
(1978) 08 GUJ CK 0020
In the Gujarat High Court

Union of India (UOI)

APPELLANT

Vs

Harshadray Jayantilal and Co.

RESPONDENT

Date of Decision : 22-08-1978

Acts Referred:

Arbitration Act, 1940 — Section 20, 20
Limitation Act, 1963 — Article 137, 137

Citation : (1979) 1 GLR 387

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—The plaintiff filed Special Suits Nos. 86 of 1974 and 87 of 1974 against the Western Railway administration in the Court of the Civil Judge (Senior Division) at Rajkot. The suits were filed u/s 20 of the Arbitration Act. He prayed that the Western Railway administration should be directed to file the original arbitration agreements in Court and that an order of reference to arbitration of the disputes between the parties be made. The learned trial Judge after hearing the parties made in each case an order directing the Western Railway administration to file the original agreement between the parties in the Court. He also recorded in his final order that the Divisional Superintendent, Western Railway administration, Rajkot, would be the arbitrator between the parties. The Divisional Superintendent, Western Railway, Rajkot, was directed to submit his award to the Court within 12 months from the date of the Impugned order.

2. Two such identical orders made in the two suits by the learned trial Judge are challenged in these two appeals.

3. The only contention which Mr. Pandit who appears on behalf of the Western Railway administration has raised is that the right of the plaintiff to apply u/s 20 of the Arbitration Act was barred by time and that, therefore, the learned trial Judge could not have made the impugned orders. Section 20 of the Arbitration Act, 1940, inter alia provides that "where any persons have entered into an arbitration agreement before the institution of any suit with respect to the

subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court." By instituting the present suits the plaintiffs have applied to the Court for a direction to the Western Railway administration to file the arbitration agreements in Court. Sub-section (1) of Section 37 of the Arbitration Act provides that "all the provisions of the Indian Limitation Act, 1908, shall apply to arbitrations as they apply to proceedings in Court." In view of this provision in Sub-section (1) of Section 37 of the Arbitration Act, Article 137 of the Limitation Act, 1963 will govern the present suits, which, in substance and in reality, are applications made u/s 20 of the Arbitration Act. Article 137 provides that an application for which no period of limitation is provided elsewhere in the Second Division of the Schedule to the Limitation Act, 1963 may be made within three years from the date when the right to sue accrued. It is not in dispute before me that 6th of December 1966 was the last date for the Western Railway administration to make payment of the plaintiff's dues to him. It is, therefore, clear that the dispute between the plaintiff and the Western Railway administration in the matter of plaintiff's dues arose on or before 6th December 1966. His right to make an application to the Court u/s 20 of the Arbitration Act, therefore, became extinct on account of the bar of limitation after 6th of December 1969. The present suits which are applications u/s 20 of the Arbitration Act were filed in 1974. It is, therefore, clear that, by virtue of the provisions of Section 37(1) of the Arbitration Act read with Article 137 of the Limitation Act, 1963 the present suits were barred. The learned trial Judge was, therefore, in error in taking a contrary view on this aspect.

4. The applications or the plaints which the plaintiff filed in the present proceedings, inter alia, stated that the contracts for supply of water in respect of which the disputes between the parties arose were for the years 1963-64, 1964-65, 1965-66, 1966-67 and 1967-68. The plaintiff has alleged that he had discharged all his contractual obligations and that there was no reason for the Western Railway administration to withhold or deduct any amount from his legitimate dues. He, therefore, prayed that the Western Railway administration should not deduct or withhold any amount from his legitimate dues. When these amounts were deducted or withheld has not been stated by the plaintiff in the plaints. If the plaintiff had stated the dates on which payment of his dues was withheld, I would have considered whether on that basis the present suits were within time. The only undisputed fact is that the last date for payment by Western Railway administration was 6th December 1966. Computing the period of limitation from that date, it is clear that the suits filed u/s 20 of the Arbitration Act were barred by time.

5. Mr. Pandit has invited my attention to the decision of the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, Adverting to Article 137 of the Limitation Act, 1963, the Supreme Court has laid down that

the expression "Any other application" used in Article 137 cannot be said on the principle of ejusdem generis to be applications under the CPC other than those mentioned in Part I of the third division. "Any other application" under Article 137 would be petition or any application under any Act. However, the Supreme Court has qualified that in order to attract the provisions of Article 137, it must be an application which must be made to a Court and not to any other authority. The present applications though numbered as suits were made by the plaintiff to the trial Court u/s 20 of the Arbitration Act. Therefore, the principle laid down by the Supreme Court in the case referred to above is applicable to the cases on hand. In my view, since the present suits were barred by time under Article 137 of the Limitation Act, 1963, the learned trial Judge could not have entertained them and made impugned orders therein. In the result, both the appeals are allowed, the impugned orders are set aside and the suits are dismissed. It may be noted that the plaintiff has made no other prayer in his two suits. There shall be no order as to costs in both the appeals in the circumstances of the case.