

(2015) 11 JH CK 0011
In the Jharkhand High Court
Case No : F.A. No. 53 of 2002

Supato Devi and Others

APPELLANT

Vs

Udyami Awasiya Sahkari Lohanchal Complex Samity Limited
and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 27(1)(a), Order 8 Rule 10, 151

Citation : (2016) 1 JLJR 80

Hon'ble Judges : Dhruv Narayan Upadhyay, J.

Bench : Single Bench

Advocate : Bhaiya Vishwajeet Kumar, Advocate, for the Appellant; Brij Bihari Sinha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dhruv Narayan Upadhyay, J.—This appeal has been preferred against the judgment dated 12th June, 2002 and decree dated 24th June, 2002, passed and signed by learned Sub Judge-I, Bokaro, in connection with Money Suit No. 6 of 2001, whereby learned Sub Judge has dismissed the suit mainly on the ground that the suit filed by the appellant/plaintiff is barred by Law of Limitation and further on the ground that the plaintiff has not invoked Clause 18 of the Contract (Exhibit-6), which suggests the parties to refer the matter to an Arbitrator for redressal of grievance, if any.

2. As per the plaint, the plaintiff was a civil contractor, having his office at Kurmidih, within Balidih Police Station, District Bokaro and Defendant No. 1 is a Society, duly registered under the Societies Registration Act, 1935 in the name and style of Udyami Awasiya Sahakari Lohanchal Complex Samiti Limited, Bokaro Steel City, District Bokaro (hereinafter to be referred as "the Society"). Defendant Nos. 2 and 3 are the elected President and Secretary of the Society.

3. It is disclosed that in pursuance of Tender Notice No. VASLCSL/

TENDER/92-93/26 dated 10th November, 2012, the plaintiff was allotted construction work of road, drainage and culverts, valued at Rs. 34,89,350.26 and, accordingly, a contract agreement was signed by and between the plaintiff and defendants. In view of the work order given to the plaintiff, he had started required construction work for the Society and worked till the year 1995 to the satisfaction of the Society for Rs. 23,61,872.70. It is further stated that payment up to 12th running bill for Rs. 19,69,523.74 was received by the plaintiff after deduction of 10% amount towards security deposit from running bill as per the agreement and 2% towards TDS. When the contract work was going on, power of the office bearers given by the Society was seized and management of the Society was taken over by the Registrar, Cooperative Societies. Sri Yogeshwar Prasad, the then Director, Accounts Administrator, was appointed as Administrator and after his transfer the post remained vacant and due to that contract work of the Society got hampered. Thereafter, Registrar, Co-operative Societies, Chas was appointed as temporary Administrator of Defendant No. 1. The contract given to the plaintiff was never terminated, but the Administrator of the Society appointed by the Registrar, Co-operative Societies, stopped the work given to the plaintiff without valid reason and payment against the work done was also withheld. Further averment made by the plaintiff is that after long chase, a sum of Rs. 20,000/- as ad hoc payment was made to him in the month of January, 1999. General election of the office bearer of the Society was held in the month of October, 2001 after which Defendant Nos. 2 and 3 were elected as President and Secretary of the Society, respectively.

4. The plaintiff approached the Society for payment and served with notice, but all in vain and lastly he has been compelled to file suit for the cause of action which arose on and from 7th December, 1992, 4th May, 1998, 25th August, 1998, 11th January, 1999, 20th September, 2000, 5th January, 2001, 6th February, 2001 and continued for further period due to non-payment of the bill amount and security deposit.

5. The plaintiff has prayed for a decree for realization of a sum of Rs. 7,56,360.02 from the defendants with interest pendente lite and future @ 18% per annum till realization of the amount due to which the plaintiff was found entitled thereto.

6. After service of notice, Defendant Nos. 2 and 3 appeared by filing Vakalatnama, but they did not prefer to file written statement. No one appeared on behalf of Defendant No. 1 and the proceeding against Defendant No. 1 proceeded ex parte and so far as Defendant Nos. 2 and 3 are concerned, the trial proceeded under Order VIII Rule 10 CPC.

7. In support of claim and contention made in the plaint, the plaintiff has examined altogether six witnesses and proved the documents. At the conclusion of the trial, learned Sub Judge held the suit filed by the plaintiff is barred by Law of Limitation and dismissed the suit and hence this appeal.

8. During pendency of the appeal, the plaintiff filed an interlocutory application, being I.A. No. 8072 of 2013, under Order XLI Rule 27 read with Section 151 CPC for recording additional evidence in order to prove that ad hoc payment of Rs. 20,000/- was made to him by the Society on 1st January, 1999 and further prayed to call for the ledger and other documents from the Society, so that he could be able to prove that the suit filed by him was within time and period of limitation shall be calculated from the date of ad hoc payment made to him on 1st January, 1999.

9. It was submitted that before deciding the appeal, the contention made in the said interlocutory application may be considered in the light of following judgments of the Hon"ble Supreme Court:--

"(i) Jayaramdas and Sons Vs. Mirza Rafatullah Baig and Others,

(ii) State of Rajasthan Vs. T. Sahani and Others,

(iii) Bishandayal and Sons Vs. State of Orissa and Others, "

10. I do feel it desirable to dispose of I.A. No. 8-72 of 2013 filed under Order XLI Rule 27 read with Section 151 CPC before giving final verdict in the appeal.

11. The provision contained under Order XLI Rule 27 CPC is an exception to the ordinary rule for admitting evidence in civil cases. Permitting the party seeking exercise under Order XLI Rule 27 is nothing but amounts to reopening the trial which has otherwise stood concluded. Therefore, caution is always needed before exercising such discretion. It is always obligatory on the part of the party concerned to bring all material and documents in support of his claim and contention in the shape of evidence during trial. In context of the above, Order XLI Rule 27 is reproduced herein below:--

"27. Production of additional evidence in Appellate Court- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate

Court, the Court shall record the reason for its admission."

The plaintiff has made averment in Para-10 of the plaint that on vigorous chasing and persuasion made by him, a sum of Rs. 20,000/- as ad hoc payment was released by the order of the Administrator in the month of January, 1999. The plaintiff has further contended at the end of Para-9 of the plaint that the Assistant Registrar, Co-operative Societies, Chas Circle, Chas, District Bokaro was appointed as Administrator of Defendant No. 1 vide order under Memo No. 42 dated 11th January, 1999 in exercise of power conferred upon him under the provision of Section 41(3) of the Societies Registration Act, 1935.

12. The plaintiff/appellant has annexed Xerox copy of a document with I.A. No. 8072 of 2013, disclosing that on 1st January, 1999 ad hoc payment of Rs. 20,000/- was made to him. Therefore, it is apparent that averments made in Paras-9 and 10 are contradictory to each other because the appointment of Assistant Registrar, Co-operative Societies, Chas as Administrator of the Society was done vide order under Memo No. 42 dated 11th January, 1999. Thus, it is apparent that on 1st January, 1999 there was no Administrator and Society was defunct. Furthermore, the plaintiff in his deposition in Court has nowhere stated about said sum of Rs. 20,000/-, which was paid to him as ad hoc payment against bill submitted.

In view of the above, it is clear that the plaintiff by filing petition under Order XLI Rule 27 CPC has been trying to patch up lacunae which could not be permitted by invoking the provision contained under Order XLI Rule 27 CPC. Furthermore, the prayer of the appellant does not come under any of the category indicated under Order XLI Rule 27(1)(a) ,(aa),(b) CPC. Therefore, I.A. No. 8072 of 2013 is hereby rejected.

13. I have already indicated in the preceding paragraphs that the plaintiff in his deposition in Court has not stated about receiving of ad hoc payment of Rs. 20,000/- on 1st January, 1999. It is admitted case of the plaintiff that he had worked till 1995 and the suit was filed for realization of money on 21st May, 2001. The Trial Court has rightly held that the suit is barred by Law of Limitation and, accordingly, dismissed the suit.

14. In view of the facts and circumstances of the case and evidence available on record, this Court observes that the judgments cited above by the appellant are not at all applicable in the case at hand. Therefore, I find no merit in this appeal.

15. Accordingly, this appeal stands dismissed.