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(2008) 09 KL CK 0036

High Court Of Kerala

Case No: Regular First Appeal No. 674 of 2007

P.V. Chacko	APPELLANT
Vs	
The Chief Secretary and The Superintending Engineer	RESPONDENT

Date of Decision: Sept. 3, 2008

Acts Referred:

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

Citation: (2008) 09 KL CK 0036

Hon'ble Judges: T.R. Ramachandran Nair, J; P.R. Raman, J

Bench: Division Bench

Advocate: S. Krishnakumar, for the Appellant; Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

P.R. Raman, J.
Plaintiff is the appellant. Suit O.S. No. 247/97 was filed seeking compensation for breach of contract by the respondent herein on account of which the appellant is stated to have sustained damages and to receive the deferred payment and for refund of excess money recovered by the respondents and for recovery of deposit money. Respondents are defendants who are respectively the Chief Secretary to the Government of Kerala and the Superintending Engineer Roads & Bridges, Alwaye.

2. The case of the plaintiff was that he was a Contractor by profession and an agreement was executed between the parties, namely, the plaintiff and the 2nd defendant for the improvement of the work of Puthencruz - Chottanikkara Road via, Monippally, Naduerus, Vandipetta, Mammala I reach of 90 to 6880. Agreement was executed on 26/12/1986. Work was awarded over and above 88% of the estimate rate and original estimate was

for Rs. 10,78,112/-, which is subsequently revised and fixed at Rs. 44,50,000/- as the sum including certain additional items of work. Work had to be completed within a period of 18 months, which was subsequently extended. The plaintiff contended that due to the acts of breach committed by the defendants, he could not perform the work in time. The delay and the resultant loss to the plaintiff was solely due to the irresponsible attitude of the defendants. It was also alleged that the work site was not handed over in time. It was not cleared and there was no free surrender and there was also no co-operation from the adjacent owners for widening the road. He also pleaded that paucity of funds is a reason for the delay in completing the work. Though monthly payment was contemplated in the agreement, it was not duly paid because of cost of construction, materials, labour, wages, price index, cost of diesel, petrol etc. were also increased exorbitantly and the Government revised the scheduled rate in 1986, 1990 and 1992. Plaintiff claimed enhancement limiting to 75% which was not granted and it is contended that he sustained loss of Rs. 8,48,500/-. Plaintiff received four bills on the expiry of original period of completion. He claimed compensation at the rate of 75% to the tune of Rs. 8,48,500/- on this account. Plaintiff had also carried out jungle clearance work and contended that no payment was made regarding the same. He claimed an amount of Rs. 40,442/- towards interest for the deferred payment. Blasting work done was not correctly accounted, according to him, and claim was made with regard thereto and interest thereon.

3. The suit was resisted contending that the it was barred by limitation and the court below had no jurisdiction to entertain the suit. It is also contended that the site was handed over in time, there was time lag in the progress of the work, there was no provision for monthly payment, additional works were found as necessitated due to the delay of work on the part of the contractor, jungle clearance is not contemplated under the MDSS, blasted rubble has not been stacked by the Contractor for measurement as per specification, the empty barrels were not returned, the work was not completed within stipulated time and hence he is not entitled to interest or any excess claim. Hence, they prayed for dismissal of the suit with costs.

4. The court below framed various issues for consideration in the suit. The evidence consists of oral testimony of PW-1 and DW-1 and Exts.A1 to A20 and Exts.B1 to B14 were marked. The court below held that the suit is barred by law of limitation, but found that it has territorial jurisdiction to try the suit and in such circumstances, the suit is not maintainable.

5. The suit is one for realisation of money on account of breach of contract as alleged by the plaintiff. The Office of the lst respondent is situated at Thiruvananthapuram and therefore the court below rightly held that it has got territorial jurisdiction to try the case. The date of agreement is 26/12/1986. As per the agreement, the work had to be completed within a period of 18 months. Admittedly, the same was not completed within that time. The plaintiff applied for extension of time and it was granted and supplemental agreements were entered into and produced as Ext.B1(f)(g)(h) and (i). On 8/3/1994 an agreement was executed for extension of time. Ext.B1(k) shows that the time was further

extended. Thus the work was completed on 30/4/1993. Ext.A3 is the completion certificate. It is also admitted that final payment was also received by the plaintiff after completion of the work. The suit is filed only on 27/6/1997, more than four years after completion of the work. Since the suit claim is for compensation on account of damages sustained due to various reasons, which should have been filed within three years from the completion of the work. The cause of action was found to have arisen on 31/3/1993, when the work was completed. The court below also found that there was no demand for money on account of compensation or on any other grounds till 3/3/1997. Thus even the demand was raised only after the work was completed. In these circumstances the court below held that the suit is barred by limitation.

6. The appellant contended that the period of three years will commence only when the right to file a suit accrues when difference or dispute arises between the parties. According to him, the matter was under correspondence. The appellant also placed reliance on the decision of the Apex Court in Hari Shankar Singhania and Others Vs. Gaur Hari Singhania and Others, . We have perused the above judgment. The Apex Court held therein that Article 137 of the Limitation Act will apply to an application u/s 20 of the Arbitration Act for filing the arbitration agreement in the court for reference of disputes to arbitration in accordance therewith required to be filed within a period of three years when the right to apply accrues. The right to apply accrues when difference or dispute arises between the parties to the arbitration agreement. None of the correspondence referred to by the learned Judges of the Division Bench of the High Court spells out the existence of any dispute as a result of which the properties could not be distributed prior to 31/5/1987. It held that the High Court has failed to appreciate that merely because parties did not take steps for distribution of the immovable properties it did not automatically follow that disputes and differences had arisen between them in this regard. In fact, from the correspondence on record it is clear that the parties were making efforts to complete the distribution of the immovable properties as per the terms of the agreement between them. Thus that is a case which arose in an appeal against the final judgment and order passed by the Division Bench of the High Court of Bombay whereby the High Court dismissed the appellant''s appeal and upheld the order of the learned Single Judge dismissing the appellant''s application u/s 20 of the Arbitration Act as being barred by the law of limitation. It could be seen from the said decision that the question arose for consideration is as to what is the period within which the matter is to be referred for arbitration. It was found that the matter was under correspondence between the parties and that the difference of opinion between the parties had to be resolved in an arbitration proceedings. It was on these circumstances that the cause of action was held to be arisen only when the dispute arises to the arbitration agreement. The said decision is not applicable to the facts of this case. The question for consideration is as to whether the suit is to be filed within three years from the date of cause of action. The work was completed on 30/4/1993 and amount was also received. It is in respect of the work done during the period of contract that the plaintiff alleges damages. There is no arbitration clause in the agreement. Therefore, the cause of action arises when contract work was

completed and paid and further it was found by the court below that not even a demand was raised within the period of three years. Therefore, the dispute itself was raised only after the period of three years. In such circumstances, the finding of the court below that the suit is barred by law of limitation has to be upheld.

We do not find any merit in this appeal. Accordingly, the appeal is dismissed.