SUPREME COURT OF INDIA

State of Kerala

Vs.

T.N. Chacko

C.A.No.1682 of 1991

(S. S. M. Quadri and Shivaraj V. Patil, JJ.)

19.04.2000

ORDER

1. The short question that arises in this appeal is whether Exhibits B-4 and A-8 do not contain any acknowledgment of the liability by the appellant-defendant, the State of Kerala, and if so is the suit filed by the respondent-plaintiff, for recovery of the bid amount paid to the Forest Department, barred by limitation under Article 47 of the Limitation Act, 1963?

2. Briefly stated, the following facts give rise to this question.

The Forest Department of the State of Kerala sanctioned the forest produce in different coupes. The respondent was the highest bidder of Sub-Coupe No. VII of Coupe X and his bid of Rupees seventy five thousand was accepted on January 15, 1974. The respondent paid Rs. 60,125/- towards the bid amount and other charges and a sum of Rupees twenty five thousand remained unpaid. The respondent was to collect and remove the whole forest produce of the said coupe on or before March 31, 1974. Part of it only was collected and removed by him before February 21, 1974. When unfortunately fire broke out in the reserved forest which destroyed also the remaining forest produce

of the respondent's coupe. The respondent made representations to the Forest Department seeking reduction of the bid amount on the ground that his coupe was destroyed by the wild fire. On June 27, 1974, the Government of Kerala instead of reducing the bid amount thought it fit to grant further time of forty five days to enable him to remove the forest produce. The respondent neither paid the balance of the bid amount nor removed the forest produce in his coupe. On September 19, 1974, the Divisional Forest Officer intimated to the respondent that as he failed to satisfy the conditions of the contract and remit the amount due to the Government, it was cancelled and the produce left on the site was confiscated and ordered to be auctioned at the risk and loss of the respondent.

3. The respondent, thereafter, issued notice under Section 80 of the Code of Civil Procedure to the appellant claiming the amount of compensation which included refund of the bid amount and filed the suit as indigent person on July 28, 1977 in the Court of Subordinate Judge, Trivandrum, praying the Court to grant compensation to the tune of Rs. 83,000/- with twelve per cent interest per annum amounting to Rs. 35,690/- and future interest at six per cent per annum. The appellant denied that it was liable for payment of any compensation and pleaded, inter alia, that the suit was barred by limitation. The trial Court came to the conclusion that as the appellant acknowledged the liability both under Exhibits B-4 and A-8, the suit was not barred by limitation and thus decreed the suit on July 19, 1980. The appellant carried the matter in appeal before the High Court of Kerala in A.S. No. 150 of 1981. On March 31, 1981, the High Court confirmed the judgment of the trial Court and dismissed the appeal. From the said judgment of the High Court, the present appeal arises.

4. Ms. Malini Poduval, learned counsel for the appellant, contends that neither Exhibit B-4 nor Exhibit A-8 can be treated as an acknowledgment of the liability of the respondent's claim and, therefore, the trial Court as well as the High Court erred in holding that the suit was not barred by limitation.

5. Mr. Ramesh Babu, learned counsel appearing for the respondent, has submitted that the representation of the respondent, requesting the Government to reduce the bid amount, would, by implication, include demand for refund of the bid amount and read in that background, Exhibits B-4 and A-8, are rightly held as acknowledgment of the liability by the appellant. In the alternative, argues the learned counsel, as under Exhibit B-4, time for performance of the contract by the respondent was extended till August 10, 1974, the suit will be within limitation from that date.

6. It is the common case of the parties that the suit of the respondent for recovery of the bid amount paid by him for the forest produce, on the ground that due to the wild fire the contract was frustrated, is governed by Article 47 of the Limitation Act, 1963. The said article reads as under :

"Description of suit Period of limitation Time for which period begins to run.

47. For money paid upon an existing consideration which afterwards falls. Three years. The date of the failure.

The period of limitation is three years from the date of the failure of consideration upon which the money was paid. The bid amount was paid by the respondent for forest produce which had failed on destruction of forest produce due to spread of the wild fire. The date of failure would, therefore, be the date of fire, which is February 21, 1974. The suit was filed on July 28, 1977. It is clearly barred by limitation unless, as pleaded by the respondent, there is acknowledgment of the liability by the appellant in Exhibits B-4 and A-8 and, therefore, the period starts from the date of the acknowledgment of the liability i.e. from September 19, 1974.

7. Now, we shall advert to Section 18 of the Limitation Act which speaks of the effect of acknowledgment in writing and it reads as follows :

"18. Effect of acknowledgment in writing.

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed, but subject to the provisions of the Indian Evidence Act, 1972 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.- For the purposes of this section,-

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word 'signed' means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property to right."

From a perusal of sub-section (1) of Section 18 it is evident that to invoke this provision :

(1) there must be an acknowledgment of liability in respect of property or right;

(2) the acknowledgment must be in writing signed by the party against whom such right or property is claimed (or by any person through whom he derives his title or liability); and

(3) the acknowledgment must be made before the expiration of the period prescribed for a suit or application (other than application for the execution of a decree) in respect of such property or right.

The effect of such an acknowledgment is that a fresh period of limitation has to be computed from the time when the acknowledgment was so signed.

8. Sub-section (2) permits giving of oral evidence at the trial of the suit where the acknowledgment is undated but it prohibits, subject to the provisions of the Evidence Act, receiving of oral evidence of contents of the acknowledgment.

9. Clause (a) of the explanation appended to that section says that an acknowledgment may be sufficient for purposes of Section 18 even though.

(i) it omits to specify the exact nature of the property or right;

(ii) it avers that the time for payment, delivery, performance or enjoyment has not yet come;

(iii) it is accompanied by refusal to pay, deliver, perform or permit to enjoy;

(iv) it is coupled with a claim to act off; or

(v) it is addressed to a person other than a person entitled to the property or right.

Clause (b) of the explanation defines the word 'signed' to mean signed either personally or by an agent duly authorised in that behalf.

10. It may be noted that for treating a writing signed by the party as an acknowledgment, the person acknowledging must be conscious of his liability and the commitment should be made towards that liability. It need not be specific but if necessary facts which constitute the liability are admitted an acknowledgment may be inferred from such an admission.

11. Here it is necessary to refer to the said documents - Exhibits B-4 and A-8. The trial Court as well as the High Court accepted the plea of the respondent and held that the period of limitation would start from September 19, 1974 (Exhibit A-8) and the suit was within limitation. Both the Courts relied upon the judgment of the Kerala High Court in Harrisons and Crossfield Ltd. v. State of Kerala, 1963 Ker LT 215. It is laid down therein that it was not necessary that there should be a specific and direct acknowledgment of the particular liability which is sought to be enforced if there was an admission of facts of which the liability in question was necessary consequence then there would be an acknowledgment within the meaning of Section 19 of Limitation of 1908. It is not the correctness of the proposition but its application that is in dispute.

12. Exhibit B-4 is a Government Order, G.R. (Rt.) 1516/74/AD dated 27th June, 1974. It reads :

"Forests - Trivandrum Division - Sale of residual growth - Agreement dated 15-1-1974 with Shri T.M. Chacko - Damage caused by Fire - Extension of period of contract free of penalty etc. - Sanction - accorded.

AGRICULTURE (FOREST) DEPARTMENT G.R.(Rt.)

1516/74/AD dated, 27-6-1974

Read :- Letter No. CI-10628/74 dated 9-5-1974 from the Chief Conservator of Forests.

O R D E R

The right of collection and removal of the residual tree growth in Sub-Coupe VII of Coupe X, Palode Reserve. Paruthipally Range was awarded to Shri T.M. Chacko for Rs. 75,000/-. He had executed an agreement on 15-1-1974, the period of contract being up to 31-3-1974. An accidental fire occurred in the coupe on 21-2-1974 causing heavy damage to the coupe. The contractor has therefore requested the Chief Conservator of Forests, to compensate the loss caused to him by fixing the fiscal amount of the coupe at 150% of the departmental valuation. After consideration the whole aspects of the case and precedents in the matter, the Chief Conservator of Forests has recommended to Government to extend the period of contract by one month from the date of order free of penalty and also to grant the contractor 15 days' time to remit the balance value of the coupe (Viz. Rs. 25000/- without penal interest.

2. Government have considered the question in all its aspect and are pleased to extend as a special case the period of contract for removal of the produce, by 45 days from the date of order free of penalty and to grant one month from the date of order for the remittance of balance value of the coupe free of interest.

By order of the Governor

Sd/- K. K. Gopalan

Deputy secretary to Government."

In the said order the representation of the respondent. Exhibit B-2, was under consideration of the appellant. A perusal of the said representation makes it clear that the claim was for remission of the bid amount by 150% (though the learned counsel for the respondent says that it is only fifteen per cent) and the claim of the respondent for recovery of the bid amount was not under its consideration.

13. Exhibit A-8 is a copy of the proceedings of the Divisional Forest Officer intimating to the respondent that as he failed to remit the balance of the bid amount and did not remove the forest produce in terms of the order of the Government, Exhibit B-4, the unremoved forest produce was confiscated and would be auctioned at the risk and loss of the respondent. On a careful reading of this letter we are unable to find that the claim of refund of bid amount by the respondent was the subject of consideration nor can we infer any acknowledgment of liability of that claim by the concerned authority.

14. We have also support for our view from the decision of this Court in Shapoor Fredoom Mazda v. Durga Prosad Chamaria, AIR 1961 SC 1236. While interpreting Section 19 of the Limitation Act, 1908 this Court pointed out the essentials of acknowledgement thereunder and observed that acknowledgment as prescribed by Section 19 was a mere acknowledgment of the liability in respect of the right in question and that it need not be accompanied by a promise to pay either expressly or by implication. It was held that the statement on which a plea of acknowledgment was based must relate to a present subsisting liability though the exact nature or the specific character of the said liability might not be indicated in words; if words used in the acknowledgment indicated the existence of jural relationship between the parties, such as that of debtor or creditor and the statement was made with the express intention to admit such jural relationship or if such intention could be inferred by implication from the nature of the admission, the acknowledgment of liability would follow.

15. We have already indicated above that neither the claim of refund of bid amount was under consideration of the appellant nor Exhibit B-4 nor Exhibit A-8 can be treated as acknowledgment of the liability of that claim of the respondent. Therefore, Section 18 of the Limitation Act cannot be called in aid to compute fresh limitation from the date of Exhibit A-8 i.e. September 19, 1974. That being the position, the suit is clearly barred by limitation and is liable to be dismissed.

16. The second contention of the learned counsel for the respondent that in view of the fact that the period to perform the contract was extended by the appellant till August 10, 1974 so the failure date should be taken as 10th August, 1974, as such the suit will be within limitation, has to be mentioned only to be rejected for reasons more than one. First, it is a new point which has never argued before the trial Court or the High Court and secondly, the suit is not (sic) based on failure of the respondent to perform his part of the contract in which case it would not be case of frustration of the contract but would be a case of breach of contract which does not entitle the respondent to claim refund of the bid amount. Therefore, there would be no cause of action for the suit itself. It is a self-defeating argument.

17. For all these reasons, the appeal is allowed and the impugned judgment of the High Court confirming the judgment of the trial Court is set aside. The suit of the respondent shall stand dismissed. Having regard to the circumstances of the case, we make no order as to costs.

Appeal allowed.