
(1972) 05 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : First Appeal No. 342 of 1960 and Civil Miscellaneous No's. 245-C of 1961 and 527-C of 1972

Zila Parishad, Ambala

APPELLANT

Vs

Banarsi Dass Kapur

RESPONDENT

Date of Decision : 23-05-1972

Acts Referred:

Limitation Act, 1963 — Article 115, 120, 145, 62

Citation : AIR 1973 P&H 276

Hon'ble Judges : S.S. Sandhawalia, J; M.R. Sharma, J

Bench : Division Bench

Judgement

Sharma, J.—This appeal arises out of the following facts.

The plaintiff, being an approved contractor, submitted a tender on May 3, 1954, in respect of the work for the mattering and tarring of Jagadhri Bilaspur road miles 6 to 8/2260 and for the supply of burnt bricks, stone-metal etc. to the District Board Ambala, which has now been substituted by the Zila Parishad Ambala. The District Board (hereinafter called "the Board") accepted the tender and communicated the necessary sanction to the plaintiff vide its letter dated June 14, 1954. In terms of the agreement between the parties, the plaintiff was required to give security for due performance of the contract. He did so by opening a Savings Fund Account in respect of Rs. 7033/- in the Ambala City Post Office on 4/5 August, 1954, and pledged this amount with the Board. The Chairman of the Board was given authority to withdraw any amount from the said Savings Fund Account on the happening of certain events which showed that the plaintiff had failed to perform his part of the contract as stipulated in the agreement deed. The plaintiff claims to have with the terms of the agreement inter parties. He was made full and final payment of the bills submitted by him to the Board without any objection. After the completion of the contract, the plaintiff was entitled to receive the amount of security deposit which he had pledged in favour of the Board. When he made a demand in this behalf, he was

informed that this amount had been adjusted towards compensation which had been imposed against the plaintiff as detailed below:--

(a) The amount of compensation levied for the alleged delay in connection with supplies of material Rs. 6076.00 (b) To amount of compensation levied for the alleged delay in the completion of jobs, consolidation etc. Rs. 957.00

Total:- Rs. 7033.00

2. As the defendant-Board refused to refund this amount the parties referred this matter to the Superintending Engineer, Ambala. as the sole Arbitrator. The Arbitrator held that he had no jurisdiction to entertain the dispute about the imposition of Rs. 6076.00 as the compensation claimed against the plaintiff for the alleged delay in completing the work undertaken for the supply of material. Regarding the second item of Rs. 957/-. the Arbitrator gave his award directing the defendant-Board to refund a sum of Rs. 947/- to the plaintiff after deducting Rs. 10/- only as the valid compensation. The plaintiff filed a suit in the Court of Subordinate Judge First Class, Jagadhri, claiming a sum of Rs. 706/-. The attack levelled against the withholding of Rs. 6076/- as compensation levied for the alleged delay in connection levied for the alleged delay in connection with the supplies of materials was based, inter alia, on the following reasons :--

(a) The act of the defendant in levying the compensation in question is arbitrary, capricious and unilateral.

(b) No details of the said compensation have been explained to the plaintiff.

(c) The terms of the contract authorising the defendant to impose compensation, being penal and inoperative, again time was not the essence of the contract and no compensation could be imposed.

(d) In any case, the defendant had waived the terms in question and is none estopped from levying any compensation on that account.

(e) The alleged compensation was not imposed by any valid resolution of the defendant-District Board, but by the Chairman of the defendant in his individual capacity. The Chairman of the defendant had no such authority and hence his order imposing the compensation is illegal and not binding upon the plaintiff.

(f) The alleged delay in the supply of the material was made for no fault of the plaintiff and, on the other hand it was the direct result of the failure on the part of the defendant to perform its part of the contract inasmuch as it did not construct the roads in time over which the material was to be carried.

(g) If at all any compensation was leviable, it could be levied only in respect of that part of the part of the contract the execution of which was delayed, and not on the entire contract.

3. The defendant-Board filed a written statement in which it was alleged that the plaintiff was to supply stone-metal and burnt bricks on the road by January 5, 1955. This date was extended by one month and ten days but the plaintiff failed to complete the job even within the expelled time. He finished the supply only on March 28, 1955. The screenings were insufficient. The plaintiff supplied only 2204cft. as against the contracted quantity of 4404cft. The material was largely mixed with earth and contained only one half of screening. It was further alleged that the time was the essence of the contract and the plaintiff rendered himself liable for compensation because he failed to perform his part of the contract within the time fixed and the compensation had been levied properly. The learned trial Court framed the following issues on the pleadings of the parties:--

(1) Whether the plaintiff supplied the material to be defendant within the stipulated period or within the period as extended by the defendant?

(2) If not, whether the delay in supply of material was caused for no default of the plaintiff and to what effect?

(3) Whether such delay was caused on account of defendant's fault?

(4) Whether the defendant had waived such delay?

(5) Whether the condition imposing penalty on the plaintiff for delay in supply of material was penal and as such void?

(6) Whether the time was not the essence of the contract for supply of material?

(7) Whether the defendant was justified in imposing a penalty of Rs. 6076/- on the plaintiff for the delay in supply of material. If not, what should be the correct amount ?

(8) Whether the said penalty had been validly imposed by or on behalf of the defendant?

(9) Whether the defendant served a show-cause notice on the plaintiff before imposing the penalty of Rs. 6076/-. If not its effect?

(10) Whether and if so to what amount is the plaintiff entitled on account of the interest?

(10-A) Is the suit within time?

(11) Relief.

4. The learned trial Court decided issues Nos. (1) and (5) against the plaintiff and decided all the other issues in his favour. As a result of this decision, the plaintiff was granted a decree for the recovery of Rs. 6076/- with proportionate

costs against the defendant-Board.

5. The defendant Board has come in appeal before this Court. The learned counsel for the appellant has mainly challenged issue No. (10-A) which related the question of limitation. According to him, the respondent was required under the contract to supply the materials up to February 13, 1955. Under this contract, he deposited the security for its due performance. If the Board refused to return him the security, then his case would be one for compensation for the breach of a contract and hence governed by Article 115 of the Limitation Act (hereinafter called "the Act".) On the other hand the learned counsel for the respondent has submitted that the security deposit, whether it is connection with due performance of a contract or not, remains a deposit in the eyes of law and the suit would be governed by the specific Article of the Act on the subject, i.e., Article 145 of the Act. He further added that in case Article 145 was held not to apply, then the suit will be governed by the residuary Article, i.e., Article 120 of the Act. In order to properly appreciate the points in controversy, it becomes necessary to notice the relevant provisions of the statute:--

Description of suit. Period of Limitation. Time from which period begins to run.

115: For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for. Three Years. When the contract is broken, or (when there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

120: Suit for which no period of limitation is provided elsewhere in this schedule. Six Years. When the right to sue accrues.

145: Against a depository or pawn to recover movable property deposited or pawned. Thirty years. The date of the deposit or pawn.

6. After interpreting the provisions of the Act, the Courts have enunciated certain salutary principles. In AIR 1932 165 (Privy Council) , it was held that "the fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in constructing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide." We have to see with reference to the suit filed by the plaintiff-respondent the question of applicability of either of the aforementioned Articles of the Act. If the suit filed by him could be called a suit for compensation or damages, then obviously Article 115 of the Act would apply. But if the suit is one for the return of security deposit, then we cannot invoke this Article which is of general nature and have to examine the language employed by other Articles of the Act for determining their applicability in the light of the principles enunciated by the Privy Council in Nagendra Dey's case (supra).

7. In Lala Gobind Prasad v. Chairman of Patna Municipality (1907) Cri LJ 535 the controversy arose on the basis of the following facts. The petitioner in that case

was appointed as Naib Buxi in the Patna Municipality and deposited Rs. 100/- as security for the faithful and held by him was abolished and his services were dispensed with. Shortly afterwards, the accounts were examined and it was found that nothing was due from the petitioner. Subsequently, he asked for the refund of the deposit but his application was refused. In a suit filed by him for the refund of the security, that Municipality set up the bar of limitation by asserting that his suit was barred under Article 120. Moorkerjee, J., after making an elaborate discussion of the points involved in the controversy came to the conclusion that moveable property as mentioned in Article 145 of the Act also included money and further observed:--

"It further appears that there is not, in point of principle, any substantial difference between the two cases in one of which a Government security, and in the other a sum of money, is deposited, for the faithful discharge of the duties undertaken by the depositor, and there is no intelligible reason why two different periods of limitation should be applicable to the two cases in each of which the depositors seeks for the return of his deposit after his service has terminated. If a Government security or a sum of money is delivered to be held as security for the performance of some engagement, and upon the express or implied understanding that the thing deposited is to be restored to the owner as soon as the engagement has been fulfilled, the person with whom the deposit has been made may rightly be treated as a depository within the meaning of Article 145 of the Second Schedule of the Limitation Act."

8. In *Gannon Dunkerly & Co. Ltd. v. Western India Theaters Ltd.*, 1961 CWN 504 a building contractor was called upon to deposit a sum of Rs. 7000/- as security with the architects for the due performance of the contract of building. When the work was finished the contractor demanded his security back which was refused. On a suit filed by him, the question arose whether Article 115 or 145 of the Act applied to that case. After making an exhaustive analysis of the relevant case law on the point. Bose. J., observed as under :--

"Now a deposit made as security for due performance of a contract is refundable whether it is coupled with a promise or agreement to repay it or not. Even if nothing is agreed as to its repayment at the time the deposit is made, the obligation to repay arises upon the proper performance of the engagement by reason the very nature of the transaction of deposit. If an express agreement is entered into for repayment of the deposit, the transaction still remains a deposit and its nature is not thereby altered. The essence of the cause of action for a suit for refund of deposit is not the breach of the contract to repay it, but the fact that the transaction is a deposit which by its very nature is refundable. The person who holds the deposit and the person on whose behalf or for whose benefit the deposit is held as security are liable to refund it because it is a deposit. They are both in the position of depositories. So my conclusion is that the Article applicable is Article 145 of the Limitation Act and if for any reason this Article cannot be held to be applicable, there is no doubt that Article 120 is

applicable to this case".

9. In *Ahilyamba Chatram and Devasthanam Vs. R. Subramania Ayyar*, , the question arose whether a suit filed by an employee against his employer for the refund of security deposit made in respect of due performance of the contract of service was governed by Article 120 or Article 145 of the Act. On a consideration of the earlier cases decided by that Court and some other Courts the learned Judge came to the conclusion that the suit would be governed by Article 145 of the Act. This case was later on considered by a learned single bench of the Allahabad High Court in *Datt Singh v. Srihar Singh* AIR 1955 NUC 3551. The commentator has digested the observations made by the learned Judge in the following terms:--

"The claim for a return of the deposit money cannot by any stretch of the language of Article 115 be considered as a suit for compensation for breach of any contract. When no employee makes a deposit for due performance of his duties, the deposit is in the nature of a true and the proper Article in such a case is Article 145 which provided for a grater period of limitation than Article 120. Even if Article 145 is not applied, there is no escape from the conclusion that the other Article applicable to a case of this type is Article 120".

10. The question regarding the applicability of the various Articles of the Act in suits for money deposited as security for due performance of the contract came to be considered also in *Harij Gram Panchayat Vs. Thakkar Lakhiram Ramji and Others*, . The learned Judge noticed with approval the observations made by Chagla C. J., in *Lingangouda Marigouda Vs. Lingangouda Fakirgouda and Others*, , which are to the effect that Article 62 should be more strictly construed because a liberal construction would result in more plaintiff losing in a large number of cases on the ground of limitation, and if this Article was strictly construed, then the suit would fall under Article 120 which gave to the plaintiff a longer period of limitation. Art. 120 was held to be applicable for such suits. It may, however, be noticed that the learned Judge did not consider the effect of Article 115 in that case.

11. In *Jorhat Local Board v. Ambika Charan Saikia*, AIR 1960 Assam 121, it was held that a suit for recovery of provident fund from a Local Board was governed by Article 120 of the Limitation Act because no specific Article was applicable. The question of applicability of Article 115 was expressly considered in this case.

12. On a perusal of the above-mentioned authorities, it becomes abundantly clear that in case of suits for return of security deposits, whether they are made for due performance of a contract of service or of works, the Courts were inclined to hold that Article 145 of the Act applied. This interpretation also appears to be in accord with the principals enunciated by the Privy Council in AIR 1932 165 (Privy Council) .

13. The learned counsel for the appellant, however, relied upon a Division Bench judgment of the Patna High Court in *Union of India (UOI) Vs. Gangadhar Mimraj*

and Another, . In that case the plaintiff had entered into a contract with the Railways authorities to supply some goods. In respect of that contract the plaintiff had deposited Rs. 2500/- as security money. This security money was forfeited by the Railway authorities on account of some default alleged to have been committed by the plaintiff. The Court considered the question of applicability Arts 115, 120 and 145 of the Act and came to the conclusion that Article 115 applied. The reasons which influenced the learned Judges to come to this conclusion can be inferred from the following passage:--

"In these suits, the Railways administration had the authority under the contracts to recover from the plaintiffs any costs which the Railway administration may have to incur for failure to perform the contracts within the stipulated periods from any money due to the plaintiffs by the Railway administration and/or forfeit the security deposits in whole or in part. In fact, in the case of D. D. Kapoor, the Railway administration did deduct from the security money the penalty imposed upon him for his failure to execute the contract within the stipulated period. Therefore, in these two cases, the deposits were made, as observed by Fry. L. J., for two purposes, first, as an earnest to bind the bargain so entered into and also as a part payment. In such circumstances, the limitation cannot be said to run from the date of deposits. The limitation will run obviously from the happening of the given contingency that is, performance or non-performance of the contract which must be later than the date of the deposits. The Limitation Act provides for time running only after the cause of action had arisen and on this view alone Article 145 must be held to be inapplicable in the instant case."

14. With utmost respect to the learned Judges, who decided this case, we are of the view that the deposits remain a deposit whether the cause of action for realising this deposits accrues on a subsequent event. For interpreting the provisions of the Articles of the Act the entries in columns 1 and 2 have to be read together and the words appearing therein have to be given their natural meaning. If this principle is accepted, then it cannot be said that a person who brings in a suit for return of the security deposit or a part thereof actually brings in a suit for compensation for the breach of any contract.

15. The other decision relied upon by the learned counsel for the appellant is State of Andhra Pradesh v. Isukapalli Gangaraju, AIR 1964 Andh Pra 485. In that case the plaintiff had obtained an excise contract from the Government in respect of which he also made a security deposit. This security deposit was forfeited on the basis of the breach of one of the clauses of the licence. The learned Judge observed as follows:--

"Therefore, I hold that, to the present case, which is a suit for money illegally collected by the Government from the plaintiff. Article 62 of the First Schedule to the Indian Limitation Act applies. The cases, which are binding on me, have pointed out that when the money was received by the defendant, it need not have been in fact received for the plaintiff's use. When the exaction is illegal, the Court applies a fiction that the defendant received the money for the plaintiff's

use, because the defendant in justice and equity is bound to refund it to the plaintiff and had no right to retain it."

16. With great respect to the learned Judge, we are of the view that a deposit lawfully made under a contract cannot be equated with money illegally collected. Besides, we find it difficult to import fiction of common law relating to money received by the defendant for the use of the plaintiff. Obviously when security is deposited for due performance of a contract, the depository has a right to take something out of it in accordance with the terms of the contract. In this situation, it cannot be said that deposit was for the use of the depositor only.

17. In R. S. A. No. 229-P of 1955 (Thakkar Dass Kishan Chand v. State of Pepsu), decided on 28-9-1959, the Director of Civil Supplies in the former State of Pepsu issued a notification making a levy of one percent on the ex-mill price of cloth obtained by the dealers for sale in purported exercise of powers under the Pepsu Cloth Distribution Order of 1948. This levy was subsequently found to be illegal. The dealer filed a suit for the realisation of the sum levied against him by the Government as the same was dismissed by the trial Court and the lower appellate Court on the ground that the suit was barred by limitation. Mehar Singh, J., as the learned Chief Justice then was, considered the relevant authorities in great detail and came to the conclusion that Article 62 of the Limitation Act was not applicable to such a case. It was held that the suit would be governed by Article 120 of the Limitation Act. In coming to this conclusion, his Lordship relied upon the following passage appearing in 1918 AC 563--

"Under principles which have always obtained in Ceylon, law and equity have been administered by the same Courts as aspects of a single system, and it could never have been difficult to treat an action analogous to that for money had received as maintainable in all cases "where the defendant has received money which ex-aequo et bono he ought to refund." If, as in Ceylon, there is no necessity to find an actual contract or to impute the fiction of a contract, inasmuch as every Court can treat the question as one not merely of contract, but of trust fund where necessary, there is no difficulty in extending the remedy to all the cases covered by the words just quoted."

18. After considering this judgment the learned Judge held that the authorities which took the contrary decision did not take into consideration the above-mentioned judgment of the Privy Council in which it had been emphasised that so far as the Courts situated outside England were concerned it was not necessary to find an actual contract or to impute the fiction of an actual contract in the case of collections made which were not supportable by law because in such actions the relief could be granted on the ground that the money so collected was a trust fund. The Letters Patent Appeal against this judgment was dismissed in limine. Thus, so far as the Court is concerned, the settled view is that Article 62 of the Limitation Act cannot be invoked in such cases.

19. The above-mentioned discussion will show that there is overwhelming judicial

opinion in favour of the applicability of Article 145. Even if it may be assumed that the deposit contemplated by Article 145 of the Limitation Act was of the type which was exclusively for the use of the depositor, the suits for recovery of such deposits could not fall under Article 115 of the Act.

20. Such a suit though relating to a deposit would fall under the residuary Article 120 of the Act. For the purposes of this suit it is not necessary to decide the conflicting claims of Article 145 and 120. It is agreed by the parties that if Article 120 applies, then the suit filed by the plaintiff-respondent is within time. In agreement with the decision given by the learned trial Court we hold that the suit filed by the plaintiff-respondent was not barred by limitation.

21. The other points involved in the controversy were not seriously challenged before us. The learned trial Court came to the conclusion that there was excessive rainfall during the relevant period which caused delay in the performance of the contract. The appellant was also held to have afforded reasonable help to the respondent for doing this job. The contract in dispute was not a commercial contract and in view of the extensions granted by the appellant itself, it cannot be held that time was the essence of the contract. No serious infirmity has been brought to our notice regarding these findings arrived at by the learned trial Court.

22. For the reasons mentioned above, this appeal fails and is dismissed with costs.

C. M. 245-C of 1961 is also dismissed.

S.S. Sandhawalia, J.

23. I agree.

24. Appeal dismissed.