

Tapas Kumar Datta vs.the Appellate Authority and Chairman, Steel Authority of India and Ors

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Court : Delhi

Decided On : Dec-14-2017

Appellant : Tapas Kumar Datta

Respondent : The Appellate Authority and Chairman, Steel Authority of India and Ors

Judgement :

\$~ * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on:

21. 11.2017 Judgment Pronounced on:

14. 12.2017 RFA7432016 & C.M.No.35138/2016 Through: Mr.S.S Ahluwalia and Mr. Jatin ... Appellant/Plaintiff TAPAS KUMAR DATTA Teotia, Advocates. versus THE APPELLATE AUTHORITY AND CHAIRMAN, STEEL AUTHORITY OF INDIA AND ORS Respondents/Defendant Through: Mr. Dig Vijay Rai and Mr. Pulkit Tyagi, Advocate. CORAM: HON'BLE MR. JUSTICE VINOD GOEL VINOD GOEL, J.

1. The appellant has challenged the impugned judgment and decree dated 09.06.2016 in CS No.371/

by which the appellants suit was dismissed by the Court of learned Additional

District Judge-16, Central District, Tis Hazari, Delhi.

2. This case has a long and tumultuous history. The appeal before this Court has reached after having gone through multiple forums. The controversy in the present case started when the appellant married with Smt.Nivedita Dutta on 10.12.1982 in Kolkata. On 09.03.1985 the appellants wife succumbed to burn RFA No.743/2016 Page 1 of 12 injuries and the police filed a charge sheet against the appellant under Section 302 of the Indian Penal Code (in short IPC) read with Sections 3 & 4 of the Dowry Prohibition Act. The appellant was convicted by the Sessions Court under Section

IPC read with Section 3 and 4 of the Dowry Prohibition Act on 25.04.1988. The High Court of Patna (Ranchi Bench) upheld the conviction of the appellant but reduced the sentence from 10 years Rigorous Imprisonment to 5 years Rigorous Imprisonment. The appellant then filed a SLP before the Honble Supreme Court against the judgment of the High Court being SLP (Crl.) No.947/1990 which was disposed off on 01.11.1996 and the conviction of the appellant was upheld but the sentence was reduced to the period he had already undergone.

3. As a consequence to the appellant being convicted by the Sessions Court vide order dated 25.04.1988, he was dismissed from service as per Rule 30 of the CDA Rules, 1977 vide office order dated 10.05.1988. The appellant filed an appeal against this order of dismissal after a gap of 9 years on 11.01.1997. The appeal was dismissed by the Appellate Authority i.e. Respondent no.1 vide order dated 24.06.1997. The appellant preferred a Writ Petition before the Calcutta High Court on 23.07.1998 being W.P(C) No.14193/1997 challenging the original order of dismissal dated 10.05.1988 and the order of the Appellant Authority dated 24.06.1997. On 23.07.1988, the High RFA No.743/2016 Page 2 of 12 Court of Calcutta without going into the merits of the case directed the Appellate Authority to decide the appeal afresh after giving the appellant a fresh hearing.

4. On 06.11.1998, the Appellate Authority after giving a hearing to the appellant dismissed the appeal and upheld the order dated 10.05.1988. This order was challenged by the appellant by filing a Writ Petition in the High Court of Calcutta being W.P(C) 22263/1998. This Writ Petition came to be dismissed on 14.11.2002

due to lack of territorial jurisdiction. This order of the Single Judge was challenged by the appellant before a Division Bench of the Calcutta High Court by way of MAT No.604/2003 (CAN22942003) along with an application under Section 5 of the Limitation Act. This appeal came to be dismissed vide order dated 22.04.2003 on the ground of limitation and lack of territorial jurisdiction. This order of dismissal by the Division Bench was challenged by way of a SLP before the Honble Supreme Court of India being SLP(C) No.12201/2003 which was dismissed on 09.07.2003.

5. The appellant then allegedly filed several complaints and representations before the Appellate Authority and the Directorate of Public Grievances, New Delhi claiming that the original order of dismissal dated 10.05.1988 was never supplied to him. The appellant is also stated to have approached the Calcutta High Court Legal Services Committee with a request for starting conciliation proceedings with the

... RESPONDENTS

. In RFA No.743/2016 Page 3 of 12 the conciliation proceedings, the appellant took the plea that he was never supplied with the copy of the order of dismissal dated 10.05.1988, which according to the respondent was provided.

6. In response to the letter to the Directorate of Public Grievance, the Ministry of Steel (MoS) sent a letter dated 25.05.2004 to Respondent No.1, 3 & 5 asking for a clarification on the same. SAIL informed the Ministry of Steel (MoS) that Respondent no.1 had duly considered the appellants appeal after giving him an opportunity to represent himself and thereafter his order of dismissal was upheld.

7. The appellant is alleged to have written letters to Secretary, Department of Administrative Reforms and Public Grievance on 12.07.2005 and 26.07.2006 but to no avail.

8. The appellant then filed a Suit for Declaration, Permanent Injunction and Mandatory Injunction on 12.01.2007 before the City Civil Court at Calcutta being Suit No.80/2007, which was returned on 30.04.2007 under Order VII Rule 10 of the Code of Civil Procedure, 1908 (in short CPC) for filing the same before the appropriate Court i.e. District Courts at Tis Hazari. The present suit then came to

be filed before Tis Hazari Courts, Delhi which was dismissed vide impugned order dated 09.06.2016 as the Trial Court found that the suit was not within the limitation period of 3 years as prescribed by the Part III of the Schedule to the Limitation Act. RFA No.743/2016 Page 4 of 12 9. Shri S.S Ahluwalia, learned counsel for the appellant had argued that the order of dismissal dated 10.05.1988 is contrary to the principles of natural justice and not in accordance with the CDA Rules and therefore is liable to be set aside.

10. He further contended that the suit was filed within the prescribed limitation period for filing a Suit for Declaration. He argued that Section 14 of the Limitation Act, 1963 prescribes for exclusion of the time during which the plaintiff has been proceeding bona fide in a court without jurisdiction and therefore the time during which the appellant was pursuing conciliation before the Calcutta High Court Legal Services Committee has to be excluded while calculating the limitation period.

11. He further argued that the order of dismissal dated 10.05.1988 was never supplied to him which is against the principles of natural justice and therefore deserves to be set aside.

12. Per contra, Mr. Dig Vijay Rai, learned counsel for the respondents contended that the impugned judgment was based on the correct proposition of law and therefore does not warrant any interference.

13. He contended that the appellants suit was correctly dismissed being barred by time as the appellant waited for 9 years to file an appeal against the order of dismissal dated 10.05.1988 which shows that the appellant was not diligent in pursuing the remedy available to him. RFA No.743/2016 Page 5 of 12 14.

15. I have the learned counsel for the parties. This appeal raises two points for consideration which are:-

"i. Whether the suit filed by the appellant was within the limitation period for a suit for declaration as given under Article 58, Part III of the Schedule of the Limitation Act, 1963. ii. Whether the order of dismissal dated 10.05.1988 was supplied to the appellant. Point No.1:

16. Article 58, Part III of the Schedule of the Limitation Act, 1963 states that the limitation period to obtain any other declaration which is not provided by other parts of the Act is 3 years from the date from which the right to sue first accrued to the plaintiff. The Appellate Authority had upheld the order of dismissal dated 10.05.1988 vide order dated 06.11.1998. Therefore the period of limitation which is 3 years must be deemed to have started from this date i.e. 06.11.1998. The contentions of the appellant with regard to the issue of limitation can be summed up and simplified with the help of the following table:-

"Sl. No.1. DATE PROCEEDINGS 06.11.1998 Appellate Authority upholds the original order of dismissal dated 10.05.1988.

2. 1998 W.P(C) 222

filed against the order of the Appellate Authority. RFA No.743/2016 Page 6 of 12

3. 14.11.2002 W.P(C) 222

dismissed for lack of territorial jurisdiction.

4. 22.4.2003 MAT No.604/2003 (CAN22942003) dismissed by a Division Bench of the Calcutta High Court of the ground of lack of Territorial Jurisdiction.

5. 9.7.2003 SLP (C) 12201/2003 against the order of the Division Bench dismissed.

6. 18.12.2003 Appellant wrote letters to the Calcutta High Court Legal Services Committee requesting conciliation with the

... RESPONDENTS

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7. 24.3.2004 The counsel appearing on behalf of the respondent company in conciliation proceedings refused to supply the appellant with a copy of the order of dismissal dated 10.05.1988 as he stated that the matter had been finally put to rest with the dismissal of SLP (C) 12201/2003 filed by the appellant.

17. The appellant has claimed that the right to sue first accrued to him on 24.03.2004 i.e. the date on which the conciliation proceedings finally concluded

and that the period of limitation should be calculated from this date in view of Section 14 of the Limitation Act, 1963.

18. The Honble Supreme Court in *State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1 while elaborating as to when the right to sue accrues in favour of the plaintiff, held as under: 6. First of all, to say that the suit is not governed by the law of limitation runs afoul of our Limitation Act. The statute of limitation was intended to RFA No.743/2016 Page 7 of 12 RFA No.743/2016 provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed period of limitation must subject to the provisions of Sections 4 to 24 be dismissed although limitation has not been set up as a defence. Section 2(j) defines the expression period of limitation to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(j) also defines, prescribed period to mean the period of limitation computed in accordance with the provisions of the Act. The court's function on the presentation of plaint is simply to examine whether, on the assumed facts, the plaintiff is within time. The court has to find out when the right to sue accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for. Article 113 (corresponding to Article 120 of the Act of 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under Article 120 it was six years which has been reduced to three years under Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words right to sue ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is a clear and infringed or when there Page 8 of 12 unequivocal threat to infringe that right by the defendant against whom the suit is instituted (See (i) *Mt. Bolo v. Mt. Koklan* [AIR 1930 PC270:

57. IA325:

1930. ALJ1188 and (ii) Gannon Dunkerley and Co. Ltd. v. Union of India [(1969) 3 SCC607: AIR 1970 SC1433: (1970) 3 SCR47]. (Emphasis supplied) 19. In light of Gurdev Singhs case, it is clear that the right to sue accrues as soon as a person can approach a Court to seek relief by legal means when right asserted is infringed or when there is clear threat to infringe the right. In the present case, the appellants right to sue accrued to him as soon as the Appellate Authority dismissed his appeal vide order dated 06.11.1998. The appellant then went on a course the reasons for which are best known to him by filing a Writ Petition being WP(C) No.22263/2003 and LPA being MAT.NO.604/2003 (CAN No.2294/2003) before the Calcutta High Court which were dismissed due to a lack of territorial jurisdiction as the disciplinary proceedings had taken place in Ranchi and then the appellant filed an SLP which was dismissed vide order dated 09.07.2003.

20. To appreciate the appellants arguments with regard to the applicability of Section 14 of the Limitation Act, 1963, it would be profitable to reproduce Section 14 below: 14. Exclusion of time of proceeding bona fide in court without jurisdiction. (1) In computing the period of limitation for any suit the time during which the plaintiff has been Page 9 of 12 RFA No.743/2016 prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. 21. A perusal of Section 14 clearly shows that this section applies to proceedings in which the plaintiff has been prosecuting with due diligence in another civil proceeding, whether in a court of first instance or appeal or revision against the defendant in good faith in a court which does not have jurisdiction to entertain the case. A conciliation proceeding does not come within the ambit of Section 14 as this Section only talks of civil proceeding, whether in a court of first instance or appeal or revision and not conciliation proceeding.

22. Therefore the appellants best case would be that the limitation period to file the suit before the correct jurisdictional forum would start to run from the date on

which SLP (C) 12201/2003 filed against the order of the Division Bench of the Calcutta High Court was dismissed on 09.07.2003. The period of limitation being 3 years would come to an end on 09.07.2016. This suit was filed on 15.05.2007 and would therefore be barred by limitation. Point No.2 RFA No.743/2016 Page 10 of 12 23. Even if the appellant contention that the suit was filed within the prescribed limitation period is believed to be true, the contention of the appellant that the dismissal order dated 10.05.1988 was not supplied to him cannot be sustained because the appellant had indeed filed an appeal against the very order dated 10.05.1988 before the Appellate Authority/Chairman, Steel Authority of India Ltd. which he claims was never served upon him. A perusal of this appeal dated 11.01.1997 filed by the appellant clearly shows that he never took this plea of not receiving the dismissal order dated 10.05.1988 in the appeal but only challenged the said order on merits. Appellant himself had enclosed the copy of the order dated 10.05.1988 along with his appeal dated 11.01.1997.

24. A perusal of the appellants written submissions filed before the Appellate Authority after the Calcutta High Court disposed off W.P(C) 141 with the direction to the Appellate Authority to decide the matter afresh after giving the appellant a hearing also brings out the falsity in the appellants claim that he was never served with the order of dismissal dated 10.05.1988 as the grounds that have been taken in this appeal could only be formulated after one has gone through the order dated 10.05.1988. Ground No.2(d) in the appeal brings out the falsity in the appellants contention that he was not communicated the order dated 10.05.1988 and is reproduced below: RFA No.743/2016 Page 11 of 12 No reason is recorded in the above said order No.RD-1(4850/85-E) dated 10.05.1988 to the effect that a lesser penalty is not sufficient to meet the ends of justice, though the Rule 30 of the CDA Rules, 1977 of the Company provides also for a lesser penalty in the circumstance of conviction of an employee. This ground clearly shows that the appellant was aware of the contents of the order dated 10.05.1988 as there is no other way by which the appellant could have found out if reasons were recorded regarding a particular finding or not. Hence the appellants plea of not being supplied with the order dated 10.05.1988 cannot be believed.

25. In light of the above facts and circumstances, I find no infirmity in the judgment of the Trial Court and the same is upheld and the present appeal as well as CM No.35138/2016 are dismissed with costs throughout. (VINOD GOEL) JUDGE DECEMBER14, 2017 // RFA No.743/2016 Page 12 of 12

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