Union Of India vs Surjit Singh Atwal on 18 January, 1979

Equivalent citations: 1979 AIR 1701, 1979 SCR (2)1002, AIR 1979 SUPREME COURT 1701, 1979 (1) SCC 520, (1979) 2 SCR 1002 (SC), 1979 UJ (SC) 209, 1979 2 SCR 1002, (1979) 1 SCJ 519

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, Ranjit Singh Sarkaria

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
SURJIT SINGH ATWAL

DATE OF JUDGMENT18/01/1979

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SARKARIA, RANJIT SINGH

CITATION:
1979 AIR 1701 1979 SCR (2)1002
1979 SCC (1) 520
CITATOR INFO :
D 1987 SC1577 (12)

ACT:
Fleas-Plea of non-compliance with the provisions of Section 175(3) of the Govt. of India Act, 1935 is a mixed plea of fact and law-A plea not having been so pleaded in the written statement and any issue not having been so raised with regard to it, cannot be allowed later.

HEADNOTE:
Pleadings-Denial of a contract-Civil Procedure Code, 1908 (Act V of 1908), Order VI Rule 8 and Order VIII Rule 2 scope of.

The respondent-plaintiff undertook the construction of a hard Runway, taxi tracks and dispersal roads at Dalbhumghar Aerodrome, pursuant to a formal written agreement with appellant. The respondent completed the work.

At a subsequent conference, it was agreed that the total amount of the final bill prepared in accordance with the agreed rates less a sum of Rs. 50,000/- should be paid forthwith and the balance of Rs. 50,000/- should be paid two weeks thereafter. On the appellant's failure to make the payment of Rs. 50,000/-, the respondent filed a suit on the original side of the High Court of Calcutta to recover the said sum together with interest. The suit was dismissed by a single judge but on appeal, the Division Bench of the High Court allowed the appeal and decreed the suit.

Dismissing the appeal by certificate, the Court,

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HELD : 1. A plea of non-compliance with the provisions of Section 175(3) of the Goverrnment of India Act, 1935 is a mixed plea of fact and law. [1006 B]

2. The plea of illegality of an agreement, not having been so pleaded in the written statement and no issue having been raised with regard to it cannot be allowed later. To permit such a plea to be raised several years after the institution of the suit would greatly prejudice the plaintiff. If such a plea had been raised, in the instant case, at the appropriate stage, the respondent-plaintiff might have come out with a suitable answer. He might have had his own pleadings amended either by seeking to rest his case on the original agreement or under Section 65 or 70 of the Contract Act. [1005 G-H, 1006 A]

3. The illegality of a contract must be specifically pleaded as much as the denial of a contract. Under Order VI, Rule 8 of C.P.C., where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract. And, under Order VIII, Rule 2 C.P.C., the defendant must raise by the pleading all matters which show the suit not to be maintainable or that the transaction is either void or voidable in point of law. [1006 B-D]

Kalyanpur Lime Works Ltd. v. State of Bihar and Anr. [1954] S.C.R. 958 referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2053 of 1969.

From the Judgment and Decree dated 16-7-68 of the Calcutta High Court in Appeal No. 199-A of 1964.

R. B. Bhatt, E. C. Agarwala and Girish Chandra for the Appellant.

H. B. Datar and Ashok Grover for the Respondent. The Judgment of the Court was delivered by CHINNAPPA REDDY, J.-Not content with raising a false plea, the appellant, Union of India has preferred this appeal on a technical ground. The respondent-plaintiff undertook the construction of a hard Runway, Taxi tracks and dispersal roads at Dalbhumghar Aerodrome. There was a formal written agreement between the parties (Agreement No : A- VII/96 of 1944-45). The respondent completed the work in 1945. The agreement provided for the work to be done "with stone at site". As no stone was available at the site, stone had to be obtained by blasting a rock in a hillock. The rates stipulated in the agreement were on the basis that stone was available at site and not on the basis that stone had to be obtained by blasting rock. Some of the rates, therefore, required revision. There was a conference between the parties in November, 1947. On the side of the Government the Superintending Engineer, the Executive Engineer and the Deputy Accountant General were present. In respect of fourteen items of work the old rates were not altered. In respect of ten items of work only the rates were altered. Out of these ten items, rates were substantially increased for nine items but slightly decreased for one item. The rates agreed between the parties at the conference were the very rates which had been previously fixed by a Government Engineer named Ramani Roy and suggested to the plaintiff by the Superintending Engineer for his acceptance. The plaintiff initially objected to the rates but withdrew his objections at the conference. It was agreed that the total amount of the final bill prepared in accordance with the agreed rates, less a sum of Rs. 50,000/-, should be paid forthwith and the balance of Rs. 50,000/ should be paid two weeks thereafter. As agreed the amount of the final bill, less Rs. 50,000/-, was paid but not the sum of Rs. 50,000/-. The sum of Rs. 50,000/- was not paid despite repeated demands by the plaintiff. The plaintiff therefore, filed suit No. 531 of 1951 on the original side of the High Court of Calcutta on 24th January, 1951 to recover the sum of Rs. 50,000/- together with interest.

In the plaint, as filed originally, the plaintiff stated that it was agreed that the work should be done by the plaintiff on the terms and conditions mentioned in certain letters that passed between the parties. No reference to the written agreement was initially made in the plaint but by a later amendment reference was also made to the agreent No. A-VII/96. The plaintiff further stated in the plaint that after the completion of the work there was a conference in November, 1947 at Calcutta and an agreement was arrived at between the parties regarding the rates at which the plaintiff was to be paid for the work executed by him. He claimed that in accordance with the terms of the agreement arrived at in November, 1947, he had yet to be paid a sum of Rs. 50,000/-.

As we said earlier, the suit was filed on 24th January, 1951. The defendant, Union of India, filed a written statement on 1st February, 1956, five years after the filing of the suit. The contract for the execution of the work was admitted. The completion of the work was admitted. The conference alleged by the plaintiff to have been held in November 1947 was denied. The agreement said to have been arrived at the conference was also denied. These denials have been found to be false by the Courts below and the learned Counsel for the appellant had to admit before us that the denial was `unfortunate'. It is a matter not merely of surprise but of shock to us that such a blatant false plea should have been raised by a Government in solemn proceedings before Court of law. Far from setting an example as an ideal litigant, we notice that such false and untenable pleas are often raised on behalf of the Government. This is a matter which needs looking into by the authorities that are concerned with it and we earnestly hope that some suitable remedial action will be taken to avoid

such pleas. To continue the story, no plea was taken in the written statement that the contract between the parties was hit by any failure to comply with the provisions of Section 175(3) of the Government of India Act, 1935.

More than a dozen years after the institution of the suit and eight years after the filing of the written statement, an application for amendment of the written statement was filed on 25th April, 1964, to enable the defendant to raise the plea that the contract was hit by the failure to comply with the provisions of Section 175(3) of the Govt. of India Act, 1935. The application was dismissed on 1st May, 1964, but it was observed that the defendant was entitled to raise the plea sought to be raised by the amendment even without an amendment. Thereafter the suit proceeded to trial. Mr. Justice Mallick who tried the case decided in favour of the plaintiff on the several questions of fact which were raised. A question regarding compliance with the provisions of Section 80 Civil Procedure Code was also decided in favour of the plaintiff. He, however, held that the suit was based not on Agreement No. A-VII/96 of 1944-45 but on the agreement arrived at between the parties in November, 1947, that this agreement was bad for non compliance with the requirements of Section 175(3) of the Govt. of India Act 1935, and that the suit had, therefore, to be dismissed. On the basis of the finding that the 1947 agreement was bad for non compliance with the requirements of Section 175(3) of the Govt. of India Act, 1935, the learned Judge also held that the Court had no jurisdiction to entertain the suit. The suit was accordingly dismissed. On appeal, a Division Bench of the Calcutta High Court consisting of A. N. Ray and S. K. Mukherjee. JJ., held that the defendant not having pleaded in the written statement that the contract contravened the provisions of Section 175(3) of the Goverment of India Act there being no issue with regard to Section 175(3), the learned Single Judge was wrong in entertaining such a plea, at that belated stage. It was observed that the request for amendment of the written statement was made thirteen years after the institution of the suit and that the plaintiff was greatly prejudiced by such a plea being entertained. It was also held by the Division Bench that there was no new agreement in November 1947. All that was done in November 1947 was to settle the rates for "additional or substituted work" as provided in clauses 12 and 12-A of the original agreement. In view of their concusion that the plea regarding the invalidity of the agreement should not have been entertained by the learned single Judge, the Division Bench held that the Calcutta High Court had jurisdiction to entertain the suit. The appeal was allowed and a decree was granted for Rs. 50,000/- with interest from the date of judgment. The Union of India has preferred this appeal pursuant to a certificate granted under Article 133(1)(a) of the Constitution of India (as it stood prior to the 30th amendment).

Shri Bhatt, learned Counsel for the appellant submitted that the suit was based on the agreement of November, 1947 and that this agreement was void as the provisions of Section 175(3) of the Govt. of India Act, 1935, were not complied with. We do not prima facie agree that the suit was based on any agreement arrived at in November 1947. We do not, however, desire to go into the question as we are satisfied that the Appellate Court was right in holding that the defendant was not entitled to raise the plea of illegality of the agreement, not having so pleaded in the written statement and not having raised any issue with regard to it. We agree with the learned Judges of the Calcutta High Court that to permit such a plea to be raised several years after the institution of the suit would greatly prejudice the plaintiff. It such a plea had been raised at the appropriate stage, the plaintiff might have come out with a suitable answer. He might have had his own pleadings amended either

by seeking to rest his case on the original agreement or under Section 65 or Section 70 of the Indian Contract Act. We do not wish to speculate on the possible alternate cases which the plaintiff might have put forward had the plea been raised. We only wish to observe that the plea that the provisions of Section 175(3) of the Govt. of India Act had not been complied with is a mixed plea of fact and law. We further agree with the view expressed by the learned Judges of the Calcutta High Court that the illegality of a contract must be specifically pleaded as much as the denial of a contract. Order VI, Rule 8 provides that where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract. Order VIII, Rule 2 Civil Procedure Code prescribes that the defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law. In Kalyanpur Lime Works Ltd. v. State of Bihar and Anr.,(1) the Supreme Court reversed the judgment of the High Court on the ground that the High Court was not justified in allowing to be raised at the time of argument the question whether there was a contravention of Section 30 of the Govt. of India Act 1915. Reliance was placed upon Order VI, Rule 8 and Order VIII, Rule 2 of the Civil Procedure Code 1908. We are, therefore, of the view that the Division Bench of the High Court was right in holding that the learned single Judge was not justified in permitting the defendant to take up the plea that the contract was hit by the failure to comply with the requirements of Section 175(3) of the Govt. of India Act. In the result the appeal is dismissed with costs.

S.R. Appeal dismissed