

IN THE HIGH COURT OF TRIPURA
AGARTALA

RFA No.11 of 2011

Plaintiff-Appellants:

1. Shri Kinkar Sur,
S/o. Shri Nitya Gopal Sur,
Proprietor of Stores Supply Agency,
Bijoy Manikya Road, Near UBI,
PO & PS – R. K. Pur, Udaipur,
District – South Tripura.
2. Shri Shubhankar Sur,
S/o. Shri Nitya Gopal Sur,
Proprietor of Sur Brothers,
Nehru Super Market, Ground Floor,
PO & PS – R. K. Pur, Udaipur,
District – South Tripura.
3. Shri Nitya Gopal Sur,
S/o. Late Phanindra Prasad Sur,
Proprietor of N. G. Sur & Others,
Nehru Super Market, Room Nos.11 and 26, Ground Floor,
PO & PS – R. K. Pur, Udaipur,
District – South Tripura.

BY ADVOCATE:

Mr. S. M. Chakraborty, Sr. Advocate.
Ms. P. Chakraborty, Advocate.

– Versus –

Defendant-Respondents:

1. Tripura State Electricity Corporation Ltd.,
Represented by its Chairman-cum-Managing Director,
Bidyut Bhavan, Banamalipur,
P.O. Agartala, District - West Tripura.
2. The Dy. General Manager,
Gumti Electrical Division,
Jatanbari, Amarpur,
P.O. Jatanbari, District - South Tripura.
3. The Senior Manager,
Gumti Electrical Sub-Division No.I,
Tirthamukh, Amarpur,
P.O. Jatanbari, District - South Tripura.

BY ADVOCATE:

Mr. D. C. Nath, Advocate.

B-E-F-O-R-E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR.JUSTICE S. TALAPATRA

Date of hearing and delivery : **01.06.2015**
of judgment and order

Whether it is fit for reporting : NO

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

This appeal is directed against the judgment and decree dated 22.07.2011 passed by the learned Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala whereby he dismissed the suit of the plaintiffs.

02. The suit relates to three different transactions. One of the transactions is for an alleged amount of Rs. 3,64, 455/- and the allegation of the claimants is that the mother of the plaintiff Nos.1 and 2, Smt. Nupur Sur was the sole proprietor of a business run in the name and style of Stores Supply Agency. According to the plaintiffs, some orders were placed by the defendant Nos.2 and 3 (Executive Engineer and Sub-Divisional Officer) of the then Power Department of the State of Tripura for supply of goods and these goods were supplied to the department.

03. There is no mention as to what were these goods. There was no mention when the orders albeit oral orders were placed of the plaintiffs. There is no mention as to whether the plaintiffs drew up any bills and raised demands immediately upon the Power Department. It is alleged that this business of the mother was inherited by the plaintiff No. 1. Plaintiffs also relied upon some statements dated 12.12.2000 wherein the claim of the plaintiffs' mother was admitted by the department.

04. The second part of the suit relates to the recovery of Rs.2,51,892/-. With regard to this claim, there are no material allegations whatsoever. Paragraph 6 of the plaint reads as follows:-

"6. That the mother of the plaintiff No.1 Late Napur Sur had another claim for an amount of Rs.2,51,892/- (Rupees two lakhs fifty one thousand eight hundred ninety two only) against the Defendants on the similar causes and demand notice dated 22.5.2004 was also served upon the Defendants claiming the said amount with interest from the date of submission of the bill i.e. 23.11.2002 till the date of payment."

05. This paragraph which is the entire material relating to the claim of Rs.2,51,892/- discloses no cause of action whatsoever.

06. Coming to the 3rd claim, this is a claim for recovery of Rs.3,78,074/-. This is a claim of plaintiff No. 2 who is stated to be the proprietor of a firm known as Sur and Brothers. The allegations in this regard are contained in Para 7 which read as follows:-

"7. That now comes the claim of the plaintiff No.2 who is the proprietor of Sur and Brothers and supplied spare parts and other materials worth Rs.3,78,074/- (Rupees three lakhs seventy eight thousand seventy four only) and in the letter of the Defendant No.3 bearing No.F.2(16)/GED-I/2338-39 dated 12.12.2000 a specific reference in that regard may be found."

07. Herein also there are no details given of the materials supplied and reliance is again placed on the letter dated 12.12.2000 and it is alleged that in that letter the defendant Power Department had admitted the claim of the plaintiffs. During trial the plaintiff did not produce any bills. They did not even produce the letters of the department including the letter dated 12.12.2000. What was produced by him was the terms of settlement recorded by the Permanent Lok Adalat and the written statement filed before the Permanent Lok Adalat. Neither

in the written statement is there any clear cut admission of the claim and the terms of settlement arrived at by the Lok Adalat are only terms of the settlement and even after the terms of the settlement had been arrived at, if the Permanent Lok Adalat was to hear the parties and decide the matters, it may have taken a different view than what was mentioned in the terms of settlement.

08. We have no doubt in our mind that the terms of settlement are only tentative terms of settlement proposed by the Lok Adalat, so that the matter can be settled between the parties on that basis. If the terms of settlement are not accepted, the Permanent Lok Adalat has the power to adjudicate upon the matter and it may take a view which is different from that reflected in the terms of settlement. In any event, the terms of settlement are not binding on a Civil Court and once the appellants had approached the Civil Court, it was the duty of the appellants to have proved their case.

09. After having gone through the plaint, in regard to the two claims of Rs.2,51,892/- and Rs.3,78,074/-, we have no doubt in our mind that even the plaint does not disclose the cause of action to proceed with the suit. Similar is the position with regard to the first claim for a sum of Rs. 3,64,455/- inasmuch as no details have been given. However, at least with regard to this claim, it is mentioned that some supplies were made and even if that be accepted from the averments made in the plaint itself, it is more than obvious that all these supplies were made well before 12.12.2000 and the suit has been instituted in the year 2006, well after the period of limitation had expired and the suit itself would be only barred by limitation.

10. It would also be pertinent to mention that the supplies were made to the Power Department of the State of Tripura. The Tripura State Electricity Corporation Ltd. was setup in the year 2005. According to Mr. Chakraborty, learned Sr. counsel, the rights and liabilities of the Power Department stand transferred to the Electricity Corporation Ltd. There is no material on record to support this case. Even assuming for the sake of argument that some liabilities took transferred, a liability which has become time-barred would not be transferred because that would not be a subsisting liability on the date when the Corporation was created in the year 2005.

11. In any event, the state of Tripura even if not a necessary party was definitely a proper party to the proceedings or because the plaintiffs have not produced any materials whatsoever to show what was the terms and conditions of the notification whereby the Electricity Corporation was setup. There is a Power Department in the State of Tripura existing even today. We do not know what liabilities have been transferred to the Electricity Corporation and what have not been. That was something for the plaintiffs to prove and no materials need be placed on.

Therefore, on all these counts, we find no merit in the appeal and the same is accordingly dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE