
(2002) 12 AP CK 0030
In the Andhra Pradesh High Court
Case No : Second Appeal No. 312 of 1991

P. Ramachandraiah Chetty	Vs	APPELLANT
The Andhra Pradesh State Electricity Board		RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Electricity Act, 1910 — Section 37

Citation : AIR 2003 AP 338 : (2004) 1 ALD 16

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : A. Rangacharyulu, for the Appellant; K. Ravindra Kumar, S.C. for APSEB, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Heard the learned counsel for the appellant. No representation on behalf of the respondent.

2. The suit was filed on 13-11-1979 for recovery of Rs. 11,802.07 due to the respondent from the appellant. The appellant who proposed to establish a flourmill at Mukkalathur of Chittoor District entered into Ex. A-1 agreement with the respondent-Board for supply of electrical energy to the flourmill to be established by them. Since, Gram Panchayat refused to grant permission to the appellant establishing the flourmill, appellant could not establish and run the flourmill. But as per the terms of Ex. A-1 agreement appellant has to pay U.C.M. charges amounting to Rs. 4635.05 up to the end of May 1971, respondent demanded that amount from the appellant, and appellant paid away that amount on 14-8-1973. Thereafter, on 15-10-1973, respondent gave a notice demanding Rs. 1,334,60 from the appellant as U. C. M. charges for the period subsequent to May 1971, whereupon the appellant requested the respondent to permit him to pay the said amount in five Instalments. Respondent by its letter dated 1-11-1973 granted permission to the appellant to pay the amount in three monthly instalments at Rs. 500/-each. Subsequently, on a request by the

appellant to waive the U. C. M. charges, by its order dated 26-2-1974 respondent waived the U. C. M. charges subject to the appellant paying (i) erection and dismantling charges and (ii) value of depreciation and interest at the bank rate and by its Ex. A-20 proceedings dated 21-7-1974 refunded Rs. 5,133.05 to the appellant and cancelled Ex. A-1 agreement. Thereafter, on 21-10-1976, respondent by Ex. A-15 notice demanded the appellant to pay Rs. 9275/- towards erection and dismantling charges alleging that the amount of Rs. 5,133.05 was refunded mistakenly without deducting the amount, due towards erection and dismantling charges etc., later by Ex. A-16 communication dated 25-10-1976 respondent informed the appellant that he need pay only Rs. 5,892/- but not Rs. 9,275/- towards erection and dismantling charges etc., and followed the demand by another letter dated 27-11-1976 and Ex. B-3 notice dated 17-12-1976 under Ex. B-3 and since the appellant failed to pay the amount so demanded respondent filed the suit for recovery of amount of Rs. 5,892/- together with interest and notice charges etc. Both the courts below decreed the suit. Hence, this second appeal by the defendant.

3. The short point for consideration is whether the suit is in time?

4. Both the courts held that cause of action has arisen on 17-12-1976, when the respondent issued Ex. B-3 notice and so the suit filed on 13-11-1979, within three years from 17-12-1976, as per 113 of the Limitation Act is within time.

5. The contention of the learned counsel for the appellant is that the finding of the courts below that cause of action arose on 17-12-1976 is not correct because on 21-10-1976 respondent demanded Rs. 9,275/- towards erection etc., charges from the appellant and followed it by another notice dated 25-10-1976, as a corrigendum, that the amount of Rs. 9,275/- is a mistake for Rs. 5,892/- and demanded the appellant to pay that amount of Rs. 5,892/- so it cannot be said that respondent is not aware of what the amount due to it from the appellant till 17-12-1976 is and that the courts below did not properly appreciate the ratio in *Mewa Bai v. Deputy Chief Accountant* (1978) 2 APLJ 6 in which it is held that cause of action for the suit for recovery of the amount due to the Board would arise, as per the terms and conditions of supply, only after charges due are estimated and demand notice was sent. In that case the demand notice was sent, on 25-4-1965, granting thirty days time for payment of amount. The defendant in that case failed to pay the amount by 25-5-1965. The suit was filed on 17-3-1968 within the period of three years from 25-5-1965.

6. In this case Ex. A-15 was issued to the appellant on 21-10-1976 demanding him to pay Rs. 9275/- towards proportionate costs towards erection and dismantling etc. charges and was directed to pay the said amount "immediately", and intimated that on his failure to pay the amount demanded service connections to his other premises would be disconnected. Under Ex. A. 16, dated 25-10-1976, respondent demanded the appellant to pay Rs. 5,892/- instead of Rs. 9,725/- demanded under Ex. A. 15. Therefore, it is clear that the respondent was aware, even by 21-10-1976, the correct amount due to it from

the appellant. The said demand was reiterated on 21-10-1976 under Ex. A. 9 and by another letter dated 17-12-1976 under Ex. B.3. Issuance of a fresh notice of demand does not extend the period of limitation, because limitation which started running from the date of cause of action on 25-10-1976, would continue to run from the date. Section 9 of the Limitation Act lays down that when time begins to run it would not stop running because of subsequent disability or inability to institute suit. So even if there was disability on the part of the respondent, subsequent to Exs. A. 15 and 16 notices, in filing the suit, running of the period of limitation, which began on 21-10-1976 does not and did not stop. As per Article 113 of the Limitation Act the period of limitation for filing of suits, which are not otherwise provided for, is three years from the date when the right to sue accrues. In this case the right to sue accrued to the respondent on 25-10-1976 to recover an amount of Rs. 5,892/- from the appellant, if not on 27-10-1976, when a demand for much higher amount was made. So, the respondent ought to have filed the suit within three years from 25-10-1976. The suit admittedly was filed on 13-11-1979 i.e. beyond three years from the date of Ex. A. 16. Therefore, the suit is clearly barred by time and hence is liable to be dismissed on the ground of limitation. In the result the appeal is allowed and the suit O.S. 116 of 1979 on the file of the Principal Senior Civil Judge, Chittoor is dismissed with costs throughout.