

(2014) 03 SHI CK 0068
In the High Court Of Himachal Pradesh
Case No : Civil Suit No. 21 of 1996

H.P. State Electricity Board

APPELLANT

Vs

Shivalik Castings Private Ltd. and Others

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151

Citation : (2014) 03 SHI CK 0068

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Advocate : K.D. Sood, Senior Advocate and Sanjeev Sood, Advocates for the Appellant; Adarsh K. Vashishta, Advocates for the Respondent

Judgement

V.K. Sharma, J.—The plaintiff-Board has brought this suit for recovery of Rs. 44,18,842/- (rupees forty four lac, eighteen thousand and eight hundred forty two only) against defendant No. 1, M/s. Shivalik Castings Private Ltd., being the principal debtor and defendants No. 2 and 3, M/s. United Polyfab and M/s. H.P. Rubklame Ltd., being the sureties, on account of unpaid electricity bills by defendant No. 1 in respect of its industrial unit, situate at village Jharmajri, P.O. Barotiwala, District Solan, H.P.

2. The suit was contested by defendant No. 2 alone, the remaining defendants being ex parte. On conclusion of trial, the suit came to be dismissed as barred by time vide judgment dated 19.10.2000, rendered by a learned Single Judge of this court. Being aggrieved, the plaintiff-Board carried the matter in appeal by way of OSA No. 1 of 2001, H.P. State Electricity Board v. M/s. Shivalik Castings Private Ltd. and others, which was allowed by a Division Bench of this court vide judgment dated 9.8.2012. It was held that the suit was well within time. Accordingly, the case was remitted to this court for decision afresh after hearing the parties.

3. It shall be pertinent to notice at the very outset that as earlier observed, initially the suit was contested only by defendant No. 2, being one of the sureties

and defendant No. 1, the principal debtor and defendant No. 3, the other surety, were ex parte. OSA No. 1 of 2001 was contested only by defendant No. 1, but without filing any written statement in the suit. However, since after remand defendant No. 1 failed to put in appearance, it was proceeded against ex parte vide order dated 12.9.2012 and was later on allowed to join further proceedings in the case vide order dated 12.4.2013. After remand, defendants No. 2 and 3 were proceeded against ex parte.

4. Thus, it is manifest that now defendant No. 1 alone is the contesting defendant before this court. However, the fact remains that neither it has filed any written statement at any stage of the proceedings nor has led any evidence, meaning thereby that the evidence led by the plaintiff remains totally un rebutted.

5. On the pleadings of the parties, the following issues were framed:--

"1. Whether the plaint does not disclose any cause of action, as alleged? OPD.

2. Whether the plaintiff is guilty of concealing the material facts and the present suit is not maintainable, as alleged? OPD.

3. Whether the suit of the plaintiff is time barred, as alleged? OPD.

4. Whether the plaintiff is estopped by its acts of omission and commission and conduct, as alleged? OPD.

5. Whether the electric connection to defendant No. 1 was granted by the plaintiff on the surety of defendant No. 2, if so, its effect? OPP.

6. Issue No. 5 is decided in the affirmative whether the defendant No. 2 is not liable to pay the suit amount, as alleged? OPD.

7. Whether the plaintiff is entitled to the interest, if so, at what rate? OPP.

8. To what amount towards the principal and interest is the plaintiff entitled and if so, from whom? OPP.

9. Relief."

6. I have heard Mr. K.D. Sood, Senior Advocate assisted by Mr. Sanjeev Sood, Advocate, for the plaintiff, Mr. Adarsh K. Vashishta, Advocate, for defendant No. 1 and gone through the records.

7. In reply to OMP No. 83 of 2013, moved by defendant No. 1 under Order 9, Rule 13 read with Section 151 CPC, seeking to set aside ex parte order dated 12.9.2012, payment of different sums of money, totaling Rs. 29,85,704/- (rupees twenty nine lac, eighty five thousand and seven hundred four only) as per details given below, by defendant No. 1 to the plaintiff during pendency of the suit, has been categorically admitted:--

8. Thus, in view of the un rebutted oral and documentary evidence brought on record on behalf of the plaintiff, coupled with the above admission, the plaintiff is

held entitled to recover a sum of Rs. 14,33,138/- (rupees fourteen lac, thirty three thousand and one hundred thirty eight only), that is, the suit amount of Rs. 44,18,842/- (rupees forty four lac, eighteen thousand and eight hundred forty two only) less the amount already paid to the tune of Rs. 29,85,704/- (rupees twenty nine lac, eighty five thousand and seven hundred four only), along with pendente lite and future interest @10% per annum. However, by way of an abundant caution, it is made clear that interest shall be liable to be calculated after adjusting the aforesaid sums of money already paid to the plaintiff by defendant No. 1 from time to time.

9. Issue Nos. 7 and 8 stand disposed of accordingly.

10. Since it is further admitted that the liability of defendants No. 2 and 3 is co-extensive to the extent of the surety bonds filed by them in the sum of Rs. 5,00,000/- (rupees five lac only) each, they shall be jointly and severally liable only to the extent of Rs. 5,00,000/- (rupees five lac only) each.

11. Issues No. 5 and 6 are decided accordingly.

12. Neither any evidence has been led by contesting defendant No. 1 on issue Nos. 1, 2 and 4 nor any arguments have been advanced on its behalf in support of these issues.

13. Accordingly, all these issues are held in negative.

14. Issue No. 3 regarding limitation stands already decided vide Division Bench judgment dated 9.8.2012, in OSA No. 1 of 2001.

15. In view of the above, the suit is partly decreed with proportionate costs and the plaintiff is held entitled to recover a sum of Rs. 14,33,138/- (rupees fourteen lac, thirty three thousand and one hundred thirty eight only) from the defendants jointly and severally, liability of defendants No. 2 and 3 as sureties, being co-extensive only to the extent of surety bonds filed by them in the sum of Rs. 5,00,000/- (rupees five lac only) each, along with pendente lite and future interest @10% per annum to be reckoned after adjusting the said sum of Rs. 29,85,704/- (rupees twenty nine lac, eighty five thousand and seven hundred four only) referred to in para 7 of this judgment, already paid to the plaintiff by defendant No. 1 from time to time.