also shown that the crop was burnt due to the short-circuited wire that fell on the crop and damaged it. The Trial Court held in affirmative about the entitlement of the plaintiff for compensation. However, since the suit was dismissed on the ground of limitation as noted above, nothing was awarded as compensation. The lower Appellate Court while allowing the appeal and holding the aspect of limitation in favour of the plaintiff, ordered that the plaintiff in each suit shall be entitled to recovery of Rs. 01,50,000/- (Rupees One Lakh Fifty Thousand Only) with 7.5% interest.

5.1 On going through the entire judgment of the lower Appellate Court, it is not reflected as to how it arrived at the quantification of amount awarded. No basis is indicated, no evidence was discussed or weighed on the aspect of award of the amount towards damages. The entire judgment of the lower Appellate Court is virtually a non-speaking judgment on this score. The contention of learned advocate for the appellant that no basis is recorded or discussed for arriving at the awardable compensation merits acceptance. It even did not frame a point of determination on the said aspect. Therefore, while endorsing to the judgment of the lower Appellate Court on the point of limitation, the other limb of dispute, viz. awardable damages and the quantum thereof, is required to be re-gone by the lower Appellate Court. On that particular count, the matters are required to be remanded.

6. Accordingly the matters are remitted to the Court of Additional District Judge at Jamkhambhaliya, who shall render the decision afresh in both the Regular Civil Appeal Nos. 216 of 2005 and 228 of 2005 insofar as the award of damages to

the respective plaintiff-appellant before it is concerned.

7. In order to enable the lower Appellate Court to take decision afresh as above, part of the judgment and decree dated 22nd August, 2012 of learned Additional District Judge, Khambhaliya in Regular Civil Appeal No. 216 of 2005 as well as Regular Civil Appeal No. 228 of 2005 in so far as they order that the respective appellant-plaintiff is entitled to recover amount of Rs. 01,50,000/- (Rupees One Lakh Fifty Thousand Only) from the respondent-defendant with running interest at the rate of 7.5% per annum from the date of filing of the suit till its actual realization, are set aside as the same would be subjected to afresh decision. Accordingly the lower Appellate Court shall take fresh decision in both the appeals being Regular Civil Appeal Nos. 216 of 2005 and 228 of 2005, and shall complete such exercise preferably within three months from the date of receipt of copy of this judgment. Both the captioned Appeals succeed to the limited extent as above.