

M. Krishnappa Vs. the Assistant Executive Engineer, Karnataka Electricity Board, Bantwal Taluk, Dakshina Kannada District

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Court : Karnataka

Decided On : Jun-03-1999

Reported in : 1999(4)KarLJ558

Judge : Hari Nath Tilhari, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9 - Order 6, Rule 17; Karnataka Electricity Board Electricity Supply Regulations, 1988 - Rules 30 and 35; [Limitation Act, 1963](#) - Sections 3 - Schedule - Articles 15, 58 and 113 ; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151; Karnataka Court Fees and Suit Valuation Act, 1958 - Sections 24

Appeal No. : Civil Revision Petition No. 3803 of 1996

Appellant : M. Krishnappa

Respondent : The Assistant Executive Engineer, Karnataka Electricity Board, Bantwal Taluk, Dakshina Kannada Distr

Advocate for Def. : Sri N.K. Gupta, Adv.

Advocate for Pet/Ap. : Sri P. Ishwar Bhat, Adv.

Judgement :

ORDER

1. This revision arises from the judgment and order dated 7-9-1996 passed by the Principal Munsiff, Bantwal, D.K. (Mr. B.M. Bajju), whereby the Trial Court rejected the plaintiff-revision petitioner's application for amendment of the plaint by addition of the relief for declaration that the bill sent by the defendant is illegal and unjust.

2. The facts of the case in nutshell are:

That the plaintiff-revision petitioner filed a suit for permanent injunction restraining the defendant-Karnataka Electricity Board from disconnecting the electricity supply to the house of the petitioner through its Meter No. T. 257 of Thumbe Village in Bantwal Taluk. According to the plaintiff the defendant demanded and served a bill on 8-11-1989 as per the plaint allegation that it was an audit short claim. The plaintiff's case is that all of a sudden, he has received a bill on 8th November, 1989 calling upon the plaintiff to pay it by 18-11-1989 in a sum of Rs. 3,841-80, out of which a sum of Rs. 3,836-40 claimed as 'audit short claim' as per audit. The plaintiff asserted in the plaint that the bill sent to the plaintiff by the defendant is nullity and unenforceable. The plaintiff claimed the relief of injunction restraining the defendant, their men, servants, agents, assignees, subordinates etc., from disconnecting the electricity to the plaintiff's house through its Meter No. T. 257 of Thumbe Village in Bantwal Taluk.

3. During the pendency of the case, the plaintiff moved an application under Order VI, Rule 17 read with Section 151 of the Code of Civil Procedure, for amendment of the plaint, whereby the plaintiff sought for deletion and substitution of para 5 as under. Paragraph 5 of the plaint relates to the valuation and jurisdiction and it reads as under:

'The suit is valued at Rs. 1,000/- for the purpose of Court fees and jurisdiction and a Court fee of Rs. 100/- is paid thereon under Section 24(d) of the Karnataka Court Fees and Suit Valuation Act, 1958 with amendments made up-to-date'.

The second amendment sought for by the plaintiff in the relief clause which as per amendment of application reads as under:

'Addition of the relief in page 4 at para VI (a).

For a declaration that the demand bill for audit short claim alleged by the defendant is invalid, unenforceable document and consequently for a permanent prohibitory injunction'.

4. This application for amendment was opposed and counter affidavit was filed taking various pleas including the plea of long delay and it was also stated that the proposed amendment is likely to change the very character of the suit or the nature of the suit, which is not permissible. It was also asserted by the defendant that the plaintiff-revision petitioner has not explained the delay properly in filing the amendment application.

5. The Trial Court opined that supply of electricity is a sale of Goods and Article 15 of the Limitation Act would apply and the period of three years is prescribed to file suits for the recovery of price of goods sold and delivered. The amendment had been sought after three years and the claim by passage of time has become time barred and it opined that the claim of the present plaintiff is barred by time and so rejected the amendment application.

6. Feeling aggrieved of the said order passed by the Court below, the plaintiff has come up in revision before this Court.

7. I have heard Sri P. Ishwara Bhat, learned Counsel for the petitioner and Sri N.K. Gupta, learned Counsel for the respondent.

8. It has been urged by the learned Counsel appearing for the revision petitioner that amendment of the relief has not the effect of making a new case or new cause of action, nor it is likely to change the nature of the suit. The learned Counsel contended that the Court below without applying its mind to the plaint paras illegally held that a new case was made out. The learned Counsel contended that the plaintiff has pleaded all the facts on the basis of which amendment was sought are contained in the plaint itself, where the plaintiff alleged that the demand notice/bill dated 8-11-1989 is illegal, null and void and that the plaintiff has alleged that he is not liable to pay any amount as audit short claim. The learned Counsel further contended that this case has already been pleaded in the pleadings. The learned Counsel contended as such that the amendment sought could not be

rejected either on the ground that it is a new case or on the ground of delay. The learned Counsel further contended that the Court below wrongly relied on Article 15 of the Limitation Act, while rejecting the application for amendment made by the plaintiff-revision petitioner. It is not the plaintiff's claim or the suit for realisation of that amount. The plaintiff is claiming the relief that the demand made is illegal, null and void. The learned Counsel for the revision petitioner further contended that Article 15 of the Limitation Act, applies to suits for the recovery of the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit. The learned Counsel contended that the plaintiff's suit is just reverse that the demand notice/bill is bad, illegal and not binding. The learned Counsel contended that the Court below illegally relied on Article 15 and on the basis thereof illegally rejected the amendment application and thus illegally failed to exercise the jurisdiction vested in it by allowing the amendment application. He submitted that this is a fit case for allowing the revision and the amendment sought for be allowed.

9. These contentions of the learned Counsel for the revision petitioner have been hotly contested by Sri N.K Gupta, learned Counsel for the respondent.

The learned Counsel for the respondent contended that allowing amendment after three years, it may prejudice the Karnataka Electricity Board and he has relied on Article 15 of the Limitation Act. In this connection, he made reference to the decision of the learned Single Judge of this Court in the case of Karnataka Electricity Board v M/s. Oriental Timber Industries. Mr. N.K. Gupta, learned Counsel for the respondent also submitted if no clause is applicable, then this suit would have been governed by residuary clause of the Limitation Act viz., either Article 113 or Article 58 and the amendment application has been moved most after the expiry of three years period from the date of bill as well as from the date of suit. He submitted that in the plaint no relief of declaration has been claimed and the suit was only for injunction. So the application for amendment being belated and beyond limitation should not be permitted. As regards the applicability of Article 15 of the Limitation Act, in my opinion the learned Counsel was mistaken on relying on it as the ground of objection of Limitation Act. Article 15 of the Limitation Act, prescribes period of limitation for suit for recovery of the price of

goods sold and delivered to be paid for after the expiry of a fixed period of credit. Had the suit been filed by the Electricity Board for the recovery of the amount referred in the notice/bill, definitely this Article would have applied to the suit, if any would have been filed by the Board, as price of the electricity sold as audit short claim. So Article 15 does not apply. The Court below was wrong in relying on Article 15 of the Limitation Act. The proper Article to be on which reliance could be placed by Sri N.K. Gupta is Article 58 of the Limitation Act, which is contained in Part III of Schedule to the [Limitation Act, 1963](#). Article 58 of the Limitation Act reads as under:

'To obtain any other declaration three years when the right to sue first accrues'.

10. Mr. N.K. Gupta made reference to Article 113. But in view of Article 58, there is no necessity to make reference to that Article. Article 113 is no doubt a residuary Article which provides limitation for any suit for which no period of limitation is provided elsewhere in the schedule to be three years period. The time will start commences from the date of right to sue accrues. Nature of the suit had to be determined not only by reading the relief clause but the entire plaint allegations have to be read to determine the nature of the suit. It will be appropriate to refer and quote paragraphs III(1), (2) and (4) of the plaint. The said plaint reads as follows:

III(1) That the plaintiff is residing in Thumbbe Village of Bantwal Taluk. The plaintiff is having a electricity energy connection to his house through a Meter No. T 257. The plaintiff is having the electricity supply through the above meter right from 1981. The plaintiff complied all the demand bills demanded for the payment of consumption of the electricity, in other words he has not kept in arrears of the same.

III(2) All of a sudden the plaintiff received a bill in the month of November 1989 calling upon the plaintiff to pay it by 18-11-1989 in a sum of Rs. 3,841-80 in which a sum of Rs. 3,836-40 is claimed as 'audit short claim' as per audit. The plaintiff submits for the consumption of the electricity, in other words, he has not kept in arrears of the same and as and when demanded within time, plaintiff has complied the same. It is a surprise to the plaintiff when he received the said bill of

demanding the audit short claim. In the same bill in the overleaf page column 4 reads 'the amount demanded, if not paid, electricity supply will be stopped. The plaintiff submits, the bill sent to the plaintiff by the defendant is a nullity and unenforceable. The bill is a intimation indicating the amount said to be due for service rendered to the plaintiff by the defendant. It is a document originating from the supplier to the consumer. The defendant has demanded a fantastic and imaginary bill called as audit short claim. The plaintiff is not liable to pay the same. The plaintiff is having every objection for the audit short claim made by the defendant and the defendant have no right to proceed with the realisation of the said amount. The plaintiff sent a Lawyer notice objecting the audit short claim to the defendant. The defendant received the said notice and sent a false and frivolous reply. The copy of the notice sent to the defendant and the reply sent by the defendant are produced herewith and may be read as the part of this plaint.

III(4) The bill sent in the month of November to the plaintiff demanding the audit short claim to the extent of amount stated have to be paid by 18-11-1989 is a surprise to the plaintiff. The meter connected to the plaintiff's house is in good condition and ameter attached to the defendant used to read the same and the bill was sent to the plaintiff and the same has been complied. It is a surprise now to the plaintiff demanding the audit short claim. In the bill attached, it is not stated how the audit short claim in respect of the meter in question has come to the plaintiff and other bills. When the consumption charges was paid regularly there is no question of audit short claim which is unenforceable by the defendant against the plaintiff. Again plaintiff received a notice on 16-1-1990 from the defendant threatened by disconnection of electricity energy.

A reading of para III(4) of the plaint per se reveals that the petitioner has asserted and alleged in the plaint that the bills referred to above sent to the plaintiff by the defendant is nullity and unenforceable. He also asserted that the plaintiff is not liable to pay any amount. So the assertion of the plaintiff in the plaint very clearly states that the demand bill dated 8-11-1989 which required the plaintiff to pay the amount mentioned thereunder by 18-11-1989 as audit short claim is illegal, null and void and unenforceable. It is on the basis of the assertion made as to the demand notice/bill which the plaintiff asserts to be illegal, null and void and

unenforceable, suit has been filed. The plaintiff has further alleged that the bill is illegal and he stated that on the basis of these bills the defendant is threatening the plaintiff to disconnect the power supply.

The main relief even if as claimed in the plaint had been decree for injunction an issue involved in the suit and arising from the suit would be in the form of issue as under:

Whether the demand notice/bill dated 8-11-1989 for 'audit short claim' is illegal, null and void and unenforceable?

This issue, the Trial Court will have to decide and to record a finding thereon. When the finding has to be recorded on such an issue by the Court then in such case it cannot be said that any prejudice is going to be caused to the defendant by allowing the plaintiff to amend the relief and seek declaration also. Mere finding given may suffice the plaintiff's purpose. The nature of the suit really appears from a perusal of the plaint to be for declaration and injunction, though the relief for declaration stands omitted or not in the plaint originally. As I mentioned earlier, when the question involved in the suit and the issue before the Court would have to decide, is whether the demand notice/bill is illegal, null and void and a finding thereon will be binding upon the parties seeking relief of declaration is nothing but an additional approach to the allegations already contained in the plaint. No person is bound to obey or follow the illegal and null and void orders. The suit, under Section 9 of the CPC it is nowhere provided, as barred if the demand notice/bill is challenged without depositing the amount under the bill. Regulation 30 or 35 of the Karnataka Electricity Board Electric Supply Regulations, 1988, cannot be said to control the jurisdiction of the Civil Court. It only relates to the complaint by the consumer to the Local Officer or the Board and only with reference to the accuracy of the bill. It does not relate to the question of nullity and voidability. It may be for the Civil Court that the Civil Court while entertaining the suit ask the party to make deposit the amount under protest that is a different matter. But making of deposit before filing the suit is not necessary. In the case of A.K. Gupta and Sons Limited v Damodar Valley Corporation, their Lordships of the Supreme Court have laid down the meaning of a new case. New case means new claim

made on new particulars stated on new facts. Then Lordships observed that the expression for the present purpose only means 'a new claim made on new basis constituted by new facts'. Here their Lordships further observed that no amendment will be allowed to introduce new set of ideas to the prejudice of any right acquired by any party by lapse of time. Their Lordships further laid down that where the amendment does not amount to constitute the addition or introduction of a new cause of action nor it raises a different case, but amounts merely to a different or additional approach to the same facts, the amendment is to be allowed even after expiry of the statutory period of limitation. Their Lordships of the Supreme Court have referred and followed the decision of the Privy Council in the case of Charan Das and Others v Amir Khan and Others, and the earlier decision in the case of L. J. Leach and Company Limited and Another v M/s. Jaldine Skinner and Company. In view of the allegations made at paragraphs 3 and 4 in the plaint, in my opinion the amendment does not amount to introducing or setting up of new set of ideas on new facts. Really what has been pleaded and the question to be decided in the suit is about the illegality of the agreement and bill and the decision on this point will definitely affect the parties. That simply allowing the additional relief of declaration in my opinion will not cause any prejudice to the respondent-defendant, because in the suit by itself the nature of claim involved of a decision or declaration of bill being illegal, null and void and unenforceable. No doubt, if amendment had been allowed, the applicant could be saddled with costs.

11. Thus considered in my opinion the revision petition is to be allowed as the Court below illegally refused to exercise the jurisdiction vested in it without applying its mind.

12. The revision is allowed and the plaintiff-revision petitioner is permitted to amend the plaint as prayed for in the amendment application subject to the payment of costs of Rs. 150/- to the defendant-respondent in the Court below.

13. After amendment, the defendant-respondent may be allowed to file the additional written statement if he is so advised or desires.