

(2018) 09 CHH CK 0302
Chhattisgarh High Court
Case No: FA No. 49 Of 2013

Sankalp Sahu

APPELLANT

Vs

Chandraprakash Upadyay And
Ors

RESPONDENT

Date of Decision: Sept. 20, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Section 80, 96, Order 41 Rule 22

Hon'ble Judges: Prashant Kumar Mishra, J; Vimla Singh Kapoor, J

Bench: Division Bench

Advocate: Vinod Kumar Sharma, Malay Shrivastava, PK Bhaduri

Final Decision: Allowed

Judgement

Prashant Kumar Mishra, J

1. This is an Appeal under Section 96 of the CPC by defendant No.3 in the suit assailing the judgment and decree passed by the trial Court directing

him to pay a sum of Rs.6,69,064/- to the plaintiff.

2. Plaintiff's case, in short, was that he has medical store and is engaged in sale and supply of medicines. In the year 2009, the present appellant was

posted as Assistant Commissioner, Department of Tribal Development, Government of Chhattisgarh, at Kawardha under whom 97 Ashram schools

(residential schools) were operating. On 19.11.2009, Shri Prakash Narayan Gupta, Superintendent of one Baiga Ashram came to the plaintiff's shop to

instruct him to supply medicines for 97 Ashram schools. He provided details of packet containing specific medicine for 97 Ashram school. On the

plaintiff's request for written order, Shri Prakash Narayan Gupta stated that the present appellant has requested for immediate supply on oral order

and written order shall be provided later on. The plaintiff supplied the said 97 packets of medicines and handed over the same to defendant No.5

Pramila Netam, but despite repeated requests, written order was not placed by defendant No.3/appellant to the plaintiff but promised to pay the bills at

the earliest. Separate bills for 97 packets were handed over to the department on the instructions of the appellant but payment of Rs.1,85,790/- only

was made through banker's cheque No.506134 on 8.6.2010 and the payments for the remaining bills were not made. The plaintiff served notice dated

27.8.2010 under Section 80 of the CPC to the defendants vide Ex.- P/6 and thereafter filed the suit on 2.1.2012. Another notice under Section 80 CPC

was served vide Ex.-P/1 on 23.7.2011.

3. The appellant/defendant No.3 and Smt. Pramila Netam, defendant No.5 filed separate written statements denying the suit allegations. The appellant

denied to have visited the plaintiff's medicine shop and further stated that if the plaintiff has supplied medicines without quotation or tender process, he

has to blame himself. Since the supply was made without order, the plaintiff was informed to take back the goods but he did not take it back,

therefore, the plaintiff is himself responsible for his act of negligence and the defendants are not liable to make any payment. However, the

appellant/defendant No.3 admitted to have made payment of Rs.1,85,790/- by the department for which an explanation was offered that since some of

the medicines were used, payment of only that quantity was made and for the remaining, the plaintiff was requested to take back the medicines.

4. Defendant No.5 Smt. Pramila Netam, in her written statement, conceded to have received 97 packets of medicine on 19.11.2009 for which she

was instructed by Shri Prakash Narayan Gupta, Superintendent, Baiga Hostel, Kawardha, who in turn informed her that medicines are to be received

on the instructions of the appellant/defendant No.3.

5. Based on the documents in the form of bills, admission of receipts of 97 packets of medicines by Smt. Pramila Netam and Shri Prakash Narayan

Gupta, as also payment of Rs.1,85,790/- made by the appellant/defendant No.3 as Assistant Commissioner, Tribal Development, Kawardha, and

statements of witnesses, the trial Court dismissed the suit against the other defendants while holding the appellant/defendant No.3 to be liable to make payment of admissible amount of Rs.6,69,064/- to the plaintiff.

6. It is argued by learned counsel for the appellant that even if the entire case of the plaintiff is proved, liability to make payment would be of the State

Government. It is also argued that the plaintiff having failed to take back the medicines despite request, none of the defendants are liable to make

payment of medicines, which were not used by the department and for which no orders for supply were ever placed with the plaintiff.

7. Learned counsel for the respondents would submit that the trial Court has rightly found the appellant/defendant No.3 to be responsible and liable to

make payment because it was the appellant who has orally directed the plaintiff to supply medicines.

8. The fact that the appellant has supplied medicines has not been denied in express categorical terms by defendant No.3 and 5. They have in fact

admitted to have received the supply, as is clearly mentioned in para-2 of the impugned judgment, which refers to the admitted facts between the

parties. It has also been found by the trial Court that part payment of Rs.1,85,790/- has been made by the Tribal Development Department,

Kawardha.

9. In view of the admitted facts, we are only required to examine whether the decree against the appellant alone could have been passed by the trial

Court.

10. Interestingly, the plaintiff has not preferred any separate appeal or any cross appeal or cross objection under Order 41 Rule 22 of the CPC praying

that the trial Court should have passed decree against the State Government and its officers.

11. In the absence of any such prayer, we shall proceed to examine as to whether decree against the present appellant/defendant No.3 alone could

have been passed by the trial Court as if the appellant had purchased medicines for his own use.

12. It was the plaintiff's case in the plaint that on the request of one Prakash Narayan Gupta, medicines were supplied and delivered in one of the

Ashram school which was received by Smt. Pramila Netam, defendant No.5, Superintendent of Pre-Matric Tribal Girls Hostel, Kawardha. She would

admit that Prakash Narayan Gupta was store-in-charge, who came to the hostel at about 8-9 am on 19.11.2009 to instruct her to receive 97 packets of

medicines. She admits to have issued receipt memo (Ex.-P/17). These supplies were received by Pramila Netam on the instructions of Prakash

Narayan Gupta and this appellant had never requested DW-2 Pramila Netam to receive 97 packets of medicines. On receipt of bills by the

department, a sum of Rs.1,85,790/- has been paid to the plaintiff by the Department of Tribal Development, Kawardha vide banker's cheque No.

506134. This payment has been admitted by the Project Administrator, Integrated Tribal Development Project, Gariyaband, District Raipur vide

document Ex.-D/1 though payment has been explained to have been made because medicines equal to the said value has been used by the

department. In yet another document (Ex.-D/3) also, the office of Assistant Commissioner, Tribal Development, Kabirdham has admitted to have

made payment of Rs.1,86,250/-. This document has been approved by the Collector, Kawardha, as is mentioned at the end of para-6 of the document.

If part payment of the total bills has been made by the Government by issuing a banker's cheque payable at the treasury, it would have the effect of

admission of receipt of goods and the liability to make payment even if there was no orders for supply of medicines. It is equally true that there is no

document on record placed and proved by the defendants asking the plaintiff to take back the medicines. This defence of asking the defendants to

take back the medicines has surfaced for the first time after service of legal notice by the plaintiff. Thus the supplies having been received and the

medicines having been used by the department, decree against the present appellant in his individual capacity and not by his designation could not have

been passed.

13. In the absence of any separate appeal/cross appeal/cross-objection by the plaintiff seeking decree against the State and its authorities and for the

reason that decree against the present appellant in his individual capacity could not have been passed, we have no other option but to allow the Appeal

and set aside the impugned judgment against the appellant/defendant No.3.

14. Accordingly, the present Appeal is allowed. Impugned judgment and decree is set aside. Parties to bear their respective costs.

15. A decree be drawn accordingly.