

RAJASTHAN HIGH COURT

Atul Industrial Agencies

Vs.

G.D. Gupta

S.B. Civil Regular First Appeal No. 161 of 1996 and S.B. Civil Cross Objections No.
28 of 2004

(A.C. Goyal, J.)

23.04.2004

JUDGMENT

A.C. Goyal, J.

1. This is the first appeal preferred by the plaintiff against the judgment and decree passed by learned Additional District Judge No. 2, *Jaipur City, Jaipur* on 26.3.1996 dismissing the plaintiff's suit on the ground of limitation. The parties in this appeal would be referred as arrayed in the plaint.

2. Briefly narrated the facts are that the plaintiff filed a civil suit on 14.3.1977 for recovery of Rs. 25,546/- as damages on account of breach of contract by the defendants. The plaintiff placed orders to the defendant No. 1 for supply of Electric Driven Motor Pumps worth Rs. 27,443.95 as per schedule 'A' annexed to the plaint in the year 1973. The defendant No. 1 supplied the goods in part through his dealer the defendant No. 2. The Electric Motor Pumps were delivered directly to the Superintending Engineer, P.H.E.D., Sawaimadhapur and Pali as directed by the plaintiff as the plaintiff had agreed to deliver the pumps to P.H.E.D. department. The Superintending Engineer having inspected the Motor Pumps found the material of no use and informed the plaintiff vide telegrams dated 21.2.1974 and 22.2.1974 and demanded refund of 75% of the price paid in advance to the plaintiff. The plaintiff vide two cheques dated 12.3.1974 and 28.2.1974 repaid a total sum of Rs. 11,965.50. Thereafter, the plaintiff asked vide registered notice dated 28.2.1974 to replace the pumps but the defendants failed to do so.

3. Both the defendants vide separate written statement denied all the averments made in the plaint. It was the case of the defendant No. 1 that he did not supply any goods to

the plaintiff and according to the defendant No. 2 the plaintiff himself purchased Electric Motor Pumps from his shop having inspected the goods and thus he is not liable for any damages. Both the defendants pleaded that the suit has been filed beyond limitation.

4. On the basis of the pleadings of the parties as may as eight issues were framed. Having recorded the evidence of the parties the learned Additional District Judge No. 2, *Jaipur City, Jaipur* decided all the issues in favor of the plaintiff except issue No. 8. While deciding issue No. 8 against the plaintiff it was held that cause of action arose on 26.2.1974 and thus the suit is beyond limitation.

5. The plaintiff has filed this appeal against the decision on issue No. 8 while the cross objections were filed by Sh. G.D. Gupta the defendant No. 1.

6. I have heard learned counsel for the parties. The first point which arises for consideration is as to whether the suit was within limitation? Learned counsel for the plaintiff-appellant referred the provisions of Section 22, 23 and Article 55 of the Limitation Act, 1963 which are reproduced as under:

Section 22. Continuing breaches and torts.- In the case of a continuing breach of contract or in the case of continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

Section 23. Suits for compensation for acts not actionable without special damage - In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Article 55

For compensation for the breach of any contract, express or implied not herein specially provided for, Three years, When the contract is broken or (where there are successive breaches) when the breach in respect of for which the suit is instituted occurs or (where the breach continuing) when it ceases.

7. According to learned counsel for the plaintiff-appellant it was a case of continuing breach of contract as the defendant did not make supply of the remaining pumps. It was also contended that the plaintiff-appellant refunded the advance money to the P.H.E.D. department vide two cheques dated 28.2.1974 and 13.3.1974 respectively

and thus the cause of action arose on 13.3.1974 and the suit was thus within limitation. He placed reliance upon *M/s. Kothari and Sons v. Krishna Rao*,¹ wherein it was held that the limitation would start to run from the date of injury actually resulted to the plaintiff in view of the provisions of Section 24 of the Limitation Act. This judgment is not applicable in the instant case as the facts are quite distinct. Learned counsel for the respondents contended that the cause of action arose when the plaintiff got information on 21.2.1974 and 22.2.1974 from P.H.E.D. department with regard to quality of the goods supplied and thereafter the plaintiff himself got one F.I.R. registered against the defendants on 26.2.1974 on account of breach of this contract and thus according to the plaintiff himself the breach of contract took place on 26.2.1974 and it was not a case of continuing breach of contract as there was no question to make the remaining supply as the breach of contract took place on 26.2.1974 according to the plaintiff-appellant himself.

8. I have considered the rival submissions and am of the view that the decision of the trial Court on this point does not call for any interference as this is not a case of continuing breach of contract. According to the plaintiff-appellant the breach of contract took place on 26.2.1974 and therefore the present suit could have been filed within a period of three years from that day and admittedly the present suit was filed after expiry of three years from 26.2.1974. Therefore, this appeal is liable to be dismissed.

9. Learned counsel for the respondents submitted that in case the appeal preferred by the plaintiff is dismissed, he would not press the cross-objections and the same may be dismissed. Therefore, the cross-objections are also liable to be dismissed.

10. Consequently, this appeal as well as cross-objections are hereby dismissed. No order as to costs. The record of the trial Court be sent back.

Appeal and cross-objections dismissed.

Appeal dismissed.

Cases Referred.

1. AIR 1953 Mad 726