

State of Rajasthan Vs. Sharma and Co.

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Court : Rajasthan

Decided On : Jul-06-1977

Reported in : 1977WLN(UC)225

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil First Appeal No. 95 of 1967

Appellant : State of Rajasthan

Respondent : Sharma and Co.

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. This is a first appeal by the defendant against the judgment and decree of the Senior Civil Judge, Ganganagar dated July 19, 1967.

2. Briefly stated the relevant facts necessarily for the disposal of this appeal are like this. The respondent is a partnership firm. It took contract from the defendant, the State of Rajasthan, for excavation of Suratgarh Branch Canal from Rs. 8,000 to Rs. 10,000 in the year 1961-62 under work order No. 65 dated 1-11-61. The respondent also executed an agreement in this respect in favour of the defendant. The respondent completed the entire work undertaken by it within the extended

period granted by the defendant. According to the plaintiff a sum of Rs. 16,658/- remained with the defendant as security deposit for performing the work in accordance with the terms of the contract. The; said amount was withheld by the defend not without any cymae or reason. The respondent served a notice under Section 80 C.P.C. and filed the met, out of which this appeal has arisen, for the recovery of Rs. 20,000/- which includes interest on the amount of Rs. 16,658/-. During the pendency of the suit the defendant paid Rs. 4409.93 to the plaintiff-respondent. The defendant contested the suit for the remaining amount on the ground inter alia that a sum of Rs. 72 31 17 was due from the defendant against the hire charges of the machineries utilised by the plaintiff-respondent for completion of the work during the period from 31-8-61 to 14-3-62. Besides the said amount the defendant also claimed miscellaneous expenses to the tune of Rs. 1309.20/- from the plaintiff. The trial court on consideration of the evidence led by the parties came to the conclusion that a sum of Rs. 14658/- was lying in deposit with the defendant as security deposit and not Rs. 16638/- as claimed by the plaintiff. It further held that since out of this amount sum of Rs. 4409.93 was paid to the respondent during the pendency of the suit, the plaintiff is entitled to a decree for Rs. 10248.07. The trial court accordingly passed a decree far Rs. 10248.07 in favour of the plaintiff and against the defendant. It is against this decree that the defendant has preferred this appeal.

3. Arguing the appeal the learned Government Advocate challenged the correctness of the finding on issue No. 3 which reads as under:

(3) Whether the plaintiff had made demand in August 1962 from the defendant's employees to supply him machinery for the completion of his work and accordingly the machineries were supplied to him from 31-8-61 to 14-3-61 for 123 hours and the defendant is entitled to recover Rs. 58.79 per hour for this duration which amounts to Rs. 7231.17 and the other expenses amounting to Rs. 1309.20 from the plaintiff

If may be stated at the outset the there is not an iota of evidence to prove that the defendant was entitled to recover hire charges of the machinery alleged to have been utilised by the plaintiff @ Rs. 58.79 per hour. In absence of such evidence it

is difficult to hold that the defendant's claim for Rs. 7231. 17 stands proved part from that there is also no reliable evidence to prove that the plaintiff-respondent utilised the machineries of the defendant for 123 hours. The only evidence in this respect is the log book Ex A 4.A11 the relevant entries in this log book stand signed by Shri P.P. Singh except one entry which stands signed by Shri K.R. Shethi. It is significant to note neither K.R Shethi nor P.P. Singh was produced in the witness-box to prove these entries. There is thus no reliable evidence to prove that the plaintiff-respondent utilised the machineries for 123 hours. Again as regards utilisation of machineries by the plaintiff-respondent there is no documentary evidence. The entire case of the defendant as to utilisation of machineries by the plaintiff rests upon the oral evidence of D.W. 1 Mansingh, DW 2 S.D. Gupta, DW 3 Ganeshmal Mathur and DW 4 Ajit Singh. The learned Senior Civil Judge has discussed the evidence of the said witnesses at length and discussed their evidence as-wholly unreliable. The learned Civil Judge has emphasised that it cannot be expected that the machinery was supplied to the plaintiff without any writing specially when it involved financial implications. The learned Government Advocate was not able to persuade me by any cogent reason for placing reliance on such oral evidence. The learned Senior Civil Judge in these circumstances was fully justified in deciding Issue No. 3 against the defendant.

4. It is next contended by the learned Government Advocate that the suit is barred by time. No issue was framed on the question of limitation. The learned trial Judge has found that the limitation would start in such a case on the repudiation of the claim by the defendant. It is admitted that the defendant repudiated the claim of the plaintiff on 4-5-64. The suit was filed on 31-10-66. The suit was thus instituted within three years. The learned Government Advocate was not able to lay his hands on any authority to show that the starting point for limitation in a suit for return of security deposit would not be from the date of reputation of the claim. There is thus no substance in the contention that the suit is barred by time. No other point has been pressed before me.

5. The appeal fails and is dismissed with costs.