

Nathoolal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-10-1973

Reported in : AIR1973Raj350; 1973()WLN378

Judge : C.M. Lodha, J.

Acts : Limitation Act, 1908 - Schedule - Articles 56 and 120

Appeal No. : Civil Second Appl. No. 295 of 1966

Appellant : Nathoolal

Respondent : State of Rajasthan

Advocate for Def. : Ashok Mathur, Dy. Govt. Adv.

Advocate for Pet/Ap. : R.C. Jain, Adv.

Disposition : Appeal allowed

Judgement :

C.M. Lodha, J.

1. This is a plaintiff's appeal against the appellate judgment and decree by the Additional Civil Judge. Ajmer dated 1-4-1966 whereby the learned Judge set aside the judgment and decree of the Munsiff, Aimer City dated 31-8-1965 and dismissed the plaintiff's suit for recovery of Rupees 1,500.70 paise.

2. The plaintiff's case is that his tender for laying 3/4' thick premix carpet on Bijai Nagar-Deolia Kalan road was accepted vide letter dated 16-5-1957 by the Executive Engineer, P.W.D. (B & R). Rajasthan. Aimer Division, Aimer. The appellant started the work and while the work was in progress the Assistant Engineer-in-Charge asked the plaintiff to lay seal coat and mix 1 cubicfoot of sand with 7 Lbs. of hot bitumen. It is alleged that the work of laying seal coat was not included in the original tender and, therefore, the plaintiff first refused to carry out the additional work but on an assurance having been given by the Assistant Engineer that payment would be made for extra labour charges and the material, the plaintiff agreed to lay seal coat. The plaintiff has further alleged that he informed the Assistant Engineer. Ajmer by his letter dated 28-3-1958 that an extra sum of Rs. 1.50 per 100 sq. ft would be charged for the additional seal coat work. On completion of the work the plaintiff charged for the seal coat work at the rate of Rs. 1.50 paise for 100 sq. ft. in the bill, but the Government paid him at the rate of .25 paise per 100 sq. ft. only. The plaintiff's case is that he was paid Rs. 1,500.70 less for which after serving a notice under Section 80, Civil P. C. he filed the present suit in the Court of Munsiff. Aimer City, Ajmer. The suit as resisted by the defendant-State of Rajasthan on a number of grounds, but the only ground which now survives for decision of this Court is whether the suit was barred by limitation?

3. After recording the evidence produced by the parties the learnedMunsiff overruled all the pleas raised by the defendant including the bar of limitation and decreed the plaintiff's suit in full. Dissatisfied with the judgment and decree of the trial Court the State filed appeal which was allowed and the suit was dismissed. Hence this second appeal by the plaintiff.

4. It may be observed at the outset that the only point canvassed before me is regarding limitation. All other objections raised on behalf of the State were overruled by the learned Additional Civil Judge and no argument has been advanced before me in respect of them by the learned counsel for the State.

5. Learned counsel for tbe appellant has urged that the present suit is governed by Article 120 of the Limitation Act and not by Article 56. It is not disputed on behalf of the State that if Article 120 is applied then, of course, the suit is within limitation.

The question that arises for decision therefore is whether the present case is governed by Article 56 or Article 120 of the Limitation Act. 1908.

6. Now, there is no controversy about certain dates. The work was completed on 14-6-1958, as mentioned in para 13 of the plaint. Bill for final payment was prepared on 10-2-1959. Notice under Section 80. Civil P. C. was given on 21-10-1961 and the suit was filed on 10-2-1962.

7. The contention of the learned counsel for the appellant is that the claim is not for price of work done or arising out of contract. It is submitted that the claim is for extra work not covered by the terms of the contract and therefore the suit is not governed by Article 56 of the old Limitation Act which is equivalent to Article 18 of the Limitation Act of 1963. In support of his contention learned counsel has relied upon *Gannon Dunkerley and Co. v. Union of India*, AIR 1971 SC 1433 and *State of Bihar v. Rama Bhushan*. AIR 1964 Pat 326.

8. On the other hand learned Deputy Government Advocate has submitted that the plaintiff's claim arises out of the terms of the contract entered into between the parties and the suit is for work done and therefore the case would come under Article 56. In support of his contention he has relied upon *Bhawani Shanker v. State*. AIR 1970 Raj 268 and *Tejsingh v. State of Rajasthan*, 1971 WLN 28 (Raj). It may be mentioned here, that AIR 1964 Pat 326 was brought to the notice of the learned Judges in the latter decision of this Court but the view taken in the earlier case in AIR 1970 Raj 268 was adhered to. Thus I have no hesitation in saying that if the claim is for the price of the work done and arises out of the terms of the agreement, the suit would fall under Article 56.

9. The question then is does the plaintiff's claim not arise out of the contract with the result that the claim cannot be covered by any specific article and must fall within the terms of Article 120. In AIR 1970 SC 1433 the appellant Company had undertaken under the terms of the contract to carry out specific construction work at basic rates and the Engineer-in-Charge was by the terms of the agreement, competent to give instructions for work not covered by the terms of the contract, and remuneration was to be paid at the rate fixed by the Engineer-in-Charge for such additional work. The appellant company made a claim for payment at an

additional rate over the stipulated rate in view of change in circumstances in respect of additional work done at the request of the Engineer-in-Charge. The suit was filed beyond 3 years of the date on which the work was done. It was held that the suit was not governed by Article 56 as the claim was for payment at an additional rate over the stipulated rate in view of change in circumstances, and not for price of additional work done by the appellant Company, at the request of the Engineer-in-Charge. It was further observed that the additional work directed by the Engineer-in-Charge when carried out might be deemed to be done under the terms of the contract; but the claim for enhanced rates did not arise out of the contract; it is in any case not a claim for compensation for breach of contract. In these circumstances the claim was held not to be covered by any specific Article and therefore Article 120 applied.

10. It may be pointed out that Clause (12) of the agreement relied upon by the learned Deputy Government Advocate was there in the case before their Lordships of the Supreme Court also. Not only that it is a strange coincidence that word to word it is the same. The appellant had undertaken under the terms of the contract to do the specific construction work at the agreed rates. The Engineer-in-Charge was, by the terms of Clause 12 of the agreement, competent to give instructions for the work not covered by the terms of the contract, and it was provided that remuneration shall be paid at the rate fixed by the Engineer-in-Charge for such additional work. It is common ground that the claim made by the appellant was not covered by the agreement. In the words of their Lordships in *Gannon Dunkerley and Co.*, AIR 1970 SC 1433. 'A suit is governed by Article 56 if it arises out of a contract to pay the price of work done at the request of the defendant'. The claim, in the present case is for payment of additional work though done at the request of the Engineer-in-Charge. In this view of the matter I am of opinion that the case on hand would not fall under Article 56 but would come within the terms of Article 120.

11. Learned counsel for the appellant also argued that the work in the present case may be deemed to have been done when the final bill was prepared. I am however not prepared to accept this contention because in my opinion the phrase 'when the work is done' must be taken to mean when the work is completed. It

cannot mean the work checked by the Engineer-in-Charge for which the bill is prepared. However, this point would not have any significance now in view of the fact that I have come to the conclusion that the case is governed by Article 120 of the Limitation Act

12. In the result, I allow this appeal, set aside the judgment and decree of the learned Additional Civil Judge, Ajmer and restore the judgment and decree of the trial Court and thereby decree the plaintiff's suit for Rs. 1,500.70 paise. However, I make no order as to costs of this appeal.

13. Learned Deputy Government Advocate asks for leave to appeal to Division Bench. I do not consider it a fit case for grant of leave. Leave is refused.

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