(2012) 01 KAR CK 0113

In the Karnataka High Court

Case No : Regular First Appeal No. 881 of 2004 (MON)

Syndicate Bank APPELLANT

Vs

Karnataka Housing Board and M/s Anchor Lines (P) Ltd. RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:
Limitation Act, 1963 — Section 113, 55

Citation : (2012) 01 KAR CK 0113

Hon'ble Judges : L. Narayana Swamy, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : B.M. Baliga, for the Appellant; V. Prakash, Advocate for R-1, Sri. V. Krishnamurthy, Advocate for R-1 and 2 and R-3 Service held sufficient, for the Respondent

Final Decision : Dismissed

Judgement

Manjunath, J.—Appellant is challenging the legality and correctness of the judgment and decree passed by XXX Addl. City Civil Judge, Bangalore dated 1.4.2004 in OS No. 1035/1996. Appellant was the 1st defendant in the suit. R-1 & 2 were the plaintiffs and R-3 was the 2nd defendant before the court below. Admitted facts are as hereunder: 1st plaintiff is the Karnataka Housing Board which is a statutory body and 2nd plaintiff is the Chief Executive of the 1st plaintiff. Construction of houses under scheme known as ''Ashraya Scheme'' was entrusted to the 2nd defendant M/s Anchor Lines (P) Ltd.. In order to award contract to the 2nd defendant, 2nd defendant was required to deposit EMD at the rate of 1% of the costs of construction. In lieu of such deposit, 2nd defendant agreed to furnish bank guarantee to the plaintiffs. Accordingly. 1st defendant furnished three bank guarantees No. 17/92 for Rs. 1,64,700/-, No. 18/92 for Rs. 1,64,700/- and No. 19/92 for Rs. 1,73,400/-in all for a total sum of Rs.5,02,800/-. All the three bank guarantees were furnished by 1st defendant who is the appellant herein in favour of plaintiffs on 6.3.1992 and stood as guarantor for due performance of the contract entrusted to the 2nd defendant by the plaintiffs. It was agreed under the Deed of Bank Guarantee that the bank guarantee shall be in force for a period of one year till 6.3.1993 and as and when the bank guarantee is invoked by the plaintiffs, due to the breach of contract by the 2nd defendant such invocation shall be honoured by the 1st defendant.

Contending that 2nd defendant failed to fulfill its obligations, the contract entrusted to the 2nd defendant was terminated plaintiffs requested 1st defendant to honour the claim made by them by invoking the guarantee. On the ground that the 1st defendant failed to send the amount pursuant to the payment made by the plaintiffs, plaintiffs filed the suit for recovery of the amount covered under the bank guarantee with interest at 18% p.a..

1st defendant alone filed the written statement. 2nd defendant though engaged the services of a counsel, did not file the written statement.

Appellant/defendant admitted the issuance of three bank guarantees in favour of the plaintiffs on behalf of the 2nd defendant. However, it was contended that there is no breach of contract by the 2nd defendant and that the bank guarantee would not have been invoked by the plaintiffs. In addition to several grounds urged in the written statement, the main contention of the defendant was suit filed by the plaintiffs was barred by limitation and therefore appellant requested the court to dismiss the suit.

Based on the above pleadings, following issues were framed by the court below:

1. Whether the plaintiffs prove that the 2nd defendant had furnished three bank guarantee issued by the 1st defendant in all a total sum of Rs. 5,02,800/- on 6.3.1992?

2. Whether the plaintiffs prove that the 1st defendant stood as guarantor for due performance of the contract work entrusted to the 2nd defendant?

3. Whether the plaintiffs prove that the 1st defendant on certain misconception cancelled the bank guarantee?

4. Whether the plaintiffs prove that the 2nd defendant committed breach of contract?

5. Whether the plaintiffs prove that the defendants are liable to pay interest at 18% p.a.?

6. Whether no cause of action arose to this suit?

7. Whether the suit is barred by time?

8. Whether the plaintiffs are entitled to a suit claim as sought for?

9. What order or decree?

In order to prove their respective contentions, on behalf of the plaintiffs one J.K. Sridhara Murthy was examined as PW-1. He relied upon Exs.P-1 to 14. No oral evidence was let in by the appellant/defendant except marking zerox copy of the circular dated 17.11.1992 as par Ex. D-1.

Trial court after appreciating the evidence let in by the parties, held issues 1, 2, 4, 5 & 8 in the affirmative, issue No. 3 as does not arise for consideration and issues 6 & 7 in the negative. Ultimately, suit was decreed for Rs. 5,02,800/- with interest at 3% p.a., from 9.2.1993 till realization. This judgment and decree is called in question in this appeal.

2. We have heard the counsel for the appellant and the Respondents.

3. The main ground of attack of Mr. Baliga is that the trial court has committed a mistake in decreeing the suit by holding that the suit filed by the plaintiffs was well within the Law of Limitation. According to him, trial court has failed to apply Art. 55 of the Limitation Act to the facts and circumstances of this case. According to him, Art. 113 of the Limitation Act dose not apply to the facts and circumstances of the case. Therefore, he contends that the trial court has committed an error in decreeing the suit and that the court below was required to dismiss the suit on the ground of limitation. To support his view, he has relied upon the following decisions:

i) Tungabhadra Steel Products Ltd. Vs. State of Gujarath,

ii) Thomas Vs. John D''sa Marian D''sa (AIR 1967 Mys 3)

iii) Hindustan Construction Co. Ltd. Vs. State of Bihar and Others, .

Relying upon these three decisions, he requests the court to allow the appeal and dismiss the suit holding that the Suit of the plaintiffs was barred by limitation

4. Per contra, counsel appearing for the Respondents contend that none of the decisions relied upon by the counsel for the appellant are applicable to the facts and circumstances of this case. According to him, as per bank guarantee, plaintiffs had a right to lodge a claim on or before 6.3.1993 and the claim was lodged by the plaintiffs as per Ex. P-10 on 20.1.1993. Plaintiff-Housing Board was under the impression that the bank guarantee invoked by the Board would be honoured by the plaintiff-bank. When the bank refused to honour the same, suit was filed on 8.2.1996, therefore suit filed by the plaintiff was well within time and that Art. 55 of the Limitation Act is not at all applicable to the facts and circumstances of the case. According to him, Art. 55 of the Limitation Act can be pressed into service only if a suit is filed for claiming compensation for breach of any contract. According to him, suit is not filed claiming compensation by the plaintiffs. It is only to recover the amount covered under the bank guarantee issued by the appellant-bank. In such circumstances, he contends that the residuary clause under Art. 113 of the Limitation Act would apply. In the circumstances, he requests the court to dismiss the appeal.

5. Having heard the counsel for the parties, the only point to be considered by this court is:

Whether the suit filed by the Respondents was barred by limitation or not?

6. Defendant/appellant is not disputing the issuance of three bank guarantees in favour of the Respondents/plaintiffs and on behalf of the 2nd defendant/ contractor. The bank guarantees are marked as Exs. P-7 to 9. They are dated 6.3.1992 and the same are valid upto 6.3.1993.

7. The admitted fact is that on account of the breach committed by the 2nd defendant, plaintiff has addressed a letter to the Chief Manager of the appellant-bank on 20.1.1993 as per Ex.P-10 invoking bank guarantee with a request to send a Demand Draft in favour of the Housing Board for Rs. 5,02,800/-. The same is received by the Bank and they have sent a reply as per Ex.P-11 on 9.2.1993 on the ground it cannot honour bank guarantee. Therefore, it is clear that the bank guarantee has been invoked within the stipulated period of one year from the day of furnishing guarantee. But the appellant/defendant has refused to honour the claim of the plaintiffs as per Ex.P-11 on 9.2.1993. But the suit is filed even before Ex.P-11 is dispatched by the bank. In other words, plaintiff/housing board having waited that the bank would honour the claim of the Board for a reasonable period has immediately approached the court by filing a suit. Therefore, the question would be whether the claim made by the plaintiff was within the Law of Limitation or not and it is also required for us to consider whether Art.55 can be pressed into service by the 1st defendant/bank or as contended by the plaintiffs Art. 113 has to be applied to the facts and circumstances of this case.

8. In order to appreciate the rival contentions, it would be appropriate for us to extract Art. 55 and 113 of the Limitation Act. Art. 55:

Description of suit

Period of Limitation

Time from which period begins to run

55.

For compensation for the breach of any contract, express or implied not herein specially provided for.

Three years

When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.

Art. 113

Description of suit

Period of Limitation

Time from which period begins to run

Part X.-Suits for which there is no prescribed period

113.

Any suit for which no period of limitation is provided elsewhere in this Schedule.

Three years

When the right to sue accrues

9. Admittedly, plaintiffs have not filed the suit for compensation for breach of any contract in order to apply Art. 55 to the present case. This is a simple suit filed by the Housing Board for recovery of the bank guarantee extended by the appellant/bank on behalf of the 2nd defendant /contractor in respect of the EMD amount which was required to be deposited by the 2nd defendant/bank in order to get the contract from the Housing Board. Therefore, it is clear that Art.55 cannot be pressed into service since suit is not filed for compensation by the plaintiffs. In the circumstances, straightaway we can say that the judgments relied upon by the counsel for the appellants has no application to the facts and circumstances of the case. In fact, above said judgments are relied upon by the appellant before the court below. Learned trial Judge after appreciating the facts involved in the case, facts involved in the said decisions has rightly rejected the contention urged by the appellants.

10. As could be seen from the Limitation Act, there is no particular article which apply to file a suit based on bank guarantee. In such circumstances, we have to rely upon the residuary article viz., Art. 113 of the Limitation Act. When the suit itself is filed within a period of three years, from the last date to invoke bank guarantee, appellant-bank cannot contend that suit of the plaintiffs was barred by limitation. In the circumstances, we are of the view that trial court is justified in holding that Art. 55 of the Limitation Act has no application to the facts of this case and Art. 113 would apply to the facts of this case and further we have to hold that the suit filed by the plaintiffs was not barred by limitation. In the result, the appeal is dismissed with costs.