

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 99 of 2016**

1. District Election Officer / Collector Korba District Korba, Chhattisgarh
2. Chief Election Officer, Indira Khand, Mantralay Parisar, Raipur, District Raipur, Chhattisgarh
3. Secretary, Election Commission Of India, Nirvachan Sadan, Ahsok Marg, New Delhi

---- Appellants**Versus**

- Gulshan Arora S/o Shri Harichand Arora, Aged About 45 Years Proprietor, Vishal Tent House, Nehru Complex, T.P. Nagar, Korba, District Korba, Chhattisgarh

---- Respondent

For Appellants : Shri Rajeev Shrivastava, Advocate.
 For Respondent : Shri Sanjay Patel, Advocate.

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

Judgment On Board By Prashant Kumar Mishra, J**13/09/2018 :**

1. This is a defendants' Appeal assailing the judgment and decree passed by the trial Court directing the appellants to pay a sum of Rs.10,00,838/- along with interest @ 6% from the date of filing of the suit till payment.
2. Facts of the matter, not in dispute, are that during the Lok Sabha election held in the year 2004, the plaintiff/respondent

was a successful bidder for providing services by providing tent, mike, sound system, electrical apparatus, close circuit tv etc. for the period 25.3.2004 to 29.3.2004 and from 7.4.2004 to 11.4.2004 at Government Higher Secondary School, Vidyut Grih, Korba. The work of commissioning of EVM was also entrusted to the plaintiff from 12.4.2004 to 21.4.2004. Similarly, the work of EVM distribution and registration was also handed over to the plaintiff on 25.4.2004. For all these works, the plaintiff served a bill for Rs.11,97,063/-, out of which the defendants/appellants paid Rs.3,20,142/- only on the date of filing of the suit and the balance amount remained unpaid.

3. The defendants did not deny that the plaintiff has provided the subject services but it is stated that on verification, the plaintiff was found to have provided the services for the value of Rs.6,57,642/- only. The appellants/defendants also raised a plea of limitation. The trial Court has found that the plaintiff has rendered services to the value of the bill amount of Rs.11,97,063/- and has thus held that the defendants are liable to pay the balance amount.
4. Shri Rajeev Shrivastava, learned counsel for the appellants would raise 3 fold submissions. Firstly, he would submit that the suit was barred by limitation. Secondly, the suit suffers from defect of non-service of notice under Section 80 CPC and

thirdly, even if the plaintiff's case is found to be proved, he was entitled for decree to the tune of Rs.6,57,642/- which would include the amount already paid to the plaintiff.

5. We shall first examine the issue as to whether the trial Court has rightly held that the suit was not barred by limitation. Admittedly, the services were rendered by the plaintiff in the month of March and April, 2004 for which bills were submitted on different dates in the month of April, 2004. According to the appellants, the suit should have been preferred within 3 years from 28.3.2006 when the defendants admitted its liability, however, the suit having been filed on 12.1.2010, it was apparently barred by limitation. The record contains the letter written by the Collector cum District Election Officer, Korba on 28.3.2006 admitting liability of the Election Commission by only stating that a sum of Rs.45,000/- has already been paid and the balance amount shall be paid as and when funds are allotted to the District Election Officer. By another document dated 18.6.2009 (Ex.-P/19), the District Election Officer again replied to the legal notice served by the plaintiff's counsel, to state that a sum of Rs.3,33,620/- has already been paid to the plaintiff and the balance amount shall be paid as and when the fund is allotted. Thus on 18.6.2009 also liability was admitted. The second acknowledgement of liability and promise to pay made on 18.6.2009 is apparently after more than 3 years from 28.3.2006, however, in between, the defendants have paid an

amount of Rs.3,20,142/- to the plaintiff by banker's cheque No.447917, dated 8.7.2006 vide Ex.-D/1. The cheque itself has been exhibited as Ex.-D/10. Both these documents bear original seal of the Deputy District Election Officer certifying the document to be a true copy. Even otherwise, the documents have been relied by the defendants and, therefore, it is binding on them and it is not permissible for them to question the admissibility or genuineness of the documents.

6. Be that as it may, the subsequent acknowledgement of the liability towards payment of the remaining amount made on 18.6.2009 vide Ex.-P/19 is well within 3 years period from 08.7.2006 on which date the banker's cheque was issued by the defendants to the plaintiff vide Ex.-D/1. After 18.6.2009, the suit has been preferred on 12.1.2010, which is well within a period of 3 years. Therefore, the suit has been instituted within limitation and the plea of limitation has rightly been negatived by the trial Court.
7. In respect of submission that the suit is not maintainable for having failed to serve notice under Section 80 CPC before institution, learned counsel for the appellants would refer to the judgment in the matter of **Uttar Pradesh Avas Evam Vikas Parishad and Others Vs. Om Prakash Sharma** {(2013) 5 SCC 182} wherein it has been held that a suit instituted without service of notice under Section 80 CPC is not

maintainable and the said issue can be raised at any point of time, even in Second Appeal.

8. There is no quarrel about the proposition that a legal issue which goes to the root of the matter and which does not need any recording of evidence or finding of fact can be raised at any point of time including at the stage of appeal, however, present is a case where the defendants have not raised any plea about non-service of notice under Section 80 CPC and non-maintainability of suit for the said reason. It is precisely for this, the trial Court has not framed any issue regarding maintainability of the suit for want of compliance of Section 80 of the CPC. A party to the suit can be said to have waived the plea if it fails to raise dispute about maintainability. This is apart from the fact that the plaintiff has served notice on the defendants vide Ex.-P/8 on 28.4.2009. Even if 2 months' time was not mentioned in this notice as required under Section 80 of the CPC, but the notice only stated that payment should be made within a period of one month, the fact that the suit was in-fact instituted after expiry of 2 months from the date of service of notice would amount compliance under Section 80 CPC, even if notice does not carry caption that it is notice under Section 80 CPC.

9. Insofar as third contention that the plaintiff is entitled for Rs.6,57,642/-, it is to be seen that the defendants have not

proved any document amounting to verification of the work done by the plaintiff nor any such notice or intimation was ever served on the plaintiff at any point of time before filing of suit that since he has not rendered service to the bill amount of Rs.11,97,063/-, he is not entitled for the said amount but is actually entitled for Rs.6,57,642/-. In the documents Ex.-P/7 and Ex.-P/9, both under the signatures of the Collector cum District Election Officer, a promise has been made to pay the entire amount as soon as the funds are allotted without objecting to the defects in the bill. The third submission of learned counsel for the appellants would thus have no substance.

10. For all the above stated reasons, we do not find any ground to interfere with the impugned judgment and decree. Therefore, the Appeal deserves to be and is hereby dismissed.

11. A decree be drawn accordingly.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Vimla Singh Kapoor)

Barve