
(1981) 08 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Regular First Appeal No. 24 of 1981

Lucky Minmate Pvt. Ltd.

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 11-08-1981

Acts Referred:

Specific Relief Act, 1963 — Section 14, 16, 39

Citation : (1981) RLW 646 : (1981) WLN 316

Hon'ble Judges : K.S. Sidhu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Sidhu, J.—This is plaintiff's appeal from a judgment and decree of the District Judge, Jaipur City, made on September 19, 1980, whereby that learned Judge dismissed the plaintiff's suit with costs.

2. The suit which was dismissed at aforesaid was brought by Lucky Minmate Private Ltd., brought through its Managing Director, Vishnu Kumar Modi (hereafter called the plaintiff) against the State of Rajasthan (hereafter called the defendant) for a declaration to the effect that notice dated, March 4, 1978, issued by the defendant to the plaintiff is illegal and void, and for a perpetual injunction restraining the defendant from realising from the plaintiff any amount by way of prospecting charges and from cancelling the mining lease granted to the plaintiff earlier.

3. The facts about which there is no dispute between the parties may be stated like this. On June 5, 1976, the defendant granted a mining lease for lime-stone and marble near village Rampura, Tehsil Neem ka Thana, District Sikar in favour of M/s Modi Mineral Grinding Mills Pvt. Ltd. in accordance with the Rajasthan Minor Mineral Concession Rules, 1959, for a period of 10 years on the terms and conditions contained in the lease deed executed by the lessor & the lessee on June 10, 1976 and registered on June 12, 1976. The lessee transferred the lease-

hold rights to the plaintiff on November 12, 1976. By an order dated November 11, 1976, the defendant approved the said transfer subject to the condition inter alia that the plaintiff shall furnish a undertaking in writing that he will pay the proportionate prospecting charges of the area as per special condition in the original lease. The plaintiff gave the requisite undertaking in writing to the effect that "he would pay proportionate prospecting charges as and when decided by the Director Mines and Geology for the area" allotted to the plaintiff. On December 22, 1976, the defendant sent a letter to the plaintiff calling upon him to pay a sum of Rs. 1,45,766.63 on account of prospecting charges as per detailed statement annexed to the letter. On a representation made to the Government in that behalf, the Deputy Secretary to the Government addressed a letter, dated, March 22, 1977, to the Mining Department requesting it to suspend the proceedings of recovery of the aforesaid amount till June, 1981. About a year later, to be precise, on March 4, 1978 the Mining Department--the defendant gave the impugned notice to the plaintiff, calling upon him once again to pay the amount of Rs. 1,45,766.63 within a period of 15 days from the date of receipt of that notice by him on pain of facing the proceedings for the cancellation of the mining lease.

4. The plaintiff filed the suit, of which this appeal has arisen, challenging the validity of the notice, dated, March 4, 1978, on the grounds that it was issued in contravention of the Government's one letter, dated March 22, 1977, aforementioned, and without giving the plaintiff an opportunity of being heard, and that the impugned notice also contravened the relevant Mining Rules. The plaintiff also questioned the correctness of the amount worked out by the Mining Department as prospecting charges due from the plaintiff.

5. It was on these averments that the plaintiff filed this suit for a declaration and perpetual injunction as mentioned above in the second paragraph of this judgment.

6. The defendant contested the suit and filed a detailed written statement in answer to it. Explaining the demand by it of Rs. 1,45,766.63 from the plaintiff, it pleaded that it had already incurred an expenditure of Rs. 46707.07 departmentally towards prospecting the area leased out to the plaintiff and that, in addition, it had to pay a sum of Rs. 99,059.56 to M/s Associated Cement Company as proportionate prospecting charges for this area. It also pleaded that the plaintiff does not disclose any cause of action for the relief of declaration and perpetual injunction as prayed.

7. From the pleadings of the parties, the trial court stated the following issues:

(1) Whether the notice, dated, March 3, 1978 issued to the plaintiff by the State Government is illegal and void?--P.

(2) Whether the plaintiff is entitled to a perpetual injunction restraining the defendant from realising from the plaintiff the amount of Rs. 1,45,766.62 and from cancelling the mining lease?--P.

(3) Whether the impugned notice does not give rise to any cause of action to sustain the present suit and the same is therefore not maintainable?--D.

(4) Whether the court fee paid by the plaintiff is insufficient?--D.

(5) Relief?

8. These issues were framed on October 12, 1979. Before the framing of the issues, the plaintiff had already been granted a temporary injunction restraining the defendant from enforcing the recovery of the amount in dispute and from cancelling the mining lease during the pendency of the suit. The case was set down for recording the plaintiff's evidence on January 4, 1980. The plaintiff failed to appear on that day with the result that the suit was dismissed. The plaintiff appeared on a subsequent date and made an application for setting the dismissal aside. By its order, dated, January 17, 1981, the court has allowed the said application, set the dismissal aside and restored the suit to its original number. The plaintiff was given another opportunity of producing his evidence and the hearing in the suit was adjourned to February 27, 1980, for that purpose. The plaintiff did not produce any evidence on February 27. He himself was not in attendance in the court. His lawyer requested for adjournment of the hearing without giving any valid ground for such adjournment. The court took a lenient view of this default by reason of an undertaking given by counsel for the plaintiff that the plaintiff would obtain the "dasti" summons to the witnesses and that he would not request for further adjournment even if the witness should not have been served. On April 17, 1980, to which the case was adjourned, the witnesses Summoned, and, as usual, the plaintiff, himself, were not in attendance. One of the two witnesses for whom the plaintiff had obtained, "dasti" summons failed to appear inspite of service. The court ordered proceedings to be taken against him under Order 16 Rule 10 CPC and further directed that if the plaintiff was still desirous of producing him as a witness he might get a warrant issued to compel his appearance. The other witness, who had not been served, was ordered to be summonsed in the ordinary manner. The case was adjourned to July 16, 1980. On that hearing, one of the witnesses summoned turned up, but the plaintiff's counsel stated that his evidence is unnecessary and that he may be discharged without recording his evidence. He was discharged as desired. The other witness was not in attendance. In fact, the plaintiff had not got any process issued against him in compliance with the court's order dated, April 17, 1980. As usual, the plaintiff was not in attendance at this hearing either. The court took an over-indulgent view of the conduct of the plaintiff and adjourned the hearing in the suit to September 19, 1980, on the plaintiff's counsel's undertaking that the entire evidence would be produced on the even date at the plaintiff's own responsibility. No evidence was produced on September 1980. The plaintiff did not care to attend the court that day. The court concluded from the aforementioned conduct of the plaintiff, extending over a period of nearly a year, that he was not interested in producing any evidence in the case. It seems that the plaintiff, who had already obtained a temporary injunction in the suit, knew it

too well that his claim in the suit was wholly groundless and that the best course for him was to prolong the proceedings in the suit and, in the meantime, to enjoy the usufruct of the mining lease without paying a penny out of the amount which he had agreed to pay to the Government to reimburse it on account of the prospecting expenditure which it had already incurred departmentally and had paid to M/s Associated Cement Company towards the prospecting charges of the lease hold area let out to the plaintiff. The trial court closed the plaintiff's case and proceeded to decide the suit forthwith in accordance with the provisions of Order 17 Rule 3 CPC. It recorded a very brief judgment stating that since the onus of proof of Issues 1 and 2 was placed on the plaintiff and since he had not discharged that onus both the issues were being decided against the plaintiff. Consequently it dismissed the plaintiff's suit with costs to the defendant.

9. Aggrieved by the judgment and decree dated September 19, 1980, mentioned above, the plaintiff presented this appeal to this Court on December 12, 1980. He also succeeded in obtaining a temporary injunction against the defendant from this court on February 27, 1981. The said injunction was vacated by the court on July 24, 1981. The appeal was ordered to be fixed for hearing on the question of admission immediately. Arguments on both sides were heard on July 28 and 29, 1981. Judgment was reserved to be pronounced on some future day.

10. Dr. Tiwari, learned counsel for the plaintiff, contended that the trial court was not legally justified in closing the plaintiff's evidence on 19th September, 1980, and pronouncing judgment forthwith. He argued that once the plaintiff had applied to the court for summons to witnesses it was the duty of the court to procure their attendance and that if any of them failed to comply with the summons it was open to the court to compel his appearance by issuing coercive process. It will be seen from the history of the proceedings in the suit, given in an earlier part of this judgment that the plaintiff did not apply for summons on a couple of dates to which the hearing in the suit was adjourned for the purpose and that as and when he applied for such summons these were issued properly. As already mentioned, the plaintiff belatedly applied for summons to two witnesses only. One of them complied with the summons and appeared in the court to give evidence on July 16, 1980. The plaintiff's counsel did not examine him on the plea that his evidence was not necessary. The other witness who did not comply with the summons was ordered by the court to be summoned by warrant. The plaintiff did not deposit the process fees for issue of a warrant with the result that no warrant could possibly issue from the court. In the facts & circumstances, the conclusion is irresistible that the plaintiff, who had already obtained a temporary injunction in the suit, was interested in prolonging proceedings by all possible means. It is a matter of regret that the plaintiff was successful in his tactics & was thus able to take advantage of an undeserved temporary injunction for a period of more than two years. The plaintiff himself admitted, though unwittingly, in the memorandum of appeal (see Page 7) that "....even if the appellant would have produced his witnesses they would not have added more in the appellant's case, than what it is". This admission, made for a

different purpose, clearly betrays the working of the plaintiff's mind. It is obvious that he had summoned the aforesaid two witnesses merely to engage the court in a lengthy process of procuring their attendance. He was quite clear in his mind that he would not need their evidence. That is why, perhaps, he allowed one of them to be discharged without examining him as a witness. He did not deposit process fee for the issue of a warrant against the other. It is reasonable to assume in these circumstances that if the court had once again allowed him to summon the said witness by ordinary process, he would not have deposited the process fee & repeated the exercise many times over, and seen to it that service shall not either have been affected, or, if affected, that the witness shall not have attended the court. It appears that, under no circumstances was he willing to deposit the warrant fee, for issue of coercive process against a witness who appears to have already exhibited a friendly and cooperative approach towards him by staying away from the court on a date for which he had been duly served.

11. I am thus convinced that the trial court was perfectly justified in closing the plaintiff's case and proceeding to decide the suit forthwith on September 19, 1980. If any thing, the trial court seems to have erred in wasting sympathy and leniency on a wholly undeserving party who had been abusing its process on diverse dates of hearing from January 4, 1980 to July 16, 1980. It ought to have finally decided the suit on February 27, 1980, which was the date fixed by the court at the instance of the plaintiff, granting indulgence to him to produce his evidence which he did not produce.

12. Dr. Tiwari then argued that the trial court was in error in deciding issues 1 and 2 against the plaintiff without discussing the documentary evidence on record. He submitted that the plaintiff had produced a number of documents along with the plaint and that the defendant had admitted these documents to be genuine in the written statement filed in answer to the plaint. The documents which Dr. Tiwari referred to are the lease deed dated June 10, 1976, executed by defendant, as lessor and M/s Modi Mineral Grinding Mills Pvt. Ltd., as original lessee, the deed of transfer dated November 12, 1976, executed by the original lessor in favour of the plaintiff, the approval order, dated November 11, 1976, made by the defendant in respect of the said transfer, first notice of demand, dated, December 22, 1976, sent by the defendant to the plaintiff and the advice letter, dated, March 22, 1977, from the Deputy Secretary to the Mining Department to postpone the recovery which are all of course on the record and admitted by the defendant. None of these documents however, could possibly be of any help to the plaintiff on issues 1 and 2. On the contrary, the lease deed, dated, June 10, 1976, which is binding on the plaintiff in view of the undertaking given by him in compliance with the defendant's approval order, dated, November 11, 1976, clearly proves that according to the contract between the parties, the defendant had already executed or performed its obligation under the contract by putting the plaintiff in possession of the lease-hold area and nothing remained to be done by the defendant towards the execution of the obligation undertaken by it.

One of the terms of the contract, which the plaintiff admits, is to the effect that the lessees "shall have to pay proportionate prospecting charges as and when decided by the Director Mines and Geology for the area allotted to them". This was an obligation which the plaintiff had yet to discharge at the time of the institution of the suit & which remains undischarged till Acts. In fact, the plaintiff instituted this suit with the object of obtaining relief to save himself from the performance of an obligation which he had agreed to perform under the admitted contract between the parties. Therefore, it is quite obvious from the plaintiff's own pleadings and documents that the plaintiff had failed to make out any, case to invalidate the notice, dated, March 4, 1978. In fact, the plaint discloses no cause of action for invalidating this notice or for grant of injunction restraining the defendants from realising the amount in question and cancelling the mining lease.

13. Another argument raised by Dr. Tiwari is that the judgment pronounced by the District Judge on September 19, 1980, dismissing the plaintiff's suit with costs is no judgment in the eye of law and that therefore the case should be remanded to him to write a proper judgment. Dr. Tiwari referred in this connection to the provisions of Order 20 Rule 4(2) C.P.C. which enjoins that a judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. It is true that the impugned judgment does not strictly come up to the standard of a judgment expected of a Judge under Order 20 Rule 4 C.P.C. This is however, not a good ground in the circumstances of this case for sending the case back to the trial court for writing a proper judgment. I have already mentioned that the plaintiff did not produce any evidence in support of his case that the impugned notice is illegal and void. The documents on the record do not help the plaintiff at all. On the other hand, the documents go against him and show that while he is enjoying the fruit of the performance by the defendant of his part of the contract, he himself is avoiding the performance of his obligation and is acting in a manner which is quite clearly a fraud on the contract. He has already deprived the defendant of a huge amount of Rs. 1,45,766.63 for the last five years and has all along been enjoying the usufruct of the mining lease with impunity.

14. Before parting with discussion is on this aspect of the case, reference may be made to Raghubans Dubey Vs. State of Bihar, cited by Dr. Tiwari in support of his plea for remand of the case to the trial court for writing a proper judgment. The cited case is clearly distinguishable. It will be seen that the defendant in the cited case had filed a written statement denying the averments in the plaint and had contested the claim of the plaintiff. Even then, the trial judge did not frame any issues, but held a lengthy trial in the course of which the plaintiff produced oral evidence. No documentary evidence was produced by the plaintiff in respect of the alleged agreement between the parties. No document was produced to prove the alleged payment of interest by the defendant. The trial judge decreed the suit without discussing the oral evidence or taking into consideration the absence of documentary evidence. The appellate court affirmed the judgment of the trial

court without discussing the evidence or want of it. It was in these circumstances that the Supreme Court felt, as it, put it "constrained to come to the conclusion that there has been no real trial of the defendant's case". This cannot however be said of the present case. As already mentioned, the plaint in the instant case discloses no cause of action. Even then, the trial court framed issues and kept adjourning the hearing from time to time at the instance of the plaintiff for nearly a year. The plaintiff did not produce any evidence. He did not consider it necessary for himself to step into the witness box. The so-called documentary evidence on record hardly required any discussion in the context of the plaintiff's averments in the plaint. If anything, the documents go against the plaintiff. Under the circumstances the trial court cannot be said to have committed any serious error in not writing a detailed judgment. The cited Supreme Court case has therefore no application to the facts of this case.

15. Before concluding, it must be pointed out here that utmost care, attention and alertness should be exercised by the court in dealing with a suit for specific performance of a contract in which temporary injunction under Order 39 Rules 1 and 2 C.P.C. is also prayed. The court should, as a first step, scrutinize the plaint to find out if it contains averments spelling out a negative term or obligation undertaken by the defendant, agreeing to refrain from or not do a particular thing. If the plaintiff does not allege, as in the instant case he did not allege, that the defendant, had entered into an agreement involving a negative term, this means that the plaint does not disclose a cause of action for specific performance of a negative term of the contract. The court must further keep in view the provisions of the Specific Relief Act, 1963. Section 39 of the Act lays down that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour. It further enjoins that when such obligation arises from a contract, the court shall be guided by the rules and provisions contained in chapter II which deals with specific performance of contracts. A suit for injunction based on contract means a suit seeking, in effect, the specific performance of a negative term of the contract. In a suit based on contract involving a negative term, the court is prohibited by Section 14 from granting injunction if compensation in money would afford adequate relief for its breach. Section 16 is another important Section which must be referred to in this connection. It lays down that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. This means that in order to constitute a valid cause of action, the plaint must contain, in addition to the averment that the defendant had undertaken a negative obligation under the contract, another averment to the effect that the plaintiff has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. If we refer to the plaint in the instant case, it will be discovered that it does not contain any of those averments in it. There is no allegation by the plaintiff in the plaint that the defendant had undertaken a

negative obligation not to enforce recovery from the plaintiff of any amount by way of reimbursement of the prospecting charges. Further, there is no averment therein that the plaintiff had performed his part of the contract. In fact the allegations in the plaint, if properly probed, would indicate that the plaintiff filed this suit in an attempt to avoid performance of his own obligation to make payment of the amount which he was called upon to pay by means of the impugned notice. It is a matter of regret that the plaintiff succeeded in abusing the process of the court and thus avoiding the performance of his own obligation for the last five years. The plaint deserved to be rejected at the very inception of the suit as disclosing no cause of action.

16. For all these reasons, this appeal fails and is dismissed with costs.