

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CCCA No.72 of 1993

Between:

M/s.New Vijayalakshmi Oil Extraction
And Refinery Private Limited, Kishangunj, Hyderabad
Rep.by its M.D. Sri B.P.Agarwal, Hyderabad

.... Appellant

And

The Andhra Pradesh State Civil Supplies Corporation Limited,
Hyderabad rep. by its General Manager,
Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: **10.08.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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| 1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? | Yes / No |
| 2. Whether the copies of judgment may be
marked to Law Reporters / Journals? | Yes / No |
| 3. Whether Their Lordship wish to
see the fair copy of the Judgment? | Yes / No |

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ C.C.C.A No.72 of 1993

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Between:

M/s. New Vijayalakshmi Oil Extraction and
Refinery Private Limited, Kishangunj, Hyderabad
Rep. by its Managing Director Sri B.P. Agarwal, Hyd.

Appellant

AND

The Andhra Pradesh State Civil Supplies
Corporation Limited, Hyderabad,
Rep. by its General Manager, Hyderabad.
Respondent

**! Counsel for Appellant : Sri S. Sri Ram
Reddy**

^ Counsel for Respondent : Sri D.Linga Rao

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 2006 SC 811

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CCCA No.72 of 1993

Judgment:

This appeal is preferred by the defendant aggrieved by the judgment dated 14.08.1992 in O.S.No.222 of 1985 on the file of Additional Chief Judge, City Civil Court, Hyderabad whereby and whereunder the learned Judge decreed the plaintiff's suit for rendition of accounts and passed a preliminary decree, directing the defendant to render accounts in respect of the transactions concerning to lifting of stocks of RBD Palmolein/Palm oil from the State Trading Corporation of India, Visakhapatnam/Madras between 14.02.1980 and 13.02.1981

and the deliveries made by defendant to the various retailers along with the release orders, way bills and lorry receipts and upon such rendition of accounts, pay such amounts as may be found due to the plaintiff with interest @ 19.5% p.a. from 13.02.1981 till the date of payment.

2) The factual matrix of the case which led to file the appeal is thus:

a) Plaintiff is the Andhra Pradesh State Civil Supplies Corporation Limited (APSCSC) which was formed with the object of procuring essential commodities like oil etc. from the bulk importers like State Trading Corporation (STC) at Visakhapatnam/Madras and arranging for collection of allotted quotas of the State of the said products, their transport from the place of their supply, storage and delivery of the said products to the various retail dealers through the transport contractors appointed by it for such transport and handling of the products. So, the plaintiff was desirous of appointing a commission agent for the transportation, storage, handling and delivery of RBD Palmolein/Palm oil to the retail dealers in Adilabad, Karimnagar, Medak, Nizambad and Warangal in Andhra Pradesh. Accordingly, the plaintiff entered into Ex.A1—Agreement dated 14.02.1980 with the defendant which deals in oil extraction and refinery. As per the terms and conditions of the agreement, defendant shall take RBD Palmolein/Palm oil from STC at Visakhapatnam/Madras and to distribute to various places at

Adilabad, Karimnagar, Medak, Nizamabad and Warangal and it is also to create minimum storage capacity at the engaged places. The oil is to be delivered to the Fair Price Shops, Super Bazars and other Co-operative institutions as per the release orders issued by the District Managers of APSCSC. As per the terms of contract, the agent shall maintain accounts and submit monthly statements with necessary details by 10th of every succeeding month. The commission agent shall be paid remuneration in respect of the services performed by it under contract at the rate of Rs.474.51 and 449.31 per metric tonne. The period of contract was for one year from 14.02.1980.

b) The grievance of the plaintiff is that defendant has not complied with terms of agreement and not discharged its obligation particularly, defendant has not submitted the monthly returns in the prescribed forms or produced any accounts for the scrutiny of the plaintiff, so that the plaintiff may be in a position to know what are the quantities received by it, what are the quantities delivered by it and what are the quantities not accounted for. As the contract period was expired on 13.02.1981 and the defendant did not render accounts for the stocks taken and delivered to the retailers, the plaintiff issued a Memo dated 24.07.1981 requiring the defendant to come to the office of plaintiff and render the accounts for settlement. The defendant in its written statement stated that most of the account books were held up with the Vigilance Authorities of the CS Wing and promised to submit the accounts within one week

after receipt from the concerned authorities but it failed to do so. The plaintiff subsequently sent similar reminders on different dates but of no use.

Hence, the suit for rendition of accounts.

c) The defendant while admitting Ex.A1—agreement, opposed the suit contending that it has been appointed as commission agent of the plaintiff for transporting, storage, handling and delivery of palm oil and according to the terms of the agreement, it was responsible for the aforesaid work and the defendant submitted the monthly returns in the prescribed proformas to the plaintiff and plaintiff was in position of the same, but the plaintiff with certain oblique motive was pleading as if defendant did not submit monthly returns. At no point of time the plaintiff complained about non-submission of monthly returns either during the subsistence or after completion of agreement. Immediately after expiry of contract period by 13.02.1981, a case was booked under NSA against the defendant and the entire books were seized on 18.02.1981 by Vigilance Department. The said department handed over the available records on different dates when approached by the defendant and it was informed that the balance records were taken away by the plaintiff and hence there were no records with the defendant. Thus it contended, it was not true to say that defendant was avoiding rendition of accounts. It contended that plaintiff has not approached the Court with clean hands. It pleaded that there is no cause of action and the suit is barred by

limitation.

d) The trial Court framed the following issues for trial.

1. *Whether the defendant is liable to render accounts?*
If so, for
what period?
2. *Whether the suit is barred by limitation?*
3. *To what relief?*

e) During trial, PWs.1 to 5 were examined and Exs.A1 to A199 and X1 to X23 were marked on behalf of plaintiff. Defendant did not adduce any evidence.

f) On issue No.1 the trial Court on considering the evidence on record and admitted facts, has held that the defendant is liable to render accounts to the plaintiff. Then issue No.2 is concerned, the trial Court held that suit was within time and not barred by limitation in view of the fact that the defendant intermittently acknowledged its liability even before expiry of period of limitation. Thus, the trial Court decreed the suit and passed a preliminary decree, as stated supra.

Hence, the appeal.

3) The parties in the appeal are referred as they stood before the Court below.

4) Heard Sri Ram Reddy, learned counsel for appellant/defendant and Sri N.Subba Reddy, learned senior counsel representing Sri D.Linga Rao, learned counsel for respondent/plaintiff.

5) Learned counsel for appellant argued on the following main aspects.

a) The necessary material like allotment orders, delivery orders, statements submitted by the defendant and release orders were with the plaintiff and as the amount due is within the knowledge of plaintiff, suit for rendition of accounts is not maintainable and plaintiff ought to have filed a money suit simpliciter.

b) Secondly, it is contended, even assuming that defendant has not rendered accounts, the plaintiff ought to have filed suit within three years from the date of termination of agency, but it filed the suit beyond the said period and hence, the suit is hopelessly barred by limitation. It is argued that mere addressing letters by the defendant stating that its records were held up with Vigilance Department will not amount to admission of its liability to extend the period of limitation.

c) Thirdly, it is contended that there is an arbitration clause provided in Ex.A1—Agreement and without invoking the said clause the plaintiff cannot maintain the suit.

He thus prayed to allow the appeal.

6a) Per contra, Sri N.Subba Reddy, learned senior counsel appearing for respondent/plaintiff argued that Ex.A1—Agreement contains clear terms to the effect that defendant is bound to render accounts by way of statements by 10th of every

succeeding month, but it woefully failed to do so with an ulterior motive. The plaintiff being the principal, entitled to demand rendition of accounts from the defendant who is his agent. Since the defendant did not render the accounts in proforma statements, plaintiff was handicapped and could not be able to know how much oil was received by it and how much was distributed to the retailers etc. crucial particulars and in such circumstances, filing of suit for rendition of accounts was only remedy available to plaintiff and hence, the suit for rendition of accounts is very much maintainable.

b) Secondly, he contended that suit is well within time in view of the fact that the defendant gave reply to the notice issued by the plaintiff acknowledging that it was liable to render accounts but its records were seized by Vigilance Department and it would render accounts within a week after receiving the records. Learned counsel contended that suit was filed within three years after receiving the reply from the defendant and hence it is farfetching to contend that suit is barred by limitation.

c) Thirdly, though admitting that arbitration clause was incorporated in Ex.A1—Agreement, senior counsel contended that the defendant did not take the plea in its written statement to the effect that suit was not maintainable in view of arbitration clause and the trial Court also did not frame any issue to that effect and as such, it cannot now take the said plea at this stage.

He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the points that arise for determination in this appeal are:

1. *Whether the suit for rendition of accounts is maintainable at the instance of the plaintiff?*
2. *If Point No.1 is held affirmatively, whether the suit is barred by limitation?*
3. *Whether the plea of non-maintainability of suit in view of incorporation of arbitration clause in Ex.A1 is available to the defendant in this appeal?*
4. *To what relief?*

8a) **POINT No.1:** This point relates to the right of the plaintiff to file suit for rendition of accounts in stead of filing a suit for specific amount. Honourable Apex Court happened to discuss the point as to who is entitled to maintain a suit for rendition of accounts in the case of ***K.C.Skaria v. The Govt. of State of Kerala***^[1]. The Apex Court held thus:

‘16. To summarise, a suit for rendition of accounts can be maintained only if a person suing has a right to receive an account from the defendant. Such a right can either be (a) created or recognized under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, as that will open the floodgates for converting several types of money claims into suits for accounts,

to avoid payment of court fee at the time of institution.”

So, as per the above principle a suit for rendition of accounts can be maintainable at the instance of a person who has a right to receive accounts from the defendant and such a right can either be created or recognized under a statute. For the purpose of present case determination of the said right is important.

b) In the instant case, Ex.A1—Agreement shows that such a right has been created in favour of plaintiff to seek rendition of accounts from the defendant. Ex.A1 is styled as agreement for appointment of commission agents for transportation, storage, handling and delivery of RBD Palmolein/Palm oil in Zone IV consisting of the districts of Adilabad, Karimnagar, Medak, Nalgonda and Warangal. It reads that plaintiff—Corporation was desirous of appointing a commission agent for transportation of RBD Palmolein/Palm oil to the retail dealers in the aforesaid districts. With that intention plaintiff appointed the defendant as commission agent. Then several clauses were incorporated with regard to method and manner in which the defendant has to distribute the oil. Then rendition of accounts is concerned, Clause 8(ii) shows that the commission agent i.e. defendant should submit monthly statement in a proforma containing 12 columns with necessary details mentioned in the agreement. This statement should be submitted by defendant by 10th of every succeeding month. Further, in Clause 14(iii) also it is

reiterated that the commission agent agreed and undertook to maintain such accounts and returns in such forms and render its periodical returns as prescribed by the Corporation and produce books and records for inspection and for scrutiny of the Managing Director/District Manager or his authorised person.

c) So, from the terms of the agreement the defendant shall render accounts periodically in the prescribed form for inspection of the plaintiff officials. Apart from the above terms in Ex.A1, Section 213 of Indian Contract Act recognized the responsibility of an agent to render accounts. It reads thus:

“213. Agent’s accounts.—An agent is bound to render proper accounts to his principal on demand.”

d) Therefore, there is no need to emphasise the point that defendant in this case is bound to render the accounts to the plaintiff. Of course, the defendant did not deny its obligation to render accounts in its written statement. The contention of defendant is that the necessary records such as allotment orders, delivery orders, statements submitted by it and release orders for distribution were in the custody of plaintiff and therefore, there was no need to file a suit for rendition of accounts and the plaintiff can as well arrive at the amount, if due by the defendant, and file a suit for recovery of money. This argument cannot be accepted for the reason that since inception it is the categorical contention of plaintiff that the defendant has not been submitting the accounts in the prescribed proforma and thereby, it was not able to know clearly

as to how much stock of oil was taken by defendant and how much was distributed to the retail dealers and how much was damaged in transit etc. particulars and therefore, it could not correctly assess the amount due and hence plaintiff had to necessarily file the suit for rendition of accounts. The defendant on one hand contended that it furnished the accounts in the prescribed proforma periodically and on the other hand, contended as if the records were held up with Vigilance authorities and so it could not render the account. Be that it may, the defendant could not establish that during continuance of the agreement, it has already submitted the accounts in proforma statements promptly and regularly. Therefore, the only option for the plaintiff is to file a suit for rendition of accounts.

Hence, this point is answered accordingly.

9) **PONT NO.2:** This point is concerned, as per Article 3 Part I of Limitation Act, 1963 suit for rendition of accounts has to be filed within three years. This article reads thus:

Description of suit	Period of Limitation	Term from which period begins to run
3. By a principal against his agent for movable property received by the latter and not accounted for.	Three Years	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.

a) In this case, the agreement continued from 14.02.1980 to 13.02.1981. The suit was filed on 24.04.1984. However, by virtue of admission of liability made by defendant, the period of limitation is extended. Under Ex.A2—letter dated 24.07.1981 the plaintiff called for the defendant to turn up to its office and submit records for settlement of accounts within a fortnight. To this letter the defendant sent Ex.A3—reply letter dated 06.08.1981 wherein it stated as follows:

“ Dear Sir,

We are in receipt of your letter No.11 (102)/81 dated 24.07.1981. We have gone through the contents with utmost care. We are trying our level best to finalize the accounts and submit the same to your corporation. But during the course, we found that most of our records connected with the contract of your corporation are with the Vigilance authorities of Civil Supplies wing. We are trying to obtain the records and we were given to understand that the books of accounts shall be returned in a few days.

Hence we request you to kindly bear with us for some more time for finalization of accounts as this is beyond our control.

We shall submit the same within a week after receipt from the concerned authorities.

Thanking you and assuring our best attention at all times.

Yours faithfully,

For New Vijaya Laxmi Oil Extraction and Refinery
Private Limited.

Sd. x x x

Managing Director.”

b) From the tenor of above letter which is written in a polite manner explaining the reasons for not submitting the accounts, it is clear that the defendant admitted its responsibility to finalize the accounts and submit the same to the plaintiff—Corporation. This letter also shows the request made by the defendant to the plaintiff to bear with it for some more time for finalization of accounts as delay was beyond its control. Further, in Ex.A192—letter dated 03.03.1983 also the defendant acknowledged its liability to render accounts. In para-3 it is stated thus:

“Therefore, there is no question of your client to issue a notice through you as my client has specifically intimated your client that they will finalize the account as and when the records will be received by them from the Civil Supplies Department. My client is totally helpless in the matter as the records are with the said Civil Supplies Department. My client is now and then visiting the Civil Supplies Department for taking back the records, but the records are not being handed over to my client.”

c) Hence, the contents in Ex.A2 and Ex.A192 would serve purpose as acknowledgement of the liability of defendant and thereby the limitation extended for a period of three years. Ex.A2 was dated 06.08.1981 and Ex.A192 was dated 03.03.1983 whereas the suit was filed on 24.04.1984. Hence, it is evident that suit was well within the period of limitation.

This point is answered accordingly.

10) **POINT No.3:** This point is concerned, no doubt Clause 16 of Ex.A1 contains a provision for reference of all disputes to the arbitration. However, as rightly argued by learned senior counsel for plaintiff, the defendant did not raise that contention in the written statement and no issue was framed by the trial Court to that effect. Hence, it cannot raise that issue for the first time in this appeal.

Point No.3 is answered accordingly.

11) In view of findings on point Nos.1 to 3, there are no merits in the appeal.

In the result, this appeal is dismissed by confirming the judgment of the trial Court in O.S.No.222 of 1985. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 10.08.2015

Murthy

[\[1\]](#) AIR 2006 SC 811