(2002) 08 JH CK 0001

In the Jharkhand High Court

Case No : LPA No''s. 449 and 454 of 1998 (R)

United Collieries Ltd. APPELLANT

Vs

Coal India Limited and Others RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Coal Mines (Taking over of Management) Act, 1973 — Section 11

Citation : (2003) 1 JCR 225

Hon'ble Judges : M.Y. Eqbal, J;Hari Shankar Prasad, J

Bench : Division Bench

Advocate : M.M. Banerjee and A.K. Das, for the Appellant; Suresh Prasad, A.K. Mehta and M.M. Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 9th September, 1998 passed in First Appeal No. 151 of 1986 (R) whereby the appeal preferred by the plaintiff/appellant has been dismissed and the judgment and decree passed by the Subordinate Judge has been affirmed.

2. The facts of the case lie in a narrow compass.

3. The plaintiff/appellant M/s. United Collieries Limited was the erstwhile owner Central Sounda Colliery and was dealing in coal business and in course of such business certain amount of coal was supplied to the defendant Northern Railway prior to 31.1.1973. Against such supply of coal, six separate bills having total amount of Rs. 1,97,887.30 were drawn up in the month of January, 1973 and the balance of Rs. 1,77,210.30 paise remained outstanding. The plaintiffs case was that the Central Sounda Colliery was taken over under the provisions of Coal Mines (Taking over of Management) Ordinance 1973 on 31.1.1973. Thereafter, the said colliery was finally vested in the Central Government under the Central Coal Mines (Nationalisation) Act, 1973. Consequently, 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 realize all the dues of the Coal Mines to the exclusion of all persons. The plaintiff''s further case was that the custodian being the statutory authority have realized the dues of the plaintiff from the defendant No. 3, Northern Railway but the said amount allegedly not recovered from the Northern Railway and the plaintiff came to know from the audited accounts which was supplied only on 17.8.1979. The plaintiff then made correspondence with the defendants but no breakup was supplied to them as to whether the amount recovered from six bills towards dues have been realized or not. The plaintiff thereafter served legal notice u/s 80 of the CPC and filed the aforementioned suit for recovery of Rs. 1.34,379.90 paise.

4. Defendants/respondents contested the suit by filing written statement. Their case is that the amount of four bills totaling Rs. 1,34,379.90 paise was paid by cheque to the custodian General CMA, Calcutta and the amount of two bills were also later on paid to the Custodian General. Their further stand was that the amount which have been realized by the Custodian General have already been paid to the plaintiff and any dues even if remained unpaid the same is not payable and the suit is hopelessly barred by limitation. The trial Court although decided some of the issues in favour of the plaintiff/appellant but held that the plaintiffs suit was hopelessly barred by limitation.

5. In the First Appeal filed by the plaintiffs/appellants, the learned Single Judge after re-appreciating the entire facts and evidences and the relevant provisions of law has affirmed the finding of the trial Court that the suit was hopelessly barred by limitation. Consequently the appeal was dismissed.

6. Mr. M.M. Banerjee, learned counsel appearing for the appellant assailed the impugned judgment of the learned Single Judge as being contrary to law and the evidence available on record. According to the learned counsel both the Courts have erred in law in holding that the suit was barred by limitation. Learned counsel contended that the law of limitation was not applicable in the present case in view of Section 11 of the Coal Mines (Taking over of Management) Act, 1973 in short Management Act of 1973) and the said Act has not been repealed and such limitation would not apply for the purpose of claim of the erstwhile owner of the Collieries against their creditors. Mr. Banerjee, further contended that the learned Single Judge erred in law in holding that after enforcement of Coal Mines Nationalisation Act, 1973 (in short Nationalisation Act the Coal Mines (Taking over of Management) had no applicability.

7. Before appreciating the contention pf the learned counsel, it would be useful to refer some of the provisions of the Management Act and the Nationalisation Act Section 11 of the Coal Mines (Taking-over of Management) Act reads as under :

"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."

8. The aforesaid provisions clearly provides that in the event a suit is filed by the owner of the Coal Mines against any person in respect of any matter arising out of any transaction in relation to the Coal Mines time during which this act is enforced shall be excluded. The question therefore falls for consideration is till what period the Management Act remain enforced. Admittedly the Management of Coal Mines was taken over by the Central Government on 31.1.1973 by virtue of the enforcement of Coal Mines (Taking over of Management) Act 1973. Immediately, thereafter on 1.5.1973 the Coal Mines (Nationalisation Act) 1973 was enacted by which right title and interest of the owner in respect of the Coal Mines specified in the schedule have been acquired and vested in the Central Government. It is therefore clear that the provisions of the Management Act was the first step towards the Nationalisation of Coal Mines and in May, 1973, the Nationalisation Act came into force whereby the entire Coal Mines vested in the Central Government. In our view also therefore, the Coal Mines (Taking over a Management) Act, was only a stop gap arrangement towards nationalization of mines and the said Act remain in force pending nationalization of such mines. After the mines were vested in the Central Government, and the Central Government became absolute owner, the management also vested in the Central Government and it is started managing the Coal Mines. The Coal Mines (Taking over of Management) Act. 1973 ceased to have any force of law on the date when the nationalization Act came into force. We are further of the view that by virtue of Section 11 of the Coal Mines (Taking over of Management) Act, 1973 the period upto 1.5.1973 is to be excluded in computing the period of limitation in the event any suit is filed by the owner of the Coal Mines after coming into force of Coal Mines Nationalisation Act.

9. Besides the above, admittedly the amount for which suit was filed fell due during 1973 and the period of three years expired in 1976. Even if it is presumed that limitation will run from the date when the audited statement of account was supplied to the plaintiffs/appellants on 17.8.1979, the suit filed by the plaintiffs was barred by limitation inasmuch as it was filed beyond three years. The trial Court the learned Single Judge have rightly held that the suit was barred by limitation.

10. For the reasons aforesaid, we do not find any merit in these appeals which are accordingly dismissed.

