(2009) 10 OHC CK 0081

In the Orissa High Court

Kishanlal Panch APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2010) 109 CLT 350 : (2010) 1 OLR 745 Supp

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Patel, J.—This is Plaintiffs'' appeal against Judgment & decree passed by Learned Civil Judge (Senior Division), Puri dismissing Money Suit No. 339 of 1995, a suit for realization of price of goods supplied along with the interest & compensation.

2. Plaintiffs case is that Plaintiff-Appellant is the Proprietor of M/s. Sagar & Company, Puri a wholesale stationery merchant, commission agent & government order supplier. Pursuant to supply Order Dated 22.12.1990, copies of which have been marked as Exts.3 & ''A'', placed by District Adult Education Officer, Puri, Plaintiff supplied 1500 lanterns for Adult Education Centres at Tangi & Daspalla on 05.01.1991 While supplying the lanterns Plaintiff also submitted bills bearing No. 38 dated 04.02.1991 for Rs. 40,500 in the name of Project Officer, Puri at Tangi & No. 46 dated 16.02.1991 for Rs. 40,500 in the name of Project Officer, Daspalla. It had been agreed by the District Adult Education Officer, Puri that payment would be made within seven days from the date of supply of lanterns failing which interest at the commercial rate of 14 % per annum shall be charged on the amount. Receipt of the lanterns was acknowledged in the copy of the challan marked as Ext.2. Despite supply of lanterns & submission of bills no payment was made to the Appellant. In such circumstances, Plaintiff served statutory notice u/s 80 of the CPC (for the short ''the C.P.C.''), copy of which has been marked as Ext. 1 &, thereafter, filed the

suit.

3. Defendants-Respondents filed joint written statement pleading, inter alia, that suit was barred by limitation. Supply of lanterns by the Plaintiff was admitted. However, it was alleged that 480 lanterns out of lanterns supplied to Project Officer, Daspalla & 312 lanterns out of lanterns supplied to Project Officer, Puri at Tangi were broken. Despite letters dated 28.05.1991, copy of which has been marked as Ext. ''D'' & dated 14.02.1992, copy of which has been marked as Ext. ''E'', Plaintiff did not replace the broken lanterns. It was further pleaded by the Defendants-Respondents that at no point of time there was agreement between the parties for payment of interest at the commercial rate. As the supply was defective & the Plaintiff did not respond in spite of intimation, bills could not be finalized.

4. On the basis of rival pleadings, the following issues were framed:

(i) Is the suit maintainable in its present form?

(ii) Whether suit is barred limitation?

(iii) Is the supply of lanterns by the Plaintiff was defective?

(iv) Was there any contract for payment of commercial interest by the Defendants for the delayed payment of dues of the Plaintiff?

(v) Whether the Plaintiff is entitled for the suit amount? &

(vi) To what other relief/reliefs the Plaintiff is entitled?

5. In order to substantiate his assertions, Plaintiff examined himself as P.W.1 & relied upon documents marked Exts.1 to 8. Two witnesses D. Ws. 1 & 2 were examined & documents marked Exts. ''A'' to ''E'' were relied upon by the Defendants.

6. In answering issue No. (ii), it was held by the Learned Trial Court that suit for price of lanterns sold & delivered on 05.01.199.1 having been filed on 22.05.1995 was barred by limitation under Article 14 of the Limitation Act, 1963. In answering issue Nos. (iii), (iv) &(v) on the basis of evidence on record it was held by the Learned Trial Court that in view of belated claim of the Defendants to that effect, it cannot be accepted that lanterns supplied by the Plaintiff were defective. Though there is no dispute concerning supply of lanterns valued at Rs. 81,000. In the absence of proof of any contract regarding payment of interest at the commercial rate of 14 % per annum, the Plaintiff is not entitled to claim interest. Accordingly, in answering the order issues, it was held that Plaintiffs suit not maintainable & Plaintiff not entitled to any relief.

7. In assailing the impugned Judgment, it was strenuously argued by the Learned Counsel for the Appellant that as. the parties had not entered into any contract for supply of lanterns by the Plaintiff to the Defendants, transaction between the parties would amount to agreement for performance of obligations

as contemplated u/s 70 of the Indian Contract Act, 1872. Plaintiff never intended to deliver the lanterns to the Defendants gratuitously. Learned Trial Court has categorically held that claim of Defendants that any of the lanterns was defective was not acceptable. Defendants accepted, retained & used the lanterns. Hence, the Defendants were bound to compensate to the Plaintiff for the lanterns. As no specific period of limitation has been provided under the Limitation Act, 1963 for institution of suits relating to such transaction, the period of limitation for institution of the present suit should have been held to be three years from the date when the/right to sue accrued i.e., when the Defendants refused to pay for lanterns as provided under Article 113 of the Limitation Act. In support of his contention Learned Counsel for the Plaintiff placed reliance on State of West Bengal Vs. B.K. Mondal and Sons, , Union of India (UOI) and Another Vs. Sahab Singh, , Jadavendra Narayan Choudhury Vs. State of West Bengal and Others, , Ram Nath Sao alias Ram Nath Sahu and Ors. v. Gobardhan Sao and Ors. AIR 2002 SC 1201 & Hindustan Sugar Mills Vs. State of Rajasthan and Others, .

8. Per contra, it was argued by the Learned Counsel for the State appearing for the Respondents that suit transaction was a contractual transaction between the parties. Ext. 1 copy of the supply order contains the terms & conditions of the contract which Plaintiff accepted by delivering lanterns. Therefore, there is no scope for the Plaintiff to urge that the Limitation Act does not provide period of limitation for institution of suit in respect of the transaction between the parties. This being a suit purely for the price of goods sold & delivered where no fixed period of credit is agreed upon, limitation for institution of suit is three years as provided under Article 14 of the Limitation Act, 1963.

9. It was never the case of the Plaintiff that there was no contract for supply/sale of lanterns between the parties or that contract was not valid. Rather, it was categorically pleaded by the Plaintiff that in terms of order Ext. 1 lanterns were supplied. Averments regarding dates of cause of action of the suit as pleaded at paragraph 12 of the plaint reads:

That the cause of action for the suit arose on 22.12.1990 (Twenty second December Nineteen hundred ninety) i.e. the date of requisition & on 4.2.91 (Fourth February Ninetyone) & 16.2.91 (Sixteenth February Ninetyone) i.e. the dates when the materials were supplied alongwith the bills to the Project Officer, Tangi & Duspalla respectively & on 18.7.1993 (Eighteenth July Nineteen hundred ninety three), 28.5.1993 (Twenty eighth May Nineteen hundred ninetythree) & 27.6.1994 (Twentyseventh June Nineteen hundred ninety four) when the Plaintiff demanded his dues from the Defendants & lastly on 24.4.95 (Twentyfourth April Ninetyfive) & lastly on 20.6.95 when Notice u/s 80 C.P.C. was served on them, when the Defendants avoided to make payment on some pretext, within the jurisdiction of this Hon''ble Court. (sic)

10. There is no mention by the Plaintiff that the payment was ever refused or denied. It was in the memorandum of appeal only it has been averred that admittedly the goods having been supplied, the Defendants having used the

same & derived benefit therefrom, the Court below should have taken aid of Section 70 of the Contract Act & should have decreed the Plaintiffs suit. In the absence of any pleading to the effect that the transaction between the parties did not involve any contract or involved contract which was not valid, Plaintiff is not entitled to take aid of Section 70 of the Indian Contract Act, which reads:

Obligation of person enjoying benefit of non-gratuitous act. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, & such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

11. In the absence of any foundation indicating date of refusal of payment, Learned Counsel for the Plaintiff has no scope to urge that period of limitation should be reckoned from the date of refusal of payment by invoking Article 113 of the Limitation Act relating to suits for which no period of limitation is provided elsewhere in the Schedule to the Limitation Act.

12. In State of West Bengal v. B.K. Mondal & Sons (supra) itself, relied upon by the Learned Counsel for the Appellant, it has been held that Section 70 of the Indian Limitation Act occurs in Chapter V which deals with certain relations resembling those created by contract. In other words, this Chapter does not deal with the rights or liabilities accruing from relations which resemble those created by contract. Decision of Allahabad High Court in Union of India and Anr. v. Sahab Singh (supra) & of Calcutta High Court in Jadavendra Narayan Choudhury v. State of West Bengal and Ors. (supra) also relate to obligations arising out of invalid contracts.

13. In the present case, the Plaintiff''s case is entirely based on the plea of sale & delivery of goods in terms of the order. Plain tiff has pleaded to have performed his part of contract by delivering the lanterns on 04.02.1991 & 16.02.1991. Therefore, the suit ought to have been filed within three years from the date of delivery of the goods as provided under Article 14 to the schedule of the Limitation Act prescribing for periods of limitation in respect of suits relating to contracts.

14. Relying on decisions of the Hon''ble Supreme Court in Ram Nath Sao alias Ram Nath Sahu and Ors. v. Gobardhan Sao and Ors. (supra) & Hindustan Sugar Mills. v. The State of Rajasthan and Ors. (supra), it was argued by the Learned Counsel for the Plaintiff that the Plaintiff having admittedly supplied the lanterns as per order & the Learned Trial Court having held that the plea of Defendants that some of the lanterns were damaged has not been established, Plaintiff should not be deprived of his dues due to technical bar of limitation. Decision in Ram Nath Sao alias Ram Nath Sahu and Ors. v. Gobardhan Sao and Ors. (supra) related to condonation of delay in substituting legal heirs of the Appellants. In M/s. Hindustan Sugar Mills. v. The State of Rajasthan and Ors. (supra) while reviewing its earlier order it was observed by the Hon''ble Supreme Court that in

the earlier order relief was granted on the premises that as we are living in a democratic society governed by the rule of law, every Government which claims to be inspired by ethical & moral values must do what is fair & just to the citizen, regardless of legal technicalities. Neither of the decisions is relevant to the issue involved the present case either on facts or on law. Dispute in the present appeal relates to bar of limitation for institution of suit. On the facts of the case it appears that though the Plaintiff was informed under Exts. ''B'', ''D'' & ''E'' that some of the lanterns were broken, Plaintiff never appears to have approached the Defendants for rectifying the defects or settlement of dispute relating to allegation of defective supply of goods. Rather, it appears from the evidence on record that the Plaintiff straightway served notice u/s 80 of the C.P.C. & instituted the suit as late as in the year 1995 more than four years after the date of delivery of lanterns. By his own conduct the Plaintiff allowed his claim for price of goods delivered to become stale. Therefore, I find no reason to ignore the bar of limitation provided under the Statute & allow the Plaintiff''s claim on the basis of equity which was allowed to be defeated by delay.

15. For the above said reasons, I find no substance in the contentions raised by the Learned Counsel for the Appellant. The appeal is liable to be & is dismissed. The Judgment & decree passed by the Learned Civil Judge (Senior Division), Puri in Money Suit No. 339 of 1995 is confirmed. No cost.