

Ashok Kumar Vs. the State of A.P.

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Court : Andhra Pradesh

Decided On : Jul-27-2005

Reported in : 2005(5)ALD584

Judge : P.S. Narayana, J.

Acts : Indian Limitation Act, 1963 - Schedule - Articles 18 and 113

Appeal No. : Appeal Suit No. 702 of 1995

Appellant : Ashok Kumar

Respondent : The State of A.P.

Advocate for Def. : G.P.

Advocate for Pet/Ap. : Vinod Kumar Deshpand, Adv.

Disposition : Appeal dismissed

Judgement :

P.S. Narayana, J.

1. Heard Sri K.V. Ramana Rao, learned counsel representing Sri Vinod Kumar Deshpande, counsel for the appellant and the learned Government Pleader for appeals.

2. The learned counsel for the appellant would contend that though all the issues were answered in favour of appellant/plaintiff only on the question of suit being barred by limitation, the suit was dismissed. The learned counsel would contend that from the date of rejection of the bills inasmuch as the suit was filed within three years, the last day being the holiday on the next day the suit was instituted which is within the time in view of Article 113 of the Limitation Act,1963. The learned counsel also had taken this Court through the respective pleadings of the parties, the evidence available on record and the findings recorded in relation thereto.

3. Per contra, the learned Government Pleader for appeals would contend that this suit is for recovery of the price for the work done and a portion of the work had been completed and in view of the same Article-18 of the Limitation Act, 1963 alone would be applicable. Hence, the judgment and decree of the learned Judge may have to be confirmed.

4. Heard both the counsel.

5. The only question, which may have to be answered by this Court, is as hereunder:

1. Whether the findings recorded by the learned Judge on the question of Limitation to be confirmed or to be disturbed in any way?

2. If so, to what relief the parties are entitled to?

6. POINT NO. 1: The parties would be referred to as plaintiff and defendant as shown in O.S.No. 13 of 1992 on the file of Additional District Judge, Adilabad. The plaintiff filed the suit pleading that the Government of Andhra Pradesh in its G.O.Rt.No. 225 Panchayat Raj Rural dt.16.2.1987 have allotted wheat additionally of 1425 M.Tonnes under RLECP to D.R.D.A.Adilabad towards 3rd and 4th quarter of 1986-87 which was to be lifted from the godown to Food Corporation of India, Nizamabad before 31.3.1987, that the Government allotted under NREP 700 M.Tonnes to D.R.D.A.Adilabad on or about March, 1987. The plaintiff/Sham Transport Co. entrusted to transport entire quantity allotted to the District under

RLECP and NRF. On 24.3.1987 the Project Director D.R.D.A.Adilabad asked the plaintiff to transport the entire quantity and the plaintiff expressed his inability to transport entire stock of 2125 M.Tonnes before 31.3.1987. He however agreed to transport the 700 M.Tonnes of wheat allotted under NREP at the rate of Rs. 1.90 Ps. Per quintal for first 6 kms., and 0.5 ps. per quintal per Km., above 16 kms., as quoted by him. The plaintiff was awarded the NRF transport work. The Project Director called on the plaintiff and asked him to take up transport work of RLFGP of 1425 M.tones of wheat from Nizambad and the plaintiff took time to think over the matter and on 25.3.1987 gave a letter to the Project Director saying that he is agreed to transport the wheat of 1425 M.Tonnes at the rate awarded to his company on 24.3.1987 subject to the condition that the wheat has to be lifted from the godowns of Nizamabad. The Project Director assured that the plaintiff has to lift from FCI godowns of Nizamabad District only, that a formal agreement was executed by the plaintiff and the Project Director, DRDA Adilabad and the work order was handed over at 4.30 P.M. on 25.3.1987. The plaintiff went to the office of Food Corporation of India, Nizambad on 26.3.1987 but the authorities issued release order at 4.00 P.M. on that day to lift 700 M.Tonnes from Sarangapur godown that the another release order for 725 M.Tonnes of wheat was addressed to the Asst.Manager, FDI Godown Mancherial on the pretext of non-availability of stock at Nizambad and the plaintiff protested with the District Manager, Nizamabad that as per the contract he has to transport the wheat from Nizamabad to various destinations in Adilabad and not from Mancherial and it was not made clear that the plaintiff has to take up transport from Mancherial, that the transport rates were not suitable as that of mentioned in the contract. For example, the distance between Mancherial FCI godown and Luxettipet is 25 kms., that a lorry can transport 1 m.ton and the amount admissible under the contract works out to be only Rs. 235/- including of loading and unloading charges amounting to Rs. 40/-, that the lorry hire charges in those days was Rs. 300/- for short distance inclusive of loading and unloading charges. The plaintiff in spite of unworkable rates still went to Mancherial on 27.3.1987 and found to his surprise the non existence of any weigh-bridge in or around Mancherial town, that the FCI authorities at Mancherial town told to the plaintiff that the stock would be released from 28.3.1987 onwards, that 725 m.tones (7,500 bags) cannot be weighed and

transported in two working days i.e., 28th and 31st March, 29th being Sunday and 30th being Telugu New Year's day when the office and godown of FCI remain closed. The Plaintiff approached the Project Director DRDA on 28.3.1987 and explained all the difficulties in transportation from Mancherial, that it is not possible to secure 70 lorries at Mancherial within 2 or 3 days that the Project Director made entreaty with the plaintiff to lift possible stocks from Mancherial but besides being contrary to the contract it was highly impossible for the plaintiff to transport 725 m.tones of wheat from Mancherial before 31.3.1987, that the plaintiff has transported 700 m.tones of wheat from Nizamabad to various destinations in Adilabad district as a dumbrated;

Destination Distance Rate for 16 Kms. For Bal. Kms. Total Kms Rate per MT for total distance.

1. Adilabad 149 Kms Rs.190 + 665 = 855 Rs.85.50
2. Boath 118 ' Rs.190 + 510 = 700 Rs.70.00
3. Utnoor 160 ' Rs.190 + 720 = 910 Rs.91.00
4. Khanapur 104 ' Rs.190 + 440 = 630 Rs.63.00
5. Mudhole 123 ' Rs.190 + 535 = 725 Rs.72.00
6. Luxetipet 149 ' Rs.190 + 665 = 855 Rs.85.50
7. Wankidi 258 ' Rs.190 + 1210 = 1400 Rs.140.00
8. Asifabad 243 ' Rs.190 + 1135 = 1325 Rs.132.00
9. Sirpur 256 ' Rs.190 + 1200 = 1390 Rs.139.00
10. Chennur 213 ' Rs.190 + 985 = 1175 Rs.117.50

7. The plaintiff submitted three bills for transporting 700 m.tonnes of wheat amounting to Rs. 91,087.85 to the Project Director, DRDA Adilabad on 27.4.1987 after obtaining the vouchers from the concerned recipients of wheat. After long

silence the plaintiff received show cause notice Dt.15-10-1987 from the Collector & Chairman D.R.D.A. Adilabad saying that he has failed to lift the entire quantity of 1425 M. Tonnes of wheat and that is why his security deposit should not be forfeited, that the plaintiff replied the show cause notice on 28- 10-87 saying that as per the discussion and letter of plaintiff dt. 25-3-87 centred round only transportation of wheat from Nizamabad and not from any other places and he has also enumerated the circumstances under which it was impossible to transport 725 M. Tonnes of wheat from the FCI godown of Mancherial. Again the Project Officer, D.R.D.A. Adilabad issued similar notice Dt.2-1-88 to which also the plaintiff replied on the lines as that of to the Collector and Chairman D.R.D.A. Adilabad. The Collector & Chairman after 17 months of reply dt. 28-10-87 passed orders dt. 18-3-89 with holding the payment of above three bills for non transportation of 725 M. Tonnes of wheat, that the above facts are the cause of action for the suit which arose finally on 18-3-89 when the Collector and Chairman passed order rejecting the three bills of the Plaintiff. The agreement Dt.25-3-87 executed for transportation of wheat was not valid in law. Even then the plaintiff is entitled to compensation from the defendant for the transportation of 700 M. Tonnes of wheat, that the plaintiff did the transportation lawfully for the defendant and has not done it gratuitously, that the defendant has enjoyed the benefit of transportation of wheat, that the hire charges of truck of the capacity of 1 M.T. (100 bags) during the relevant time of March, 1987 was around Rs. 5/- to Rs. 6/- per KM for distances 100 Kms., and more, that the hire charges for short distances worked out to be Rs. 8/- to 10 /-, that the defendant has not incurred any loss due to non-transportation of 725 M. Tonnes of wheat, that the suit is within limitation as the Collector & Chairman passed order on 18/12-3-89 rejecting the bills of the plaintiff for the work done in transportation of 700 M. Tonnes of wheat.

8. The defendant filed the written statement taking the plea that the Government had constituted the District Rural Development Agency and it is a separate and independent agency having its name and seal to entertain the contract on its own accord. It was also further pleaded that the Project Director and District Collector represented the Agency as its Chairman, in pursuance of application Dt.21-3-87 and 25-3-87 and the representation of the defendant the plaintiff offered for transportation of wheat and his offer was considered and the plaintiff entered into

an agreement with the Project Director, the defendant herein for transporting total wheat under NRFP/RLFPG allotted to Adilabad District for the year 1986-87 as per the approved rates by the Dist. Civil Supplies Officer Adilabad against the tender notice published by 1986-87 that the plaintiff agreed to transport the wheat to distribution centers in the various blocks of Adilabad District. The plaintiff had earlier entered into an agreement for transport work with the A.P. Civil Supplies Corporation, Adilabad and executed an agreement with the A.P. Civil Supplies Corporation, in 1986-87 whereunder the Plaintiff had given cash security of Rs. 50,000/- and bank guarantee of Rs. 1,50,000/- for due performance of the contract entered into with the Civil Supplies Corpn., Adilabad. The plaintiff agreed to abide by the same terms and conditions as agreed to with the Civil Supplies Corporation, Adilabad for transportation of wheat with D.R.D.A. Adilabad, that the plaintiff also agreed and declared that the cash security and the bank guarantee given to the Civil Supplies Corporation Adilabad to be treated as the cash security and Bank guarantee for due performance of contract of transport entered into with the DRDA., Adilabad, that the plaintiff also agreed to forfeit the above cash security in the event of his failure to lift the total quantities allotted and for any breach of contract. Accordingly, he has executed an agreement with the D.R.D.A. Adilabad represented by the defendant on 25-3-87 and on the same day the plaintiff was issued the necessary work order but not at 4-00 p.m. as alleged by him. It is denied that pursuant to the inability expressed by the plaintiff he was called to the office of the defendant and persuaded to undertake transport work and that he was assured by the defendant that he would be asked to transport wheat from Nizamabad godown of Food Corporation of India. It is also denied that the plaintiff was forced to enter into an agreement much against his will and adds to help the DRDA and the DRDA would accept whatever stocks the plaintiff could transport. The plaintiff has taken this plea in order to escape the liability arising out of breach of contract, that the plaintiff on his own accord approached the office of the D.R.D.A. and put an application expressing his willingness to undertake the transport work for the D.R.D.A. The plaintiff entered into an agreement for doing transport work after having been understood the nature of work to be carried out under the contract executed by him. Having breached the contract the plaintiff is trying to justify his action by resorting to various pleas and violated the terms of

contract to advance the cause of his case. In any event, the plaintiff has not protested for transporting wheat from Sarangapur godown and from Mancherial as alleged by him. The plaintiff being a businessman of transportation fully aware of the nature of transport work to be performed for the DRDA and entered into agreement with the DRDA Adilabad which specifically provided for transporting total wheat allotted to Adilabad District to various distribution centers in the blocks of Adilabad District. The agreement is not confined for transporting wheat from Nizambad only, that the plaintiff having failed to perform his contract is only trying to take cover under various pleas which apart from being contrary to the terms and conditions of the contract are incorrect and the same are denied. The plaintiff deliberately failed to lift the stocks even after making arrangements for delivery of the same even on holidays. It is denied that the plaintiff approached the defendant and explained to him the difficulties in transportation from Mancherial and that the Project Director made entreaties with the plaintiff to lift the possible stocks from Mancherial. The plaintiff was made to understand that he had to lift the wheat from the places where the stocks were available and to transport the same to the distribution centers in various blocks of Adilabad District. That the plaintiff having breached the contract and to avoid the consequences arising there with putting various difficulties which are only imaginary and cannot be a good ground for not performing the contract on his part. The plaintiff bound to perform his contract and having failed to do so cannot justify the breach of contract by putting forth various pleas, which apart from being false are not tenable. The details of the rates of transportation of wheat mentioned in the plaint by the plaintiff are not correct, that the plaintiff put to strict proof regarding the distance and the rates mentioned by him. The plaintiff has submitted three bills for transportation of wheat of 700 m.tonnes, that after verification a show cause notice was issued to the plaintiff by the District Collector/the defendant herein for withholding the payments of bills in lieu of forfeiting the security deposit for not transporting 1425 m.tonnes of wheat and thereby committing breach of contract. The plaintiff replied the notice justifying the breach of contract under various pleas which are imaginary, false and contrary to the terms of the contract. The plaintiff having committed the breach of contract fraudulently withdraw the cash security and the bank guarantee from A.P.Civil Supplies Corporation without the consent and knowledge of the defendant/DRDA

Adilabad, that the said cash security and bank guarantee was given for due performance of contract entered into with the DRDA Adilabad. Taking into consideration the breach of contract and fraud played by the plaintiff the defendant/Chairman DRDA passed orders for withholding the payments of bills of the plaintiff by his order Dt.18.3.1989, that the plaintiff had given cash security of Rs. 50,000/- and bank guarantee of Rs. 1,50,000/- for the due performance of the contract, that the plaintiff committed breach of contract therefore the defendant rightly withheld the payments of bills of the plaintiffs inasmuch as the plaintiff has not left the amount with DRDA for forfeiture as stipulated in the contract that the action of the defendant is perfectly legal and justifiable the same being in accordance with the terms of the contract therefore no cause of action accrued to the plaintiff on 18.3.1989. It is denied that the agreement dated 25.3.1987 executed for transportation of wheat by the plaintiff was made under any mistake of fact and that the same is also not valid in law as contended by the plaintiff. The plaintiff is not entitled to claim transportation charges withheld for not making available cash security and bank guarantee given by the plaintiff for due performance of the contract which has been breached by the plaintiff. The plaintiff performed transportation of wheat under a contract and the question of transporting the wheat non-gratuitously and enjoyment of the same by the defendant does not arise. The plaintiff having failed to make available bank guarantee as stipulated hence the question of incurring any loss due to non-transportation of wheat does not arise. The distribution of wheat under various programmes could not be implemented in time thereby caused inconvenience to the Government and the public at large. The suit is not within the limitation inasmuch as the Article 113 of the Indian Limitation Act, 1963 is not applicable to the facts of this case and the order of the defendant cannot be considered as the starting point for running the limitation for filing the suit. The article 18 of the Indian Limitation Act is applicable to the facts of this case and the time runs from the date of execution of the work that the suit is filed beyond 3 years from the date of execution of work is beyond the limitation.

9. On the strength of the pleadings, the following issues were settled for trial:

1. Whether the plaintiff is entitled to the amount as claimed for?

2. Whether the suit is maintainable?
3. Whether this Court has no jurisdiction to try this suit?
4. Whether the Court fees paid is not correct?
5. Whether the suit is beyond time?
6. To what relief?

10. P.Ws.1 and 2 were examined on behalf of the plaintiff and Exs.A1 to A4 were marked. On behalf of the defendant D.Ws.1 to 3 were examined and Ex.B.1 to B.20 were marked.

11. Issue No. 5, as referred to supra is whether the suit is beyond time. The said issue was discussed at length and findings had been recorded. The other findings no doubt had been recorded in favour of the plaintiff except the question of limitation. Reliance was placed on Great Eastern Shipping v. Union of India, : AIR1971 Cal150 , Badarwada Bhima Subbaraju v. Village Panchayat of Gundugalanu, : AIR 1965 AP186 , Jullundur Improvement Trust v. Kuldip Singh, , State of Bihar v. Thawardas Pherumal, : AIR1964 Pat225 .

12. Articles 18 and 113 of the Limitation Act, 1963 read as hereunder:

Article 18:

Description of suit Period of Time from which

Limitation period begins to run

18. For the price of work three years when the work is done

done by the plaintiff

for the defendant at his

request, where no time

has been fixed for payment

Article 113:

Description of suit Period of Time from which

Limitation period begins

to run

113. Any suit for which three years when the right to sue

no period of limitation accrues.

Is provided elsewhere

In this Schedule.

13. A perusal of Ex.A3 shows that the work was completed by 27.4.1987. The relief as prayed for is for recovery of the amount which is towards the price for the work done and it is needless to say that Article 18 of the Limitation Act, 1963 would be applicable. It was not filed within three years but the same was filed on 19.3.1992 beyond the period of limitation. No doubt, certain submissions were made that from the date of the rejection of the bills, if the limitation is computed inasmuch as the last day being a holiday and on the next day suit had been instituted and hence, the same is within limitation. When specific article is applicable the plaintiff cannot rely upon the residuary article, i.e., Article 113 of the Limitation Act, 1963. Hence, in this view of the matter, the findings of the learned

Judge deserve no disturbance at the hands of this Court on question of limitation and the same are hereby confirmed.

14. As far as other findings are concerned, the said findings relating to the merits and demerits of the matter need not be adverted to in detail, in the light of the aforesaid finding recorded on question of limitation. 15. POINT NO. 2: In the light of the findings recorded above, the appeal is devoid of merits and accordingly, the same shall stand dismissed. Inasmuch as the plaintiff lost the suit on the question of limitation this Court directs the parties to bear their own costs.

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