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Court : Rajasthan

Decided On : Nov-18-1992

Reported in : 1992WLN(UC)575

Judge : B.R. Arora, J.

Appeal No. : S.B. Civil Second Appeal No. 126 of 1992

Appellant : The State of Rajasthan

Respondent : Mohan Singh

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated May 16, 1992, passed by the Additional District Judge No. 3, Jodhpur, by which the learned Additional District Judge allowed the appeal filed by the plaintiff and set-aside the decree and judgment dated May 14, 1983, passed by the Munsif and Judicial Magistrate, First Class, Jodhpur City, Jodhpur.

2. Plaintiff Mohan Singh - a 'C' Class Contractor with the Public Works Department - filed a suit for the recovery of an amount of Rs. 2471/- (Rs. 1444/- as the principal and Rs. 1027/- as interest). The case of the plaintiff, as set-out in the

plaint, is that he was granted a contract for the construction of the road from Makrana to Borawar on November 27, 1971. The plaintiff completed the work in the year 1972. 10% of the amount, amounting to Rs. 5851/- was deducted from the running bills of the plaintiff which amount was to be paid to him after the final bill is prepared. No final bill upto this period was prepared, but in the year 1975, an amount of Rs. 4390 (75% of the total bill) was paid to the plaintiff. When this amount of Rs. 1464/- was not paid inspite of several requested, the palintiff served upon the defendant a notice under Section 80 C.P.C. on 4.1.80, which was received by the defendant on 10.1.80. Inspite of the service of the notice under Section 80 C.P.C, the amount was not paid and, therefore, the plaintiff filed a suit. This suit was contested by the defendant on various grounds. A preliminary objection was taken by the defendant that the suit is barred by time. According to the defendant, the limitation for filling the suit, as per Article 113 of the Limitation Act is only three years from the date of the completion of the work, which he completed in the year 1972, while the suit has been filed on 23.1.81. The learned Munsif treated this issue regarding the limitation as the preliminary issue and by his judgment dated May 14, 1982, decided the issue in favour of the defendant and against the plaintiff and held that the suit is barred by time. He, therefore, dismissed the suit filed by the plaintiff. Dissatisfied with the device any judgment dated May 14, 1982, passed by the learned Munsif, the plaintiff preferred an appeal before the learned District Judge, Jodhpur, which was transferred to the Court of the learned Additional District Judge No.3, Jodhpur, who, by his judgment dated May 16, 1992, set-aside the device any judgment passed by the learned Munsif and remanded the case to the learned trial Court to decide it in accordance with law. It is against this judgment dated May 16, 1992, that the appellant-the State of Rajasthan-has filed this appeal.

3. I have heard the learned Counsel for the appellant and perused the judgment passed by the learned lower Court. The State has filed this second appeal against the judgment dated May 16,1992, passed by the learned Additional District Judge No. 3, Jodhpur. It is not In dispute that the plaintiff filed the suit for an amount of Rs. 2472/- and Section 102 of the Code of Civil Procedure provides that no second appeal shall lie in any suit of the nature to be heard by the small causes court when the amount of the suit or the valuation of the subject-matter of the suit

does not exceed Rs. 3000/-. Admittedly, the valuation of the present suit is less than Rs. 3000/- and, therefore, in view of the bar, created by Section 102 C.P.C., the second appeal is not maintainable.

4. Learned Counsel for the appellant, therefore, prays that this appeal may be treated as a revision. Even if this appeal is treated as the revision, even then no useful purpose will be served because the order passed by the learned lower Court does not require any interference. Of Course, the work was completed in the year 1972, but the plaintiff did not submit the final bill. Even no final bill was prepared by the Department, which ought to have been prepared in case the contractor does not submit the final bill. As per the contention, raised by the learned Counsel for the defendant the time starts from the date when the final bill is prepared. When no final bill was prepared then the computation of the time does not start. Even as per the defendant's case, as set-up in the written-statement, the plaintiff had to complete his work upto February 26, 1972, but he actually completed the work on November 26, 1972, and took 270 days more than the period prescribed under the Contract and the plaintiff has been paid 75% of the amount of the bill and only Rs. 1464/- remained to be paid which can be paid to the plaintiff only after the final bill is prepared. Even as per the stand taken by the defendant in the written-statement, the final bill, has not been prepared and, therefore, the limitation does not start. The order passed by the learned lower Court, thus, does not require any interference. The learned lower Court has taken Into consideration all the facts and circumstances of the case and the order, passed by the learned lower Court, cannot be said to be, In any way, unjust or arbitrary.

5. In the result, I do not find any merit in the appeal and the same is hereby dismissed.