
(2009) 03 P&H CK 0116
In the Punjab And Haryana At Chandigarh

Janta Panjola, CASS Panjola and Another	APPELLANT
Vs	
Daulat Ram, Kishori Lal, Commission Agents Balbera and Another	RESPONDENT

Date of Decision : 09-03-2009

Acts Referred:

Constitution of India, 1950 — Article 1, 14

Citation : AIR 2009 P&H 85 : (2009) 2 RCR(Civil) 728

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Grover, J.—This Regular Second Appeal is directed against the judgments and decrees dated 20.2.2003 and 5.4.2004 passed respectively by the Civil Judge (Junior Division), Patiala (hereinafter described as "the trial Court") and the Additional District Judge, Patiala (referred to hereinafter as "the First Appellate Court") whereby the suit of the plaintiffs-respondents was decreed and the appeal of the defendants-appellants was dismissed.

2. The respondents filed a suit for recovery of Rs. 93497/- (Rs.67264/- as principal and Rs. 26233/- as interest from 9.12.1996 to 8.3.2000 calculated at the rate of 12% per annum) from the appellants, which liability they disputed. It was pleaded by the appellants that the accounts had been maintained in regular course of business and no amount was due and that the suit was barred by limitation as it was beyond the period of three years.

3. The parties went to trial on the following issues:

1. Whether the plaintiff is entitled to recover the amount of Rs. 93497/- w.e.f. 9.12.1996 till 8.3.2000 along with interest @ 12% p.a.? OPP
2. Whether the suit is within limitation? OPP
3. Whether the suit is non-maintainable? OPD

4. Whether this Court has no jurisdiction to try and decide the present suit? OPD

5. Whether the suit is bad for non-joinder of parties? OPD

6. Relief.

4. After appraisal of the entire evidence on record, the trial Court decreed the suit by concluding that the amount in question was due to the respondents.

5. In appeal, the findings of the trial Court were affirmed by the first Appellate Court.

6. Hence, this appeal by the appellants.

7. Learned Counsel for the appellants contended that the suit for recovery filed by the respondents was barred by limitation. He further contended that according to their own showing of the respondents, the last transaction had taken place on 9.12.1996, whereas the suit was filed on 7.3.2000. He argued that both the Courts below have gone wrong by excluding the period of notice which was issued by the respondents u/s 79 of the Punjab Co-operative Societies Act, 1961 (for short, "the 1961 Act"). The notice was allegedly issued on 8.3.1997 and the suit was filed on 7.3.2000. It was submitted that if this period is not excluded, then the period of limitation would start from 9.12.1996 and the suit will be clearly barred by time. He further referred to Article 14 of Part-II of the Schedule attached to the Limitation Act, 1963 (for short, "the 1963 Act"), which deals with the period of limitation for a suit to be filed within three years for the price of goods sold and delivered where no fixed period of credit is agreed upon and the limitation begins from the date of delivery of the goods. In support of his contention, he relied upon the judgments in *Attadi Venketi v. Bjharatam Ramulu and sons* AIR 1984 Or 226; *V.K. Abraham v. N.K. Abraham* AIR 1978 Mad 56 and *P.K. Kutty Anuja Raja and another Vs. State of Kerala and another*, and a Single Bench judgment dated 16.12.2005 Reported in AIR 2006 bom 1322 of Bombay High Court in *Daulat Feeds Distributors, A Registered Partnership Firm through Partner B.R. Patil v. Razvi Brothers, through its Partner Shri Mubarak Babalal Razvi* (copy of this judgment has been produced by the learned Counsel for the appellants).

8. It was next contended by the learned Counsel for the appellants that the notice u/s 79 of the 1961 Act was not, at all, required to be issued as the Registrar of the Co-operative Societies was not to exercise the power of mediation between the parties. In support of this contention, he placed reliance on *Amin Chand Shiv Saran Dass v. The Nalagrah Co-operative Transport Society Ltd., Nalagarh* 1981 P.L.J. 473 (P&H).

9. On the other hand, learned Counsel for the respondents argued that the provisions of Section 79 of the 1961 Act are mandatory and no suit can be filed without prior issuance of notice thereunder. In support of this argument, he relied upon *Rajpal Grover v. The Guru Nanak, Joint Co-op. Farming Society Ltd.* 1982 P.L.J. 289 (P & H).

10. He further argued that even if this is to be ignored, according to the Schedule attached to the 1963 Act, which provides for the periods of limitation for various suits, the time from which the period of limitation begins to run has been specified in Article 1 of Part-I and for the purpose of recovery suit, which is based on the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties, the period for which the limitation begins to run, has to be the close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

11. I have thoughtfully considered the respective contentions and have carefully perused the record.

12. Section 79 of, the 1961 Act reads as under:

79. Notice necessary in suits.- No suit shall be instituted against" a co-operative society or any of its officers, i in respect of any touching the business: of the society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

13. It may be noticed here that in the proceedings before the Courts below, the categoric stand of the appellants was that no notice had been issued u/s 79 of the 1961 Act, but once it was proved that due notice had been issued and the period excluded for the purpose of computing the limitation, the appellants cannot now be allowed to contend that no notice was required and if notice was not required, the period of notice could not be excluded.

14. In any eventuality, a perusal of the above reproduced provisions of Section 79 of the 1961 Act makes it amply clear that notice is mandatory, especially when the suit is sought to be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society.

15. The facts of this case reveal that the dispute was pertaining to the supply of paddy to the appellants by the respondents and thus, it touched the business of the appellant-society. In view of this, the dispute came very well within the ambit of the affairs touching the business of the appellant-society and hence, the service of notice as a pre-requisite to the filing of the suit was essential and mandatory.

16. The provisions of Section 79 of the 1961 Act also lay down that the notice in writing is to be delivered to the Registrar or left at his office. Notice, Exhibit P10 and postal receipts Exhibits PI 1 and P12 reveal that it was sent to the Registrar of the Cooperative Societies and was duly served. Therefore, the appellants cannot make a grievance on that account.

17. In so far as the question of the suit being barred by limitation is concerned,

the same is to be answered with reference to the Schedule attached to the 1963 Act, wherein under Parts-I and II, the manner in which the period of limitation has to be computed for the purpose of filing suit has been detailed. Part-I pertains to the suits relating to accounts, whereas Part-II speaks of suits relating to contracts. For the purposes of reference, the relevant portion of Part-I and Part-II of the Schedule aforesaid, on which the learned Counsel for the parties have placed reliance, is extracted below:

The Schedule Periods of Limitation [See Sections 2(j) and 3] First Division - Suits

Description Period of Time from suit. Limitation which period begins to run. Part 1- Suits Relating to Accounts

1. For the balance Three years The close of the year in due on a mutual, which the last item ad- open and a cur- mitted or proved is en- rent account, tered in the account; where there have such year to be compu- been reciprocal ted as in the account, demands between the parties. xx xx xx xx xx xx xx xx PART II - Suits Relating to Contracts

6. to 13. xx xx xx xx xx xx xx xx

14. For the price of goods Three years The date of the del sold and delivered ivery of the goods where no fixed period of credit is agreed upon xx xx xx xx xx xx xx xx

18. The facts of the case reveal that the appellants had purchased paddy from the respondents from time to time on various dates, the details of which have been given in the suit for which payments were being made accordingly. According to the own showing of the respondents, last transaction had taken place on 9.12.1996 when the balance of Rs. 67264.15 was reflected. The details of the transactions as per the respondents are as follows:

Date of purchase Price of the Paddy. 8.10.1996 Rs. 6,26,014.38 10.10.1996 Rs. 94,363.43 12.10.1996 Rs. 1,70,379.25

19. It was averred by the respondents that previously also, the appellant had purchased paddy for Rs. 9,10,264.15 on different dates and a balance of Rs. 18507.09 was due as on 8.10.1996. It was further averred that out of the above amounts, the appellant had paid a total amount of Rs. 8,43,000/- on various dates and as on 9.12.1996, the outstanding balance was of Rs. 67264.15.

20. Thus, the last transaction, as per the respondents, took place on 12.10.1996 and the above balance of outstanding amount was shown as on 9.12.1996. Admittedly, the suit was filed on 7.3;2000.

21. Now, the question that is to be considered is as to whether the account between the parties was mutual, open and current so as to come within the ambit of Article 1 of Part-I or the transactions between them fell within the ambit of Article 14 of Part-II of the Schedule of the 1963 Act.

22. In *The Tea Financing Syndicate Ltd. Vs. Chandra Kamal Bez Barua*, , the Calcutta High Court considered the provisions of Article 85 of the Limitation Act, 1908 (corresponding to Article 1 of Schedule attached to the Limitation Act, 1963) and Rankin, C.J., while speaking on behalf of the Division Bench, observed as under:

There can, I think be no doubt that the requirement of reciprocal demands involves, as all the Indian cases have decided following *Holloway*, Ag. C.J., transactions on each side creating independent obligations on the other and not merely transactions which create obligations on One side, those on the other being merely complete or partial discharges of such obligations....

23. In *V.K. Abraham v. N.K. Abraham* (supra), while noticed the aforementioned judgment along with other various judgments including that of the Supreme Court in *The Hindustan Forest Company Vs. Lal Chand and Others*, , Which also related to the interpretation of the provisions of Article 85 of the Limitation Act, 1908. The question that was considered in that case was whether the transaction between the plaintiff and the defendant therein can said to fall within the category of a mutual, open and current account described in Article of the 1963 Act? After thorough discussion, it was observed in paragraph 12 of the judgment as under:

12. The defendant has been asking for amounts not necessarily as advance for the supply of rubber. For instance in Ex.A-54 dated 18.10.1965, the defendant has asked for a sum of Rupees 10,000 being sent per bearer as he was urgently in need of that amount. He does not say that this amount was needed as and by way of any advance or towards any particular supply of rubber. Similarly, in EX.A-129 the defendant had asked for "Carboyot formic acid", being sent per bearer. The plaintiff sent it and had to recover the amount due therefor. There are similar items of stores required by the defendant for which indent was made to the plaintiff. There are certain other transactions in which the defendant has stated that the amount could be adjusted against the rubber to be delivered. In one of the letters the defendant has acknowledged the receipt of some manure and has asked for a sum of Rs. 2,000 being sent per bearer one Padmanabha Pillai. It was mentioned that this amount could be adjusted by next week. He has also asked for another load of rubber mixture by 18th July and stated that the amount could be adjusted by two weeks. There were repayments by the defendant in cash on 27.11.1964 and 24.12.1965. The correspondence and the accounts go to show that the transactions here falling in those categories of rubber sales, estate store supplies, and loans are clearly independent transaction in the nature of a mutual, open and current account. The decision of the Court below that the suit is not barred by limitation is thus correct.

24. In *Hindustan Forest Co. v. Lal Chand and Ors.* (supra), their Lordships of the Supreme Court quoted with approval the observations of Rankin, C.J. in *The Financing Syndicate Ltd. v. Chandra Kamal Bez Barua* (supra) and held as under:

The requirement of reciprocal demands involves transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side, those on the other side merely complete or partial discharges of such obligations.

25. The same principal was followed in *Kesharichand Jaisukhal Vs. The Shillong Banking Corporation*, .

26. In *Attadi Venketi v. Bharatam Ramulu and Sons* (supra), a Single Bench of Orissa High Court considered the provisions of Articles 1, 14 and 26 of Schedule attached to the 1963 Act in the light of the law laid down in aforementioned judgments of the Supreme Court and that of the Calcutta High Court, and it was held that Article I was not applicable to the facts of that case and rather, Article, 14 was attracted thereto. A perusal of the judgment reveals that therein the plaintiff was a wholesale dealer in cloth. He filed tjae, suit on the allegation that the defendant, who was a dealer in ready-made gar merits used to purchase cloths from him on credit and make payments from time to time in 4ue discharge of the credit account. Last purchase was made by the defendant on 16.8.1973 and the last payment was made; by him on 28.9.1973. Thereafter, the defendant discontinued his business transaction with the plaintiff. A sum of Rs. 1,476.67 paise was left unpaid by the defendant. He did not pay up the dues despite demands. Hence, the suit for recovery of Rs. 1474.67 paise with interest at 12 per cent per annum was filed.

27. In *Daulat Feed Distributors, A Registered Partnership Firm through Partner B.R. Patil v. Razvi Brothers*, through its Partner Shri Mubarak Babalal Razvi (supra), the question that arose for consideration was whether the provisions of Article 1 or Article 14 of the Schedule attached to the 1963 Act were applicable? The facts of the case were that a suit for recovery of the balance amount of the price of goods sold and delivered was filed. The plaintiff had claimed that as the amount was paid and/or received by him from time to time, lastly on 7.10.1992 and, the suit being filed on 4.10.1995, was within limitation whereas the date of last transaction entered into between the parties was 11.12.1989. In those facts, a learned Single Judge of Bombay High Court, after noticing two previous judgments of that Court on the subject, held that "there remained no doubt that the suit being of recovery of price of goods sold and delivered, the limitation of three years would commence from the last date of the purchase/sale and delivery of goods on credit and not from the date of last payment.

28. When the transactions inter se between the parties herein are tested in the light of the above reproduced law laid down by the Supreme Court and various High Courts, it becomes amply clear that the same do not fall within the ambit of Article 1 of Part-I and rather come within the fold of Article 14 of Part-II of the Schedule attached to the 1963 Act. The period of limitation for filing a suit would, thug, start running from the time when the goods were delivered, which, in this case,, would be in the year 1996.

29. The nature of transactions, in the instant case, do not clearly indicate that the accounts were mutual, open and current, as there is no reciprocity of demands between the parties. It was simpliciter a case where the goods were being supplied to the appellants by the respondents.

30. In these circumstances, even if notice u/s 79 of the 1961 Act, which was mandatory, had been given and the period thereof excluded, it would make no difference as the suit would still be beyond the period of limitation.

31. It is, thus, held that the suit of the respondents was barred by limitation.

32. The question of law that arises in the present appeal is as to whether Article 1 of Part-I or Article 14 of Part-II of the Schedule attached to the Limitation Act, 1963 would apply for computing the period of limitation in a business transaction in which the goods are purchased and delivered" and for the reasons which have been given out in the above discussion, the same is answered to conclude that because it was merely a case where the goods were being supplied and delivered and the accounts between the parties being not open, mutual and current, Article 14 of Part-II of the Schedule to the 1963 Act would govern the same.

33. In the result, the appeal is accepted; the impugned judgments, and decrees are set aside and the suit of the respondents is dismissed.