

(2010) 12 CHH CK 0016
In the Chhattisgarh High Court
Case No : F.A. No. 128 of 1992

Ramesh Chandra and Brothers (M/s)	Vs	APPELLANT
Durga Oil Mills and Others (M/s)		RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3, Order 1 Rule 9, 96
Limitation Act, 1963 — Article 11, 31, 55, 80

Citation : (2011) 2 MPJR 122

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—By this first appeal u/s 96 of the Code of Civil Procedure, 1908 (for short "Code"), appellant has challenged legality and propriety of the judgment and decree 3.2.1992 passed by Second Additional District Judge Raigarh in Civil Suit No. 58/83 whereby learned Additional District Judge has dismissed claim of Rs. 89212.50 along with interest.

2. As per plaint allegation, plaintiff a registered partnership firm carries business as general merchants, commission agents and manufacturers and used to purchase and sell oil cake on their behalf and on behalf of their constituents. One partner Ramesh Chandra Dhanji Somaiyya is authorized to sign and verified the plaint. Defendant No. 1 M/s Durga Oil Mills, Raigarh carries business of manufacturing of edible oils. On 7.12.1992, respondent No. 1 agreed to sell to plaintiff falli oil cake + sengdana oil cake. Procedure for delivery was Raigarh Bilty Cut. Consign was required to despatch to BPTG Grain Depot. Same was despatched vide R.R.Nos.881070, 881071 and 881074 dated 10.12.1972 and 12.12.1972 from Kotharaliya to Vikhroli. Defendant No. 1 has drawn hundi dated 13.12.1972 in respect of aforesaid goods for Rs. 18,200/- from plaintiff. On 14.12.1972, again defendant No. 1 entered into contract for selling falli cake, same was also despatched vide R.R. Nos.881080, 881081 and 881082 dated

13.12.1972 from Kothrliya to Vikhroli. Plaintiff has also paid Rs. 20,100/- to defendant No. 1.

3. Defendant No. 2 also carries business of oil cake along with other business, defendant No. 2 also entered into contract with plaintiff on 8.12.1972 and sold oil cake. Plaintiff paid Rs. 24,187.50 to defendant No. 2. Plaintiff despatched the consign through railway by R.R. to endorsee i.e. to M/s BPTG and Godrej Boyce, Bombay and goods were required to be delivered as per contract with plaintiff. Goods were not delivered in time, then plaintiff served notice upon Union of India defendant No. 3. Then plaintiff came to know that goods were detained at Raigarh by order of the Collector, Raigarh and goods were unloaded on platform of Raigarh Railway Station. Police Officer gave goods in Supurdnama on 30.5.1973 to Dulichand Ramkuwar Agrawal for defendant No. 2, Jagdishprasad Keshavprasad Sharma and Satyanarayan for defendant No. 1. Goods were detained by the State of Madhya Pradesh on the basis of Government Notification dated 23.12.1972 and 25.12.1972, but ban was lifted on 15.4.1973. On the aforesaid basis, plaintiff has filed suit for recovery of aforesaid amount which he has paid to defendants No. 1 and 2 along with interest.

4. By filing separate written statement, respondent/defendant No. 1 has admitted the contract, but denied the other allegations. Defendant No. 1 has further alleged that suit is not maintainable on the ground of misjoinder of party and cause of action. By filing written statement Railway defendant No. 3 through Union of India has denied adverse allegation made in the plaint, they have only admitted booking of goods through railway receipts, detention of goods by order of the Collector and unloading of goods at Raigarh Railway Station. Defendant No. 3 has further earned that plaintiff is not having any cause of action against defendant No. 3 and suit is not maintainable in the light of misjoinder of party and cause of action. By filing written statement, respondent/defendant No. 4 State Government has admitted issuance of notification and has denied other adverse allegation except detention of goods which was in violation of said notification. Defendant No. 2 has not filed any written statement and Court has proceeded ex-parte against respondent / defendant No. 2. After providing an opportunity of hearing to the parties, learned Second Additional District Judge has dismissed the suit on the ground of limitation, misjoinder of parties and cause of action.

5. I have heard learned counsel for the parties, perused the judgement and decree impugned and record of the trial Court.

6. Learned counsel for appellant vehemently argued that as per admitted claim of the parties, plaintiff has purchased oil cake from respondents/ defendants No. 1 and 2 and same were consigned to railway department vide railway receipts. Plaintiff has paid the amount to respondents/defendants No. 1 and 2. Railway receipts were endorsed in the name of Godrej Boyce and goods were required to deliver to Godrej Boyce but same has not been reached to the destination. When plaintiff inquired the matter, then he came to know that goods were unloaded at

the instance of respondent/defendant No. 4 on the ground of ban created by State Government vide its Notification and same has given in supurdnama to respondents No. 1 and 2 through its authority. Suit is not hit by the provisions of misjoinder of parties and cause of action. As per Order 1 and 2 of Rule 3 and 9 of the CPC, plaintiff has claimed similar relief against defendant No. 1 and 2, they are necessary party for recovery of money against them, therefore, suit was not time barred on the ground of misjoinder of party and cause of action. Learned counsel further argued that suit was not barred by limitation. As per Article 11 of the Limitation Act, 1963, limitation of filing suit for compensation for non-delivery is three years when the goods ought to be delivered, therefore, suit against carrier i.e. railway was not time barred.

7. Learned counsel placed reliance in the matter of *Bootamal Vs. Union of India (UOI)*, in which the Supreme Court while interpreting the word "when the goods ought to be delivered" in Article 31 of the Limitation Act has held that when the goods ought to be delivered means reasonable time for delivery of goods. Learned counsel further placed reliance in the matter of *Bhagwan Dass Rama Shanker (Dead) Through Lrs. Vs. Union of India (UOI) and Others*, in which the Supreme Court while interpreting the word "when the goods ought to be delivered" relating to Article 31 of the Limitation Act, 1908 has held that in the absence of a contract, express or implied, between consignor/consignee and the carrier the normal time of delivery of goods will have to be determined having regard to the nature of the carrier, distance and other relevant factors.

8. Mr. Ashish Surana, Counsel for respondent No. 1 and Mr. Rakesh Kumar Jha, learned Deputy Government Advocate for respondent No. 4 opposed the appeal and argued that Article 11 of the Limitation Act, 1963 was only applicable in case of suit against carrier, but in case of suit against person for claiming damages or compensation or on account of breach of contract, Article 55 of Limitation Act, 1963 will come into play which provides three years limitation from the date when a contract is broken.

9. Learned counsel for respondent No. 4 further argued that present respondent No. 4 has made respondent/defendant on the ground that goods were wrongfully seized, in these circumstances, for respondent No. 4, Article 80 of the Limitation Act will be applicable which provides limitation of one year from the date of seizure.

10. As per plaint allegation, documents and evidence, plaintiff has entered into contract with separate and independent firm and company on different dates. Only similarity in both the contracts were that goods were required to send through respondent No. 4 and was required to deliver M/s Raj Trading Company and finally Godrej Sharp, Bombay. As per plaint allegation, goods were despatched but same were afterwards unloaded at the instance of the Collector, Raigarh on the ground of issuance of Notification No. 710 (sic)2993-[1] 72 dated 4.7.72 Amendment Notification 10706-5-(1)72, dated 30.11.72 i.e., at that time, said notification was in force and plaintiff or its endorsee were not competent to

transport aforesaid fodder from undivided State of Madhya Pradesh to the State of Maharashtra, therefore, goods were unloaded and finally it was given in supurdnama.

11. This is not a case in which any right to relief was arose out of same act of transaction or series of act of transaction against defendants No. 1 and 2 but act or act of series relating to defendants No. 1 and 2 was different, inter alia, for the act of defendant No. 2, defendant No. 1 was not liable and for the act of defendant No. 1, defendant No. 2 was not liable.

12. As per plaint allegation and evidence of Ramesh Dhaneje Bhai Somaiya (PW-1), all railway receipts were endorsed in the name of M/s Raj Trading Company and M/s Raj Trading Company endorsed the same in the name of Gojraj Sharp, Bombay. Gojraj Sharp, Bombay was required to receive the goods on its behalf, but not on behalf of plaintiff.

13. In the present case, Gojraj Sharp, Bombay was endorsee and goods were required to deliver to it for its own and on behalf of plaintiff. In case of non-delivery of goods, Gojraj Sharp, Bombay was the only person to claim damages and money but present plaintiff was not competent to file suit after making endorsement in favour of Gojraj Sharp Company.

14. Virtually, this is a suit of non-joinder of necessary party. In these circumstances suit filed on behalf of plaintiff was not maintainable against any of the defendants. Likewise suit against defendants No. 1 and 2 was suffering from misjoinder of party and cause of action. Same was also not maintainable in the light of misjoinder of party and cause of action. Plaintiff was having no cause of action to file suit against defendants. In case of suit for damages against respondent/defendant No. 3 Railway i.e., carrier in accordance with the provisions of Article 11 of the Limitation Act, 1963, limitation was three years when the goods ought to be delivered but in case of suit against defendants No. 1 and 2, limitation was three years under Article 55 of the Limitation Act, 1963 from the date when contract was broken and in relation to respondent No. 4 as per Article 80 of the Limitation Act, suit for compensation for wrongful seizure, limitation was one year from the date of seizure. Limitation was available to the person entitled to sue having interest over the property. But in the present case, after making endorsement in favour of third party, claim and interest admittedly passes in favour of third party and present appellant was not having any claim or interest or right to file suit against any of respondents for recovery of money. Suit was also barred by limitation relating to defendants No. 1, 2 and 4.

15. As relates to respondent/defendant No. 3, goods were despatched on 8.12.1972 by railway, but plaintiff has filed suit on 14.6.1976 after three years and more than five months. As per para 5 of notice Ex. P/5, on account of ban, goods were seized and unloaded in the last week of December, 1972. Notice Ex. P/5 was sent on behalf of Raj Trading Company, Bombay endorsee of railway receipts and also on behalf of plaintiff. As per para 5 of notice Ex. P/2, goods

were seized in the last week of December, 1972 on account of ban created under Notification No. 7101-2993-[1] 72 dated 4.7.72 Amendment Notification 10706-5-(1)72, dated 30.11.72, then delivery of goods to anyone was not possible and as per Article 11 of the Limitation Act, 1963, cause of action arose in the last week of December, 1972, but plaintiff has filed suit on 14.6.2006 which was hopelessly time barred.

16. On the ground of misjoinder of party and cause of action, virtually non-joinder of necessary party, suit not filed by the person entitled for any claim and ground of limitation, trial court has dismissed the suit. While dismissing the suit on the ground of non-joinder of necessary party, misjoinder of party and cause of action and on the ground of limitation, trial Court has not committed any illegality

17. I do not find any merit in the appeal. Consequently, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed. Parties shall bear their own costs.

18. Advocate fee as per schedule.

19. Decree be drawn accordingly.