

(1983) 01 OHC CK 0001

In the Orissa High Court

Case No : Second Appeal No. 18 of 1978

Udyogsilpa Pvt. Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-01-1983

Acts Referred:

Specific Relief Act, 1963 — Section 41

Citation : AIR 1983 Ori 168 : (1983) 55 CLT 549

Hon'ble Judges : P.K. Mohanti, J

Bench : Single Bench

Advocate : P.K. Misra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—This is a plaintiff's second appeal from the decree of the lower appellate Court reversing the decree of the trial Court and remanding the suit for a fresh disposal.

2. On 29-3-1966, the plaintiff entered into a contract with the State of Orissa to act as the Oil Miller Agent for one year for supplying oil and oilcakes after procuring mustared seeds and preparing oil. An interest-free loan of Rs. 5,00,000/- was advanced to the plaintiff on the condition that the amount would be adjusted towards the supply of mustard oil and oil-cakes. The contract was terminated with effect from the 28th March, 1967 by the Secretary, Supply Department. A certificate case bearing No. 220/70 was instituted against the plaintiff for realisation of Rs. 2,70,687-94 as the amount lying with the plaintiff unutilised together with interest, costs etc. In the certificate case as originally filed, the Collector was shown to be the Certificate Creditor. But subsequently it was amended and the Secretary to the Government of Orissa, Supply Department, Bhubaneswar was shown to be the certificate holder and the certificate case was re-numbered as 231 of 1972. On 27-6-1975, the plaintiff filed the suit, out of which this second appeal arises, for a permanent injunction

restraining the defendants-respondents from proceeding with the certificate case. It was alleged that the Govt. did not act according to the terms of the contract for which the plaintiff suffered heavy loss and from time to time claimed damages and ultimately filed a suit bearing O. S. No. 20 of 1970-III in the Court of the Subordinate Judge, Bhubaneswar for recovery of Rs. 5,83,097.14 paise. Thereafter the Certificate Case No. 220/70 was filed against the plaintiff as a counterblast to the suit filed by it. The plaintiff challenged the certificate proceeding on the ground that the amount even if due could not be realised as a public demand under the provisions of the Orissa Public Demands Recovery Act, 1962. It was also alleged that according to the terms of the contract the Secretary of the Supply Department could terminate the contract and assess the damages and demand the same from the plaintiff after proper accounting. But no accounting was made and the amount was assessed behind the back of the plaintiff in violation of the principles of natural justice.

3. The defendants filed written statement contending that the contract was terminated by the Secretary, Supply Department as per the terms of the agreement and that accounting was duly made in presence of the plaintiff.

4. The main contention before the trial court was that the claim in the certificate case is not a public demand as defined in the Orissa Public Demands Recovery Act. This contention found favour with the trial court and a decree for permanent injunction was passed in favour of the plaintiff. On appeal, the learned Subordinate Judge differed from the finding of the trial court and held that in view of the terms of the contract (Ext. A) the claim in the certificate case is a public demand as denned in Clause (xi) of Schedule I appended to the Act. But on the finding that the parties were at variance regarding the plaintiff's liability to pay the amount, the suit was remanded for a fresh disposal after framing proper issues and giving the parties opportunities of adducing further evidence on the question of plaintiff's liability to pay the amount in question.

5. It is urged in this appeal that the amount, if any, due under the terms of the contract, is not a public demand as defined in the Act. On admission of the appeal, the Court also formulated a question as to whether the suit is maintainable in view of the provisions of Section 41 of the Specific Relief Act.

6. u/s 43 of the Orissa Public Demands Recovery Act, 1962 no certificate duly filed under the said Act shall be cancelled by a Civil Court except on the ground that the amount stated in the certificate was actually paid or discharged before the signing of the certificate and that no part of the amount stated in the certificate was due by the certificate debtor to the certificate holder. It is not the case of the plaintiff-appellant that the amount stated in the certificate was actually paid or discharged. Therefore, he could only maintain a suit for cancellation of the certificate on the ground that no part of the amount stated in the certificate was due by the certificate debtor to the certificate holder. But the present suit is for a permanent injunction simpliciter. The sole relief claimed in the suit is for issue of a permanent injunction restraining the defendants from

proceeding with the certificate case. The State of Orissa, the Collector of Puri and the Certificate Officer of Bhubaneswar have been impleaded as defendants in the suit.

7. The provisions of Section 41 (a) and (b) of the Specific Relief Act are a bar to the prayer for injunction, Section 41(a) provides that injunction cannot be granted the restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings. Undoubtedly, the certificate proceeding is a judicial proceeding and it was pending at the institution of the suit. Prevention of a multiplicity of proceedings is net the purpose for which the suit was filed. As such no injunction can be issued for restraining the defendants from prosecuting the certificate case in view of the bar u/s 41(a) of the Act.

8. According to Section 41(b) of the Act an injunction cannot be granted to restrain any person from instituting or presenting and preceding in a court not subordinate to that from which the injunction, is sought. The Certificate Officer appointed under the provisions of the Orissa Public Demands Recovery Act is a Court as held by this Court in the case of Narayan Trusti v. State, AIR 1972 Orissa 186. The Certificate Officer is not subordinate to the court of the Munsif from which the injunction is sought. The relief for permanent injunction, cannot, therefore, be granted.

9. The courts below have not considered the import of Section 41 of the Specific Relief Act though there was an issue relating to the maintainability of the suit. The suit, as framed, is not maintainable for the reasons stated above. It is not necessary to consider the question whether the dues claimed under the certificate is a public demand recoverable under the provisions of the Orissa Public Demands Recovery Act.

10. The appeal is allowed and the decisions of the courts below are set aside, I make no order as to costs.