(2023) 02 CHH CK 0034

In the Chhattisgarh High Court

Case No : First Appeal No. 88 Of 2019

Ramesh Kumar Bansal APPELLANT

Vs

Director, State Academic Research And Training RESPONDENT

Date of Decision : 14-02-2023

Acts Referred:

Limitation Act, 1963 — Article 24
Limitation Act, 1963 — Section 21
Indian Contract Act, 1872 — Section 70

Citation : (2023) 02 CHH CK 0034

Hon'ble Judges : Goutam Bhaduri, J;N.K. Chandravanshi, J

Bench : Division Bench

Advocate : Manoj Paranjpe, Sanjay Pathak, Rahul Mishra

Final Decision : Dismissed

Judgement

N.K. Chandravanshi, J

1. Challenge in this appeal is to the judgment and decree dated 26-11-2018 passed by the 3rd Upper District Judge, Ambikapur in Civil Suit No. B-16/2011 whereby the civil suit preferred by the appellant/plaintiff for recovery of amount of Rs. 20,84,438/- from respondents/defendants has been dismissed.

(Hereinafter parties shall be referred to as per their description before the trial Court.)

2. Brief facts of the case are that plaintiff filed a suit for recovery of amount of Rs. 20,84,438/- against the defendants on the ground interalia that pursuant to supply order dated 25-8-2008 issued by defendant No. 1 for supply of tin boxes, he had supplied 2162 tin boxes and submitted Invoice No. 58 dated 16-12-2008 to the tune of Rs. 20,84,438/-. Defendant No. 1 had assured that payment of the due amount will be made, but despite repeated requests, payment has not been made. Then notices to the defendant dated 18-1-2010, 24-6-2010 and further dated 19-11-2009, 18-1-2010 and 23-1-2010 were sent, but despite several

notices, the amount has not been paid. It is further stated that defendant No. 3 by playing fraud and in collusion with defendants No. 1 and 2, has obtained amount of Rs.20,76,280/- and by preparing forged letter pad, receipt was given to the defendant No. 1 on 17-2-2009. It is further stated that defendant No. 3 has opened a new bank account in the name of firm of plaintiff in the Union Bank of India, Branch Deviganj Road, Ambikapur and fraudulently has withdrawn the aforesaid amount. Defendant No. 3 was not entitled to receive any amount on behalf of proprietorship firm namely Sharan Steel Fabrication Industries, Ambikapur, despite that, defendants No. 1 and 2 had paid the amount to him, without any consent of plaintiff and without any verification in respect of his entitlement. It is further averred that the supply order was issued in the name of plaintiff firm and the invoices of the material supplied were submitted before the authorities by the proprietor of the plaintiff's firm. Despite that, amount was paid to defendant No. 3 who is not party to the contract. Accordingly, the civil suit was filed for recovery of amount to the tune of Rs. 20,84,438/-.

3. Defendant No. 1 and 2 filed joint written statement in which they denied the allegations made in the plaint. It was alleged by the defendants No. 1 and 2 that out of 5394 nos. of Tin boxes, only 5103 Tin boxes were supplied, against which amount of Rs. 15,65,409/- and Rs. 12,74,896/- after deducting TDS amount, has already been paid to the plaintiff, vide cheque No. 474395 and 474503 respectively. Further amount of Rs. 20,46,270/- was paid to the plaintiff vide cheque No. 474504 after deducting TDS and the receipt of aforesaid cheques have been issued by the plaintiff. Thus, all the amount has been paid to plaintiff. Despite that, he has filed present suit, whereas no amount has been left to be paid to him.

4. Defendant No. 3 has filed separate written statement in which he denied allegations made against him in the plaint. He has averred that he is engaged in the business of wooden furniture and steel fabrication. He and his elder brother are having very good business relation with plaintiff since 10 – 15 years. The plaintiff showed his inability to supply Tin boxes and sought help from him, therefore, plaintiff requested his brother for manufacturing of Tin boxes. Since they were having prior business relation, hence they manufactured 2162 Tin boxes and supply was made in various places of Raigarh and Janjgir district as per direction of plaintiff. The Invoice dated 16-12-2008 produced by the plaintiff towards supply made of 2162 Tin boxes is a forged document as till such date, total number of 2162 Tin boxes were not supplied and even after 16-12-2008 large quantity of Tin boxes were fabricated and supplied by defendant No. 3 on his own expenses, as per direction of plaintiff, despite that, plaintiff by submitting forged document obtained amount of Rs. 20,84,438/- which was given to defendant No. 3 after being satisfied to his work that he will supply remaining Tin boxes which was done by defendant No. 3. It is further stated that account in the name of "M/s. Sharan, proprietor Navin Kumar Gupta" was opened in Union Bank of India, Branch Ambikapur at the instance of plaintiff so that, the amount against supply of goods (Tin boxes) could be made to him and

thereafter plaintiff himself received cheque No. 474504 to the tune of Rs. 20,98,438/- (as per record, amount of Cheque No. 474504 is Rs. 20,46,270/-) and he himself deposited that cheque in the account of defendant No. 3. Thus, plaintiff himself has received all three cheques and amount shown in those cheques, as has been stated by defendant No. 1 and 2. It is further stated that amount was paid by plaintiff to defendant No. 3 on 19-2-2009, despite that, initially he was not arrayed as defendant in the suit and he was arrayed as defendant after more than 3 years, hence the suit is barred by limitation against him. Therefore, the plaintiff is not entitled to receive any amount as sought for by him from defendants.

5. Learned trial Court after framing issues recorded the evidence of both the parties and vide impugned judgment and decree dated 26-11-2018 dismissed the suit of plaintiff holding therein that plaintiff has received all the amount from defendant No. 1 by three cheques and he himself deposited the cheque of Rs. 20,84,438/- in the account of defendant No. 3 which he withdrawn, hence he is not entitled to receive any amount from defendants. It is further held that suit of plaintiff is barred by limitation against defendant No. 3. Being aggrieved, plaintiff has challenged legality and propriety of the impugned judgment by filing instant application.

6. Learned counsel for the appellant/plaintiff would submit that supply order was issued by defendant No. 1 in favour of plaintiff. Defendant No. 3 was not a party to the contract. Hence, as per terms and conditions of supply order, defendant No. 1 under the contractual obligations was bound to pay the amount to the plaintiff for supply of Tin boxes, but without any consent or authority of plaintiff, amount was paid to the defendant No. 3 vide cheque No. 474504 dated 17-2-2009. It is further submitted that receipt Ex. D-2 was not issued by the plaintiff in respect of aforesaid cheque/amount and the said receipt is forged which does not contain signature of the plaintiff. It is next submitted that alleged cheque No. 474504 dated 17-2-2009 of Rs. 20,84,438/-(as per record, amount of Cheque No. 474504 is Rs. 20,46,270/-) was issued in the name of M/s. Sharan, proprietor Navin Kumar Gupta and the same was encashed by defendant No. 3 whereas name of firm of plaintiff is Sharan Steel Fabrication Industries, Ambikapur, which shows that respondent No. 3 not only fraudulently received the aforesaid cheque and given false and fabricated receipt Ex. D-2 in forged letter head of plaintiff, he also opened bank account in the name of firm of plaintiff in Union Bank of India, Deviganj Road branch, Ambikapur. Further, defendants have failed to show and prove in evidence that plaintiff has authorized defendant No. 3 to receive the amount, despite that, learned trial Court failed to appreciate such fact, evidence adduced by the defendant No. 3 in respect of payment of subject amount is without any pleading as he has not pleaded that amount was deposited by the plaintiff in his account through RTGS. This fact has also not been proved by adducing any evidence by defendant. It is further submitted that findings recorded by learned trial Court are completely perverse and without any evidence. Since during pendency of suit, it came to the knowledge of plaintiff

that subject amount has been paid to defendant No. 3 by defendant No. 1, thereafter, vide Court order dated 10-1-2013, he made defendant No. 3 a party. Hence, finding of learned trial Court that the suit was filed beyond limitation against defendant No. 3 is also against the law. Hence, it is prayed that appeal may be allowed and decree may be passed in favour of the plaintiff.

7. Per contra, learned counsel for the defendants No. 1 and 2 submits that all the amount was paid to the plaintiff vide 3 cheques, in this regard, he has issued receipts Ex. D-1 and D-2, out of which receipt Ex. D-2 is issued by him for 2 cheques. It is further submitted that earlier one cheque bearing No. 474500 dated 17-2-2009 to the tune of Rs. 33,21,166/- was prepared after deduction of TDS Rs. 61948/-, subsequently after request made by plaintiff, aforesaid cheque No. 474500 was cancelled and 2 cheques bearing No. 474503 dated 17-2-2009 and cheque No. 474504 dated 17-2-2009 of Rs. 12,74,896/-and Rs. 20,46,270/- respectively were issued. Cheque of Rs. 20,46,270/- was issued in the name of M/s. Sharan Ambikapur because plaintiff has stated that the bank account is in the name of Sharan Ambikapur, all these facts have been taken in the note sheet of the department which has been proved in the case. Thus, there is no amount left to be paid by defendant No. 1 and 2 to the plaintiff.

8. Learned counsel for the defendant No. 3 would submit that plaintiff and defendant No. 3 are having good business relation 10 – 15 years prior to filing of this suit. Plaintiff showed his inability to supply Tin boxes hence on being request made by him, defendant No. 3 supplied 2169 Tin boxes in various places of Raigarh and Korba districts as per instruction of plaintiff. It is further submitted that plaintiff himself opened the bank account of defendant No. 3 in Union Bank of India, Ambikapur in the name of M/s. Sharan, proprietor Navin Kumar Gupta and after receiving cheque 474504 dated 17-2-2009 of Rs. 20,98,438/- (as per record, amount of Cheque No. 474504 is Rs. 20,46,270/-), plaintiff himself deposited said cheque in account of defendant No. 3 against aforesaid Tin boxes supplied by him, despite that earlier defendant No. 3 was not arrayed as party in the suit. Thus, the amount was given by plaintiff himself to defendant No. 3 and knowing fully well he arrayed him (defendant No. 3) as party after 3 years, which is barred by limitation against defendant No. 3. It is lastly submitted that, the impugned judgment passed by the learned trial Court is well merited, it does not call for any interference by this Court.

9. We have heard learned counsel for the parties, perused the impugned judgment, record of the trial Court and material available on record.

10. Perusal of the pleading and evidence of both the parties, specifically shows that work order was issued in favour of the plaintiff by defendant No. 1 for supply of Tin boxes which he had supplied. It has also been admitted by plaintiff in his cross-examination that against supply of Tin boxes made by him, he received amount of Rs. 15,65,409/- and Rs, 12,74,896/- vide cheque No. 474395 and 474503 respectively.

11. In-charge officer of the case P.S. Samund (D.W. 1) has stated in his deposition on the basis of document vide note sheet Ex. D-11-C and receipt Ex. D-2 that amount of Rs. 20,46,270/- was paid to the plaintiff vide cheque No. 474504, after deduction of TDS, but plaintiff has denied this fact and claimed aforesaid amount by filing instant suit.

12. Perusal of note sheet Ex. D-11-C, cheque issue register Ex. D-12-C and receipt of 2 cheques Ex. D-2, which has been proved by PS Samund (D.W. 1) shows that earlier cheque No. 474500 dated 17-2-2009 for Rs. 33,21,166/- were prepared after deduction of TDS against invoice No. 19 dated 18-11-2008 and invoice No. 50 dated 16-12-2008 (in plea and statement, plaintiff has stated number of subject invoice to be No. 58 dated 16-12-2008 but he has not filed any invoice bearing No. 58 dated 16-12-2008, rather he has filed photocopy of invoice No. 50 dated 16-12-2008). Note sheet further shows that as per discussion with plaintiff, aforesaid cheque No. 474500 was cancelled and 2 cheques bearing No. 474503 and 474504 both dated 17-2-2009 were prepared in the name of Sharan Ambikapur because as plaintiff had told that bank account is in the name of Sharan Ambikapur and, therefore, he gave receipt Ex. D-2 of both the cheques.

13. Plaintiff Ramesh Kumar Bansal (P.W. 1) has admitted in his cross-examination that Ex. D-2 is letter pad of his firm. He has also admitted in his cross-examination that in respect of 3 cheques he has received TDS certificate before filing of present suit but he has not proved any document in respect of any objection raised by him in respect of TDS certificate of subject cheque No. 474504 of amount of Rs. 20,46,270/-.

14. It has been informed by the Union Bank/ State Bank vide Ex. D-8-C, Ex. D-9 and Ex. D-10 that subject cheque No. 474504 dated 17-2-2009 of Rs. 20,46,270/- was deposited in the account of M/s. Sharan, proprietor Navin Kumar Gupta and encashed on 19-2-2009 which has also been admitted by his brother Sanjeev Kumar Gupta (P.W. 6). In this regard, Sanjeev Kumar Gupta (D.W. 6) has deposed that since plaintiff showed his inability to supply Tin boxes to defendant No. 1 and sought help from his brother defendant No. 3, therefore, they manufactured 2162 Tin boxes and supplied them in various places of Korba and Raigarh districts as per instruction of plaintiff. He has denied the suggestion taken by learned counsel for the plaintiff that they have not supplied the tin boxes, taking of this positive suggestion by plaintiff’s counsel itself show truthfulness of aforesaid statement of this witness. He has further deposed that since plaintiff himself had opened bank account of defendant no. 3, in the Union Bank of India, Deviganj Road branch, Ambikapur in the name of M/s. Sharan, proprietor Navin Kumar Gupta and thereafter plaintiff himself deposited subject cheque of Rs. 20,46,270/- in that account which was encashed by defendant No. 3 on 19-2-2009.

15. Ex. D-18-C stock register of Block Education Office, Dharamjaigarh, Distt. Raigarh, Ex. D-19-C challan of Pankaj Furniture Mart (firm of defendant No. 3

and his brothers) of supply of 215 nos. tin boxes which is verified by the Block Education Officer, Dharamjaigarh, contents of Ex. D-20-C and Ex. D-29 certificate issued by the Block Education Officer, Sarangarh proves truthfulness of the statement of Sanjeev Kumar Gupta (D.W. 6), who runs business in the name of Pankaj Furniture Mart and also does fabrication work, that at the instance of plaintiff, they had supplied 2162 Tin boxes to defendant No. 1, therefore, plaintiff, after receiving subject cheque No. 474504 from defendant No. 1 in name of Sharan Ambikapur, he himself deposited it in the account of respondent No. 3. Statement of plaintiff that he has not received cheque No. 474504 dated 17-2-2009 of Rs. 20,46,270/- is not reliable due to following facts :-

A. As per note sheet D-11-C, and cheque issue register Ex. D-12-C, 2 cheques bearing No. 474503 and 474504 both dated 17-2-2009 were issued at the behest of plaintiff in the name of Sharan Ambikapur. Plaintiff Ramesh Kumar Bansal has admitted receipt of cheque 474503 of Rs. 12,74,896/- but he denied receipt of subject cheque. Ex. D-1 is receipt of another cheque No. 474395 of Rs. 15,65,409/- therefore if he would have received only one cheque No. 474503 of Rs. 12,74,896/- then he would have issued receipt of only one cheque, but he has not filed/proved any separate receipt of aforesaid single cheque.

B. Plaintiff Ramesh Kumar Bansal (P.W. 1) has admitted that Ex. D-2 is a letter pad of his firm.

C. If receipt Ex. D-2 would have been false & fabricated and issued fraudulently by defendant No. 3 and bank account in the name of Sharan proprietor Navin Kumar Gupta would have been opened fraudulently in the name of his firm i.e. Sharan, in which subject cheque was encashed with connivance of other defendants, then plaintiff would have lodged FIR against defendants but he has not taken any criminal action against him/them.

D. Evidence available on record proves that on the basis of prior business relation between plaintiff and defendant No. 3, on request made by plaintiff, defendant No. 3 had supplied Tin boxes at various places which is proved vide Ex. D-18-C, D-19-C, D-20-C.

E. Article A-1 is photocopy of challan of plaintiff’s firm which is filed by him and Ex. D-20-C is photocopy of that challan, but perusal of content of both the documents shows that Article A-1 has been got photo copied concealing some words “?? ???? ???". This fact shows that plaintiff has not come before the Court with clean hands.

F. It has been proved by defendant No. 3 by adducing oral and documentary evidence that on being help sought for by the plaintiff, defendant No. 3 had supplied Tin boxes as per his instruction, despite that nothing has been pleaded in the suit by the plaintiff, in this regard, rather he has put allegation of fraud against respondent No. 3 but he has not taken any criminal action against him.

G. As per pleading and deposition of plaintiff Ramesh Kumar Bansal (P.W. 1), he has deposited Invoice No. 58 dated 16-12-2008 of Tin boxes of 2162 nos. in the office of defendant No. 1, but he has stated in his cross-examination that number of said invoice is 50. He has filed photocopy of Invoice No. 50 along with his plaint but it has not been exhibited. Defendant No. 1 has filed and proved Invoice No. 50 which has been marked as Ex. D-13. Content of Ex. D-13 and photocopy of Invoice No. 50 filed by plaintiff are not similar, meaning thereby, they are not photocopy of same document, which shows some foul play between plaintiff and defendant No. 1.

H. Sanjeev Kumar Gupta (D.W. 6) who is brother of defendant No. 3 has stated that prior to instant case, they have very good relation with plaintiff, despite that, plaintiff Ramesh Kumar Bansal initially in his cross-examination has stated that he does not know Navin Kumar Gupta (Defendant No. 3) but subsequently in his cross-examination he admitted that he knows him since his childhood, thus concealing material facts by plaintiff shows that he has not come before the Court with clean hands.

16. Thus, perusal of oral and documentary evidence proves the facts on the basis of preponderance of probabilities that on being request made by plaintiff, defendant No. 3 manufactured and supplied Tin boxes. Although any written document in this regard issued by plaintiff in favour of defendant No. 3 has not been filed, but various documents i.e. Ex. D-18-C, D-19-C and Ex. D-20-C proves statement of Sanjeev Kumar Gupta (D.W. 6) that they have manufactured and supplied Tin boxes at various places as per instruction of plaintiff, therefore, not proving any authorization issued by plaintiff in favour of defendant No. 3 could not be a ground to discard his statement. It is also found proved from evidence that plaintiff himself had received subject cheque No. 474504 of Rs. 20,46,270/- along with cheque No. 474503 of Rs. 12,74,896/- and he himself had issued receipt Ex. D-2 in this regard. Thereafter he deposited the cheque in account of firm of defendant No. 3 i.e. M/s. Sharan Ambikapur, which has been withdrawn by defendant No. 3.

17. Section 70 of the Indian Contract Act provides as follows :-

“70. Obligation of person enjoying benefit of non-gratuitous act- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

18. Aforesaid provision completely applies in the instant case because it has been found that at the behest of plaintiff, defendant No. 3 manufactured Tin boxes and supplied in various places as per direction of the plaintiff, admittedly the work order was issued by defendant no. 1 to plaintiff, defendant No. 3 accepting oral request of plaintiff has supplied Tin boxes, thus, he had done work for the plaintiff, thus in view of aforesaid provision, plaintiff enjoyed the benefit thereof. Hence, the plaintiff is bound to compensate the defendant No. 3 against

the work done by him. Otherwise also in the instant case, it has been proved that subject cheque was received by plaintiff himself along with other cheque and he himself has given receipt Ex. D-2 in this regard. It has also been proved that he himself deposited subject cheque in the account of firm of defendant No. 3, i.e. M/s. Sharan, which plaintiff himself had opened in the name of defendant No. 3, and therefore, on being request made by plaintiff, defendant No. 1 issued both the cheques in the name of Sharan Ambikapur. Hence, learned trial Court has not committed any mistake in holding that plaintiff is not entitled to receive any amount from defendants.

19. Since subject cheque dated 17-2-2009 was received by plaintiff himself and deposited the same in the account of defendant No. 3, which he encashed on 19-2-2009, as per the information supplied by Union Bank of India (vide Ex. D-9), where the cheque was encashed, therefore, as per Article 24 of the Limitation Act, plaintiff ought to have filed suit against defendant No. 3 within 3 years from 19-2-2009. But plaintiff despite knowing all the facts did not implead defendant No. 3 in the suit and he was impleaded in the suit on 10-1-2013 i.e. after order of the Court which is after more than 3 years from 19-2-2009, hence learned trial Court considering the provisions of Section 21 of the Limitation Act, 1963 rightly held that the instant suit in respect of defendant No. 3 is also barred by limitation.

20. In view of above discussion, we do not find any merit in the instant appeal. The same is accordingly dismissed.

21. A decree be drawn accordingly.

