
(2004) 04 MP CK 0046

In the Madhya Pradesh High Court

Case No : Civil Revision No. 394 of 1999

M.P. Electricity Board and Others

APPELLANT

Vs

Kalekhan

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Limitation Act, 1963 — Article 113, 72

Citation : (2005) 1 ACC 71 : AIR 2004 MP 248 : (2004) 2 JLJ 414 : (2004) 2 MPHT 412

Hon'ble Judges : Subhash Samvatsar, J

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant; Shankar Ram Rakhiyani, for the Respondent

Final Decision : Dismissed

Judgement

Subhash Samvatsar, J.—This revision is filed by the defendant challenging an order dated 18-12-98 passed by 6th Addl. District Judge, Gwalior in Civil Suit No. 1-B/91 whereby issue No. 5 is tried as preliminary issue and decided against the present petitioner.

2. Brief facts of the case are that the respondent filed a suit for compensation for the injuries sustained by him due to the fall of electric pole on his body on 16-6-88. Due to the said accident the respondent plaintiff suffered various injuries and, therefore, he filed the present suit for compensation on 25-6-91. In the plaint it is alleged that the cause of action to the present suit was accrued on 16-6-88 and the period of limitation for claiming compensation is three years which expired on 15-6-91. However, at that time the Court was closed due to summer vacation and 22-6-91 was the last day of summer vacation. 23-6-91 was Sunday. 24-6-91 was a holiday due to Ed-ul-Zuha and the suit was filed on 25-6-91 i.e., the Court reopening day, hence the suit is within limitation.

3. Defendant raised a plea that the present suit is governed by Article 72 of the

Limitation Act and the limitation for filing a suit is one year, hence the present suit is barred by limitation. On the basis of the pleadings Court has framed several issues out of which issue No. 5 relates to limitation. This issue was tried as a preliminary issue and decided against the defendant, hence this revision.

4. Learned Counsel for the applicant urged that the present suit is governed by Article 72 of the Limitation Act (hereinafter referred to as the "Act") which provides a limitation for one year. According to the petitioner the Trial Court has erred in applying Article 113 of the Act in holding that the suit is within limitation which provides for a limitation of three years of filing the suit. According to the Trial Court the present suit does not fall under Article 72 of the Act and since there is no other Article governing the suit for compensation, hence the suit will be governed by Article 113 of the Act. This order is challenged by the learned Counsel for the applicant.

5. Shri Gupta, learned Counsel for the petitioner submitted that the plaintiff in the present suit has claimed damages for the injuries sustained by him due to fall of electric pole. According to him Article 72 of the Act provides for a suit for compensation for doing or for omitting to do an act alleging to be in pursuance of any enactment in force for the time being in the territories to which this Act extends. Article further provides a period of one year from the date when the act or omission takes place. According to the Counsel for the applicant it is statutory duty of the petitioner to maintain the electric supply and the poles erected for supporting the electric wires. According to him as per the allegations in the plaint the plaintiff is claiming compensation due to the injuries sustained by him due to falling of the pole. Thus, according to the Counsel the claim for compensation arises out of the act or omission to maintain the electric poles which is the statutory duty of the M.P.E.B. In such circumstances the present suit will be governed by Article 72 of the Act and when there is a specific article governing the suit then Article 113 of the Act will have no application.

6. Counsel for respondent on the other hand has supported the impugned order by stating that the suit is not covered by Article 72 of the Act but will be governed by Article 113 of the Act as there is no other article; To support his case counsel for applicant has relied on the judgment of this Court in the case of B.S. Yadava v. Prabhudayal, AIR 1992 MP 203. In that case the suit was filed against the Tahsildar for claiming compensation for demolition of construction. As according to the Tahsildar the said encroachment was on the Govt. land. Suit for compensation was filed and in that case this Court has held that the demolition was in exercise of statutory powers vested in the Tahsildar, hence the suit will be governed by Article 72 of the Act. But this case is quite distinguishable. In the present case, the applicants were not acting under any statutory powers but they have neglected in following their statutory duties. The protection of Article 72 of the Act will be applicable when the authorities act contrary to any statutory command and not only when the authority has omitted to do its statutory duty.

7. The wordings of the article are very significant. Article 72 of the Act is

reproduced as under :--

"For compensation for doing or One year When the act or for omitting to do an act alleged to omission takes be in pursuance of any enactment place." in force for the time being in the territories to which this Act extends.

8. From bare reading of the said article it is clear that the act of omission must be in pursuance of any enactment in force hence mere failure to perform a statutory duty will not be sufficient to attract Article 72 of the Act. So long as there is breach of some enactment or command issued by any enactment, Article 72 of the Act will not come into play. This is not the case here. It is true that maintaining the electric supply of pole is a statutory duty of the respondent M.P.E.B. However, in maintaining the electric supply of the poles cannot be said to be a violation of any command issued by an enactment. Counsel for the petitioner has failed to place on record any enactment which directs the respondent to maintain the poles. For this purpose Counsel for the respondent has relied on the judgment of Apex Court in the case of State of Punjab Vs. Modern Cultivators, Ladwa, in which Apex Court has held that the compensation against the Govt. for maintaining the canal properly and it is further held that there is no breach of any enactment to attract Article 2 of the old Act which is para material with Article 72 of the present Act. Act or omission which can claim statutory protection or is alleged to be in pursuance of statutory provision may attract Article 72 of the Act but the act or omission must be one which must be said to be in pursuance of an enactment. Mere omission or failure in following statutory duty is not covered by Article 72 of the Act. In that case, the allegations against the statutory authority was that the authority has failed to maintain the canal properly. According to the Apex Court the said failure is not in pursuance of the statutory authority to attract Article 72 of the Act. A similar view is taken by Punjab High Court in the case of East Punjab Province (State of Punjab) Vs. Modern Cultivators, Ladwa, in which Punjab High Court has held that failure of local body to maintain water string in proper order or failure to maintain the canal bank in proper order is a failure of statutory duty and, therefore, Article 72 of the Act will not be applicable in absence of any enactment to that effect.

9. In the light of these judgments, I find that in absence of any enactment having a force of command against the petitioner to maintain the Electricity Board Article 72 of the Act will not be applicable merely because petitioner has failed to perform statutory duty.

10. There is no other article governing the situation prevailing in the present case. Hence Article 113 of the Act which is a residual clause will come into play. A limitation for filing a suit under Article 113 of the Act is three years, hence Trial Court was right in holding that the suit is within limitation.

11. In the result this revision is without any merit and is dismissed with no orders as to costs.