
(2014) 09 BOM CK 0017
In the Bombay High Court
Case No : First Appeal No. 243 of 2008

Prateek Alloys Pvt. Ltd.

APPELLANT

Vs

The Chief Electrical Engineer

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Citation : (2014) 09 BOM CK 0017

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : D. Pangam, Advocate for the Appellant; E. Afonso, Government Advocate, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

U.V. Bakre, J.—Heard Mr. Pangam, learned Counsel appearing on behalf of the appellants and Mr. Afonso, learned Government Advocate appearing on behalf of the respondents.

2. This First Appeal is directed against the Judgment and Decree dated 30/04/2008 passed by the learned Ad hoc District Judge- I FTC Panaji (trial Court, for short) in Civil Suit No. 45/2007. The appellants were the plaintiffs and the respondents were the defendants. The suit filed by the plaintiffs was dismissed. Parties shall herein after be referred to as per their status in the said suit.

3. The plaintiffs had filed the suit for recovery, from the defendants, of an amount of Rs. 4,50,000/- along with interest thereon at the rate of 18% per annum with effect from 20.12.2005 till the date of actual payment. The defendants, by communication dated 31.05.2002, had demanded from the plaintiffs the electrical consumption charges for the period 25.03.2002 to 01.04.2002, amounting to Rs. 3,95,161/-, during which period, according to the plaintiffs, they had kept their industrial plant continuously closed with the departmental incoming Gang Operated 3 Air Break switch of installation, open.

The plaintiffs had received the bill for the electrical consumption for the following months and said bills were duly paid. Subsequently, it was found out by the defendants that more rebate was erroneously given for the period from 25.03.2002 to 01/04/2002 during which according to the plaintiffs, their industrial plant was continuously closed. As such, the revised bill was sent to the plaintiffs for a sum of Rs. 3,95,161/-, which was sent on or about 21.05.2002. This additional demand for the period of 7 days during the alleged closure of the industrial plant was disputed and as such representations were made to the State Government and matter was taken at ministerial level. Various such representations were also made by other industrialists, who were also served with similar revised bills. The representations were pending till the year 2007 and ultimately the plaintiffs did not succeed in the representation and, as such, the amount of revised bill was demanded from the plaintiffs. This happened sometime in October, November, 2005. Demand was made from the plaintiffs and under protest, the amount of Rs. 4,50,000/- was deposited with the defendants on 20.12.2005, which included the principal amount of Rs. 3,95,161/-. Thereafter, sometimes in the year 2007, Writ Petition No.287/2007 was filed by the plaintiffs before this Court challenging the said additional revised bill. Said Writ Petition was 4 disposed of by this Court vide order dated 09.07.2007 allowing the plaintiffs to prefer a suit for recovery of the amount paid under the protest. Consequently, Civil Suit No. 45/2007 was filed by the plaintiffs on 08.08.2007.

4. The defendants filed their the written statement, in which preliminary objection that the suit was barred by limitation was taken, amongst other pleas. After going through the pleadings of the parties, following issues were framed by the trial Court. The issues along with the findings given by the trial Court, are as under:

5. Upon consideration of the entire evidence on record, the trial Court dismissed the suit, mainly since the suit was found to be 6 barred by limitation. The said Judgment and decree of the trial Court is impugned in the present appeal.

6. After hearing the rival submissions, it is seen that the factual position has been accepted by both the learned Counsel as to issue nos. 1 and 2 which have been answered in the affirmative and the said findings are not challenged by the defendants. It is also agreed by the learned Counsel for both the parties that only on the finding on issue no.4, i.e. on limitation, the entire suit of the plaintiffs failed inasmuch as the trial Court had held that the suit filed of the plaintiffs was barred by law of limitation. It is thus clear and is ascertained that the answer given only to this issue is required to be scrutinized and it is required to be seen whether the reasoning given by the trial Court, on this issue is just and proper and in accordance with law.

7. For the above purpose, the reasoning given by the trial Court in paragraph no. 15 of the impugned judgment and decree is relevant. During the arguments before the trial Court, it was the submission on behalf of the plaintiffs that the

cause of action for recovery of the amount paid under protest commenced on the day on which the amount was paid i.e. from 20.12.2005. As against this, the trial Court has held that the cause of action for filing the suit accrued in favour of the plaintiffs on 31.05.2002 when the revised bill for Rs. 3,95,161/- was issued to the plaintiffs by the defendants. In fact, this is the date on which the cause of action would start for defendants for the recovery of the said amount and definitely not for the plaintiffs, who had not paid that amount even till 20.12.2005. In the considered opinion of this Court, the entire reasoning given by the trial Court as to period of limitation that it starts from the demand made on 31.05.2002 is erroneous inasmuch what the plaintiffs seek from the Court is recovery of the amount paid under protest and in fact that amount was paid on 20.12.2005. On this aspect, learned Counsel for the defendants submitted that in the initial suit there are no prayers for declaring the demand order, for the revised bills being null and void and in spite of such prayer issue nos.1 and 2 were framed accordingly by the Court. The suit filed by the plaintiffs is for the recovery of the amounts paid under the protest and the entitlement of the plaintiffs revolves around the answer to issue no. 4 which is of limitation and it is erroneously answered in the affirmative in the impugned judgment and decree. In fact, considering the demand by the plaintiffs and even considering the demand raised by the defendants for the additional revised bill amounts. In the considered opinion of this Court definitely the suit filed by the plaintiffs is within the 8 period of limitation and, as such, the answer to issue no. 4 which is framed to the effect: "whether the defendants prove that the suit is barred by law of limitation" is required to be answered in the negative and in that event consequently the issue no. 3 is answered partly in the affirmative to the effect that the plaintiffs have proved their entitlement for the refund of respective amount.

8. Learned Counsel for the defendants submitted that there is a Consumer Grievance Redressal Forum situated at Vasco which has been constituted specially for the purpose of dispute of electricity consumers. He submits that the constitution of such forum has been published in Office Gazette sometime in July, 2012. He further submits that on account of the same, Civil Court has no jurisdiction and the disputes ought to have been decided by the said Forum. In this regard, Mr. Pangam, learned Counsel for the plaintiffs submitted that the dispute in the present matter is of the year 2005 and the suit was filed in the year 2007 and even otherwise there are no pleadings regarding any Redressal Forum, in the written statement. The Consumer Grievance Redressal Forum was not in existence when the present suit was filed and even when it was decided. Hence, there is no merit in the contention raised by the learned Counsel for the defendants, insofar as the jurisdiction of the 9 trial Court, is concerned.

9. What remains to be seen is as to at what rate of interest the plaintiffs are entitled for the said amount paid under protest and as such for this purpose and in order to pass appropriate final order and alter the decree accordingly, the matter is remanded back to the concerned trial Court with the directions that the

answer to issue no. 3 is in the affirmative and answer to issue no.4 is in the negative. Answers to the rest of the issues are maintained except the answer to issue no. 11. Accordingly, the trial Court is directed to answer the issue no. 11 and also ascertain as to at what rate of interest the plaintiffs are entitled to the refund of the amount paid under protest. Decree to be drawn accordingly.

10. Appeal is partly allowed. In the facts of the present appeal there are no orders as to costs. Records and proceedings be sent back to the learned trial Court for passing appropriate directions. Accordingly, the parties to appear before the trial Court on 06/10/2014 at 10.00 a.m.