Karnataka High Court
Manipal Industries Ltd. vs Fertiliser Corporation Of India ... on 20 March, 1995
Equivalent citations: AIR 1996 Kant 355, ILR 1996 KAR 425, 1995 (5) KarLJ 559
Bench: M Saldanha
JUDGMENT

1. An interesting aspect of law relating to the institution and filing of suits has arisen for decision in this pair of appeals which centres round the question as to when precisely can it be held that a suit has been filed or instituted; though seemingly clear some ambiguity has arisen because of the sequence of events in this proceeding. The original plaintiff M/s. Manipal Industries Limited filed a suit before the learned VIII Addl. City Civil Judge, Bangalore to recover a sum of Rs. 3,21,245/- from the defendants-Fertilizer Corporation of India Ltd., (hereinafter referred to as the 'FCI'). It is the plaintiffs' case that the following three items of amounts had been paid to the FCI in connection with the supply of fertilizers and that since the transactions did not materalize, the amounts were repayable along with interest that had accrued thereof.

1. Rs. 18,950-00 paid on 11-10-1972

2. Rs. 1,00,000-30 paid on 10-11-1972

3. Rs. 1,12,000-00 paid on 6-12-1972 For a variety of reasons the fertilizers in question were not supplied and therefore the plaintiffs after some correspondence filed a suit on 10-11-1975 wherein they claimed repayment of the aforesaid three amounts along with interest as calculated by them. It was the plaintiffs' case that they were entitled to interest computed at 13 per cent all through because they were a commercial organization and effectively they used to procure fertilizer from the defendants and supply the same to their customers. Therefore they were required to raise finance from financial institutions and they contended that the rate of interest was never less than 13 per cent and that therefore this was the barest minimum that they were entitled to claim.

2. The suit was resisted by the defendants who inter alia contended that because of certain internal problems that several of their records were unavailable and that therefore they were handicapped in their defence. The defendants submitted that in the absence of some of the relevant records it was impossible for them to admit the receipt of the amounts or for that matter to correlate as to what were the reasons for the default if any that was alleged against them. The learned trial Judge after hearing the parties dismissed the claim as far as the first of the three amounts were concerned, principally because the defendants had pointed out that the amounts had been paid to them (FCI) on 11-10-1972 and that the suit was filed on 10-11-1975 after three years i.e. beyond the period of limitation. The learned Judge therefore refused to accept the plaintiffs' contention that it was a running account, that the amounts had merged and consequently disallowed the claim as far as the first deposit is concerned. There was a serious controversy with regard to the amount paid on 10-11-1972 because, the defendants had pointed out that even though the plaint was physically handed over to the Court on 10-11-1975 only a part of the court-fee amount was paid on that date. The plaintiff had filed a memo pointing out that due to the non-availability of the requisite stamp papers the plaint was being lodged with whatever court-fee papers were available and the balance

amount of court-fee was ultimately paid five days later. A contention was raised before the trial Court that under the provisions of the Civil Procedure Code, the filing or institution of the suit is presumed to have been done only on the date when the plaint is presented complete in all material respects, the most important ingredient being the accompaniment of the court-fee amount. It was therefore contended that even if this requirement of law was complied with five days later, the bar of limitation would apply and as far as the amount of Rs. 1,00,000/- is concerned, the plaint should be deemed to have been filed beyond the period of limitation. The learned trial Judge disallowed these objections and decreed the suit allowing this claim as also the third one and awarded interest at the rate of 6 per cent p.a. from the date of filing of the suit.

3. It is against this judgment and decree that the present two appeals had been filed. The defendants have challenged the decree principally on the ground that the second amount was not disallowed and the plaintiffs have filed a cross-appeal contending that the interest of 6 per cent that was awarded was incorrect and further more that they are entitled to 13 per cent computed from the date of deposit viz., 10-11-1972 up to the date of repayment.

4. In R.F. A. No. 435 of 1985, the original defendants challenged the whole of the decree. Mr. Jayaram learned counsel who appears in support of the appeal has advanced several contentions, the principally one being that the record placed before the Court which essentially consists of the material produced by the plaintiffs in support of their contention that the amounts had been in fact paid to the FCI does not establish that the payments in question could lelate to the supply of fertilizers. As indicated by me earlier, the records of the FCI at the relevant time were lying with the C.B.I. authorities and this is set out as the main reason for the unsatisfactory manner in which the written statement that was filed and the lack of any material produced by them before the trial Court. The second ground pleaded was the usual one viz., that as is common with public sector corporations there was a change of officers and that therefore the persons who have deposed wouid not have complete and full knowledge of all the facts. Regardless of this position, Mr. Jayaram was at pains to submit that there were several running transactions between the parties and that if the amounts and figures were to be checked with, it could be demonstrated that the deposits were directly relatable to the supply of certain quantities of fertilizer. Though I have heard the learned counsel at some length, I would prefer not to deal with this aspect of the matter for two reasons, the first of them being that the submission is totally devoid of any substance in so far as it makes little difference to this Court as to what the payments were for, in so far as the plaintiffs have successfully established through documentary evidence that the amounts had been paid to the defendants. The second reason is, that fertilizers were essential commodities at that time and that because of shortages, there were certain premiums payable for which the defendants themselves had to maintain an account. The record before the Court unmistakably establishes that the three amounts were paid by the plaintiffs to the defendants in connection with the purchase of fertilizers and that the amounts were paid on the dates mentioned by the plaintiffs. Mr. Jayaram was not able to demonstrate to the Court that the FC1 had in fact supplied fertilizers against these amounts and that they therefore constituted the purchase price or that they were required to be adjusted against any other supplies. Consequently, the finding of the learned trial Judge to the effect that the payments in question were liable to be termed as advances remains undisturbed. The real controversy is with regard to the second of the three items of the amounts viz., the sum of Rs. 1,00,000.30 which was

paid to the defendants on 10-11-1972. Admitledly, the suit was filed on 10-11-1975 and the records indicate that when the plaint was presented to the office, there was deficit as far as the court-fee amount was concerned. The records also indicate that the plaintiffs' learned Advocate had filed a memo setting out the reasons why the deficit court-fee had been paid with an undertaking to make good the amount which was subsequently done within a short period of five days. The learned trial Judge had set at rest the controversy by pointing out that the Court possesses the power to grant sufficient time for payment of court-fees or to defer the payment, and that there is implied condonation, if at all there was some delay in the payment. Mr. Jayaram advanced the argument that since this is a case wherein the aspect of limitation was extremely fine, the Court will have to decide the question as to whether the plaint in respect of the second of the three amounts presented on the last date of limitation can be said to have been presented in lime, if the requisite court-fee had not been paid on that date. The provisions of the Civil Procedure Code are explicit in so far as there is a negative provision therein which empowers the Court to reject the plaint if the requisite court-fee has not been paid. The implication thereby means that the plaint shall not normally be accepted unless it is presented along with the requisite court-fee amount. According to Mr. Jayaram, the implication of filing the suit, under these circumstances, on 10-11-1975, would be that for all intents and purposes, the Court would have to hold that the suit was filed only on the date on which the balance of the court-fee was paid and not earlier. Therefore, it is his contention that as on 15-11-1975 when the balance of court-fee amount was paid, the suit was time barred as far as the second amount was concerned. Mr. Jayaram submitted that undoubtedly under Section 49 of the Civil Procedure Code, the Court is invesfed with the power of deferring the payment of Court-fee, but it is his contention that the order to this effect must be passed prior to the date on which the amount is paid or that there can be no ex post facto condonation regarding delay particularly where one may cross the bar of limitation.

5. Mr. Jayaram has drawn my attention to a decision of this Court in M/s. Bhoopalam R. Ramaswamy Shetty v. Vysya Bank Ltd., Shimoga (1991) 4 Kant LJ 678, wherein the learned Judge has occasion to consider the effect of Sections 148 and 149 read with Order VII Rule 11 of the Civil Procedure Code. That was a case on slightly different facts and the learned Judge had occasion to consider the following decisions:

1. State of Karnataka v. M/s. Coimbatore-

Premier Constructions, ;

2. Kathyee Cotton Mills Ltd. v. Padmanabha Piliai, ; 3. Mahanth Ram Das v. Ganga Das, ; 4.

Union of India v. Roshanlal, and certain other decisions.

The ratio of that decision proceeded essentially on the basis that no proper cause had been shown and that there was very belated compliance. The real issue before the Court was as to whether the discretionary powers had validly been exercised by the trial Court or not. On the facts of that case, the High Court came to a conclusion that the delay ought not to have been condoned. I need to add that the principles which this Court was required to consider on that occasion were entirely different

than what is before the Court today. The short point before me is, as to whether in the face of the original delay of five days for which neither the plaintiff or his Id. advocate can be found fault with, the bar of limitation should be held against them and on the facts of the material placed before me the answer is in affirmative. It is true that in appropriate cases the Court may be justified in refusing to grant time or for that matter rejecting the plaint. In the present case that has not happened and according to me the stage at which the objection was raised was only when the suit had come up virtually for arguments and that was hardly the point of time when the Court could have upheld this sort of objection.

6. As far as the head of argument is concerned, I shall first deal with the factual aspect viz., that the paintiffs' learned Advocate had filed a memo indicating that for no fault of his, but because the requisite Court-fee paid (sic) not available he was handicapped in paying the balance Court-fees, Under these circumstances, it can never be argued that there was default either on the part of the plaintiff or his learned Advocate. The office of the Court had not rejected the plaint and had it done so, it would have been wrong on its part having regard to the circumstances that prevailed. The fact of the matter remains, that for a variety of reasons proceedings are required to be lodged with the office of a Court in the absence of some of the requirements which may be, a certified copy or the court-fee papers, the Court documents etc., and this alone has never been construed as being fatal to the institution of the proceedings. It would be laying down a dangerous precedent if one were to uphold such a submission, particularly having regard to the circumstances that are prevalent of which judicial notice must be taken. I do concede that in instances where some set of papers are mechanically lodged with the office of a Court just in order to save limitation and (sic) for months and years the requisite formalities have not been complied with or are complied with very long thereafter, that in an appropriate case, a Court may be justified in rejecting or dismissing the proceedings. That would be no ground in which a general rule can be laid down that the filing of the papers in the absence of the Full Court-fee etc., cannot be construed as institution of the proceedings. When the papers are presented to the office of the Court, a record is maintained of the date on which they are filed and it is that date that is material for purpose of limitation and no other date. I am not in agreement with the submission canvassed that the power vested with the Court under S. 149, C.P.C. to differ or postpone the payment of Court -fees is a power that must be exercised prior to the payment of the deficit Court-fee. In appropriate cases, the Courts have permitted to defer payment of Court-fees or even subsequent recovery of Court-fees and it is well known that in numerous instances after the proceedings are examined the Court itself prescribes a certain additional amount payable which the litigant or the learned Advocate tenders at a later date. To my mind therefore, the learned trial Judge was fully justified in holding that the suit has been validly instituted on 10-11 -1975 and that it was within limitation even as far as the second amount is concerned.

7. Having regard to the aforesaid position, the situation that emerges is, that the plaint was filed within the period of limitation, as far as the 2nd and 3rd amounts are concerned, the record before the trial Court consequently indicate that the amounts had not been repaid and the trial Court was fully justified in having passed a decree directing the defendants to pay back these amounts to the plaintiff along with interest.

8. The cross-appeal that has been preferred in R.F.A. No. 9 of 1984 concerns the award of interest. It is submitted on behalf of the appellant who is the original plaintiff that on the facts of the present case this was a commercial transaction and that the interest has got to be awarded from the date on which the amount was paid to the FCI. The learned Advocate for the appellants submitted that S. 61 of the Sale of Goods Act, 1930 would apply as far as the present transaction is concerned. He has further pointed out to me that having regard to the fact that there was absolutely no reason why the FCI did not supply the fertilizer to the plaintiffs and to this extent they have breached the contract, the provisions of S. 61(2) of the Sale of Goods Act would apply to the present case. The section reads as follows:--

"61. Interest by way of damages and special damages :

(1) .. ..

(2) In the absence of a contract to the contrary, the Court may award interest at such

(a) to the seller in a suit by him for the amount of the price -- from the date of tend

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of

The learned Advocate for appellants submitted that the amount was deposited expecting that FCI would supply the consignment of fertilizers. He states that this did not happen. Two formal notices were addressed to the defendants and that the interest has been claimed with effect from 1-5-1973 the date from which the defendant ought to have paid the. amount to the plaintiffs. It was also pointed out that the bank rate at that time though much higher, than the plaintiffs were required to pay interest at the rate of 13 per cent and that consequently it was that rate at which they were demanding the rate of interest. The learned Advocate for the appellants also pointed out to me that the award of interest even in normal suits is left to the discretion of the Court and that under Section 34, C.P.C. it is now well settled law that the Court while dealing with commercial transactions is justified in awarding a higher rate of interest. It is unnecessary to go into any detail as far as these propositions are concerned, because they require to be accepted straightway.

9. In response to these submissions Mr. Jayaram on behalf of the FCI advanced an entirely different argument. He contended that the payment had nothing to do with the sale transactions or with the commercial transactions between the parties. Referring to market conditions that were prevalent at that point of time, he submitted that various amounts were required to be deposited in advance by persons who were interested in the purchase of fertilizers and that therefore these deposits cannot come within the umbrella of a commercial transaction. To my mind this distinction is totally incorrect and one cannot divorce it from the main transaction which was intrinsically collected with supply (sic). If because of market shortages or any other reasons the parties were required to follow a slightly different method of making the payment for the consignments, to my mind the mechanics

of that transaction would not change the complexion of the case even to the slightest extent. The plaintiffs were the customers the FCI and the amount was paid in connection with the procurement of fertilizer. On examination of the record, I find that it was a purely commercial transaction. The records indicate that despite receipt of the amounts the FCI breached the contract and under these circumstances, S. 61 of the Sale of Goods Act would apply straightway. Under these circumstances, the learned trial Judge was in error in having disallowed the modest rate of interest claimed by the plaintiffs which happens to be 13 per cent per annum.

10. In the result, R.F.A. No. 9 of 1984 fails and stands dismissed. R.F.A. No. 435 of 1983 succeeds and the same is allowed. The decree passed by the trial Court shall stand modified to the extent that the interest allowed to the plaintiffs shall be computed at the rate of 13 per cent per annum with effect from 1 -5-1973 until the date of payment. I am informed by the learned Advocates that the FCI has deposited part of the decretal amount in the trial Court which the original defendants are allowed to withdraw. If the same has not been withdrawn the amount in question along with interest shall be repaid to the original defendants.

11. The office shall draw up a decree in terms of the modified order passed by this Court. Both the appeals stand disposed of accordingly. In the circumstances of the case there shall be no order as to costs.

12. Order accordingly.