
(1961) 01 PAT CK 0005
In the Patna High Court
Case No : A.F.A.D. No. 836 of 1958

Ramlal Mistry and Others

APPELLANT

Vs

Commissioners of Tekari Municipality

RESPONDENT

Date of Decision : 05-01-1961

Acts Referred:

Limitation Act, 1908 — Article 115, 52, 56, 19

Citation : AIR 1961 Patna 485

Hon'ble Judges : R.K. Choudhary, J

Bench : Single Bench

Advocate : Satyendra Prosad Jamuar, for the Appellant; Awadh Kishore Prasad, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Choudhary, J.—This is an appeal by the heirs of the sole plaintiff Chamari Misery, who during the pendency of the appeal in the lower appellate Court and whose suit for recovery of Rs. 1,552/13/- on account of price of goods supplied to the defendant municipality and for works done by him for the defendant has been dismissed.

2. The plaintiff was a professional contractor, and his case was that he was given several contracts for doing a number of works for the defendant Municipality at different rates and for different amounts. In course of the works, done, in pursuance of above contract, the plaintiff's dues amounted to Rs. 1,335/2/- which were not paid to him, and therefore, he instituted, the suit for recovery of the same together with interest and cost of notices, and the total claim came to Rs. 1,552/13/- as stated above. In the plaint, he has given a list of the different items of work with specific amount of labour charge for each item and the different materials, supplied by him with specific cost for each of them, and the total number of all these items is 30. Item Nos. 1 to 17, 20, 24, and 25, are the different items of work done by the plaintiff for the defendant. Items Nos. 18, 19, 21, 22, 23, 26, 27, 28, 29 and 30 contain the list of different materials

supplied by the plaintiffs to the defendants.

3. The defendant Municipality contested the suit mainly on the ground that the claim of the plaintiff was barred by limitation. There were other pleas also taken but it is not necessary to refer to them because the present appeal will have to be dismissed on the ground of limitation alone.

4. The trial Court, overruled the contention of limitation raised in defence, and also disallowed the claim of the plaintiff for interest. After giving a set off of a certain amount of money proved to have been advanced to the plaintiff by the defendants the trial court gave a decree to the plaintiff for a sum of Rs. 1,017/2/-. On appeal by the defendant Municipality however, the appellate court held that the suit was barred by limitation and therefore, dismissed the entire suit

5. The claim of the plaintiff may be grouped in three classes, namely, (i) relating to items 13 to 17 and 19 to 30 mentioned at the foot of the plaint, the total amount of which comes to Rs. 835/4/- (ii) relating to items 1 to 12, the total amount of which comes to Rs. 205/14/- and (iii) relating to item No. 18 amounting to Rs. 94/-.

6. With respect to the last class namely, item No. 18, the finding of the lower appellate Court is that this claim has not been established and the claim of the plaintiff with respect to this item has been dismissed on merit. In this appeal, no argument could be advanced with respect to this item as the question relating to this item was concluded by finding of fact.

7. With respect to the items relating to supply of materials, the court of appeal below has applied Article 52 of the Limitation Act, which provides three years" period of limitation for a suit to recover the price of goods sold and delivered, where no fixed period of credit is agreed upon, from the date of the delivery of the goods.

In this case, on the finding of the lower appellate court, there was no fixed period of credit agreed upon. With respect to the items relating to the Works done by the plaintiff for the defendant, the lower appellate court applied Article 56 of the Limitation Act, which prescribes three years period of limitation for a suit to recover for the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment, from the date when the work is done. With respect to these items also, the finding of the lower appellate court is that no time had been fixed for the payment.

Applying these two articles, the lower appellate Court held all the claims put forward on behalf of the plaintiff to be barred by limitation. Mr. Jaguar, appearing, for the appellants, however, has contended that the proper article applicable to the case was Article 115 of the Limitation Act, under which the plaintiff had three years" period of limitation from the date of the breach of the contract. That article prescribes a period of three years for a suit for compensation for the breach of any contract, express or Implied, not in writing

registered and not elsewhere provided in the Limitation Act, from the date when (he contract is broken.

This is a residuary article with respect to a suit for compensation for the breach of an unregistered contract, and this will apply only where there is no specific article provided elsewhere in the Limitation Act for a particular suit. As Articles 52 and 56 specifically provide a period of limitation for a suit for the recovery of price of goods sold and delivered and for the price of work done by the plaintiff for the defendants at his request where no time has been fixed for payment, article 115 could have no application. Learned counsel, however has relied on a Full Bench decision of the Lahore High Court in Mahomad Ghasita v. Sirajuddin AIR 1922 Lah 198.

In that case, what happened was that the plaint, in a suit for the recovery of a certain sum of money alleged to be due to the plaintiff for material supplied and work done, made no mention of the price of the materials as distinct from the price of the Work, and contained no reference whatsoever to two claims and there was only one Indivisible claim, and that was for the balance of the money due to the plaintiff on the basis of a contract by which he was to be paid for every thing supplied and done by him in connection with the contract work at a comprehensive rate. In those circumstances it was held that the claim as laid in the plaint being indivisible one it could not be split up into two portions, and therefore, article 52 or 56 could not be applied, and the proper article, that governed the case was Article 115 of the Limitation Act.

In the present case, however, two different kinds of claims, namely, the claim for materials supplied and the claim for the works done, are separately mentioned as distinct from each other and containing price of each of the materials and separated cost of each of the works done. That case has, therefore no application to the present case.

8. So far as the claim with respect to class (i), that is, amounting to Rs, 835/4/- is concerned, the various items are covered, by the list (Ext. 1) dated the 3rd of November, 1949. It is, therefore, clear that the cause of action for recovery of the said amount arose to the plaintiffs before the 3rd of November, 1949. The suit was brought on the 1st of December, 1956. It was, therefore, obviously barred by limitation, With respect to class amounting to Rs. 205/14/- it appears that the vice-Chairman of the Municipality passed payment orders (Ext. 3 series) on the 17th of June, 1952. Therefore the cause of action for (he recovery of the said amount could be said to have arisen to the plaintiffs on the 17th of June, 1952. The suit having been brought on the 1st of December, 1956 was, therefore, obviously, barred by limitation.

9. On behalf of the plaintiffs, the limitation, was sought to be saved u/s 19 of the Limitation Act on the basis of two documents, namely, exhibit 10 and Exhibit 5. Exhibit 10 is a notice dated the 30th of December, 1953, signed by somebody for the Chairman of the Municipality calling upon the plaintiff to file the old bills by

the 7th of January, 1954. Exhibit 5 is the copy of a petition dated the 16th of December, 1955 filed on behalf of the Municipality for withdrawing a criminal case against the plaintiffs in which it is stated that there were pending bills of the plaintiffs to be paid by the Municipality and they had to be checked and verified and after adjustment, if any amount was found to be due, the same had to be paid to the plaintiff.

On the basis of these two documents the plaintiff claimed that the limitation is saved. So far as the claim for the sum of Rs. 835/4/- covered by class (0) is concerned both these documents came into existence long after the period of limitation for the suit had expired. As already stated, the cause of action for this item arose on the 3rd of November, 1949, and therefore, the last date of period of limitation to file the suit was the 3rd of November, 1952. Any acknowledgment made thereafter could not save limitation u/s 19 of the Limitation Act, because that section clearly provides that the acknowledgment of liability must be made before the expiration of the period prescribed for a suit. The claim for this amount, therefore was, correctly held by the lower appellate court to be barred by limitation.

10. So far as the claim for Rs. 205/14/- covered by class, (if), is concerned the cause of action appears to have arisen on the 17th of June, 1952, and Exhibit 10 the notice dated the 30th of December, 1953, could save the limitation if the other provisions of section 19 of the Limitation Act had been complied with. That section requires that the acknowledgment of liability in respect of any property or right must be made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability. Explanation 11 of that section states that for the purposes of this section, "signed" means signed either personally or by an agent duly authorised in this behalf. Admittedly this document is not signed either by the chairman or the vice-Chairman of the municipality.

It bears the signatures of somebody for the chairman. There is no evidence on the record as to whether the man who signed this notice was authorised by the Chairman to make the acknowledgment as required by explanation 11 of section 19. Thus, the acknowledgment not having been made by the chairman himself or by any person through whom the chairman claimed or by any person duly authorised by the Chairman in this behalf, it could not give a fresh start of limitation to the plaintiff. The other document, namely, exhibit 5 is dated the 16th of December, 1955 long after the expiry of the period of limitation and, for the reasons already given in regard to the claim covered by class (1) this document, will not save the limitation and give any fresh start of period of limitation to the plaintiffs. The decision of the lower appellate Court, therefore, that both the claims of the plaintiffs are barred by limitation is perfectly correct and justified.

11. The result, therefore, is that there is no merit in this appeal which must be dismissed with cost.