

Ramdeo Sarma Vs. Assam State Electricity Board and ors.

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Court : Guwahati

Decided On : Mar-02-2007

Judge : I.A. Ansari, J.

Appellant : Ramdeo Sarma

Respondent : Assam State Electricity Board and ors.

Advocate for Def. : Mr. B.D. Das

Judgement :

I.A. Ansari, J.

1. This revision is directed against the judgment and decree, dated 23.9.2003, passed in Money Appeal No. 3 of 2000, by the learned Civil Judge (Senior Division), Kokrajhar, allowing the appeal and setting aside thereby the judgment and decree, dated 30.9.2002, passed by the learned Civil Judge (Junior Division) No. 1, Kokrajhar, in Money Suit No. 4 of 1999, whereby the learned Trial Court had decreed the plaintiffs suit for recovery of a sum of Rs. 8,000/- with interest @ 12% per annum, with effect from 2.6.1999, until realization, of decretal amount with cost of the suit.

2. The case of the plaintiff may, in brief, be described thus:

The plaintiff is by profession, a carpenter and has a shop of making furniture, which he runs under the name and style of Ganga Furniture House at Kokrajhar Town. In the month of February/March, 1998, the defendant No. 3 placed order with the plaintiff for supply of six numbers of tables and two numbers of benches and also to repair furniture of his office. The plaintiff accordingly made the furniture and also did the repairing works of the furniture of the office of the defendant No. 3. The plaintiff, then, submitted his bills, on 18.1.1998 and 3.6.1998, to the tune of Rs. 7,500/-. When the bills were so submitted to the office of the defendant No. 3, who is an employee of the defendant No. 1, namely, Assam State Electricity Board (in short, 'the ASEB'), a body corporate, the defendant No. 3, being an Assistant Executive Engineer of the ASEB, at Kokrajhar, the defendant No. 3 paid Rs. 1,000/- only to the plaintiff, but rest of the amount was not paid. Though the promises to make payment were made by the defendant No. 3, he (defendant No. 3) did not make payment of the plaintiff's bill despite repeated reminders. The plaintiff, then, served an Advocate's notice on the defendants, requesting them to make payment of his dues. Having failed to realize his dues, the plaintiff instituted a suit for recovery of the balance amount of Rs. 6,500/- and also a sum of Rs. 1,500/- for causing loss to him. The plaintiff also sought for interest on his unpaid dues.

3. The defendants contested the suit, their case being, in brief, that the claim of the plaintiff was false and fictitious, no order for either making of furniture or repairing of furniture of the office of the defendant No. 3 was placed with the plaintiff. It was contended by the defendants that since the claim of the plaintiff is false and fictitious, the suit deserves to be dismissed.

4. Having recorded the evidence adduced by the parties, the learned Trial Court decreed the suit as indicated hereinabove. Aggrieved by the decree, so passed, the defendants preferred an appeal. Since the appeal has been allowed as indicated hereinabove, the plaintiff has, now, come to this Court with the help of the present revision petition.

5. I have heard Mr. A.S. Choudhury, learned Senior Counsel, appearing on behalf of the plaintiff-petitioner, and Mr. B.D. Das, learned Counsel for the defendant-

opposite party.

6. At the time of hearing of this revision, Mr. B.D. Das, learned Counsel for the defendant-opposite party, has raised a preliminary objection, the objection being that this revision is not maintainable, for, in the present case, the suit was for recovery of Rs. 8,000/- with interest and since the amount involved was less than Rs. 25,000/-, no second appeal lies and since the second appeal has not been provided against such a decree, revisional power, under Section 115 of the Code of Civil Procedure (in short, 'the Code') too cannot be exercised by the High Court.

7. While considering the above submission made on behalf of the opposite party, it is petitioner to point out that there is no dispute that the present suit was for recovery of Rs. 8,000/-. There is also no dispute that a second appeal, in the light of the provisions of Section 102 of the Code does not lie, where the subject-matter of the original suit is for recovery of money not extending Rs. 25,000/-. It is, thus, clear that no second appeal could not have been preferred, under the law, against the impugned appellate decree. So far as the revisional jurisdiction under Section 115 is concerned, what needs to be noted is that revisional jurisdiction can be exercised only when no appeal lies. In the present case since there is no second appeal provided against the appellate-decree and there is not law restricting exercise of revisional jurisdiction against such a decree, there can be no impediment, on the part of the High Court, to entertain a revision petition under Section 115. In the facts of the present case, whether a revision would be allowed or not is, however, a question of merit of the grounds on which the revisional jurisdiction is sought to be exercised and not of jurisdiction of the Court. The preliminary objection is, therefore, overruled and the revision has accordingly been heard on merit.

8. Coming to the merit of the revision, it may be noted that it is submitted, on behalf of the defendant-opposite party, that there is no such evidence on record on the basis of which a finding could have been reached that the defendants had placed order for making and supplying of furniture with the plaintiff for repairing the furniture of the office or the defendant No. 3.

9. While dealing with the above aspect of the case, it needs to be noted that in the face of the evidence on record and in the light of the reasons assigned by the learned Trial Court, it clearly transpires that there is cogent and convincing evidence on record proving that the defendant No. 3 did place order for supply of furniture and also for repairing of furniture with the plaintiff, though the order, so placed, was not in writing. This apart, the evidence on record also clearly proves that the plaintiff carried out the repairing work in the office of the defendant No. 3 and also supplied the furniture to the office of the defendant No. 3. In such circumstances, the repairing work done by the plaintiff and the supply of furniture placed by the defendant No. 3 could not have been held to have not been done by, and under the authority of, the defendant No. 1. In the facts and circumstances of the present case, therefore, the defendant No. 1 is wholly liable for the said acts of its employee, such as, the defendant No. 3.

10. While considering the present revision, what may also be pointed out is that the issue Nos. 4 and 5 framed in the suit read as follows:

(iv) Whether the defendants has given orders for supplying of furniture and repairing of some office furniture?

(v) Whether the defendants received the furniture from the plaintiff?

11. While considering the issue Nos. 4 and 5, the learned Trial Court observed and concluded as follows:

7. Issue Nos. iv and v.

In the evidence of PW1, Sri Ramdeo Sharma is to the effect that be is the owner of 'M/s. Ganga Furniture House' which is located at Ward No. 10, Kokrajhar Town. In the month of February, 1998, the SDO, ASEB. Kokrajhar placed an order to him to supply 6 (six) numbers of big office Tables and 2 (two) numbers of bench and to repair some office furniture. Accordingly, PW 2 complied with the order of S.D.O., ASEB (defendant No. 3) and supplied the furniture and repaired some office furniture. On 18.4.1998, plaintiff (PW1) has submitted the bills of Rs. 6,700/- for cost of furniture and Rs. 800/- for repairing of office furniture. On 18.4.1998, the

defendant No. 3 has paid Rs. 1,000/- only to PW1 and promised to pay the rest of the amount as and when Government sanctions the said amount After waiting several months. PW visited the offence of defendants to get the balance amount but of no avail. Later on, PW1 served the pleader's notice upon the defendants.

8. Similarly, PW2, Sri Ranindra Sharma deposed the same. He has specially stated that defendant No. 3 has given order of 6 (six) numbers of office tables, 2 (two) numbers of bench and to repair some office furnitures.

Accordingly, they have constructed and supplied the same to the office of defendant No. 3. When PW1 submitted the bills to defendant No. 3, he has paid Rs. 1,000/- (one thousand) only and the rest remained as balance till date.

9. In the evidence of PW3. Md. Suna Khan deposed that on the relevant date, he saw the furniture in front of plaintiff's shop which was ready for delivery. When PW3 asked PW1, he came to know that the office tables and benches were made for Electrical Office, Kokrajhar.

In the depositions of PW4, Fazal Ali and Md. Manan Ah PW5, who are the Thellawalas reveals that they have carried 6 (six) numbers of office tables and 2 (two) numbers of benches to the Electrical Sub-Division Office, Kokrajhar, from the furniture shop of PW1. The furniture was all newly constructed. In return. PW1 paid them Rs. 10/- per Thella.

10. The defendants have examined Mr. RamendraNath Choudhury as PW1, who is defendant No. 3 in the present case. He deposed that he has neither placed any order to PW1 for construction of furniture for the office nor paid Rs. 1,000/- in advance for me same. He has not given any furniture from his office to repair to the plaintiff's shop. He has also not received any bill in this regard. However, in the cross-examination, PW1 admitted that they have received the Advocates notice and thereafter Executive Engineer (Defendant No. 2) directed him to make payment of the furniture.

11. After careful scrutiny of facts and evidence on record it transpires that the defendant No. 3 has given verbal order to construct 6 (six) numbers of Tables, two

numbers of benches and to repair some office furniture. The plaintiff has supplied the said furniture and repaired some office furniture. Accordingly, the plaintiff has submitted the bills to the defendant No. 3. On receipt of the said bills, defendant No. 3 has paid Rs. 1,000/- only and the rest of bill amount remained unpaid. There is no glaring contradictions emanated from the evidences which dislodges the plaintiff's case. The credibility of PWs 1, 2, 3, 4 and 5 are not doubtful whereas averments of DW1 are self-contradictory and not trustworthy. Thus, the instant issues are decided in favour of the plaintiff.

12. For the conclusion reached above, the learned Trial Court decreed the suit. While setting aside this decree, the learned appellate Court has observed that since there was no written order for supply of furniture to the defendants, the suit was not maintainable. We must remember that there is no law that on the basis of verbal order, supply of furniture cannot be made to a body corporate, such as the defendant-opposite party No. 1. Merely because of the fact that no written order for supply or making of furniture had been placed with the plaintiff by the defendants, the suit could not have been held to be not maintainable. In fact, with regard to the issue Nos. 4 and 5 the learned appellate Court has observed as follows:

13. On perusal of the record it reveals that the subsequent issues which are taken into consideration in place of earlier issues, have been framed by the learned Civil Judge (Jr. Divn.) without hearing of the parties and without assigning any reason thereof. However, on perusal of the plaint, w/s and evidence on record, it is seen that though the issue Nos. 4 and 5 have been altered, the purpose and interpretation of the evidence on record would be same and defendants would not be prejudiced in framing and deciding the subsequent issues by the learned Civil Judge (Jr. Divn.).

14. On perusal of the plaint, w/s and evidence on record, it is found that there was no written/official order for supply of any furniture to the plaintiff firm in the month of February/April, 1998. There is no evidence that the appellant/defendant No. 3 have placed any order and alleged articles were received by him. As no order for supply of repairing of office furniture was placed, the question of payment of bill

amount or question of agreement promises of any payment of balance amount does not arise. PWs 1 and 3 had stated that as per order of the SDO (defendant No. 8), they made furnitures six big office table and two benches and supplied the same and repaired some office furniture, and on 18.4.1998 plaintiff has submitted the bill of Rs. 6,700/- as repairing charge of office furniture and defendant No. 3 also paid Rs. 1,000/- out of the said bill amount. PW 4 and 5 have supported the evidence of PW 1 and 2 that they carried the furniture to the defendant's office from the shop of PW1.

15. The defendant No. 3 as DW1 deposed that he neither placed any order to PW1 for supply of furniture for his office nor paid Rs. 1,000/- in advance for the same. He has stated that he has no authority to purchase and given any such order and he never did so.

16. If there was any verbal order for supply of furniture as alleged to the respondent/plaintiff from the defendant No. 3, the respondent/plaintiff could have filed the suit claiming the cost of furniture from the defendants in official capacity as there was no written or official order for supply of furniture. Apart from this, it reveals that the respondent/plaintiff is neither a registered contractor nor a Government supplier under the defendant's office. The learned Civil Judge (Jr. Divn.) ought to have decided the is-sues in negative and against the plaintiff.

13. From a careful reading of what has been observed by the learned appellate Court, what clearly surfaces is that according to the learned appellate Court, no written order was proved to have been placed with the plaintiff and there was no oral evidence also to show that any order for supply of furniture, as had been claimed by the plaintiff, was placed by the defendants. For holding that no evidence indicating the placing of order by the defendant No. 3 existed on record, the learned appellate Court assigned no reason. The conclusion, so reached by the learned appellate Court, is not only without any discussion of the evidence on record, but also against the cogent findings of the learned Trial Court and the evidence on record.

14. Situated thus, it is clear that the findings, reached by the learned appellate Court, are nothing, but perverse. An appellate Court is required to correct the

findings of the Trial Court if the findings are incorrect or untrue. What has happened, in the present case, is that the learned appellate Court rejected the learned Trial Court's findings as incorrect, but in support of its own conclusion, the learned appellate Court has assigned no reason except saying that no evidence was adduced or exists on record to show that order of supply of furniture was placed with the plaintiff. This approach of the learned appellate Court is wholly against the law. The present one is an incorrect exercise of jurisdiction and needs to be interfered with, for, such an appellate decree, if allowed to survive, would cause serious miscarriage of justice.

15. As regard the interest, which has been decreed @ 12% per annum, it needs to be noted, as correctly pointed out by Mr. Das, that though it is within the discretion of the Court to award interest from the date of the institution of the suit until the date of the decree, the rate of interest, on and from the date of a decree, cannot, under Section 34 of the Code, exceed 6% per annum.

16. Considering, therefore, the matter in its entirety, while the decree for the sum of Rs. 8.000/- passed by the learned Trial Court and the interest granted on the said amount @12% per annum, with effect from 2.6.1999. (i.e., the date of institution of the suit) until' 29.1.2003, (i.e., the date of the decree), may I not be interfered with, the future interest must be restricted to 6% per annum.

17. In the above view of the matter, it is hereby clarified that the decree granted by the learned Trial Court is maintained except with modification that on or from the date of the decree, i.e., 30.9.2002, the interest payable, on the unpaid due of the plaintiff, shall be 6% per annum.

18. In the result and for the reasons discussed above, this revision partly succeeds. While the impugned appellate judgment and decree, dated 23.9.2003, aforementioned stand set aside, the learned appellate Court's decree is modified, with regard to the interest as indicated hereinabove. The revision shall accordingly stand allowed with cost.

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