

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-7-2018

Judgment delivered on 9-8-2018

FA No. 740 of 2000

1. M/s Roopchand and Company, Regd. Firm Partnership, Thru- Partner- Roopchand Agarwal, S/o Prabhudayal Agarwal, Age- 30 Yrs, Transport Loading And Handling Contractor, R/o Gram- Bilha, Distt. Bilaspur M.P., Chhattisgarh
2. M/s Anilchand Sunilchand Branch Firm Roopchand And Company, Thru- Partner Roopchand Agarwal, S/o Prabhudayal Agarwal, Age- 30 Yrs, R/o Gram- Bilha, Distt. Bilaspur M.P.

---- Appellants.

Versus

1. Senior Regional Manager, Food Corporation Of India, Chetan Bhawan, Maharana Pratap Nagar, Habibganj, Bhopal M.P., Madhya Pradesh
2. District Manager Food Corporation Of India, Jail Road, Civil Line, Raipur M.P., District : Raipur, Chhattisgarh

---- Respondent

For appellants	:	Mr. S.S. Baghel, Advocate.
For respondents	:	Mr. B.P. Gupta, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred by the appellants under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 24-9-1999 passed by the VIIth Additional District Judge, Raipur (CG) in Civil Suit No.5-A/96 wherein the said court dismissed the suit filed by the appellant for recovery of the amount to the tune of Rs.65,100/-.

2. Admittedly, the appellants entered into contract with respondents for loading, unloading and transporting goods from respondents' godown and in that agreement they deposited Rs.29,700/- as security and again deposited Rs.13,000/- as FDR. After completion of contract, no demand certificate was issued in favour of the appellants on 7-11-1990. Security deposit is not returned that is why they filed the suit before the trial Court but the trial court erred in holding that the suit is barred by time. The trial Court has not scanned all the oral and documentary evidence in its proper perspective, therefore, same is liable to be reversed.
3. The core issue for consideration of this Court is whether the suit filed by the appellants on 7-9-1994 and after returning the same suit again filed before the trial Court on 1-2-1996 was without limitation.
4. From the evidence it is admitted position that no demand certificate was issued on 7-11-1990 which is date of final act for execution of the contract.
5. It is contended on behalf of the appellants that notice was served to the respondents on 27-4-1992 for paying the dues and limitation runs from 27-4-1992.
6. In view of this court, cause of action arose when no demand certificate was issued on 7-11-1990 and limitation runs from that

date as per Article 113 of the Limitation Act, 1963. Notice may be served to the respondents on any date within three years, but the suit must be filed within limitation i.e., three years from 7-11-1990, it means suit could have been filed upto 6-11-1993. Admittedly, the suit is not filed within three years and same is filed on 27-9-1994 which is barred by limitation. There is no reason to reverse the finding arrived at by the trial Court. The ground raised in the appeal is not sustainable.

7. Considering all the facts and the material available on record, this court is of the view that the finding arrived at by the trial Court is based on proper appreciation of oral and documentary evidence and again it is based on settled law which is not liable to be interfered by this court.
8. Accordingly, the decree is passed against the appellants and in favour of respondents on the following terms and conditions.
 - I) The appeal is dismissed with cost.
 - ii) Appellants to bear the cost of the respondents.
 - iii) Counsel fee, if certified be calculated as per certificate or as per Schedule whichever is less.
 - iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE