
(1998) 08 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 264 of 1992

Ravinder Kumar

APPELLANT

Vs

Himachal Pradesh State Forest Corporation Ltd. and Another

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 8 Rule 6A
Contract Act, 1872 — Section 65

Citation : (1999) 1 ShimLC 88

Hon'ble Judges : Kamlesh Sharma, Acting C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, Actg. C.J.

1. The Appellant was the Plaintiff, whereas, the Respondents were Defendants in the Civil Suit No. 78/1 of 1990/88 filed for recovery of Rs. 1,24,408,35 and they will be referred to as such in this judgment. The suit of the Plaintiff was dismissed by District Judge, Solan by the impugned decree and judgment dated 9.1.1992 on the preliminary objection that it is barred by principles of res judicata. The other preliminary objections, that the suit is time-barred and is bad for non-joinder of necessary parties, were decided in favour of the Plaintiff, against which findings the Defendants have not filed either cross-appeal or cross-objections, hence these findings have become final.

2. It is not in dispute that the Plaintiff entered into an agreement with the Defendants on 30.3.1983 for extraction of resin in lot No. 2/82 of Nahan Division and lot No. 3/82 of Rajgarh Division, when he was minor as his date of birth is 8.11.1969 and as per the said agreement a sum of Rs. 7,730/- was deposited by the Plaintiff with the Defendants as security. The work of extraction of resin was undertaken on behalf of the Plaintiff and resin worth Rs. 74,460 73 was extracted

and supplied to the Defendants. According to Defendants, the Plaintiff could not extract and supply the resin in terms of the agreement, hence they filed a suit for recovery of damages amounting to Rs. 96,569.27 after adjusting the amount of Rs. 74,460,73, the price of resin supplied by the Plaintiff. The security amount of Rs. 7,730/- was also forfeited. The said suit No. 349/1 of 1995 was ultimately dismissed by Senior Sub-Judge, Solan holding that the agreement dated 30.3.1983 was illegal and void ab initio having been entered into with the Plaintiff during his minority. Thereafter the suit, out of which the present appeal has arisen, was filed by the Plaintiff.

3. The District Judge has come to the conclusion that since the agreement dated 30.3.1983 was declared illegal and void ab initio, the Plaintiff is barred from basing his claim and cause of action on the said agreement, as he has done in his suit, hence his suit is barred on the principles of res judicata. For coming to this conclusion, the District Judge has relied upon the averments made in the plaint as referred to in para 12 of his judgment.

4. The contention raised on behalf of the Plaintiff that the bar of principles or res judicata cannot be applied to the Plaintiff since he was minor at the time of filing the earlier suit was also rejected on the ground that the Plaintiff had attained majority during the pendency of the suit and also that even if it is assumed that he was minor at the time of decision of the earlier suit, he was duly represented by guardian ad litem in the said case and there was no averment that there had been any gross negligence on the part of the guardian in defending the suit on his behalf. These findings have not been challenged on behalf of the Plaintiff in the present appeal.

5. Heard, The case set up by the learned Counsel for the Plaintiff is that u/s 65 of the Indian Contract Act, 1872 any person who has received any advantage under an agreement which is discovered to be void is bound to restore it or to make compensation for it to the person from whom he received it. In view of this provision, the learned Counsel has urged that the suit of the Plaintiff was maintainable and in support of his submission he has relied upon the latest judgment of the Supreme Court in Sri Tarsem Singh Vs. Sri Sukhminder Singh, In Para 30 of this judgment the learned Judges while interpreting Section 65 of the Contract Act have held:

This section, which is based on equitable doctrine, provides for the restitution of any benefit received under a void agreement or contract and, therefore, mandates that any "person" which obviously would include a party to the agreement, who has received any advantage under an agreement which is discovered to be void or under a contract which becomes void, has to restore such advantage or to pay compensation for it, to the person from whom he received that advantage or benefit.

And in para 31:

Learned Counsel for the Appellant has contended that Section 65 would apply to

a situation where the agreement is "discovered to be void or where the contract "becomes void" and not to an agreement which is void from its inception. This argument cannot be allowed to prevail.

(Emphasis supplied)

The District Judge has not directed himself to this provision of law under which the claim of the Plaintiff was maintainable.

6. In the result, we set aside the findings of the District Judge that the suit of the Plaintiff was barred by the principle of res judicata for the reason that his claim was based on the agreement which was declared to be illegal and void ab initio in the earlier suit. In fact the claim of the Plaintiff was for recovery of the price of the resin supplied to the Defendants under the agreement which was declared illegal and void ab initio and the findings in the earlier suit served as basis to the Plaintiff for filing his suit in view of the provisions of Section 65 of the Contract Act instead of bar on the principles of res judicata as held by the District Judge.

7. So far the findings of the District Judge that the suit of the Plaintiff is not barred under Order 2, Rule 2, CPC are concerned, these are correct. Another point that the Plaintiff could file counter-claim under Rule 6-A of Order 8, CPC has also been rightly rejected holding that it was optional for him to claim a set-off or to set up a counter-claim as Defendant in the earlier suit, failing which he was not barred from preferring independent suit for recovery.

8. The result of above discussion is that there is merit in this appeal and it is allowed in the terms stated hereinabove. The impugned judgment dated 9.1.1992 passed by District Judge, Solan is set aside and the case is remanded to the District Judge, who will further entrust it to the competent Court for trial in accordance with law after giving opportunities to the parties. Since it pertains to the year 1988, it is expected that the trial of the suit will be completed within a period of one year. The parties will appear before the District Judge on 14.9.1998. The records be sent to the District Judge forthwith. No order as to costs.