
(1974) 08 DEL CK 0010

In the Delhi High Court

Case No : Regular Second Appeal No. 65 of 1968

Union of India

APPELLANT

Vs

Ganpat Rai

RESPONDENT

Date of Decision : 22-08-1974

Acts Referred:

Citation : (1975) RLR 129

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : H.S. Dhir and Harbans Singh, for the Appellant;

Judgement

H.L. Anand, J.

(1) Respondent entered into an agreement with Railway on 15-12-50 for doing certain work. It was extended up to 3-3-52. In March, 1952, respondent gave bill for Rs. 4,000.00 & asked refund of Rs. 3,000.00 (security). To repeated reminders, he was told that matter was under consideration. On 21-1-64, his claim was repudiated. After notice u/s 80, Civil Procedure Code, he filed suit for Rs. 7,000.00. Para 2 onwards judgment is :-

(2) The suit was resisted on the merits as also on the ground that it was barred by time. By its judgment and decree, the trial Court returned findings on all the issues on merits in favor of the respondent but the plea with regard to limitation raised by the appellants prevailed with the learned trial Court with the result that the respondent's suit was dismissed. In the course of its judgment, the trial Court held that the limitation for the suit would be regulated by Article 120 of the Limitation Act of 1963 and came to the conclusion that in terms of clause (23) of the agreement, time was fixed within which claim had to be submitted by the respondent and the question of disallowance was to be decided by the appellant and that the right to sue in terms of Article 120 of the Limitation Act accrued on the expiry of the said period, and that in that view of the matter, the suit was barred by time. The contention raised before the trial Court on behalf of the

respondent that the right to sue accrued on various dates on which the appellant admitted the payment and kept the matter pending from time to time and eventually on January 21, 1964 when the appellants finally repudiated the claim wai dispelled.

(3) On appeal, the decision of the trial Court on the question of limitation, the only question raised by the respondent was reversed and the learned First Appellate Court held that the entire approach of the trial Court with regard to the question of limitation was erroneous and held, basing its decision on AIR 1930 270 (Privy Council) , AIR 1931 9 (Privy Council) and AIR 1931 89 (Privy Council) , that there could be no right to sue until there was an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe the right which forms subject matter of the suit and that the repudiation which could constitute an accrual of the right to sue took place only by the letter of January 21, 1964 Ex. P 25 and the suit being governed by Article 120 of the Limitation Act and having been filed within six years of the said date of the letter was within time. In the result, the judgment and decree of the trial Court were set aside and the suit of the respondent was decreed with Costs.

(4) Aggrieved by the aforesaid judgment and decree of the First Appellate Court the appellants have come up in Second Appeal.

(5) Shri H.S. Dhir learned counsel for the appellants in the first instance contends that the claim of the respondent should have been suitably split up into two parts for the purpose of limitation, in that, the claim was a composite one, for the refund of the security and for payment of the amount of the bill for the work done and that if it had been so split up, at least the part of the claim that relates to the amount for the work done would be regulated by Article 56 of the Limitation Act, 1908 and be taken out of the pale of Article 120.

(6) This contention is wholly untenable. In the first instance, there is no warrant in law for a composite claim arising out of the same agreement being split up for the purpose of ascertaining if any part of the claim was barred by time and it is unnecessary to take this matter any further except to refer to decision of the Supreme Court in the case of Union of India (UOI) Vs. Watkins Mayor and Co., which is an authority for the proposition that the splitting up of the claim arising out of the same agreement is not admissible for the purpose of limitation. In the second instance, assuming that such a splitting up was possible, the claim with regard to the work done was in any event not covered by Article 56. Art. 56 is.....

(7) The Article would apply only if the time for the payment for the work done had not been specified in the agreement for that is what the Article says. Shri Harbans Singh, who appears for the respondent however, points out that a reference to clause (30) of the agreement would make it clear that time for payment had been clearly specified and he has also invited attention to para 3 (c) of the plaint in which the averment on the basis of the said clause had been

specifically made and to the corresponding para in the written statement where the averment was unreservedly admitted on behalf of the appellants. Learned counsel for the appellants, Therefore, does not seriously press this contention and it is accordingly rejected.

(8) In the circumstances, it is unnecessary to consider the objection raised on behalf of the respondent that inasmuch as Article 56 had never been set up at any earlier stage of the proceedings, it was not open to the respondent to plead Article 56 to non-suit the respondent.

(9) The next contention urged on behalf of the appellants is that the "right to sue" in terms of Article 120 of the Limitation Act would be deemed to have accrued in the present case with regard to the work done when the work was actually done or in any event when the bill submitted for payment in respect of work done was duly sanctioned by the appellants for payment and in any event, on the expiry of the period stipulated in clause (23) of the agreement turn the settlement of the claim and the settlement of it after a consideration of any disallowance and that so construed, the suit of the respondent was hopelessly time barred.

(10) Learned counsel for the respondent on the other hand, contends and rightly in my view, that there could be no right to sue in law until the claim is made and is repudiated or the right which is sought to be agitated is either infringed or there is an effective threat to such a right and, Therefore, contends that such a repudiation, threat or injury to the right of the respondent to the amount in question could be said to have arisen only on the repudiation of the claim by the appellants vide Ex, P 25 of January 21, 1964 and that in that view of the matter, the suit would be clearly within time and the learned First Appellate Court was justified in returning that finding.

(11) The starting point for a suit which could be regulated by Article 120 of the Limitation Act is "when the right to sue accrues". Obviously, Therefore, the time under this rule would run from the date "when the right to sue accrues." The words "right to sue" would clearly mean a right to ask for relief, that is a right to prosecute by law to obtain relief by aid of legal process. In other words, the right to sue accrues when a cause of action arises. It is well settled that there would be no accrual of the right to sue unless substantive right first comes into existence, is asserted & had been infringed or threatened to be infringed because it is the right and its infringement or a threat of infringement which constitutes a cause of action and gives rise to the right to seek relief in a Court of law.

(12) The question as to when a right to sue would accrue has been subject matter of considerable judicial controversy and it was held in AIR 1931 9 (Privy Council) that "there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted." This is the basic authority on the question and has since been followed almost

without any dissent and reference would be made in this connection to Gobinda Narayan Iy3I P.C, 69 Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, and Gannon Dunkerley and Co., Ltd. Vs. Union of India (UOI), .

(13) In Gannon Dunkerley and Co. Ltd. v. Union of India (supra), the appellant company had undertaken under the terms of the contract to do specific construction work for the Union on certain basic rates. The appellant company claimed to have done the work and claimed payment at an additional rate over the stipulated rate in view of change in circumstances. The suit was filed beyond three years of the date on which the work was done and also date on which the claim was finally repudiated by the Union. The contention of the Union that Article 56 would regulate the suit was dispelled and it was held that the suit would be governed by Article 120 and the question as to when the right to sue arose was dealt with by Shah J, who spoke for the Court, in the following manner :

"THE claim is Therefore not covered by any specific article under the First Schedule, and must fail within the terms of Art. 120 The Solicitor General, for appellant says claim falls within the terms of Art 120 of the Limitation Act, it was barred, for the appellant company had in the suit made a claim for work done more than six years before the institution of the suit. Counsel submitted that under Art. 120 the period of limitation commences to run from the date on which the defendant obtains the benefit of the work done by the plaintiff. But under Art. 120 of the Limitation Act the period of six years for suits for which no period of limitation is provided elsewhere in the Schedule commences to run when the right to sue accrues. In our judgment, there is no right to sue until there is an accrual of the right asserted in the suit, and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

(14) While Shri Dhir is justified in his contention that the Privy Council decisions as indeed, borne of the other decisions which were based on them were concerned with cases for declaration under the Specific Relief Act and sought to justify this line of decision on the ground that in the case of suit for a declaration, the infringement of the right or an injury or threat to it alone, would give a cause of action for the suit, but in the case of Gannon Dunkerley and Co. Ltd. (supra) the aforesaid principle laid by the Supreme Court was dealing with claim for the recovery of money for the work done and I do not see how the aforesaid decision of the Supreme Court is not an authority for the proposition that there could be no right to sue until a substantive right came into existence, was repudiated or there was any effective threat to such a right so that the time for the institution of the suit under Article 120 would run only by such a threat,

(15) This contention of the appellants must, Therefore, be rejected.

(16) It is unfortunate that a petty claim of Rs. 7,000.00 on account of refund of

security and for the work done by the respondent in the year 1962 was resisted on behalf of the appellants, the Union of India, on rather flimsy grounds and even the bar of limitation was set up with a view to defeat it. In such a case, one is bound to recall to mind the following observations of V.R.Krishna Iyer J. in the case of Dilbagh Rai Jarry V. Union of India 1974 (1) S.L.R. 1, as indeed his Lordships observations in case decided by the Kerala High Court which are quoted in the said judgment;

"I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant today and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions Of state activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, had led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit court here and has been negated in the judgment just pronounced. Instances of this type are legion as is evidenced by the fact that the Law Commission of India in a recent report (54th Report) Oh amendments to the CPC has suggested the deletion of S. 80, find in that wholesome provision hardly ever utilised by Government, and has gone further to Provide a special procedure for government litigation highlight the need for an activist policy of just settlement of claims where the state is a party. It is not right for a welfare State like ours to be Janus-faced, and while formulating the humanist project of legal aid to the poor, contest the claims of poor employee ;s under it pleading limitation and the like. That the tendency is chronic flows from certain observations I had made in a Kerala High Court decision which I may usefully excerpt here : The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook ; for, the State's interest is to meet honest claims, vindicate a substantial defense and never to score a technical point or over-reach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin mothers, of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial

homily but only echoing the dynamic national policy on State litigation evolved at a Conference of law Ministers of India way back in 1957. This second appeal strikes me as an instance of disregard of the policy."

All these words from the Bench, hopefully addressed to a responsive Government, may, if reasonable reactions follow, go a long way to avoidance of governmental litigiousness and affirmance of the image of the State as deeply concerned only in Justice-social justice. The pyrrhic victory of the poor appellant in this case is a sad justification for the above observations."

(17) Appeal dismissed.