
(2017) 03 OHC CK 0020
In the Orissa High Court
Case No : S.A. No. 93 of 1996

Theeda Ramaswamy

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 1
Contract Act, 1872 — Section 45

Citation : (2017) AIR(Orissa) 77 : (2017) 1 OJR 529 : (2017) 1 OriLawRev 1122

Hon'ble Judges : A.K. Rath, J.

Bench : Single Bench

Advocate : Mr. Sumit Lal, Advocate, for the Appellant; Mr. P.C. Panda, AGA, for the Respondent

Final Decision : Allowed

Judgement

Dr. A.K. Rath, J.—This is an appeal from the judgment and decree dated 12.1.1996 and 27.1.1996 respectively passed by the learned Addl. District Judge, Jeypore in Money Appeal No.2 of 1994 confirming the judgment and decree dated 24.8.1993 and 7.9.1993 respectively passed by the learned Subordinate Judge, Jeypore in Money Suit No.103 of 1988.

2. The case of the plaintiff is that it is a registered partnership firm carrying on business of petrol, diesel and lubricants having retail outlet of HPC Limited. On the request of the Collector, Koraput, it supplied petrol, diesel and lubricants to the vehicles of the Collectorate on credit basis, according to the coupons issued by the officers in duplicate. The drivers of the concerned vehicle used to sign on the reverse side coupons in token of receipt of commodity. In case of urgent requirement, the driver used to sign on the credit bill and no coupons were issued. Bills were submitted to the office of the Collector once in a month. There was a stipulation in the bill for charge of interest at the rate of 18% per annum, if the bill was not cleared within a month. The procedure was followed for the last twenty years. On account of credit supplies, an amount of Rs.1,07,775.62 ps.

was outstanding against the defendant by 14.10.1987. On 14.10.1987, an amount of Rs.25,000/- was paid. The balance Rs.82,775.62 ps. was outstanding. Notice issued under Section 80 CPC was received by the defendant on 28.10.1987. On 24.11.1987, a sum of Rs.12,010/- was paid. The plaintiff requested on 12.1.1988 for an advance payment of Rs.60,000/-. On 14.1.1988, an amount of Rs.20,000/- was paid towards outstanding bills. Still an amount of Rs.50,763.67 ps. was outstanding. Since some of the claims were barred by limitation, the plaintiff confined its claim to Rs.42,990.47 ps. over which interest @ 18% per annum i.e. Rs.4,461.43 ps. was payable. With this factual scenario, the suit has been filed for realisation of Rs.47,451.90 ps. with interest at the rate of 18% per annum from the defendant.

3. Pursuant to issuance of summons, defendant entered appearance and filed written statement. The case of the defendant is that there was no agreement between the defendant and the plaintiff for supply of petrol, diesel, oil, etc. on credit basis and, as such, the suit was not maintainable. The Collector had authorised the officers to give requisition and pay money. Drivers were not authorised to take oil on credit basis. In the event plaintiff had given any oil to the drivers, the defendant was not responsible for the same. Further, in absence of any agreement for payment of interest is unjustifiable. With regard to the bills, it is stated that 62 bills amounting to Rs.76,168.15 ps., as described in Annexure-I of the plaint, was only pending as on 14.10.1987. On 14.10.1987, Rs.25,000/- was paid. The plaintiff had no right to adjust the said amount for the dues of the previous years. Out of 62 bills, 50 bills amounting to Rs.57,091.00 were paid on subsequent dates and the balance of 12 bills for Rs.19,097.15 ps. only was outstanding. The claim of the plaintiff was barred by limitation.

4. On the inter se pleadings of the parties, learned trial court struck nine issues. To substantiate the case, the plaintiff had examined two witnesses and on its behalf 198 documents had been exhibited. The defendant had examined one witness and on its behalf sixteen documents had been exhibited. Learned trial judge came to hold that the plaintiff is entitled to Rs.31,506.47 ps. from the defendant over which no interest is payable, but then dismissed the suit with a finding that the suit is hit under Section 69 of the Indian Partnership Act, since the firm was not represented by any of the partners after death of the Managing Partner during pendency of the suit. The plaintiff unsuccessfully challenged the judgment and decree before the learned Addl. District Judge, Jeypore in Money Appeal No.9 of 1993, which was eventually dismissed.

5. The second appeal was admitted on Ground No.7(a) and (b) enumerated in the appeal memo. The same are quoted below;

"7(a) Whether in view of Order 30, Rule 1 , 2 and 4 of the Code of Civil Procedure, 1908 and Section 69 of the Indian Partnership Act, 1932, the suit is maintainable and if the said question is answered in the affirmative, whether the findings of the learned courts below are sustainable at all ?

7(b) Whether grant of interest under substantive law is discretionary and the learned courts below aptly exercised the judicial discretion by refusing the claim relating to interest both for a period anterior to the institution of the suit as well as pendente lite and further interest when (i) claim was duly notified as per interest Act and (ii) was amply justified because the Respondent withhold plaintiff-appellants dues from out of commercial transaction ?"

6. Heard Mr. Sumit Lal, learned counsel for the appellant and Mr. P.C. Panda, learned Addl. Government Advocate for the State.

7. Mr. Lal, learned counsel for the appellant, submitted that the plaintiff is a registered firm. It instituted a suit against the defendant after service of notice under Section 80 CPC. During pendency of the suit, the Managing Partner died. In view of Rule 4 Order 30 CPC, the suit shall continue in the event of death of a partner. Thus the courts below have committed manifest illegality and impropriety in dismissing the suit. He further submitted that even though there was no agreement for supply of oil to the vehicles belonging to the Collectorate, but then the same was done for two decades on credit basis. The plaintiff used to submit bills periodically and receive the payment. There is a clause in the bill that in the event non payment of any amount, the same will carry interest @ 18% per annum. Thus the defendant is liable to pay interest.

8. Per contra, Mr. Panda, learned Addl. Government Advocate for the State, submitted that the suit is barred by limitation. There is no agreement between the plaintiff and the defendant for supply of oil. Moreover, the plaintiff had received the payments. He further submitted that the Managing Partner of the firm who represented the partnership died during pendency of the suit. Both the courts below are justified in holding that the suit has abated.

9. Rule 1 Order 30 and Rule 4 Order 30 CPC are the hub of the issues. The same are quoted below;

"1. Suing of partners in name of firm.—(1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm if any of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

xxx xxx xxx

4. Right of suit on death of partner.—(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872), where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit."

10. Though a firm is not a juridical person, it is enabled by virtue of the aforesaid order to sue and be sued in the manner provided. When a suit is instituted by the firm, the logical sequitur is that it is brought in the name of the partners constituting the firm. Rule 4 Order 30 contains a non obstante clause. Notwithstanding the provision of Section 45 of the Indian Contract Act if a suit is on behalf of the registered firm and any of such persons dies, whether before institution or during pendency of the suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit. The said rule applies where any two or more persons may sue or be sued in the name of the firm under the provision of Rule 1 Order 30 CPC.

11. The provisions of Order 30 CPC are intended to avoid the consequences and conflicts raised on the basis of Section 45 of the Indian Contract Act. The suit, in the instant case, was instituted by the firm. Notwithstanding the death of one of the partners during pendency of the suit, in view of Order 30, Rule 4 , the suit will not abate. The question substituting the heir and legal representative of the partners does not arise and death has no impact on the suit. With regard to grant of interest, there was no agreement between the plaintiffs and the defendants.

12. The substantial questions of law are answered accordingly. Learned trial court came to hold that the plaintiff is entitled to Rs.31,506.47 ps. from the defendants over which no interest is payable. The defendant has not challenged the said amount. In view of the same, the plaintiff is entitled to Rs.31,506.47 ps. only.

13. In the wake of the aforesaid, the judgment and decree of the courts below are set aside. The plaintiff is entitled to Rs.31,506.47 ps. from the defendants. The suit is decreed in part. The appeal is allowed in part. No costs.