State of Madhya Pradesh Vs Chhindwara Cold Storage Co. Pvt. Ltd. and Another

Court: Madhya Pradesh High Court

Date of Decision: April 29, 2005

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 96
Limitation Act, 1963 â€" Section 18, 3

Citation: (2005) 4 MPHT 402

Hon'ble Judges: S.L. Jain, J

Bench: Single Bench

Advocate: G.P. Singh, for the Appellant; Masood Ali and G.P. Singh, Government Advocate for Defendant No. 2, for the Respondent

Final Decision: Allowed

Judgement

S.L. Jain, J.
This appeal u/s 96 of the CPC is directed against the judgment and decree dated 5-8-92, passed in Civil Suit No. 8-B/86 on

the file of IInd Additional District Judge, Chhindwara.

2. In the course of this judgment, parties will be referred to by the ranks assigned to them in the Trial Court.

3. Plaintiff, Chhindwara Cold Storage Co. Pvt. Ltd. (for short "the Company") filed a suit against the defendants, Madhya Pradesh Electricity

Board, Jabalpur and State of Madhya Pradesh for recovery of Rs. 22,000/-. It is alleged that plaintiff is a Private Limited Company. Devilal

Sharma is the Managing Director of the Company. The plaintiff established a cold storage which is a small scale industry registered with the State

Industries Department. Defendant, M.P. Electricity Board supplied electricity to the aforesaid Cold Storage. By inadvertence defendant No. 1,

M.P. Electricity Board recovered Rs. 20,304.63 and Rs. 1326.00 more in connection with electric connections I.P.-5 and C.L. 3072 respectively

in the head of electricity duty.

4. On 30-8-83 defendant No. 1 realized that a sum of Rs. 21644.89 has been recovered from the plaintiff in excess in the head of electricity duty.

Assistant Engineer of defendant No. 1 informed the Divisional Engineer regarding the excess recovery. Divisional Engineer also realized that excess

amount has been received. Correspondence went on between defendants No. 1 and 2 but the amount recovered in excess could not be refunded

to the plaintiff. On 11-6-84 defendant No. 1 adjusted a sum of Rs. 2511.76 in the subsequent bill of the plaintiff, but an amount of Rs. 19,133.13

remained due. Plaintiff claimed interest on this amount @ 1.5% per mensem by way of damages and filed the suit for recovery of Rs. 22,000/-.

5. Defendant No. 1, M.P. Electricity Board contested the suit by filing a written statement. It was denied by it that the excess amount was

recovered inadvertently. It was also the case of defendant No. 1 that it has no interest in the amount of duties recovered by the State Government;

therefore, the Board is not liable to adjust the amount in the subsequent bills.

6. The defendant No. 1 further pleaded that it has been unnecessarily dragged in the litigation. Defendant No. 1 also denied the acknowledgment

of the claim of the plaintiff-company. Defendant No. 2 specifically pleaded that interest can not be claimed by way of compensation. The

defendant No. 1 also put forth that the suit is barred by limitation.

7. Defendant No. 2 State of Madhya Pradesh did not appear before the Trial Court and the case proceeded exparte against it.

8. On the pleadings of the parties, the Trial Court framed as many as three issues and recorded a finding that defendant No. 2 is liable to pay Rs.

21,600/- to the company. The Trial Court also recorded a finding that it is the obligation of the defendant No. 1 to ensure the payment of the

decretal amount. The Trial Court further recorded a finding that the suit is not barred by limitation.

9. I have heard Shri G.P. Singh, learned Govt. Advocate appearing for the appellant/defendant No. 2 and Shri Masood Ali, learned Counsel for

respondent No. 1. None appeared for the respondent No. 2/defendant No. 1.1 have also perused the record of the Trial Court including the

impugned judgment.

10. Learned Counsel for the State/defendant No. 2 submitted that the Trial Court committed grave error in awarding the interest.

11. Per contra, learned Counsel for the plaintiff submitted that the interest can be allowed by way of damages.

12. The contention of the learned counsel for the appellant appears to be acceptable. Interest prior to the suit is a matter of substantive law. When

interest is not payable under the agreement or under mercantile usage or statute, mere retention of money due to the plaintiff by defendant is no

ground for awarding it. There must be something above, such as fraud or breach of trust or some ground in equity in a suit for refund of money

paid in excess. The plaintiff is not entitled to interest on the amount till the institution of the suit where the contract does not provide for the payment

of such interest, (sec Mahabir Prashad Rungta Vs. Durga Datt, .

13. In the present case there is neither term in the agreement that interest shall be payable nor the statute provides for the payment of interest. The

plaintiff has not pleaded usage or custom; therefore, the Trial Court committed error in awarding interest for the period prior to the date of the suit.

14. Learned Counsel for the appellant next contended that suit is barred by limitation. Both the parties do not dispute that the limitation prescribed

for the recovery of money is three years. The amount in excess was recovered during the period Feb., 79 till March, 81 and the suit was filed on

13-8-86.

15. In this regard learned Counsel for respondent No. 1 submitted that in the letter Ex. P-6 (a) written by Assistant Engineer to Divisional Engineer

East Division, Chhindwara, the liability to pay the amount was acknowledged on 30-8-83. Since the acknowledgment was made before the expiry

of the period of limitation, it gives a fresh starting point u/s 18 of the Limitation Act.

16. The contention can not be accepted. In order that the acknowledgment may give fresh starting point u/s 18 of the Limitation Act, it must be

signed by the party or his authorized agent. Assistant Engineer can not be said to be a person authorised to acknowledge. A letter written by the

Asst. Engineer to Divisional Engineer recommending to the higher authorities to pay the amount can not serve as acknowledgment of liability. Mere

fact that matter was under consideration of the authorities can not serve as acknowledgment. A communication made to the plaintiff intimating that

the matter is under consideration of the authorities would not amount to acknowledgment within Section 18 of the Limitation Act. The

communication Ex. 6-C will not amount to admission of jural relationship.

17. Letter Ex. P-3 (a) written by Divisional Electric Inspector to Divisional Engineer East MPEB, Chhindwara acknowledges the liability for the

period of October, 80 to May, 81 amounting to Rs. 2,511/-. Regarding other amount, liability was not acknowledged and it was stated that

permission to adjust the amount for the period Feb., 79 till Sep., 80 can not be granted. Under the circumstances, it can not be said that the liability

for the period Feb., 79 to Sep., 81 was acknowledged.

18. The Trial Court committed an error in holding that letter Ex. P-6A is an acknowledgment of the debt. In the absence of acknowledgment, the

suit is hopelessly time barred. Since the suit against the appellant is barred by limitation, the decree could not have been passed against the

plaintiff/defendant No. 2.

19. It is true that the appellant did not file any written statement and did not contest the suit but it is always for the plaintiff to establish that his case

is within limitation. In the present case, the plaintiff-company failed to prove that its case is within limitation. Simply because the appellant defendant

No. 2 was ex parte before the Trial Court, a time barred claim could not have been decreed against it. When the Courts find that the suit has been

filed after the period of limitation, they are bound to be dismissed even if limitation may not have set up as a defence. The fact that a party did not

raise the plea of limitation before the Trial Court would not disentitle it to raise the same in appeal. Where the suit is filed beyond the period of

limitation prescribed and there is no question of condoning delay, the Trial Court had no jurisdiction to entertain such suit on merits and decree the

same. The provisions u/s 3 of the Limitation Act are absolute and mandatory. Even at an appellate stage, it is the duty of the Court to dismiss the

suit which, on the face of it, is barred by time. Despite the fact that the issue was not raised by a party the Court can suo motu take notice of the

question of limitation.

20. For the reasons stated above, I am of the opinion that the suit filed by the plaintiff against defendant No. 2 was barred by limitation. The appeal

is, therefore, allowed. The Trial Court committed error in decreeing the suit against the appellant. The decree passed against the

appellant/defendant No. 2 is set aside.

21. The cost of this appeal shall be born by the parties.