

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 49 of 2013**

- Sankalp Sahu S/o Dr. N.S. Sahu Aged About 40 Years Assistant Commissioner, Tribal Welfare Department, Bemetara, P.S. City Kotwali, District Bemetara C.G.

---- Appellant**Versus**

1. Chandraprakash Upadyay S/o Shri Parmanand Upadhyay Aged About 33 Years Proprietor Upadhyay Aushadhi Bhandar, Sarafa Line Near Maa Sheetla Temple Kawardha, Distt. Kabirdham (C.G.)
2. State Of Chhattisgarh Through - Collector, Kabirdham, Distt. Kabirdham (C.G.)
3. Chief Secretary State Of C.G., Mantralaya, Raipur, Distt. Raipur (C.G.)
4. Assistant Commissioner Tribal Welfare Department, Kawardha, Collector Office, Kabirdham (C.G.)
5. Smt. Pramila Netam Superintendent, Pre-Metric Anusuchit Jati Kalyan Chhatrawas Kawardha, Present Add. - Pre Metric Anusuchit Jati Kanya Chhatrawas, Kawardha, Distt. Kabirdham (C.G.)

---- Respondent

For Appellant : Shri Vinod Kumar Sharma, Advocate.

For Respondent No.1 : Shri Malay Shrivastava, Advocate.

For Respondent/State : Shri PK Bhaduri, Govt. Advocate.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Smt. Vimla Singh Kapoor, JJ**

Judgment On Board By Prashant Kumar Mishra, J

20/09/2018 :

1. This is an Appeal under Section 96 of the CPC by defendant No.3 in the suit assailing the judgment and decree passed by the trial Court directing him to pay a sum of Rs.6,69,064/- to the plaintiff.
2. Plaintiff's case, in short, was that he has medical store and is engaged in sale and supply of medicines. In the year 2009, the present appellant was posted as Assistant Commissioner, Department of Tribal Development, Government of Chhattisgarh, at Kawardha under whom 97 Ashram schools (residential schools) were operating. On 19.11.2009, Shri Prakash Narayan Gupta, Superintendent of one Baiga Ashram came to the plaintiff's shop to instruct him to supply medicines for 97 Ashram schools. He provided details of packet containing specific medicine for 97 Ashram school. On the plaintiff's request for written order, Shri Prakash Narayan Gupta stated that the present appellant has requested for immediate supply on oral order and written order shall be provided later on. The plaintiff supplied the said 97 packets of medicines and handed over the same to defendant No.5 Pramila Netam, but despite repeated requests, written order was not placed by defendant No.3/appellant to the plaintiff but promised to pay the bills at the earliest. Separate bills for 97 packets were handed over to the department on the instructions of

the appellant but payment of Rs.1,85,790/- only was made through banker's cheque No.506134 on 8.6.2010 and the payments for the remaining bills were not made. The plaintiff served notice dated 27.8.2010 under Section 80 of the CPC to the defendants vide Ex.-P/6 and thereafter filed the suit on 2.1.2012. Another notice under Section 80 CPC was served vide Ex.-P/1 on 23.7.2011.

3. The appellant/defendant No.3 and Smt. Pramila Netam, defendant No.5 filed separate written statements denying the suit allegations. The appellant denied to have visited the plaintiff's medicine shop and further stated that if the plaintiff has supplied medicines without quotation or tender process, he has to blame himself. Since the supply was made without order, the plaintiff was informed to take back the goods but he did not take it back, therefore, the plaintiff is himself responsible for his act of negligence and the defendants are not liable to make any payment. However, the appellant/defendant No.3 admitted to have made payment of Rs.1,85,790/- by the department for which an explanation was offered that since some of the medicines were used, payment of only that quantity was made and for the remaining, the plaintiff was requested to take back the medicines.
4. Defendant No.5 Smt. Pramila Netam, in her written statement, conceded to have received 97 packets of medicine on 19.11.2009

for which she was instructed by Shri Prakash Narayan Gupta, Superintendent, Baiga Hostel, Kawardha, who in turn informed her that medicines are to be received on the instructions of the appellant/defendant No.3.

5. Based on the documents in the form of bills, admission of receipts of 97 packets of medicines by Smt. Pramila Netam and Shri Prakash Narayan Gupta, as also payment of Rs.1,85,790/- made by the appellant/defendant No.3 as Assistant Commissioner, Tribal Development, Kawardha, and statements of witnesses, the trial Court dismissed the suit against the other defendants while holding the appellant/defendant No.3 to be liable to make payment of admissible amount of Rs.6,69,064/- to the plaintiff.
6. It is argued by learned counsel for the appellant that even if the entire case of the plaintiff is proved, liability to make payment would be of the State Government. It is also argued that the plaintiff having failed to take back the medicines despite request, none of the defendants are liable to make payment of medicines, which were not used by the department and for which no orders for supply were ever placed with the plaintiff.
7. Learned counsel for the respondents would submit that the trial Court has rightly found the appellant/defendant No.3 to be responsible and liable to make payment because it was the

appellant who has orally directed the plaintiff to supply medicines.

8. The fact that the appellant has supplied medicines has not been denied in express categorical terms by defendant No.3 and 5. They have in fact admitted to have received the supply, as is clearly mentioned in para-2 of the impugned judgment, which refers to the admitted facts between the parties. It has also been found by the trial Court that part payment of Rs.1,85,790/- has been made by the Tribal Development Department, Kawardha.
9. In view of the admitted facts, we are only required to examine whether the decree against the appellant alone could have been passed by the trial Court.
10. Interestingly, the plaintiff has not preferred any separate appeal or any cross appeal or cross objection under Order 41 Rule 22 of the CPC praying that the trial Court should have passed decree against the State Government and its officers.
11. In the absence of any such prayer, we shall proceed to examine as to whether decree against the present appellant/defendant No.3 alone could have been passed by the trial Court as if the appellant had purchased medicines for his own use.
12. It was the plaintiff's case in the plaint that on the request of one Prakash Narayan Gupta, medicines were supplied and delivered in

one of the Ashram school which was received by Smt. Pramila Netam, defendant No.5, Superintendent of Pre-Matric Tribal Girls Hostel, Kawardha. She would admit that Prakash Narayan Gupta was store-in-charge, who came to the hostel at about 8-9 am on 19.11.2009 to instruct her to receive 97 packets of medicines. She admits to have issued receipt memo (Ex.-P/17). These supplies were received by Pramila Netam on the instructions of Prakash Narayan Gupta and this appellant had never requested DW-2 Pramila Netam to receive 97 packets of medicines. On receipt of bills by the department, a sum of Rs.1,85,790/- has been paid to the plaintiff by the Department of Tribal Development, Kawardha vide banker's cheque No. 506134. This payment has been admitted by the Project Administrator, Integrated Tribal Development Project, Gariyaband, District Raipur vide document Ex.-D/1 though payment has been explained to have been made because medicines equal to the said value has been used by the department. In yet another document (Ex.-D/3) also, the office of Assistant Commissioner, Tribal Development, Kabirdham has admitted to have made payment of Rs.1,86,250/-. This document has been approved by the Collector, Kawardha, as is mentioned at the end of para-6 of the document. If part payment of the total bills has been made by the Government by issuing a banker's cheque payable at the treasury, it would have the effect of admission of receipt of

goods and the liability to make payment even if there was no orders for supply of medicines. It is equally true that there is no document on record placed and proved by the defendants asking the plaintiff to take back the medicines. This defence of asking the defendants to take back the medicines has surfaced for the first time after service of legal notice by the plaintiff. Thus the supplies having been received and the medicines having been used by the department, decree against the present appellant in his individual capacity and not by his designation could not have been passed.

13. In the absence of any separate appeal/cross appeal/cross-objection by the plaintiff seeking decree against the State and its authorities and for the reason that decree against the present appellant in his individual capacity could not have been passed, we have no other option but to allow the Appeal and set aside the impugned judgment against the appellant/defendant No.3.

14. Accordingly, the present Appeal is allowed. Impugned judgment and decree is set aside. Parties to bear their respective costs.

15. A decree be drawn accordingly.

Sd/-
Judge
 (Prashant Kumar Mishra)
 Barve

Sd/-
Judge
 (Vimla Singh Kapoor)