

ALLAHABAD HIGH COURT

Naini Tal Hotel Co. Ltd.

Vs.

Municipal Board

(Bennett, J.)

23.11.1945

JUDGMENT

Bennett, J.

1. This appeal raises an interesting question of limitation. The appellant is the Naini Tal Hotel Co. Ltd., while the respondent is the Municipal Board of Naini Tal. The Municipal Board sued the Hotel Co. for ₹ 6979-1-0 on account of electric energy (both for light and power) supplied to the Royal Hotel Annexe called Waverly Quarters between 1st September 1936 and 7th June 1941, incorrect bills having been submitted throughout this period owing to a mistake having been made by the meter reader.

2. In the Court below the defendant company did not admit that any mistake had occurred, but the finding on this issue was against the company and the finding has not been disputed before us. The mistake was said to, have occurred because the meter reader thought that the last digit was to be ignored and thus entered in his hand-book only one tenth of what should have been entered. There was this excuse for the mistake that the meters used by the Board varied and some showed decimal points before the last digit. What is surprising, however, is that no one should have noticed that the consumption at the Waverly Quarters throughout this long period was only a fraction of what it had been previously.

3. These being the now undisputed facts the only question for determination is whether the claim can be allowed for the whole period of nearly five years. The Civil Judge held that the case was covered by Article 96, Limitation Act, and so no part of the claim was time-barred. He decreed the suit for the whole claim with costs and future interest at six per cent.

4. The learned Counsel for the appellant contends that Article 96, which relates to a suit brought for "relief on the ground of mistake" and which, allows a period of three years from the date when the mistake becomes known to the plaintiff is not applicable. If it is applicable, the decree for the whole amount due is justified, because, according to the plaintiff's evidence, which there

is no reason to doubt, the mistake was not discovered until July 1941.

5. The appellant's contention is that Article 52 is the Article applicable, this relating to a suit for the price of goods sold and delivered, where no fixed period of credit is agreed upon, and allowing a period of three years from the date of the delivery of the goods. His counsel admits his liability for such deficiency in payment as occurred during the three years prior to the institution of the suit. The suit was instituted on 7th January 1942.

6. In addition to supporting the finding of the Court below that Article 96 applies the learned Counsel for the respondent argues that Article 52 is not applicable because (1) electric energy is not goods; (2) that Article 52 would not apply to a case where neither party knew how much had been supplied and (3) payment for electric energy is made only on demand and there is no liability until there is a demand.

7. If Article 96 is not applicable, it is contended that the only Article applicable is Article 120 which provides for period of six years for suit for which no period of limitation is elsewhere provided.

8. As to the nature of suits in which Article 96 may be invoked we have examined several cases cited on either side, learned Counsel for the respondent conceding that he can find no case precisely parallel to the present which supports his contention. He also conceded that Article 96 would not apply to all cases of mistake. The cases cited for the appellant are *Firm Attar Singh Sant Singh v. Municipal committee Amritsar*¹ and *Narumal Hirachand v. Nanumal Benarsidas*²

9. The Lahore case *Firm Attar Singh Sant Singh v. Municipal committee Amritsar*³ was somewhat similar to the present. The voltage of the, current supplies was 440 volts, but the meter was one which reported only 220 volts. To get a correct reading therefore of the current supplied the reading indicated by the meter should have been doubled and the municipal employees had been so instructed. But whether by mistake or negligence this was not done and the consumer was debited with only half the correct amount. When the mistake was discovered more than three years had elapsed, but the District Judge held that Article 96 and not Article 52 applied. In appeal reversing this finding it was held that this sort of mistake is not covered by Article 96. A party to a contract cannot merely by pleading mistake on the part of his employees bring the case under Article 96.

10. In the Sind case *Narumal Hirachand v. Nanumal Benarsidas*⁴ the plaintiff supplied goods to one of two brothers who did business independently of each other. The debit was wrongly entered to one brother with the result that no demand for payment was sent to the other brother who was liable until the period of limitation had expired. It was sought to bring the suit within time by relying on Article 96. The contention was rejected, a distinction being drawn between cases where money was paid under mistake and cases where on account of a mistake a claim for

money due was not made within limitation. The plaintiff did not say that he had sold his goods on account of a mistake. The case was covered by Article 52 and what the plaintiff was really trying to do was to claim exemption from the operation of that article. The plaintiff could not avoid the plea of limitation by the simple process of setting up his own mistake.

11. The principle which emerges from these decisions is that the suit must be founded on a mistake, that is the money or article claimed must be claimed as due in consequence of

¹(38) A.I.R. 1938 Lah.338

³(38) A.I.R. 1938 Lah.338

²(33) A.I.R. 1933 Sind 32

⁴(33) A.I.R. 1933 Sind 32

the mistake, as where an excess amount is paid or some article is handed over by mistake, there being no other cause of action, the claim not being maintainable except on this footing. If this is the correct principle to be followed, it would rule out a case like the present where the suit is brought for the price of something supplied, the liability to pay this price being in no way affected by mistake, and the mistake only explaining the delay in making the claim.

12. Learned Counsel for the respondent cited a number of cases, including *Ramiah & Co. v. Sadasiva Mudaliar*⁵, and *Tofa Lal v. Moinuddin Mirza*⁶, The first case really supports the principle stated, in that the suit was brought to recover money paid in excess, the plaintiff having paid in the belief that bales of material supplied to him contained sixty pieces, whereas in fact they contained only fifty. Article 96 clearly applied. The other case is only authority for the view that where two articles limiting the period for bringing a suit are wide enough to include the same cause of action and neither of them can be said to apply more specifically than the other, that which keeps alive rather than that which bars the right to sue should generally be preferred. I in no way dispute this proposition, but as in my opinion the principle stated should be followed, Article 96 is ruled out of consideration altogether.

13. In *Viraraghavayyengar v. Krishnaswami Ayyangar*⁷ compensation money for land acquired under the Land Acquisition Act was awarded to the wrong person either through fraud or mistake, but the money was left in the Treasury. It was claimed by the right person some six years later, this person not becoming aware of the fraud or mistake until within six years of the suit. It may be said that in this case the suit, which was for a declaration, was brought to recover money paid for land, but it was not brought against the person paying the compensation. It was brought against the person who had wrongly been awarded it and to that extent it was founded on mistake.

14. In *Martand Mahadev v. Dhondo*, AIR 1921 Bombay⁸ the plaintiffs had been allotted a mortgage debt at partition. It was subsequently found that the mortgage had been extinguished. The plaintiffs sued the defendants for contribution to the loss. It was held that while Article 96 applied the suit was barred by it, the discovery of the mistake dating back more than six years. The position in this case appears to have been that the defendants owing to this mistake had obtained more and the plaintiffs less than they should have done. Thus again the cause of action was the mistake.

15. *Ramakottaya v. Sundararamayya*⁹, was a very similar case, the plaintiff suing for rectification of a partition vitiated by mistake.

16. Of other cases cited by the learned Counsel for the respondent on this point the only case which is at all relevant is Madras Consolidated Sugar and *Spirit Factories Ltd. v. William Sissmore Shaw*¹⁰ In this case a debt was released by mistake and it was held that those who made the mistake were entitled to be placed in the same position as they would occupy, if there had been no mistake, and also compensated for

⁵ AIR 1925 Madras 125; (1925) ILR 48 Mad 925; 1925-22-LW 341; (1925) 49 MLJ 228 7(83) 6 Mad. 344

⁶ AIR 1925 Patna 765 ⁸184; (1921) 23 BOM LR 69; 61 Ind. Cas. 34

⁹ AIR 1931 Madras 707; (1931) ILR 54 Mad 883; 1931-34-LW 262; (1931) 61 MLJ 430

¹⁰(04) 14 M.L.J. 443

any loss necessarily resulting from the mistake. In so far as the claim was not time-barred (under the article ordinarily applying) they could sue for the amount due and would not be entitled to any other relief, save a declaration that the release was void. But where the debt released by mistake is barred at the date of the discovery there is a loss which is the necessary result of the mistake, and relief against the mistake will comprise not only a cancellation of the release but also compensation for the loss.

17. This decision certainly supports the respondent, but with respect I feel very grave doubt as to its soundness. The result would be that a plaintiff whose claim was ordinarily time-barred could always plead that on account of a mistake he had failed to bring his suit within the time ordinarily allowed and he, therefore, relied on Article 96 which gives him another three years from the date when he discovered the mistake. This would open wide a door for such excuses of which it cannot be doubted full advantage would be taken, with the result that in many cases the ordinary period of limitation might have to be held inapplicable and in all such cases much of the time of the Courts would be spent in determining whether or not there had occurred a bona fide mistake. I am quite unable to subscribe to such a construction of Article 96.

18. I do not consider that there is any force in the contentions that Article 52 would not apply to a case where neither party knew how much of the commodity in question had been supplied, and that no liability arises until a demand is made. Learned Counsel had little to say with regard to either. In the case of electric energy the consumer is liable to pay according to the consumption shown by the meter and it is for the supplier to make demands accordingly. He cannot be allowed to plead his own mistake or negligence in not making demands within the ordinary period of limitation.

19. The remaining objection that electric -energy is not 'goods' within the meaning of Article 52 requires more consideration. It may be noted, first of all that in the Lahore case cited in *Firm Attar Singh Sant Singh v. Municipal committee Amritsar*¹¹ no such objection appears to have been taken and it was summed that the article applied to electric energy as much as to any other

commodity. The word 'goods' is not defined in the Limitation Act, but according to the definition in the Indian Sale of Goods Act the word means "every kind of movable property" other than actionable claims and money." Electric energy is bought and sold like any other commodity and there can, therefore, be no doubt that it is 'property.' Is it movable? There does not appear to have been any authoritative pronouncement on this point, though doubt has been expressed as to the extent to which gas and electricity are 'goods' -for the purpose of the English Sale of Goods Act.

20. The Indian Electricity Act of 1910 furnishes no direct assistance, but it may be noted that it provides (in Section 39) for theft of energy. The definition of theft in Section 378, Penal Code, shows that that offence is committed when a person intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking. Section 39, Electricity Act, enacts that:

Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code; and the

¹¹(38) A.I.R. 1938 Lah. 338

existence of artificial means or such abstraction shall be prima facie evidence of such dishonest abstraction.

21. It was no doubt felt, having regard to the various ways in which electric energy may be taken dishonestly, that difficulty might arise in applying the definition of the Penal Code without such a provision. The necessity for such a provision does not, I think, imply that electric energy is not movable property but rather that theft of electric energy may be committed other, wise than by moving it out of the possession of the owner. This is indicated by the use of the words 'consumes' and 'uses'. The word 'abstracts' on the other hand means that it is 'drawn away,' that is, moved, though under the definition in Section 89 it becomes unnecessary to prove an intention to move it out of the owner's possession, for the question might arise whether it was in his possession when so moved.

22. And quite apart from these considerations I cannot see any difficulty in holding that electric energy is movable, for it can certainly be transmitted or sent from one place to another, and this implies that it is moved.

23. There is another argument which points to the same conclusion. This is that under the General Clauses Act property is either movable or immovable; electric energy is certainly not Immovable property as that expression is defined in the same Act or any other Act. The definitions are not exhaustive, since they use the word 'in-eludes' and not the word 'means,' but there is nothing in the examples given which would suggest that electric energy should also be included.

24. For these reasons it seems to me clear that electric energy should be held to be 'movable

property' and therefore 'goods' within the meaning of Article 52, Limitation Act, and that the decree awarded in this case should have been confined to a period of three years prior to the institution of the suit.

25. I would, therefore, allow the appeal to this extent, set aside the decree and remand the case to the Court below with the direction to pass another decree for the amount found due on calculation in respect of these three years, and to allow the parties costs in both' Courts in proportion to their success and failure.

Walli-ullah J.

26. I agree and have nothing to add.

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