

The State of Madhya Pradesh and Others

Vs

M/S. Nathabhai Desaibhai Patel

Civil Appeal No. 1376 of 1969

(K.S. Hegde, A.N. Grover JJ)

15.09.1971

JUDGMENT

HEGDE, J. -

1. This is an appeal by Certificate from the decision of the High Court of Madhya Pradesh. The defendant in the suit is the appellant herein. The plaintiff therein is the respondent. The plaintiff claimed a sum of Rs. 89,408-15-6 as being the principal and interest of the amount illegally realised from him on the ground that amount collected by him as sales-tax from his customers is payable to the Government. The principal amount claimed is Rs. 62,518-8-0.

2. The trial Court came to the conclusion that the collection in question was illegal. But it dismissed the suit on the ground that the same was barred by limitation.

3. In appeal, the High Court disagreeing with the view taken by the trial Court decreed the principal amount claimed by the plaintiff and interest on the same at 5 per cent per annum from the date of the suit. It came to the conclusion that the suit was within time. The defendant did not challenge the finding of the trial Court as to its liability.

4. In this Court, the counsel for the appellant-defendant did not contest the correctness of the decision of the High Court on the question of limitation. The only contention urged by him was that the High Court erred in awarding interest on the principal amount claimed from the date of the suit. The question, whether interest should be awarded on the principal amount claimed from the date of the suit, was within the discretion of the Court. In our opinion, the High Court rightly exercised that discretion. It disallowed the interest claimed by the plaintiff-respondent up till the date of the suit. Coming to the question of interest, subsequent to the date of institution of the suit, it was found that the appellant had unlawfully withheld the amount due to the respondent even after coming to know that the collection made was an illegal one. Before instituting the suit, the respondent had issued a notice to the appellant, calling upon the appellant to pay the money illegally collected from it; but despite that notice, the appellant failed to pay back the amount illegally collected from the respondent. That being so, in our opinion, the High Court was justified in awarding interest on the principal amount from the date of the suit.

5. In the result, this appeal fails and the same is dismissed with costs.

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