

(1974) 02 RAJ CK 0030
In the Rajasthan High Court
Case No : First Appeal No. 57 of 1972

Rajasthan State Electricity Board, Jaipur	APPELLANT
Vs	
Rampur Ice Factory Ltd.	RESPONDENT

Date of Decision : 07-02-1974

Acts Referred:

Limitation Act, 1963 — Article 113, 17(1)

Citation : AIR 1974 Raj 192 : (1974) RLW 92 : (1974) 7 WLN 75

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Advocate : H.P. Gupta, for the Appellant; C.R. Bhansali, for the Respondent

Final Decision : Allowed

Judgement

S.N. Modi, J.—Whether the suit is barred by time is the short question involved in this appeal brought by the defendant against the judgment and decree of the Civil Judge, Bikaner, dated 7-12-1971.

2. To appreciate the point arising in this case, it is necessary to state a few relevant facts. The plaintiff-respondent had taken electric power connection for running its ice factory at the rate of annas two per unit from the Former Bikaner State. The plaintiff continued to pay at that rate upto 31-3-1952 even though the Bikaner State had, in the meantime, merged in the State of Rajasthan. By notification dated 14-3-1952 issued under the signature of the Chief Engineer, Electrical and Mechanical Department of the State of Rajasthan, the rate of power supplied was increased from annas two to three per unit in Bikaner. The plaintiff paid for the power consumption at the increased rate from 1-4-1952 to 7-11-1962. The validity of the said notification was challenged in a suit filed by one Murlidhar and it was held by this Court in Civil Second Appeal No. 134 of 1962 decided on 5-2-1968 -- Murlidhar v. State of Rajasthan, that the notification increasing the rate from annas two to three was invalid being unauthorised. The plaintiff then instituted the suit out of which this appeal arises on 25-2-1970 claiming refund of the excess amount of Rs. 12799.19 recovered

from it during the period from 1-4-1952 to 7-11-1962. The plaintiff alleged that the electric charges at the rate of three annas per unit were charged from it under a mistake of law and this mistake came to its knowledge on 5-8-1968 when the plaintiff was informed of the judgment of the High Court dated 5-2-1968 in Murlidhar's case declaring the notification invalid.

3. Under the Indian Limitation Act, 1908, a claim for refund on the ground of mistake was governed by Article 96 and the time commenced to run from the date when the mistake became known to the plaintiff. See *K.S. Venkataraman and Co. Vs. State of Madras*, and *State of Bombay (Now Gujarat) Vs. Jagmohandas and Another*, . In both these cases, it was held by their Lordships of the Supreme Court that Art. 96 applied to a suit for recovery of money paid under a mistake of law. Article 96 has been omitted in the new Limitation Act 1963. It appears that it was found unnecessary to retain Article 96 as the same provision was incorporated in Section 17(1)(c) of the Limitation Act, 1963. The omission of Article 96 in the new Limitation Act has thus not brought any change in the law. Section 17 (1)(c) of the Limitation Act, 1963, provides that in case of the suit for relief from the consequences of a mistake, the period of limitation shall not begin to run unless the plaintiff has discovered the mistake or could with reasonable diligence have discovered it. The plaintiff's suit, in the present case, is governed by Article 113 of the Limitation Act, 1963, which is a residuary Article and it prescribes three years limitation from the date the right to sue accrues. As this Article will have to be read with Section 17 the result would be the same as that provided under Article 96 of the old Limitation Act. It is not disputed before me that limitation for filing the present suit was three years and it commenced to run from the date of knowledge of mistake. The important question that arises, for consideration is therefore as to when can the plaintiff be said to have discovered or acquired knowledge as to the mistake, that it had made payment under mistake of law. In other words, when can the plaintiff be said to have acquired knowledge as to the illegality or invalidity of the notification dated 14-3-1952 under which it had paid or had to pay electric charges at the rate of annas three per unit. The plaintiff in its plaint had put the date of its knowledge to be 5-8-1968, that is, six months after the decision of this Court in Murlidhar's case. The learned Civil Judge has rather assumed the date of the plaintiff's knowledge to be the date when this Court in Murlidhar's case struck down the notification. But that is obviously wrong. The period of three years has to be reckoned from the date of knowledge of the mistake and not from the date of the pronouncement of the judgment striking down the notification. P. W. 1, Chhaganlal, the Managing Director of the plaintiff's company and the person who instituted the suit, nowhere in his statement stated that he acquired the knowledge of the mistake, namely as to the invalidity of the notification dated 14-3-1952 on 5-8-1968 or on the date of the judgment of this Court in Murlidhar's case, that is, 5-2-1968. The burden of proving the suit to be within time lay on the plaintiff. The plaintiff was therefore required to prove that it acquired the knowledge of the mistake within three years prior to the date of

the institution of the suit. The plaintiff completely failed to discharge this burden. On the contrary, P. W. 1 Chhaganlal in his statement in clear terms deposed that he had known in 1952 that the recovery of electric charges at the rate of annas three per unit was illegal. He further added that he did not protest against the illegal recovery because he was afraid that he electric connection of his factory might be disconnected. The above statement of the Managing Director who instituted the suit clearly shows that the plaintiff had the know-edge of the mistake in the year 1952. The learned Civil Judge has not at all considered the above statement of P. W. 1, Chhaganlal. If he had carefully read the statement of P. W. 1, he would not have assumed the knowledge of the mistake on the date of the judgment of this Court in Murlidhar's case. In my opinion, the learned Civil Judge was clearly wrong in holding that the suit instituted by the plaintiff was within time.

4. The appeal is therefore allowed, the judgment and decree of the Court below are set aside and the plaintiffs suit is dismissed. Having regard to the circumstances of the case, the parties are left to bear their own costs throughout.