

(2015) 02 GAU CK 0048

In the Gauhati High Court

Case No : Regular First Appeal No. 133 of 2005

The Assam State Electricity Board and Others

APPELLANT

Vs

Surana Industries

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Limitation Act, 1963 — Section 18
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 2015 Guw 70 : (2015) 3 GLT 520

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : B.D. Das, Senior Advocate and N. Goswami, for the Appellant; P. Sarma, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Nishitendu Chaudhury, J.

1. This first appeal has been preferred by the erstwhile Assam State Electricity Board (now renamed as Assam Power Distribution Company Limited) challenging the judgment and decree dated 08-06-2005 passed by learned Civil Judge (Sr. Divn.) No. 1, Kamrup at Guwahati, decreeing Title Suit No. 290/2000 in entirety. Respondent, as plaintiff, initially instituted title suit No. 65/1990 challenging a disconnection notice dated 13.08.1990. This disconnection notice was conditional to the extent that if plaintiff had paid Rs. 81,260/- within 7 days of notice being arrear electricity bill for the period of 29-09-1989 to 01-08-1990, supply would not be disconnected. The suit was finally dismissed on 30.06.2000 and so objection as to maintainability of the disconnection notice became unsustainable. Under such circumstances, plaintiff made payment of the whole amount along with interest thereon on 16.09.2000. But in the mean time the defendants, Assam State Electricity Board and another issued a fresh notice on 28-08-2000 claiming surcharge on the whole amount of Rs. 81,260/- w.e.f. 13-08-1990 till realisation. The claim was to the tune of Rs. 5,63,108/-. Upon receipt of the

notice, plaintiff once again instituted a fresh suit being Title Suit No. 290/2000 praying for a declaration that said demand notice was unenforceable being beyond limitation and that plaintiff was not bound to make the payment of the bill.

2. On being summoned, the defendants No. 1 and 2 filed a joint written statement stating that under Clause 21 of the terms and conditions of the Supply, the consumers are liable for recovery against malpractice under Clause 18(c). It is stated that admittedly the plaintiff did not make payment of the original amount of bill to the tune of Rs. 81,260/- till 16-09-2000. Only after the suit was dismissed, the payment was made and so the plaintiff could not be allowed to avail benefit for its own failure. On the basis of aforesaid rival contentions of the parties, the learned trial court framed as many as 7 issues and the same are quoted below:

(i) Whether there is any cause of action?

(ii) Whether the suit is properly valued and whether the adequate court fee is paid thereon and whether the suit is maintainable for nonpayment of adequate court fee?

(iii) Whether the relief claimed in the suit are barred by principle of res judicata and/or constructed res judicata?

(iv) Whether the court has jurisdiction under Section 9 of C.P.C. to adequate the subject matter of the suit?

(v) Whether the impugned bill dated 28.08.2000 for Rs. 5,63,108/- are barred by law in view of judgment and decree dated 30.06.2000 passed in T.S. No. 65/90?

(vi) Whether the plaintiff is entitled to a decree as prayed for?

(vii) To what other relief/reliefs the parties are entitled?

3. In course of trial, plaintiff examined himself as P.W. 1 and exhibited some documents. The defendants also examined one witness and exhibited their documents. After hearing the learned counsel for the parties and on perusal of the materials available on record including the depositions of witnesses the learned trial court held that the plaintiff was not guilty of lack of bona fide and he was not a willful defaulter. He was under the impression that since the suit was pending, he was not required to make payment. With these findings, the learned trial court held that the plaintiff is entitled to a decree as prayed for. Consequently, it was held that impugned bill dated 28.08.2000 for an amount of Rs. 5,63,108/- was not enforceable upon the plaintiff and that plaintiff was not bound to make the payment of the bill. A consequent decree of prohibitory injunction was also passed restraining the defendants from disconnecting electricity supply to the premises of the plaintiff. This judgment was passed on 08-06-2005 which has been brought under challenge in the present appeal.

4. I have heard Mr. B.D. Das, learned senior counsel assisted by Mr. N. Goswami for the appellant and Mr. O.P. Bhati, assisted by Mr. P. Sarma for the sole respondent. I have also perused the pleadings of the parties and the respective evidence led by them.

5. Mr. B.D. Das, learned senior counsel, would argue that whether the plaintiff was under the bona fide impression that he was not required to pay or whether he willfully defaulted in making payment is irrelevant for the purpose of adjudication of liability to pay surcharge. Under Clause 18(c) of the terms and conditions of supply, a consumer is duty bound to make payment of surcharge for the unpaid bill. The terms and conditions of supply not having been challenged in any way, the plaintiff cannot claim immunity against its liability to make payment of surcharge merely because a suit was pending. He would further argue that there was no injunction by the trial court during pendency of the Title Suit No. 65/1990 against realisation of unpaid bill and so the plaintiff acted at its risk by not making payment of the bill in due course. He having failed to make payment knowingly well that there was no injunction in force against realisation, cannot claim benefit for his own mistake. With these submissions, the learned senior counsel for the appellant would argue that the impugned judgment and decree is liable to be set aside and quashed and decree of prohibitory injunction against enforcement of disconnection notice cum demand notice be vacated.

6. Per contra, Mr. O.P. Bhati, learned counsel for the respondent would argue that the claim of the defendants for surcharge for over 10 years is clearly barred by limitation. On each and every moment after the initial bill was issued for payment of electricity bill, limitation started running for demand of surcharge. The defendant electricity board did not make any claim till 28-08-2000 and so the claim cannot survive for more than 3 (three) years because of bar of limitation. After all, it is a claim of money and it is subject to the law of limitation, the learned counsel contended.

7. Having heard the learned counsel for the parties and on perusal of the documents available on record, this Court feels that by absolving plaintiff from the total liability to make payment of surcharge would not be just and proper. The plaintiff availed a benefit of exemption for the time being due to pendency of Title Suit 65/1990. Ultimately when the suit was dismissed, the legality of the claim of tariff by the Electricity Board is automatically upheld and so the plaintiff became liable to make payment of the bill. Knowingly well about its liability to make payment of the bills, it made payment on 16.09.2000 and so it would amount to an admission as to its liability. But this acknowledgment as to liability would be limited to the extent of Rs. 81,260/- which was the principal amount of the electricity bills. So far as demand of surcharge is concerned, no demand was earlier made and so by making payment on 16-09-2000 such liability to make payment of surcharge cannot be considered to be acknowledged by the plaintiff by operation of Section 18 of the Limitation Act. But once demand was made on

28.08.2000, the said demand would not be barred by limitation at least for proceeding 3 (three) years. That is to say the claim of surcharge w.e.f. 13-08-1990 till 28-08-1997 would be time barred but the claim of surcharge w.e.f. 29-08-1997 till 28-08-2000 shall be well within the period of limitation. The impugned judgment and decree, therefore, is liable to be modified to the extent that impugned notice dated 28-08-2000 insofar as it relates to the period upto 28-08-1997 shall be barred by limitation but it shall not be barred by the limitation for the period from 29-08-1997 to 28-08-2000. The appeal is, accordingly, partly allowed with modification as referred to above.

8. Draw up decree accordingly.

9. Send down the records.

10. No order as to costs. Interim order, if any, stands automatically vacated.