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Court : Andhra Pradesh

Decided On : Oct-31-2007

Reported in : 2008(2)ALD770

Judge : L. Narasimha Reddy, J.

Acts : Code of Civil Procedure (CPC) - Sections 100

Appeal No. : SA No. 262 of 1998

Appellant : S. Subramanyam

Respondent : A.P. State Essential Commodities Corporation Ltd. and ors.

Advocate for Def. : D. Linga Rao, Adv. for Respondent Nos. 1 and 2

Advocate for Pet/Ap. : K.V. Chalapathi Rao, Adv.

Disposition : Appeal allowed

Judgement :

L. Narasimha Reddy, J.

1. The plaintiff in O.S. No. 11 of 1991 on the file of the Principal Subordinate Judge, Kurnool, filed this second appeal. He was Taluq Level Stockist for

Palmolein Oil for Koilakuntla of Kurnool District, during the year 1982. On 20.5.1985, 23 barrels of palmolein oil was recovered from M/s. Pratap Traders in Nandyal. Suspecting that the said quantity was purchased from the appellant, his premises were inspected on 26.5.1985 and the entire quantity of 186 barrels was seized from him. The stock was entrusted to the safe custody, to a different person. Thereafter, the Sub-Collector, Nandyal, the 4th respondent herein, has decided to sell the seized quantity, through public distribution system. On noticing that there was shortage of about 5,163 Kgs., of palmolein oil, the matter was referred to the District Collector, Kurnool, the 3rd respondent herein. He, in turn, passed orders, dated 9.3.1986 (Ex.A.6), directing recovery of Rs. 55,448.60 ps., from the appellant. In pursuance of the same, the Mandal Revenue Officer, Kurnool, the 5th respondent herein, issued an order of attachment, dated 14.12.1990, marked as Ex.A.8. The appellant filed the suit challenging the said proceedings. He pleaded that no shortage of stock was noticed, when it was seized from him. It is his case that samples were drawn from the seized stock of 186 ban-els and nothing incriminating was found against him. It is alleged that he cannot be held responsible for the discrepancy, if any, in the hands of the stockist to whom the seized quantity was entrusted.

2. On behalf of respondents, a written statement was filed narrating the circumstances that led to the seizure of the stock and noticing of the shortage. It was pleaded that in terms of the agreement of dealership, marked as Ex.A.2, the appellant is responsible for the shortages. A plea of limitation was also raised.

3. Through its judgment, dated 22.3.1993, the trial Court decreed the suit. Respondents 1 and 2 filed A.S. No. 5 of 1994 in the Court of I Additional District Judge, Kurnool. The appeal was allowed through judgment, dated 15.12.1997. Hence, this second appeal.

4. Sri K.V. Chalapathi Rao, learned Counsel for the appellant, submits that the clear finding recorded by the trial Court that no discrepancy of stock was noticed, when the palmolein oil was seized from the appellant, was disturbed by the lower appellate Court, without there being any evidence. He contends that the shortage, if at all, had occurred, when the stock was in the custody of the respondents, and

there was no basis for issuing the impugned proceedings. He further contends that the plea of limitation recorded by the lower appellate Court is without any basis, inasmuch as the cause of action accrued to the appellant only when Ex.A.8 was issued on 14.12.1990.

5. Sri D. Linga Rao, learned Counsel for respondents 1 and 2, on the other hand, submits that, as a dealer, the appellant is responsible for any shortage of stock, in terms of Ex.A.2 and that the lower appellate Court has taken the same into account. He submits that the proceedings, through which the liability was fastened upon the appellant, were issued on 9.3.1986, through Ex.A.6, and the suit, which was filed in the year 1991, was clearly barred by limitation.

The trial Court framed the following issues for its consideration:

(1) Whether the proceedings of the third defendant in R.C.H1/4867/85, dated 9.3.1986 are illegal, arbitrary, without jurisdiction, and not binding on the plaintiff?

(2) Whether the defendants 1 and 2 are entitled to withhold the security deposit of Rs. 20,000/- payable to the plaintiff?

(3) Whether the plaintiff is entitled for the payment of Rs. 14,028.50 ps., being the commission payable to him?

(4) Whether the plaintiff is entitled for the refund of Rs. 3,400/- collected from him by the 5th defendant?

(5) To what relief, the plaintiff is entitled?

(6) Whether the suit is barred by limitation?

(7) Whether this Court has no jurisdiction to try the suit?

6. On behalf of the appellant, his G.P.A., was examined as PW.1 and Exs.A.1 to A.8 were marked. On behalf of the respondents, DWs. 1 to 4 were examined and Exs.B.1 to B.17 were marked. The trial Court decreed the suit on finding that the shortage of stock, if any, had taken place, when the goods were in the custody of the respondents. The lower appellate Court reversed the judgment and decree of

the trial Court.

Two questions arise for consideration in this appeal, namely,

(i) Whether the suit filed by the appellant was barred by limitation?

(ii) Whether the proceedings in Exs.A.6 and A.8 suffer from any illegality?

7. The relief claimed by the appellant in his suit is comprehensive in nature. He challenged Ex.A.6 - proceedings, dated 9.3.1986, issued by the 3rd respondent and the consequential notice, dated 14.12.1990, issued by the 5th respondent, marked as Ex.A.8. If the challenge to Ex.A.6 is to be treated in isolation, the suit filed in the year 1991 is obviously barred by limitation. A perusal of Ex.A.6 discloses that the 3rd respondent directed that a sum of Rs. 55,448/-is to be recovered from the appellant. Neither any notice was issued to him, nor the demand was made straight away. At the most, Ex.A.6 reflected a decision of the 3rd respondent. Unless the consequential steps for recovery were initiated, the appellant did not have any grievance vis-a-vis Ex.A.6. The record discloses that the consequential demand was made by the 5th respondent through Ex.A.8 only on 14.12.1990. The actual cause of action can be said to have accrued to the appellant, only when he received Ex.A.8. The suit was filed within few months from the date of receipt of Ex.A.8. Therefore, the plea of limitation raised by the respondents is without any basis.

8. Coming to the second question, it needs to be seen that basically the appellant was not put on notice by the 3rd respondent before he passed the orders under Ex.A.6. There is a serious legal infirmity. Apart from that, it is not in dispute that no shortage of palmolein oil was noticed, when 186 barrels of that material was seized from the appellant. Under panchanama drawn in Ex.B.12, dated 26.5.1985, the entire stock was entrusted for safe custody, to a different person. The appellant cannot be held responsible for any shortage that occurs, or takes place after the date of seizure. Admittedly, the shortage is to the extent of 1000 kgs., on 11.8.1985, and in the second inspection caused on 24.8.1985, it rose to 4196 kgs. The final inspection was caused on 26th and 27th August, 1985, where shortage of 5231 Kgs., was noticed. By no stretch of imagination, the appellant can be held

responsible for such shortage.

9. The lower appellate Court referred to a clause in Ex.A.2, which held the stockist responsible for shortage. It does not require any emphasis that the responsibility under such a clause could be in respect of the shortage that is noticed when the stock is in the hands of the dealer. If any shortage is noticed, while the stock was in the hands of the department, or any third party, a dealer cannot be held responsible.

10. Learned Counsel for respondents 1 and 2 places reliance upon the judgment of the Supreme Court in M. Jagannadha Rao v. N. Santosh Hegde, in support of his contention that the grounds raised in the appeal cannot be treated as substantial questions of law under Section 100 of CPC.

11. This Court finds that substantial questions of law, which were discussed above, arise for consideration.

For the foregoing reasons, the second appeal is allowed and the judgment and decree passed by the lower appellate Court is set aside. Consequently, the decree passed by the trial Court shall hold good. There shall be no order as to costs.

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