

State of Rajasthan and anr. Vs. the Bundi Electric Supply Co. Ltd., Bundi and anr.

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Court : Rajasthan

Decided On : Aug-14-1969

Reported in : AIR1971Raj24

Judge : D.M. Bhandari, C.J. and; Sohan Nath Mody, J.

Acts : [Constitution of India](#) - Article 295; Limitation Act, 1908 - Sections 19 - Schedule - Articles 115 and 120

Appeal No. : First Appeal Nos. 31 and 33 of 1959

Appellant : State of Rajasthan and anr.

Respondent : The Bundi Electric Supply Co. Ltd., Bundi and anr.

Advocate for Def. : M.B.L. Bhargava and; S.K. Jindal, Adv.

Advocate for Pet/Ap. : R.A. Gupta, Adv.

Judgement :

Bhandari, C.J.

1. These two cross-appeals arise out of a suit filed by the Bundi Electric Supply Co. Ltd. against the State of Rajasthan in the Court of Senior Civil Judge, Bundi, on 4th September, 1957.

2. Briefly the allegations of the plaintiff, as stated in the plaint, are that an agreement was executed between the plaintiff and the Government of the former Bundi State on 9th October, 1945. It is Ex. 1 on the record. Under this agreement, the plaintiff agreed to erect an underground line of about five miles to supply electric energy to Phoolsagar palace and also to maintain the same at its expense for a period of fifteen years on the terms and conditions set out in Ex. 1. The main terms and conditions are given below:--

'The extension of the underground line will be completed within a period of three months. No sooner the line is energised by the company, the State will take connections at Phoolsagar and the State may take connections for testing water of a few wells for the purpose of supply of water to the city, if so desired.

The Company will be entitled during the continuation of this agreement to supply electric energy from the extension for all purposes to the public as well.

Energy will be supplied by the company to the State and the public from this extension on the same terms and rates as are prevalent in the Bundi City.

The State agrees to guarantee a minimum consumption of at least Rs. 250/-per month from the date the line is energised. The minimum consumption of current for Rs. 250/- as referred above can be consumed by His Highness and Royal family either at Phool Sagar or at proposed palace singly or jointly and will continue to pay so long as the Bundi Electric Licence, 1936, remains in force.

Apart from this minimum consumption the State further agrees to pay as rent Rs. 6,000/- in lump sum for the length of a line erected from Power House to Phoolsagar. The amount of Rs. 6,000/-will be paid in advance yearly for the period of 15 years commencing from the date the line is energised, and will be paid without break. After the expiry of 15 years, no hire will be paid to the company.

The company undertakes to maintain the line at their own expenses so long as the Bundi Electric Licence, 1936 remains in force or is extended for a further period.'

In pursuance of the aforesaid agreement, the plaintiff laid down an electric line from Power House, Bundi, to Phoolsagar at its own expense. The Government of

Bundi accordingly paid a sum of Rs. 6,000 in advance. On the merger of the Bundi State into the State of Rajasthan in 1948, the State of Rajasthan did not pay the agreed yearly amount. The plaintiff stated that the State of Rajasthan became the successor of the Government of the former State of Bundi under Article 295 of the [Constitution of India](#) and as such it was liable to discharge the liabilities of the latter. After a good deal of correspondence, the defendant Government paid a sum of Rs. 6,000/-. The plaintiff claimed in this suit Rs. 48,000/- as rent and Rs. 11,880/- by way of interest, in all Rs. 59,880/-. The defendant contested the suit. It admitted the execution of the agreement (Ex. 1) and also the fact that electricity was supplied to Phoolsagar palace through underground cable. The defendant also admitted that Rs. 6,000/- relating to Phoolsagar cable hire bill of 26th March, 1948, were adjusted towards the amount which the plaintiff owed to the defendant. It denied that the Government of Rajasthan was the successor-in-law of the former Government of the State of Bundi. It also stated that the liability for which the suit was filed neither pertained to the public nor to the State and the plaintiff was also informed that since the line in question was not catering for any purpose other than the Phoolsagar estate, which is the personal property of the Maharaja of Bundi, the Government of Rajasthan was not liable to pay any amount under the agreement. The defendant also pleaded that the suit of the plaintiff was barred by limitation. Several other pleas were taken which need not be mentioned here as they are not material for purposes of deciding this appeal. The trial Court, however, decreed the suit of the plaintiff to the extent of Rs. 24,000/- with costs and dismissed the remaining claim. Both the parties have filed appeals in this Court. The appeal filed by the State of Rajasthan is No. 31 of 1959 and the appeal filed by the Bundi Electric Supply Co. Ltd., Bundi, is No. 33 of 1959. Both the appeals are, therefore, disposed of by this single judgment.

3. Two arguments have been addressed by the learned counsel for the defendant in support of its appeal. The first argument is that the defendant was in no way liable to pay any amount to the plaintiff under the agreement (Ex. 1) as the agreement was executed by the former Bundi State of which the defendant was not a successor in the eye of law and thus it is not liable to discharge the liability of that State arising under the agreement. It is further contended that under Ex. 1 no benefit was conferred on the public and the electric line was laid down only to

supply electric energy to the Phoolsagar palace of the former ruler of the Bundi State. The defendant, therefore, cannot be held liable for anything done by the plaintiff exclusively for the benefit of the former ruler of the State of Bundi. It has been further pointed out that the Phoolsagar palace has become the personal property of the former ruler of the Bundi State since 24-8-49. The last argument is that the plaintiff's suit is barred by limitation so far as the amount of Rs. 6,000/- out of the decretal amount of Rs. 24,000/- is concerned.

4. The argument addressed on behalf of the plaintiff in its appeal is that the trial Court was wrong in holding that the plaintiff's suit for the recovery of Rs. 48,000/- and interest thereon was barred by limitation to the extent of Rs. 24,000/-.

5. Before we deal with the respective contentions of the learned counsel for the parties, we may refer to the history of the former State of Bundi which was merged into the State of Rajasthan.

6. The integration of Rajputana was completed in three stages. At first the Rajasthan Union was formed by the smaller Rajputana States, namely, Banswara including Kushalgarh, Bundi, Dungarpur, Jhalawar. Kishengarh, Kotah, Shahpura Partapgarh and Tonk. The United State of Rajasthan so constituted was inaugurated on 25-3-48. Very soon thereafter the Ruler of Mewar joined the Rajasthan Union and this second Rajasthan Union was inaugurated on 18-4-48 by the covenant entered into by the rulers of the various States. By notification dated 28-4-48, an ordinance styled as 'The United State of Rajasthan Administration Ordinance No. 1 of 1948' was issued by the Raj Pramukh of the second United State of Rajasthan. The preamble of this Ordinance provided as follows:--

'An Ordinance to provide for the Administration of the United State of Rajasthan--

Whereas by the covenant entered into by the Rulers of certain States of Rajasthan (hereinafter referred to as 'the Covenant') the Covenanting States agreed to unite and integrate their territories in one State to be called the United State of Rajasthan. And whereas in pursuance of the said Covenant, the Rulers of the covenanting States have agreed to make over the administration of their States to the Raj Pramukh not later than 1st day of May 1948;

And whereas all rights, authority and jurisdiction as well as all duties and obligations appertaining to the Government of the said States have vested or may be vested in the United State of Rajasthan.

And whereas it is expedient to provide for the administration under the United State of Rajasthan of all the territories of the said States;

Now, therefore, in exercise of the powers conferred by paragraph 3 of Article X of the Covenant, the Raj Pramukh is hereby pleased to make and promulgate the following Ordinance:'

Clause 2 of the Ordinance was as follows :

'2. When in pursuance of para (1) of Article VI of the Covenant, the administration of any Covenanting State has been taken over by the Raj Pramukh, the fact should be notified in the official gazette of the United State of Rajasthan and the provisions of Clauses (a), (b) and (c) of paragraph (1) of Article VI of the Covenant shall immediately come into force,' By this Clause, the provisions of Clauses (a), (b) and (c) of paragraph (1) of Article IV of the Covenant came into force. The relevant provisions of Article IV of the Covenant were as follows;--

'Article IV--

(1) The Ruler of each covenanting State shall, as soon as practicable, and in any event not later than the first day of May 1948 make over his administration of his State to the Raj Pramukh; and thereupon--

(a) xx xx xx(b) all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the United State and shall be discharged by its and

(c) All the assets and liabilities of the Covenanting State shall be the assets and liabilities of the United State.

(2) When in pursuance of any such agreement of merger as is referred to in Clause (b) of paragraph (1) of Article II the administration of any other State is handed over to the Raj Pramukh, the provisions of Clauses (a), (b) and (c) of

paragraph (1) of this Article shall apply in relation to such State as they apply in relation to a covenanting State.'

The third Union was inaugurated on 30-3-49. The covenant entered into by the rulers of various States which constituted this Union is given in the White Paper at page 274. On the formation of this new State, the Rajasthan Administration Ordinance No. 1 of 1949 was promulgated by the Raj Pramukh on 7-4-49. Clause 3(1) of this Ordinance provided for the continuance of the existing laws and it ran as follows:--'Clause (3) (1) -- All the laws in force in any Covenanting State immediately before the commencement of this Ordinance in that State shall, until altered or repealed or amended by a competent Legislature or other competent authority, continue in force in that State subject to the modification that any reference therein to the Ruler or Government of that State shall be construed as a reference to the Raj Pramukh, or, as the case may be, to the Government of Rajasthan.'

Thereafter the Matsya Union also merged into the United State of Rajasthan and the present State of Rajasthan excluding the State of Ajmer was formed.

7. The question to be examined is whether by these successive integrations, the liability of the former Government of State of Bundi became the liability of the defendant. The Ordinance issued on 28-4-48 clearly provided by Clause (2) that the provisions of Clauses (a), (b) and (c) of paragraph (1) of Article IV of the Covenant, which has been mentioned hereinbefore, would come into force immediately. Thus, there was a legislative recognition by this Ordinance by the United State of Rajasthan that the liability of the State of Bundi was thenceforward to be treated as the liability of the United State of Rajasthan. Similarly, another Ordinance was promulgated in 1949 which provided by Clause (3) (1), as mentioned above, that all laws in force in any Covenanting State immediately after (before the coming into force of that Ordinance in that-- Ed.) State, shall continue in force in that State. The Covenant entered in the year 1949 read with Ordinance must be taken to mean that the liability of the former State of Bundi devolved on that State. This is the view taken by their Lordships of the Supreme Court in *State of Rajasthan v. Shyamlal*, AIR 1964 SC 1495. It was pointed out in that case that

'each time a merger took place the new State by a provision in the Covenant took over the assets and liabilities of the merging States. This provision in the Covenant could not be availed of by the subjects of the new State as in view of the decision in Dalmia Dadri Cement Company's case, AIR 1958 SC 816, the Covenant in whole or in part was an act of State. But according to the same decision the presence of such a Clause in the Covenant throughout would be valuable evidence which would show that the new State assumed the liabilities of the merging State and further every time when there was a merger and formation of a new State, the old laws were always to continue till they were repealed, amended or altered by the New State.' Under these circumstances, their Lordships of the Supreme Court took the view that 'when the new State continued all the old laws till they were altered or repealed, and there was specific provision in each Covenant that the assets and liabilities of the Covenanting States were to be the assets and liabilities of the Union, the new State must have intended to respect all the rights flowing from laws so continued and assume all liabilities arising from the existence of those laws'. In the face of this authority, we cannot accept the argument of the learned counsel for the defendant that the State of Rajasthan was not liable to honour the terms of the agreement (Ex. 1). These terms clearly provided the payment of advance rent of Rs. 6,000/- every year for what the plaintiff had done for the former Government of the State of Bundi, when the agreement (Ex. 1) was entered and the cable was laid. The first contention raised on behalf of the State of Rajasthan has no force.

8. Coming to the second contention, we find after a careful examination of the agreement (Ex. 1) that the plaintiff-company had undertaken to supply electric energy for all purposes to the public as well on the same rates as were prevalent in the Bundi State. It was further provided that the State could take connections for testing water of a few wells for the purpose of supply of water to the city (Bundi) if so desired. It may also be mentioned that the agreement (Ex. 1) was not executed by the Ruler of the Bundi State in his personal capacity. It was executed by the Bundi State represented by the Dewan of the Bundi State and was signed by A. W. Robertson, Dewan of the Bundi State on behalf of the Bundi State. It may be that the purpose of entering into the agreement was to provide for electric connection at Phoolsagar Palace which subsequently became the property of the

ruler of the State but the underground line could be availed of for supply of electricity to the public and it might be that such electricity was so supplied. It could also be availed of, for providing electricity to the wells for the purpose of supply of water to the city of Bundi. Whatever may be the initial motive for executing the agreement (Ex. 1) on behalf of the Government of Bundi State, there is no doubt that the underground line could be utilised for the benefit of the public. We also find that after the formation of the State of Rajasthan, the State Government did pay the amount of Rs. 6,000/- to the plaintiff on the basis of this agreement. This is clear from Ex. 2 which is a letter from the Government of Rajasthan, Finance Department (Accounts & Audit) to the Accountant General, Rajasthan, and a copy of which has been sent to the managing agents of the plaintiff-company. The relevant part of the letter runs as follows;

'I am directed to convey Government sanction to the admission of the claim of Rs. 15,975/- of the Bundi Electric Supply Company, Bundi, in respect of the following items, which became due for payment of the company on 1-4-48 by debit to pre-April, 1950 liabilities:--

(a) Phoolsagar cable hire bill of 26th March, 1948 -- Rs. 6,000/- (b) Telephone hire bill -- Rs. 9,975/- I am further directed to request you kindly to adjust the loan of Rs. 15,625/- given to the aforesaid company plus Rs. 215/9/- on account of interest from 12-12-47 to 31-3-48 against the above claim and the balance of Rs. 134/7/- be credited to the loan account of rupees five lakhs outstanding against the Bundi Electric Supply Company.'

By this letter the State Government must be taken to have affirmed the contract executed between the Government of the former State of Bundi and the plaintiff but further paid Rs. 6,000/- of the hire bill dated 26-3-48. The letter clearly shows that the State of Rajasthan accepted the liability to pay Rs. 6,000/- even after the Phoolsagar Palace, as contended by the defendant, had become the personal property of the ruler of Bundi. In view of what we have said, we do not accept the contention of the learned counsel for the defendant that the State of Rajasthan was not liable to pay the amount as envisaged in the agreement (Ex. 1).

9. Now we come to the question of limitation. The plaintiff had sued for eight instalments payable to it under the agreement on 1st April of every year beginning from the year 1949. The suit was filed on 4-9-57. In the plaint the plaintiff mentioned that the suit was within limitation under Articles 110 and 120 of the Indian Limitation Act, 1908.

10. The trial Court held that either Article 74 or Article 110 applied. It came to the conclusion that the plaintiff's claim for Rs. 6,000/- payable on 1-4-55, Rs. 6,000/- on 1-4-56 and Rs. 6,000/- on 1-4-57 was within limitation. It further held Ex. 2 as an acknowledgment under Article 19 of the Limitation Act and extended limitation for another sum of Rs. 6,000 payable on 1-4-54. Thus, it passed a decree for Rs. 24,000.

11. In the appeal filed by the plaintiff, it is contended that Article 131 of the Limitation Act applies. In our opinion, this Article applies to a suit to establish a periodically recurring right and the present suit is not a suit for establishing a periodically recurring right. It is purely a suit for recovery of the amount which became due under the agreement (Ex. 1) every year. Alternatively, it is contended that Article 120 of the Limitation Act applies. We may agree with the learned counsel that Article 110 of the said Act is not applicable to the facts and circumstances of this case. That Article applies only when the suit is for the arrears of rent. In the present case, though it is mentioned in the agreement (Ex. 1) that the amount was payable in respect of the rent, yet it was not the rent properly so-called which was payable under the said agreement. But there is no reason why Article 115 should not apply to this case. Learned counsel for the plaintiff has argued that this Article is also not applicable, inasmuch as the plaintiff was not suing for compensation but was only seeking to recover what was due to him under the agreement (Ex. 1). He has relied on the decision of the Allahabad High Court in *Town Area Committee Raya v. Budh Sen*, AIR 1962 All 438. In that case, the defendant took the use of a shop for one year from the plaintiff and agreed to pay certain sum by instalments but failed to pay agreed sum and therefore, the plaintiff filed a suit for recovery of defaulted instalments without claiming any compensation or damages for the breach of a contract. It was held that 'the suit was governed by Article 120 and not by Art 115, for it was not a suit

for compensation for breach of the contract, but for enforcement of the agreement to pay theka money.' With great respect, we find ourselves unable to accept the view taken in that case. No doubt, under Article 115 the suit must be for compensation for breach of the contract, express or implied. In the instant case, it cannot be denied that as soon as the State of Rajasthan failed to make payment of Rs. 6,000/- when it became payable under the agreement (Ex. 1), there was breach of contract on the part of the State of Rajasthan. The question, however, is, whether the suit was for compensation or not. The argument that has been accepted by the Allahabad High Court in the above mentioned case is that when the suit is for the enforcement of a contract rather than for compensation or damages, this Article is not applicable. It has been pointed out that if a breach of agreement gives rise to a suit, it may not necessarily be a suit for compensation or damages as it can be one for specific performance also, and then it is inferred that when a party defaulted in paying the instalments, it cannot be said that the suit was one for compensation. With great respect, we may say that in taking this view, the Allahabad High Court has ignored the Full Bench decision of its own Court in *Husain AH Khan v. Hafiz Ali Khan*, (1881) ILR 3 All 600 (FB). That was a case of a registered money bond and the question was whether Article 116 was applicable to a suit to recover the money on the basis of that bond. Now Article 116 also relates to a suit for compensation for breach of a contract which is in writing and registered, *Spankie, J.* referred to the decision of the Calcutta High Court in *Nobocomar Mookhopadhaya v. Siru Mullick*, (1881) ILR 6 Cal 94 and observed as follows;--

'There is a contract between the parties who lend and accept a loan, respectively, and by Section 73 where the contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it; such compensation, however, is not to be given for any remote and indirect loss or damage sustained by reason of the breach. The compensation which a party can recover from the party who breaks his contract to repay money lent is an equivalent for the money advanced and all interest that may be due for the

detention of the debt. Illustration (n), Section 73, is an instance where there can be no compensation for indirect and remote injury resulting from the breach; but the party who committed the breach is liable for the principal sum he failed to pay, with all interest that may be due.'

We may point out that in the instant case, the plaintiff has also claimed interest as damages, as the money has not been paid to it when it became, payable. Straight, J. also agreed with Spankie, J. and observed as follows:--

'Nor upon consideration does it appear to me that the expression compensation is so wholly inapplicable or inappropriate to suits in respect of bonds and promissory notes, as might at first sight seem to be the case. Every bond and promissory note is a contract, by which the obligor or promisor agrees to pay money, either upon a particular date, or upon demand, and such contract can be performed either upon the specified date, or when the demand is made. If payment is refused, or is not forthcoming, then there is a breach, and the suit against the defaulting obligor or promisor is, not to make him do something in furtherance of the contract, for the time for its performance is passed, but is in reality one for damages for the breach of it, the measure of which will be the amount of the debt with interest.'

Thus, the Full Bench of the Allahabad High Court has taken the view that when the suit is for recovery of money and interest on a bond, Article 116 is applicable and it must be deemed to be a suit for compensation even though what was claimed was the original principal advanced and the interest thereon. This view has been approved in *Ganappa Putta v. Hammad Saiba*, AIR 1925 Bom 440, *Lalchand Nanchand Gujar v. Narayan Hari*, (1913) ILR 37 Bom 656 and *M. L. Dalmiya and Co. v. Union of India*, AIR 1963 Cal 277.

12. We may also refer to the following passage in the judgment of Asutosh Mukerjee, J. who discussed the meaning of the word 'compensation' in Article 116 in *Mohamed Mozaharal Ahmad v. Mohamed Azimaddin Bhuinya*, AIR 1923 Cal 507:--

'In answer to the contention that claims of this character sound in debt and not in damages, it may be pointed out, however, that the term used in Article 115 and

Article 116 is not damages but compensation, which also occurs in Section 73 of the Indian Contract Act. As Lord Esher observed in *Dixon v. Calcraft*, (1892) 1 QB 458, the expression 'compensation' is not ordinarily used as an equivalent to damages, although as remarked by Fry, L. J. in *Skinner's Co. v. Knight*, (1891) 2 QB 542, compensation may often have to be measured by same rule as damages in an action for the breach. The term compensation as pointed out in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. Damages, on the other hand, constitute the sum of money claimed or adjudged to be in compensation for loss or injury sustained; the value estimated in money, of something lost or withheld. The term compensation etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. The derivative meaning was familiar to the Roman Jurists and reappears in the modern codes founded on the Civil Law.

The term 'compensation' as used in Articles 115 and 116 is thus, perhaps not sufficiently precise, while the technical distinction between debt and damages may be too refined for the purpose.

We must hold that the decision of the Judicial Committee in *Trikamdas y. Gopi Nath* though concerned directly with the applicability of Articles 110 and 116 to a suit for arrears of rent, instituted upon a registered lease, must be regarded as of far-reaching application. We cannot ignore the principle which lies at the root of that decision and must govern the applicability of Article 116 to cases other than those covered by Article 110, wherever the position may reasonably be maintained that the claim sought to be enforced is a claim for compensation for breach of a contract in writing registered.'

These authorities make it clear that Article 115 is applicable to a case when the creditor seeks to recover the amount he has lent to the debtor. If the argument by the Allahabad High Court in AIR 1962 All 438 (*supra*) is to be accepted, what will happen to suit on a bond which provides for payment of a certain sum of money on a particular date and further provides for payment of interest as damages if the amount is not paid on the due date. The suit for the money payable under the

bond will be governed by Article 120 and the suit for interest by Article 115, because the first part relates to the payment of the money contained in the bond and the second part relates to the payment of damages. Such a queer position has not been accepted by any High Court. In our humble view, the compensation for non-payment of a debt may mean the very sum which has been advanced as debt and such a suit would fall under Article 115 or Article 116 as the document on which the suit is based is unregistered or registered. We are, therefore, of the opinion that the instant case is governed by Article 115 of the Limitation Act.

13. The next question to be considered is, whether Ex. 2 amounts to an acknowledgment of the debt for the amount of Rs. 6000/- which fell due on 1-4-1954 as held by the trial court. Section 19 of the Limitation Act requires an acknowledgment of a liability in respect of the amount which is sought to be recovered by the plaintiff. It has been pointed out by their Lordships of the Supreme Court in *Shapoor Fredoom Mazda v. Durga Prasad Chamaria*, AIR 1961 SC 1236 that an acknowledgment must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. In Ex. 2 there is no such admission on the part of the State Government that it was liable to pay any other amount except the amount of Rs. 6000/- which was paid by way of adjustment. No admission can be inferred to that effect from Ex. 2. There is no such express statement contained in Ex. 2 and we are not in a position to infer any admission even by implication. In our view, the trial court was wrong in treating Ex. 2 as an acknowledgment for the amount of Rs. 6,000/- payable under the agreement (Ex. 1) on 1-4-1954 and passing a decree on that basis.

14. The appeal of the defendant must succeed so far as the sum of Rs. 6,000/- is concerned and for the rest, it must be dismissed on the view that Article 115 is applicable to the claim filed by the plaintiff. The appeal filed by the plaintiff has got no force.

15. The result is that the judgment and decree dated 29-11-1958 passed by the Senior Civil Judge, Bundi, is modified to the extent that instead of a decree for Rs. 24,000/- awarded in favour of the plaintiff against the defendant, the former is only

entitled to a decree for Rs. 18,000/-and interest thereon as mentioned by the trial court. The parties shall give and take costs in proportion to their success and failure in both the courts.

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