
(2014) 11 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Second Appeal No. 753/2011

Mining Engineer (Recovery)

APPELLANT

Vs

Shivshakti Marble Pvt. Ltd.

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Citation : (2015) 2 WLN 31

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Sheweta Bora on behalf of Suman Porwal, Addl. Govt, Advocate for the Appellant; Deepip Kawadia, Advocate for the Respondent

Judgement

Vineet Kothari, J.—The Mining Department of the State has preferred this second appeal aggrieved by the judgment and decree dated 01.03.2011 of learned Additional District Judge, Fast Track, Rajsamand, in Civil Appeal No. 26/2009 - M/s. Shivshakti Marble Pvt. Ltd. vs. Mining Engineer (Recovery) & Anr., whereby the appeal filed by the plaintiff/respondent was allowed and the judgment and decree dated 29.09.2007 passed by learned Civil Judge (Jr. Division), Rajsamand dismissing the suit being Civil Suit No. 22/04 - M/s. Shivshakti Marble Pvt. Ltd. vs. Mining Engineer (Recovery) & Anr. filed by the plaintiff/respondent against the recovery, was set aside.

2. The issue in brief was that the Assessee/plaintiff M/s. Shivshakti Marble Pvt. Ltd. filed an injunction suit against the purported recovery of Rs. 64,710/- from the plaintiff/company on account of default in payment of royalty for removal of marble from the Gang Saw unit situated at Kelwa, in District: Rajsamand. The said demand comprised 3 parts, one for a sum of Rs. 8,450/- raised on 28.07.1987 qua one M/s. Shivshakti Marble, raised against a proprietorship firm, which bears a similar name to that of plaintiff a limited company, second demand of Rs. 18,000/- raised on 22.01.2002 and Rs. 38,2050/- raised on 23.07.2002 raised against the limited company.

3. In the plaint, the plaintiff/respondent claimed by the demand of Rs. 64,710/- sought to be recovered from the plaintiff, was entirely pertaining to a proprietorship concern, which firm was also having a similar name i.e. M/s. Shivshakti Marbles, of which the proprietor was one Sh. Shyamlal Khatik, who had no concern or relation with the plaintiff/company, which is a private limited company, incorporated in the year 1990 only. Therefore, the recovery sought by the Mining Department of royalty as land revenue under the provisions of Rajasthan Land Revenue Act, was wholly illegal.

4. The learned Civil Judge (Jr. Division), Rajsamand (for brevity, hereinafter referred to as "trial court") while deciding the Issue No. 1 clearly held that even if the first demand of Rs. 8,450/- raised on 28.07.1987 could be held attributable to another proprietorship concern i.e. M/s. Shivshakti Marble, the Exhibit A/1 to Exhibit A/23 clearly show that two other demands, viz. Rs. 18,000/- raised on 22.04.2002 and Rs. 38,250/- raised on 23.07.2002 pertained to the plaintiff-company, which was a private limited company and the demand notices and determination of lease dues were issued by the Mining Department in the name of limited company and, therefore, the entire demands could not be held attributable to the said proprietorship firm of Sh. Shyamlal Khatik. The suit was ultimately dismissed by the learned trial court.

5. The learned Addl. District Judge, Fast Track, Rajsamand (for brevity, hereinafter referred to as "appellate court"), however, allowed the appeal of the plaintiff-company and while deciding the Issue No. 1 in favour of plaintiff/company held that the demands could not be recovered from the plaintiff/company. On page 7 of the appellate court judgment while discussing the defence evidence, of DAW. 1, namely, Om Prakash, Officer of the Mining Department and DAW. 2, namely, Shyamlal Khatik, proprietor of M/s. Shivshakti Marbles, the lower appellate court has wrongly but frequently used interchangeably the words i.e. "proprietorship firm" and "limited company" and has mixed up the proprietorship firm of Sh. Shyamlal Khatik i.e. M/s. Shivshakti Marbles, which bore the similar name as that of M/s. Shivshakti Marble Pvt. Ltd. (plaintiff/respondent herein). The relevant portion of the judgment dated 01.03.2011 of the lower appellate court below is quoted herein below for ready reference:-

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6. As against this, the findings of the learned trial court on page 6 of its judgment dated 29.09.2007 are also quoted herein below for ready reference:-

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7. Upon perusal of the afore-quoted judgment of the learned appellate court, this Court is of the opinion that the matter requires remand to the first appellate court for two reasons. Firstly, that the appellate court has not properly appreciated the difference between the proprietorship concern of Sh. Shyamlal Khatik and the plaintiff/company which is a private limited company i.e. M/s. Shivshakti Marble Pvt. Ltd., a closely held company by Agarwal family. These two concerns obviously had no connection and the perusal of the relevant documents would reveal that two demands raised later on in the year 2002 in the name of limited company did not pertain to proprietorship concern of Sh. Shyamlal Khatik, but they related to the plaintiff-limited company. This difference though clearly found out by the learned trial court, has not been appreciated again properly by the lower first appellate court. Secondly, the interchangeable use of words "proprietorship firm" with "limited company", shows that the conclusion that the entire demand pertained to proprietorship firm, is absolutely incorrect. The matter, therefore, deserves to be looked into again by the first appellate court and the evidence on record deserves to be re-appreciated by the first appellate court in a proper manner.

8. This Court is also of the opinion that the suit in the present case was also a misconceived remedy availed by the plaintiff company. Against the demand notices of royalty under Mining laws raised upon it, the proper remedy to avail was the departmental remedy under the Mining laws by way of appeals or by way suitable rectification application, if the plaintiff company felt that some other party's dues are sought to be recovered from it, like the royalty dues of M/s. Shivshakti Marble, pertaining to the year 1987 for a sum of Rs. 8,450/-, raised prior to even incorporation of the plaintiff company. Had this fact been properly brought to the notice of the departmental authorities, there was a possibility of making a suitable correct at that end itself avoiding much of the litigation which prolonged over these long years. It appears that under the garb of minor portion of demand raised against a third party i.e. Sh. Shyamlal Khatik, the plaintiff/company has avoided the demand of even its own dues, namely, royalty dues of the year 2002, which was a substantial portion of the entire demand in question. The civil court should have also looked into this aspect of the matter and though the issues were framed about the jurisdiction of civil court against the bar provisions contained in the relevant Mining laws, the issues were wrongly decided in favour of plaintiff/respondent.

9. For the aforesaid reasons, the first appellate court judgment dated 01.03.2011 deserves to be set aside and the matter deserves to be remanded back to the lower appellate court. Since the matter is being remanded back to the appellate court, it is not considered necessary to frame any substantial question of law and then decide the same but the matter is remanded back to the first appellate court for re-deciding case again in the light of the aforesaid observations.

10. The present second appeal is, accordingly, allowed for statistical purposes

and setting aside the first appellate court order dated 01.03.2011 the matter is remanded back to learned appellate court. No costs. Copy of this judgment be sent to the concerned parties forthwith.