
(2007) 04 AP CK 0004
In the Andhra Pradesh High Court
Case No : A.S. No. 2857 of 2001

National Aluminium Co. Ltd. and Others	APPELLANT
Vs	
N. Rajender Kumar	RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8

Citation : (2007) 6 ALD 414

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : M.S. Ramchandra Rao, for the Appellant; S. Subba Reddy, for V.L.N.G.K. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

G. Bhavani Prasad, J.—The unsuccessful defendants in O.S. No. 35 of 1996 on the file of IV Additional District Judge's Court, Visakhapatnam filed the appeal against the judgment and preliminary decree dated 5-9-2001.

2. The factual background is that the plaintiff filed the suit claiming that the defendants entered into an understanding with the plaintiff, a transport contractor, for transporting various oils. As per the understanding, the plaintiff should provide the tankers for transportation of oils from Visakhapatnam to Damanjodi and has to be paid Rs. 0.39 paise per kilolitre per kilometre. The plaintiff deposited Rs. 10,000/- as security deposit on 26-5-1988 and the initial contract for one year was extended from time to time. The plaintiff was accordingly supplying oil tankers without any delay or default and was submitting his bills to the defendants which were payable within 30 days from the date of submission. However, the defendants abnormally delayed in paying the bills resulting in huge loss to the plaintiff and the demand by the plaintiff to enhance the transport rate due to increase in fuel prices and the cost of maintenance of the vehicles was in vain. The defendants were alleging that there was a little shortage of the oils at the delivery point and were withholding the payments in

spite of the admitted understanding about the handling loss. The last payment was made by the defendants through a cheque dated 3-8-1990 and the defendants did not pay the balance in spite of repeated demands. The shortage allowance of 0.7 per cent agreed between the parties was also ignored by the defendants and as per the plaintiffs calculations, Rs. 1,83,351/- were due from the defendants, apart from the security deposit of Rs. 10,000/-. The defendants were not rendering proper and correct accounts compelling the plaintiff to file the suit for rendition of accounts and to pay the plaintiff a sum of Rs. 1,93,351/- with further interest at 24 per cent per annum and costs.

3. The defendants resisted the suit contending that the plaintiff entered into the contract through his letter dated 25-5-1988 and when the plaintiff received the amounts under various bills without any protest, he is estopped from claiming any further amounts and in the presence of the agent of the plaintiff, the shortages found in each transportation were arrived at based on which the bills were ascertained and the amounts were paid without any delay. The plaintiff received the amounts under all bills including the final bill dated 30-7-1990 without protest and the cheque for Rs. 55,095/- was accepted and encashed by the plaintiff. A further amount of Rs. 10,678/- was also paid on 3-9-1990 to offset the loss caused to the plaintiff by the accident committed by the plaintiffs driver though the defendants are not responsible for making any such payment. The short deliveries by the plaintiff were duly taken into account and the claim for Rs. 1,83,351/- as due from the defendants is false. The plaintiff was uncertain of the amount claimed by him and when the payments made by the defendants were in full and final settlement of all the claims, the question of any rendition of accounts does not arise. The contract specifically recited that the Courts in Koraput in Orissa State have alone jurisdiction and hence, the trial Court has no jurisdiction. When the accounts were completely and finally settled, a suit for rendition of accounts does not lie and hence, the defendants sought for dismissal of the suit with costs.

4. On such pleadings, the trial Court framed the following issues for trial.

- (1) Whether the defendants shall be directed to render accounts?
- (2) Whether the plaintiff is entitled to recover the suit amount from the defendants?
- (3) Whether this Court has territorial jurisdiction to entertain this suit?
- (4) To what relief?

5. After examining PW. 1 and DWs. 1 and 2 and marking Exs. A. 1 to A. 312 and B. 1 to B. 5 during trial, the trial Court rendered the impugned judgment holding that Clause 20 of Ex. B. 4 terms, and conditions of the agreement cannot nullify the territorial jurisdiction of the Court when the agreement was entered into at Visakhapatnam and the oil was transported from Visakhapatnam and the branch office of the defendants is located at Visakhapatnam, which made the payments

to the plaintiff. As the cause of action was considered to have arisen at Visakhapatnam, the trial Court confirmed its jurisdiction to try and decide the suit. The trial Court also held that the relationship between the plaintiff and the defendants as disclosed by the documents admitted into evidence shows that the relationship between the plaintiff and the defendants is not purely that of a debtor and creditor and the defendants did not produce any positive evidence to show that the accounts between them were fully and finally settled. Therefore, the trial Court considered that it becomes necessary to look into the accounts maintained by the defendants to ascertain whether the defendants owed an amount of Rs. 1,83,351/- to the plaintiff. The trial Court also observed that Ex. B4 agreement does not absolve the defendants of their obligation to render accounts to the plaintiff and it is difficult to ascertain the exact amount to which the plaintiff is entitled without verifying the accounts maintained by the defendants in the ordinary course of business. Considering the plaintiff to be the agent of the defendants concerning supply of oil from Visakhapatnam to Damanjodi, the trial Court concluded that it can pass a preliminary decree directing the defendants to produce the account books as the accounts were not settled, and consequently, it decreed the suit with costs and passed a preliminary decree directing the defendants to render accounts. The plaintiff was given liberty to file a separate application for passing a final decree.

6. The defendants challenged the said judgment contending that the trial Court erred in concluding in favour of the plaintiff about the maintainability of the suit for rendition of accounts and the presence of territorial jurisdiction for it. The trial Court ought to have seen that there was no fiduciary relationship in the contractual relationship between the parties and consequently, the trial Court erred in holding that the decisions cited on behalf of the appellants before it do not apply to the facts of the case. The mere absence of any clause in Ex. B. 4 agreement relieving the defendants of any obligation to render accounts cannot lead to a positive direction when PW. 1 himself stated in his evidence that he did not act as an agent. Hence, the defendants sought for reversal of the impugned judgment and preliminary decree.

7. During the pendency of the appeal, an interim stay of further proceedings was granted in CMP No. 24330 of 2001 by orders dated 20-12-2001. In further orders in ASMP No. 12207 of 2004, dated 4-8-2004, the said orders of interim stay were modified permitting to proceed with all further proceedings except passing a final decree.

8. Sri M.S. Ramachandra Rao, learned Counsel for the appellants has strenuously contended that on the admitted facts, the principles laid down in K.C. Skaria Vs. The Govt. of State of Kerala and Another, , squarely applied and the suit for rendition of accounts has to fail. The learned Counsel further contended that the assumption of territorial jurisdiction by the trial Court was an obvious error against the agreed terms and conditions of the agreement between the parties which stipulation cannot by any means be considered as illegal or of no effect.

The learned Counsel contended that the plaintiff failed in proving his entitlement to the suit claim otherwise, though he had paid Court fee on Rs. 1,93,351/-. The learned Counsel, therefore, desired the suit to be dismissed.

9. Sri S. Subba Reddy, learned Counsel, representing Sri V.L.N.G.K. Murthy, learned Counsel for the respondent/plaintiff strenuously contended that this is not a case of entrustment of a particular work to an independent contractor, but his claim is involving a series of transactions of transport of oils, the liability of either party under which has to be separately accounted for taking into account the quantum of oil transported, the quantum of oil ultimately delivered, the extent of deficiency within permissible limits or otherwise and the amount payable to the plaintiff towards the transport charges at the agreed rate for the distance noted to be covered for the quantum of oil supplied and delivered deducting the value of any excessive deficiency. Therefore, the very nature of the relationship between the parties makes it incumbent to settle the accounts between the parties for appropriate adjudication of the legal rights of either. The learned Counsel, therefore, contended that the precedent relied on by the appellants and similar decisions are distinguishable and have no application. The learned Counsel further argued that the territorial jurisdiction of the Court on the admitted facts cannot be nullified by any exclusionary clause in the agreement and consequently, the appeal has to fail.

10. The points that arise for consideration in this appeal are:

- (1) Whether a suit for rendition of accounts is not maintainable?
- (2) Whether the trial Court has no territorial jurisdiction?
- (3) To What relief?

Point No. 1:

11. In K.C. Skaria v. Government of State of Kerala and Anr. the apex Court considered a case where the contractor filed a suit for recovery of a specific sum and also prayed for proper accounting with a request for permission to pay any additional Court fee if the amount due to him for the work were found to be in excess of the amount for which the Court fee was paid. Though the trial Court found the amount due to be much more, it granted a decree only for the amount for which the Court fee was paid and in appeal, the High Court dismissed the suit in entirety holding that a suit by an independent contractor for rendition of accounts by the employer was not maintainable. The Supreme Court, while noting that the right to claim rendition of accounts is an unusual form of relief granted only in certain specific cases and to be claimed when the relationship between the parties is such that the rendition of accounts is the only relief which will enable the plaintiff to satisfactorily assert his legal right, has also noted that even where there is no specific provision for rendition of accounts, Courts have recognized an equitable right to claim rendition of accounts. The Supreme Court summarized among other things that a suit for rendition of accounts can be

maintained only if a person suing has a right to receive an account from the defendant, which can be claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Though such a right cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, the Apex Court in effect and substance recognized the maintainability of such a suit where there may be special circumstances rendering it equitable that the principal should account to the agent. It also noted with reference to an earlier decision that the provisions of the Contract Act are not exhaustive in this regard. While referring to the earlier decision in *Narandas Morardas Gaziwala and Others Vs. S.P. Am. Papammal and Another*, , the Supreme Court extracted the observation that the right of the agent may also arise in an exceptional case where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of his principal are gone into. It is true that the Apex Court dealt with a case of a contractor engaged to execute a particular work and negatived his right to file a suit for accounts. But even in the case before their Lordships, the Supreme Court upheld the right of the plaintiff to have his claim for the amounts for which he has paid the Court fee adjudicated by the Court irrespective of the framing of the suit and in that view it restored the decree by the trial Court for such amount.

12. The relationship between the parties herein is such as covering a series of transactions of transport of oils from Visakhapatnam to Damanjodi. In each trip, the plaintiff transported the oils of the defendants from the place of loading to the place of destination and delivered the oils so transported at the destination. On each occasion, the oil loaded at Visakhapatnam and the oil delivered at Damanjodi have to be admittedly noted by both parties to account for any deficiency in the quantity of oil delivered and to note whether such deficiency was within the permissible shortage allowance of 0.7 per cent agreed to be ignored by the parties under the agreement. For each trip, the quantum of kilolitres of oil transported and the distance of kilometres for which the transportation was done also had to be calculated and after taking into account the deficiency within or beyond the permissible limits, the transport charges payable to the plaintiff have to be arrived at. The evidence of the parties including the documents produced by them shows that the parties were not in agreement about these details and while the plaintiff is claiming more, the defendants are admitting their liability only to the extent of the payments already made. The trial Court noted that the defendants did not produce their account books in spite of the notice by the plaintiff under Order XII Rule 8 of the Code of Civil Procedure. It is also noted that Ex. B5 voucher for Rs. 55,095/- did not evidence the same to be in acceptance of full and final settlement of the accounts between the parties. When the vouchers, delivery challans etc., produced by the plaintiff are not admitted by the defendants, it becomes

necessary for a comprehensive adjudication of the dispute between the parties to invariably look into the accounts of the defendants also. While the agreement between the parties does not absolve the defendants of such liability for settlement of account, it cannot be in dispute that the documents produced by the defendants are insufficient to arrive at a satisfactory conclusion about the mutual liability of the parties. Under such circumstances, even though it is a case of entrustment of transportation work to a contractor by the defendants, it is not an engagement for a particular work, but is an engagement for a series of transactions, the determination of the mutual liabilities of the parties for which is possible only through a rendition of accounts. The present dispute can be safely considered as a case covered by special circumstances where the accounts in the possession of the defendants can enable the plaintiff to determine his legal right to any particular amount. The nature of relationship is such that there can be no other legal or equitable alternative for adjudication of the claims.

13. Before the trial Court, the defendants relied on *Sait Kesarimal Mulaji v. Sait Nainimal and Ors.* 1975 (2) APLJ 72 (HC), and other decisions laying down similar principles and there can be no dispute about the proposition that the suit for accounts is a special form of suit which remedy has been recognized to be available only in certain types of cases. However, the availability of such a restricted remedy was pointed out by the Apex Court itself to be also available in cases, which may not strictly come within the parameters of the specified categories but where rendition of accounts can be the only relief, which can satisfactorily enable the Court to adjudicate the legal rights of the parties. In that view of the matter and in the light of the evidence produced by the parties before the trial Court and the nature of transactions covered by the claim, it has to be concluded that a suit for rendition of accounts cannot be considered as *ex facie* untenable. Even otherwise, as held in the precedent cited by the learned Counsel for the appellants, the plaintiff cannot be nonsuited as a whole having paid the Court fee for recovery of Rs. 1,93,351/- towards the transport charges and the security deposit and the adjudication of the entitlement of the plaintiff to such sum is in fact what is progressing in the enquiry into the final decree I petition before the trial Court. Bereft of the technicalities, what is happening in effect and substance is only an enquiry into the liability or otherwise of the defendants to pay any amount to the plaintiff under the heads for which the Court fee was paid, which will alone be the subject-matter of enquiry whether the proceedings are called a suit or final decree petition. It is also, therefore, not necessary to interfere with the preliminary decree passed by the trial Court in the interests of justice and in the light of the principles laid down by the Supreme Court. Hence, it is to be concluded that the suit for rendition of accounts is maintainable on the facts and circumstances of this case.

Point No. 2:

14. Though a feeble attempt was made to question the territorial jurisdiction of the trial Court, the learned Counsel for the appellants was not vociferous in

trying to displace the finding of the trial Court about the presence of the territorial jurisdiction for it. When on the admitted facts the agreement was entered into at Visakhapatnam, the offices of the plaintiff and the defendants are located at Visakhapatnam, the transport of oil commenced from Visakhapatnam and the payments were made to the plaintiff at Visakhapatnam, the territorial jurisdiction of the trial Court to try the suit is, therefore, confirmed.

Point No. 3:

15. While the appeal should fail in view of the foregoing discussion, the parties can be directed to bear their own costs in the appeal in view of the peculiar circumstances of the case. However, it has to be made clear that in the light of the principles laid down by the Apex Court in *K.C. Skaria v. Government of State of Kerala and Anr.* (supra), any entitlement of the plaintiff to any sum that may be found due to him from the defendants on rendition of accounts in the final decree proceedings cannot exceed the sum of Rs. 1,93,351/- for which he paid the Court fee.

16. In the result, the appeal is dismissed without costs.