
(1998) 09 PAT CK 0060

In the Patna High Court

Case No : Appeal from Original Decree (F.A.) No. 151 of 1986 (R)

United Collieries Limited

APPELLANT

Vs

Coal India Limited and Others

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Coal Mines (Nationalisation) Act, 1973 — Section 19
Coal Mines (Taking Over of Management) Act, 1973 — Section 11, 18

Citation : (1999) 1 BLJR 245 : (1999) 1 PLJR 257

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prasun Kumar Deb, J.—This appeal has been preferred by the above named plaintiff-appellant against the judgment and decree dated 14.7.1986 and 26.7.1986 respectively passed by the then Sub-Judge, Hazaribagh, in Money Suit No. 11 of 1982 whereby the suit for recovery of Rs. 1,75,210.30 paise of the plaintiff-appellant has been dismissed.

2. The plaintiff was the erstwhile owner of Central Sounda Colliery and was dealing in coal business and in course of such business plaintiff supplied coal to the Northern Railway prior to 31.1.1973 and for that six separate bills for a total value of Rs. 1,97,887.30 paise were drawn up in the month of January, 1973, out of which an adjustment was made for Rs. 20,677/- and a balance of Rs. 1,77,210.30 paise remained outstanding. As per the plaintiffs case, Central Sounda Colliery was taken over of its management under the provisions of Coal Mines (Taking Over of Management) Ordinance, 1973 on 31.1.1973, which was later on converted into an Act. Thereafter, the said colliery was vested in the Central Government under the Central Coal Mines (Nationalisation) Act, 1973. Accordingly, the Management of Central Sounda Colliery was being taken over on 31.1.7 973 and accordingly, all the bills and all types of transactions were taken

over by the custodian as per the Coal Mines (Taking over of Management) Act, 1973 and the said custodian appointed by the Central Government was entrusted to realise all the dues of the Coal Mines to the exclusion of all persons. The custodian being the statutory authority under the Act should have realised the dues of the plaintiff from the defendant No. 3-Northern Railway and on that expectation the plaintiff did not take any step and was awaiting the audited accounts to be supplied to it. Then again in the meantime, Coal Mines (Nationalisation) Act came into force having its appointed date on 1.5.1973 and after that the Government Companies were formed known as Coal India Ltd. and its subsidiary Central Coal-Fields Ltd., who are the defendant Nos. 1 and 2 respectively. All the assets and liability of the erstwhile private company u/s 19(1) of the Coal Mines (Nationalisation) Act of 1973 were vested to the Central Govt. u/s 19 of the Act, the Govt. Company was to receive or realise the dues to the Coal Mines after 31.1.1973 and the copy of the statement of account duly audited was to be delivered to the owner. In the present case, according to the plaintiff, such audited accounts were supplied by the defendant Nos. 1 and 2 only on 17.8.1979 and as per that statement of accounts the realisation of dues of the Coal Mines of the plaintiff was shown to be Rs. 6,98,921.90 paise with respect to the period prior to taking over i.e., 31.1.1973 but such accounts did not disclose as to whether the amount due to the defendant No. 3 was realised or not. The plaintiff made correspondences with the defendant No. and also with the defendant Nos. 1 and 2, but no break up was supplied by the defendant Nos. 1 and 2 or the defendant No. 3 as to whether the said amount of six bills towards the dues to the defendant No. 3 have been realised by the defendant Nos. 1 and 2 or not. As such, the plaintiff served a notice u/s 80 of the CPC to the defendant No. 3 and a reply was given on 6.7.1982 that a sum of Rs. 1,34,379.90 paise covering amount of last four bills were paid to the custodian and regarding the two other bills investigation was still going on. When the plaintiff could find that the defendants were intentionally avoiding the plaintiffs payment, the suit was filed for the amount as already mentioned above.

3. Defendants appeared and filed separate written statement. In the written statement of defendant No. 3, it was made clear that the amount of four bills totalling Rs. 1,34,379.80 paise have been paid by cheque to the Custodian General C.M.W., Calcutta and the amount of rest of the two bills were also later on paid to the Custodian General and the details of mode of payments have been given in the written statement. Besides such factual statement, it was vehemently contended in the written statement of defendant No. 3 that the plaintiffs claim has become hopelessly barred by limitation.

4. Defendant Nos. 1 and 2 have also filed joint written statement contending, inter alia, that amount which have been realised by the Custodian amounting to Rs. 6,98,921.09 paise have already been paid to the plaintiff and that any dues even if remained with the defendant No. 3, the defendant Nos. 1 and 2 can not be held liable for it because as per the statement of accounts whatever amount have been received and realised from northern and eastern railway have been

amalgamated and shown in the audited accounts, break up of which was not available to them. It was also contended that the plaintiff is not entitled to any claim at this stage when the same has become totally barred by limitation.

5. On the basis of the pleadings of the parties, following issues were framed:

1. Is the suit, as framed, maintainable?
2. Has the plaintiff got cause of action?
3. Is the suit barred by law of limitation?
4. Is the plaintiff entitled to decree as prayed for?
5. To what other relief/reliefs, if any, the plaintiff is entitled to?

6. The vital issue being the issue No. 4 has been decided in favour of the plaintiff to the effect that the realisation of six bills of the plaintiff could not be shown by the defendant Nos. 1 and 2 in their audited statement nor the defendant No. 3 could show by proper documents to the effect that they have already paid the amount of six bills of the plaintiff. They have shown payment of four bills which might have included within six lakhs and odd as per the realisation of the Custodian but the rest of the two bills were not paid. When the defendant Nos. 1 and 2 or the defendant No. 3 could not show the break up as the realisation of the six bills then all the three defendants were held to be liable for the amount due to the plaintiff. But in issue No. 3, it was held that the plaintiff's suit is hopelessly barred by limitation.

7. Mr. M.M. Banerjee, appearing for and on behalf of the plaintiff-appellant has argued only on the point of limitation as the other issues have already been decided in favour of the plaintiff-appellant. His contention is that the learned Court below did not at all consider the fact that the law of limitation was not applicable in the present case as per Section 11 of the Coal Mines (Taking Over of Management) Act, 1973 and the same Act had not been repealed and as such, limitation would not apply for the purpose of claim of the erstwhile owner of the Collieries against their creditors. His contention is that the learned Court below by a single sentence held that after the creation of Coal Mines (Nationalisation) Act, 1973 and coming of its force on 1.5.1973, Coal Mines (Taking Over of Management) Act, had no applicability. It is the contention of Mr. Banerjee that when Coal Mines (Taking Over of Management) Act, 1973, including its Section 11 had never been repealed then it must be construed that such Act is still in force and, as such, law of limitation would not be coming into force for realisation of any claim against its creditors by the erstwhile owner.

8. Admittedly, Section 11 of the Coal Mines (Taking Over of Management) Act, 1973, has kept the law of limitation in abeyance during the continuance of the Act in force. Section 11 of the Act runs as follows-

11. Exclusion of period of operation of Act in computing period of limitation.--In computing the period of limitation prescribed by any law for the time being in

force for any suit or application against any person by the owner of any coal mine in respect of any matter arising out of any transaction in relation to the coal mine owned by him, the time during which this Act is in force shall be excluded.

9. It is the contention of Mr. Banerjee, for and on behalf of the plaintiff-appellant that the bills of the plaintiff were definitely prior to 1973 and the suit has been filed in the year 1982 i.e., on 13.10.1982 but as in the year 1973 i.e., from appointed day of Coal Mines (Taking Over of Management) Act, the appointed day being 30.1.1973 and the same remained continued for realisation of the amount of the plaintiff by the Custodian General, the plaintiff had no scope to raise his claim in the civil Court or in any oilier forum till the plaintiff is being supplied with the audited accounts by the Custodian General i.e., defendant Nos. 1 and 2. Such accounts were made available to the plaintiff only on 17.8.1979 and after that the plaintiff made correspondence and denial has been made after 1979 and hence the plaintiff came in the year 1982 when all his grievances were being turned down by the defendants. In that view also, if the period of limitation is to run from 17.8.1979 then also the claim was definitely not raised within three years and, as such, his claim is barred by limitation. But Mr. Banerjee's contention is that Section 11 of the Coal Mines (Taking Over of Management) Act has not been repealed uptil now then the period of limitation should always be construed as excluded during the continuance of the Act being in force. It is true that u/s 11 of the Act, the period of limitation has been kept in abeyance during the continuance of the Coal Mines (Taking Over of Management) Act. Now, it is to be construed whether Coal Mines (Taking Over of Management) Act is still in force or not.

10. We are to consider that fact from the preamble and other provisions in the Act itself because this Coal Mines (Taking Over of Management) Act or its Ordinance had been made as first step towards Nationalisation of Coal Mines and in the month of May, 1973, Coal Mines (Nationalisation) Act came in force. Now, whether after the coming into force of Coal Mines (Nationalisation) Act, also the Coal Mines (Taking Over of Management) Act remained in force or not is only the crux to be decided in this appeal.

11. By Coal Mines (Taking Over of Management) Act, only the management was taken over by the Central Govt, as the first step towards Nationalisation of the Collieries. Different provisions of the Coal Mines (Taking over of Management) Act reveal as to how the management is to be made by the Central Govt. till the whole of the Collieries are to be Nationalised. As the first step. Management was taken over and then the whole colliery was nationalised by way of vesting. Therefore, in natural course, Coal Mines (Taking Over of Management) Act should not have any application or force after the Coal Mines (Nationalisation) Act came in force because the management including its property had been vested in the Central Govt. Before nationalisation, only management was taken over; when the properties had been vested, then the management must have been merged with such nationalisation. The preamble of the Coal Mines (Taking Over of

Management) Act is very relevant which is reproduced below-

An Act to provide for the taking over, in the public interest, of the Management of Coal Mines, pending nationalisation of such mines, (emphasis applied by me) with a view to ensuring rational and co-ordinated development of coal production and for promoting optimum utilisation of the coal resources consistent with the growing requirements of the country, and for matters connected therewith or incidental thereto.

Thus, from the above, it suffices to mention that this Coal Mines (Taking Over of Management) Act, was only a stop gap arrangement towards nationalisation of mines and this Act shall remain in force pending nationalisation of such mines. Naturally, after the mines have been nationalised, then this Coal Mines (Taking Over of Management) Act shall not be in force and from the different provisions of this Act also, it is clear that these are enumerated towards the end in goal after nationalisation of the mines. After the mines are vested in the Central Govt. then the Central Govt. became the absolute owner of the erstwhile collieries and then the question of Coal Mines (Taking Over of Management) Act remaining in force has no meaning at all. But it is true that by any clear words in the Coal Mines (Nationalisation) Act, or by any Act afterwards, the Coal Mines (Taking Over of Management) Act, 1973, has not been repealed. In my view, such repealing is not necessary because this Act has been promulgated by the legislature only as stop gap arrangement towards nationalisation of the mines. Furthermore, this Act can not have any application after the vesting of the mines with the Central Govt. This would again be clarified from Section 18 of the Coal Mines (Taking Over of Management) Act, 1973, itself, which runs as follows-

18. Coal Mines to which this Act shall not apply.--(1) Nothing contained in this Act shall apply to any coal mine-

(a) owned, managed or controlled by Government, or by a Government company or by a corporation which is owned managed or controlled by Government;

(b) owned or managed by a company engaged in the production of iron and steel;...

Thus, the Coal Mines (Taking Over of Management) Act has no application on the mines which are being owned by the Central Govt. after vesting under the Coal Mines (Nationalisation) Act. Admittedly, the Central Govt. or the defendant Nos. 1 and 2 have become the owner of the collieries including that of Central Sounda Colliery and since the appointed day of the Coal Mines (Nationalisation) Act, i.e., 1.5.1973, the ownership of the plaintiff-company was changed to Govt. company and from that date the Coal Mines (Taking Over of Management) Act has no application in it. In view of Section 18 being included within the Coal Mines (Taking Over of Management) Act, there remains no question of repealing of Coal Mines (Taking Over of Management) Act because this Act has got no application the Govt. owned companies and for that reason, the legislator did not feel it proper to repeal the Coal Mines (Taking Over of Management) Act as the

repealing provision has already been included within the Act itself by inclusion of Section 18. Hence, I find that Mr. Banerjee's submission has got no force. The question of repealing of Coal Mines (Taking Over of Management) Act vis-a-vis Section 11 has got no force after 1.5.1973. when the Coal Mines (Nationalisation) Act came in force.

12. In that view of the matter, I totally agree with the views expressed by the learned Court below in the impugned judgment in its decision at issue No. 3 in view of the preamble and Section 18 of the Coal Mines (Taking Over of Management) Act, 1973. The question of its repealing is redundant and Section 11 excluding the limitation period of no avail after the Coal Mines (Nationalisation) Act came in force. It also does not come to any reason in general and natural sense that Limitation Act will remain in abeyance for an indefinite period regarding the Coal Mines alone.

13. In the result, this appeal has got no force and hence the same is dismissed with costs. The impugned judgment and the decree of the learned Court below is hereby upheld and confirmed.