

Mohanlal Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Aug-21-1979

Reported in : AIR1980MP1; 1979MPLJ801

Judge : G.P. Singh, C.J., ;U.N. Bhachawat and ;C.P. Sen, JJ.

Acts : [Limitation Act, 1963](#) - Schedule - Articles 113 and 522; ;[Arbitration Act, 1940](#) - Sections 33

Appeal No. : Misc. First Appeal No. 52 of 1972

Appellant : Mohanlal

Respondent : State of Madhya Pradesh and ors.

Advocate for Def. : J.M. Sood, Govt. Adv.

Advocate for Pet/Ap. : R.K. Pandey, Adv.

Disposition : Appeal allowed

Judgement :

C.P. Sen, J.

1. This case has been referred to the Full Bench by the learned single Judge for decision. In the order of reference no specific question has been framed but it appears that the learned single Judge had doubts about the decision of the

Division Bench of this Court in Badriprasad v. State of Madh. Pra. Misc. First Appeal No. 156 of 1971, D/- 18-2-1975.

2. In the auctions held on 24-8-1956 the appellant took on lease coupe No. 1 in Tumadabra for Rs. 3100/- and coupe No. 1 in Bundela Kachhar for Rupees 8200/- for extracting timber from these coupes. Both these coupes were in North Bilaspur Forest Division. The amounts of the lease money were payable by instalments and the time of payment of the instalments was the essence of the contract. Regarding the lease of Tumadabra coupe, the appellant deposited the first instalment on 4-10-1956 instead of on 24-8-1956 but the lease deed was executed by the D. F. O. He further defaulted in paying the other instalments. Accordingly, the lease was cancelled. Regarding the lease of Bundela Kachhar coupe, the appellant failed to pay even the first instalment and, therefore, no lease deed was executed and the tender was cancelled and it was re-auctioned for Rs. 5200/-. Since the appellant failed to pay the balance amounts of the lease money, he was served with demand notices calling upon to pay Rs. 2325/- for the first lease and Rs. 2900/- for the second lease. The appellant raised dispute that he was not permitted to work the first lease and so the State is not entitled to recover the balance amounts of the lease money.

It appears that thereafter revenue recovery proceedings were started and notices were issued to the appellant on 19-8-1959 but then no further step was taken. Again by notice dated 21-10-1965 the revenue authorities again asked the appellant to deposit the amounts. The appellant, therefore, filed a petition under Section 20 of the [Arbitration Act, 1940](#), on 19-8-1966 contending that in the lease-deed there is an arbitration clause that all disputes and differences should be decided by the Conservator of Forest. Unless the dispute is decided and award is made, the State is not entitled to recover the balance amount of the lease money. The application was opposed by the respondents. They ' denied that the balance amounts of the lease money could not be recovered without referring the disputes to the Arbitrator. They also denied that the appellant was not permitted to work the lease of Tumadabra coupe. Since time of payment of instalments was the essence of the contract, the D. F. O. was justified in cancelling both the leases in default of payment of instalments. In fact, in respect of Bundela-Kachhar coupe, no lease

deed was executed and so there is no question of referring any dispute to Arbitrator.

3. The Additional District Judge by his award D/- 20-10-1970 referred all the disputes between the parties in respect of the two leases to the Arbitrator, i.e. Conservator of Forest. The Arbitrator gave 2 separate awards. In respect of Tumadabra coupe, he held that the claim was barred by limitation as the cause of action arose on 19-8-1959 when the notice for recovery of arrears as land revenue was issued by the revenue authorities, while the application under Section 20 of the Arbitration Act was made on 19-8-66. Regarding the lease of Buhdela-Kachhar coupe, he held that there was no written agreement and there being no provision for arbitration in the sale condition, nothing can be arbitrated. The appellant filed objection under Section 30 read with Section 33 of the Arbitration Act for setting aside of the award in respect of the lease of Tumadabra coupe alone on the ground that the claim has been wrongly rejected as being barred by limitation. No challenge was made regarding the award in respect of the lease of Bundela-Kachhar coupe.

The learned Addl. District Judge made the award rule of the Court and rejected the application for setting aside of the award holding that the Arbitrator was justified in rejecting the claim of the plaintiff as being barred by limitation as he had full authority to go into the question of limitation in view of Section 37(1) of the Arbitration Act. He also relied on a decision of the Supreme Court in Wazir Chand Mahajan v. Union of India, AIR 1967 SC 990. The appellant then preferred an appeal to this Court. The learned single Judge by his order of reference held that the learned counsel for the appellant made no effort to show that the dispute before the Arbitrator was within time and that the decision was, therefore, patently erroneous. Moreover, an Arbitrator is a judge on all questions of law as well as facts, and a mere erroneous decision by him on a question of law does not vitiate the award, unless an error is apparent on the face of the record. But it appears that at that stage a Division Bench decision of this Court in Badri Prasad v. State of Madh Pra. (supra) was cited before him.

The learned single Judge doubted the correctness of the opinion expressed by the Division Bench and he was of the view that under Section 22 of the Limitation Act of 1963 in case of a continuing breach of contract or in case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues. In the instant case, the said section is not attracted because it is neither a case of continuing breach of contract nor of a continuing tort within the meaning of the section. Ordinarily a suit for injunction is governed by Article 113 of the Limitation Act which prescribes a period of 3 years from the date of accrual of the cause of action. However, since the matter is of importance, he referred the case to larger Bench and that is why this has been heard by the Full Bench.

4. In *Badriprasad v. State of Madh. Pra.* (supra) it has been held as under:--

'In short, the case of the appellant was that the State was not entitled to make any recovery under the terms of the contract, and that it should be restrained from doing so. The nature of the claim made by the appellant is to restrain the recovery proceedings started by the State. The claim is thus in the nature of an injunction, every threat of recovery gives a fresh cause of action for a suit for injunction. Until the recovery is made it cannot be said that a suit for injunction to restrain the recovery becomes barred by limitation. The reason is that if recovery of the amount is not justified under the terms of the contract, the State could not acquire that right on the facts of this case by prescription. It is, therefore, clear that the claim of the appellant, which was involved in the dispute referred to the arbitrator was not barred by limitation. The arbitrator's finding that the claim was barred by limitation is apparently erroneous.'

In this decision reliance has not been placed on Section 22 of the Act but on the basis that it is a case of recurring cause of action. The appellant got a fresh cause of action against every threat of recovery. Until the recovery is made it cannot be said that a suit for injunction to restrain the recovery becomes barred by limitation. The Division Bench, therefore, set aside the award and directed the Addl. District Judge to remit the award to the Arbitrator under Sec. 16 of the Act. The facts of the present case are similar to the facts of that case. The nature of the claim here

also is to restrain the recovery proceedings started by the State i.e. in the nature of an injunction suit.

5. We do not find any reason to differ with the opinion expressed by the Division Bench which to us appears to be the correct view of the provisions of law. There is no separate Article provided under the Limitation Act for a suit for injunction. So a suit for injunction has to be governed by the residuary Article i. e. Article 113. Under this Article, a suit can be filed within 3 years from the date of accrual of the cause of action. The Division Bench has rightly held that the cause of action for a suit for injunction arose each time when there was a threat of recovery by the respondents. Every threat of recovery gives a fresh cause of action. Until the recovery is made it cannot be said that a suit for injunction becomes barred. The reason is that if recovery of the amount is not justified under the terms of the contract, the State could not acquire that right on the facts of the case by prescription.

The learned single Judge has overlooked the fact that the present case is a case of recurring cause of action and not of continuing breach of contract or tort. Section 22 of the Limitation Act provides that in case of continuing breach of contract or in case of a continuing tort, a fresh period of limitation begins to run at every moment of the breach or the tort, as the case may be. Tort has been defined under the Act as meaning a civil wrong which is not exclusively a breach of contract or breach of trust. Admittedly, the present case is not of continuing breach of contract or tort because the contract stood rescinded by the D. F. O. and there is also no continuing wrong. A Division Bench of this Court in *Firm Bhagwandas v. State of M. P.* AIR 1966 Madh Pra 95 has held that the contract being repudiated by the State and the conduct of the plaintiffs also show that they had accepted the repudiation, the suit for damages should have been filed within 3 years of the rescission of the contract. That was not a case of successive or continuing breach.

The present suit is not for damages but for injunction. Section 22 does not apply to successive wrongs. Where there are successive infringements of existing or continuing right, each infringement is a wrong, thus giving rise to successive wrongs affording successive causes of action as in the case of successive breach

of contract. The mere fact that a party has not availed of himself an earlier cause of action will not prevent him from availing the same later on in view of Article 55 of the Limitation Act. The Privy Council in *Jalandhar Thakur v. Jharula Das*, AIR 1914 PC 72 has held as under:--

'The respondent not being a Brahmin Panda could not hold the office, that the right to the office did not arise from or depend upon the receipt of the share of the income and that his appropriation did not constitute him Shebait for the time being or affect the title to that office in any way. In these circumstances the suit was not one for possession of an hereditary office and Article 124 did not apply and that every appropriation was a fresh actionable wrong on which a suit could be maintained.'

A direct case on this question is by a Full Bench of the Madras High Court in *Annasami v. Adivarachari* AIR 1941 Mad 81 which has relied on the aforesaid Privy Council decision. The Full Bench held as under:--

'A person who is admittedly the lawful holder of an office and is enjoying its emoluments must in law be regarded as being in possession of the office itself, especially where no one else is performing the duties of the office. He has the right to bring a suit at any time when the performance of his duties is interfered with. But he is not bound to take action in case of interference if it does not suit him. He can bide his time until another occasion which would only give rise to another cause of action since at every time of interference there is a fresh wrong. Consequently Article 120 or 124 have no application to such a case.'

6. Therefore, the present case is a case of recurring cause of action. The appellant got fresh cause of action in respect of each threat of recovery. His right to file such a suit is not barred unless and until the recovery is made. If the recovery of the amount is not justified under the terms of the contract, the appellant could challenge the same. Though a demand notice was issued by the revenue authorities on 19-8-59 but they took no further action and so the appellant kept quiet but when a second notice was issued on 21-10-65 the appellant thought the danger to be imminent and so he filed the application under Section 20 He was fully justified in basing his cause of action for this suit on the notice dated 21-10-65

and his application filed on 19-8-66 could not be said to be barred by limitation. If an error of law appears on the face of the award it is a ground for remitting it or setting it aside.

An error of law on the face of the award means you can find in the award or a document actually incorporated thereto.' (sic) But this rule does not apply where questions of law are specifically referred to the arbitrator for his decision; the award of the arbitrator on those questions is binding upon the parties, for by referring the specific questions the parties desire to have a decision from the arbitrator on those questions rather than from the Court, and the Court will not, unless it is satisfied that the arbitrator had proceeded illegally, interfere with the decision. *Union of India v. Rallia Ram*, AIR 1963 SC 1685.

7. Accordingly, we allow this appeal and set aside the award given by the Arbitrator and direct the Additional District Judge to remit the award to the Arbitrator under Section 16 of the Act for a decision on merits. He should also fix a time within which the Arbitrator shall submit his decision to the Court. There shall be no order as to costs regarding this appeal.