(1993) 05 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2005 of 1991

Punjab State Electricity Board and Others APPELLANT

Vs

Guru Nanak Ice Factory and Cold Storage RESPONDENT

Date of Decision : 06-05-1993

Acts Referred:
Limitation Act, 1963 — Article 24

Citation : (1993) 104 PLR 293

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Subhash Goel, for the Appellant; M.L. Sarin Hemant Sarin and Ashish Handa, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This is defendants regular second appeal against the judgment and decree of District Judge, Bathinda, whereby the appeal filed against the judgment and decree of the trial Court was dismissed

2. Briefly put, the plaintiff filed suit for recovery of Rs. 1,92.741.19 on the allegations that M/s Guru Nanak Ice Factory and Cold Storage is consumer of electricity since 1976. The firm had been paying electricity bill regularly. It is ''on 27-4-1985'' that the company received a bill for Rs. 96,082/- which was challenged in the Court. In that suit, CT''s installed in the factory premises of the plaintiff were got tested from another laboratory and the same was found to be of 3x100 Amps Accordingly, the bill which was calculated taking CT''s capacity to be of 3x200/5 Amps was quashed It is on this basis the plaintiff claimed refund of the excess amount paid in respect of the bill for the period 4/79 to 7/82 and 3/85 to 3/87, in all a sum of Rs. 1,92,741.19 paise. The plaintiff claimed interest at the rate of 18% per annum.

3. Defendants put in appearance, filed written statement and replied on merits. Besides this, two legal objections were raised i.e. plaint does not discloses a

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cause of action and that the suit is time barred.

4. On the pleadings of the parties, following issues were framed :-

(1) Whether the plaintiff is entitled to recover the disputed amount from the defendants on the grounds alleged in the plaint ? OPP.

(2) Whether the plaintiff is entitled to claim interest, if so at what rate ? OPP.

(3) Whether suit is time barred ? OPD.

(4) Whether plaint does not disclose cause of action ? OPD.

(5) Relief.

5. On the basis of evidence all the issues were decided in favour of the plaintiff and so his suit was decreed by the trial Court.

6. Once again the matter was examined by the lower appellate Court. The lower appellate Court too after referring to the evidence on record came to the conclusion that excess amount had been recovered by the electricity board and thus found no merit in this contention of the learned counsel for the appellants.

7. In addition to this, counsel for the appellants, resisted the claim on the plea of limitation. The appellate Court found no merit and consequently dismissed the appeal vide judgment and decree dated 19.3.1991.

8. Much emphasis has been laid by the learned counsel for the appellants with regard to the conclusion of the Courts below in respect of issue No. 3 According to the counsel, both the Courts have erred in law in deciding this issue against the appellants. Elaborating, the counsel urged that Article 24 of the Limitation Act would govern such like cases and since the suit has been admittedly filed after the expiry of three years the same was per se barred, I find no merit in this contention of the learned counsel for the appellants. In the present case, the plaintiff had been making payments under a mistake. This mistake came to his notice when the meter was tested from another laboratory through the intervention of the Court and on test it was found that the same is of 3 x 200 x 5 Amps Such being the case time would start running when such a mistake has come to the notice of the aggrieved person. In the instant case, soon it came to the notice of the plaintiff; the present suit was instituted on 15 9.1988. Somewhat similar point came up for consideration before the apex Court in case reported as K.S. Venkataraman and Co. Vs. State of Madras, . The apex Court was examining as to whether in a case when recovery of sales tax is effected from the assessee by the government and later on the provisions of the Act have been declared ultra vires, whether refund of such an amount is to be governed under Article 96 of the limitation Act (1908) ? It was held that time would commence running from the date when the mistake became known. Otherwise too, the apex Court has observed in case reported as Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, , that ordinarily such like plea of limitation should not be taken by a government or a

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public authority.

9. No other point has been urged

10. The appeal is thus devoid of any merit and is consequently dismissed. No costs.

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