IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.800 of 2011 (O&M)
Date of Order:15.02.2018

Bharat Petroleum Corporation Ltd. and another ..Appellants

Versus

Punjab State Electricity Board and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None for the appellants.

Mr. Rajneesh Malhotra, Advocate, the respondents.

ANIL KSHETARPAL, J.

The arguments were heard in detail and order was pronounced. Detailed reasons are being recorded.

Defendants-appellants are in regular second appeal against the judgments passed by both the courts below, decreeing the suit for recovery of Rs.1,90,677.25 paise with proportionate costs with future interest.

Although, it is unfortunate that two public sector undertakings are fighting for a small amount, however, since, the appeal has been filed, therefore, it has to be decided.

Plaintiff-Punjab State Electricity Board filed a suit for recovery on 08.10.2001. Plaintiff claims that it had started construction of the Anandpur Sahib Hydel Construction project and a Diesel Pump was installed and operated but if defendants-appellants were supplying high speed diesel and the plaintiff used to pay advance amount to the defendants. The project was completed in the year 1985 and on completion of the project, diesel pump was closed down as the supply of high speed diesel was no more required. Plaintiff requested the defendants to finalize and settle the account but the defendants did not respond. Hence, the suit for recovery was filed.

Defendants on notice, appeared and contested the suit. It was pleaded that the suit is barred by limitation and the suit for Rs.1,90,687/25 paise has been filed only because due to an computer error, some communications were sent to the plaintiff. Rather defendants claimed that it is to recover certain amount from the plaintiff.

Plaintiff in order to prove its case, produced copy of DDR Ex.P3 to state that all their record has been burnt. However, the plaintiff produced on file copy of statement of accounts allegedly sent by the defendants, Ex.P4, P-7 and P-9, These are computer generated copies of statement of accounts by the office of Bharat Petroleum Corporation, Delhi showing total amount payable as Rs.1,90,677.25 The earliest computer generated statement of account is dated 15.10.1997 and the last is dated 10.10.1999. None of the statement of accounts is signed by any official.

On the other hand, defendants produced on file statement of accounts reconciled dated 14.05.1997, which shows that it is the defendants-appellants who have to recover a sum of Rs.39,763.45/- from the plaintiff. Similar is a letter dated 25.06.1997.

Both the courts decreed the suit filed by the plaintiff by holding that Article 112 of the Limitation Act would apply and the suit for recovery can be filed within a period of 12 years.

In the considered opinion of this Court, the following substantial question of law would arise:-

(i) Whether the Punjab State Electricity Board can claim that the suit is by or on behalf of the state Government?

(ii) Whether acknowledgment in writing after the expiry of limitation for filing the suit would result in reviving the claim which had already become barred by time?

Article 112 of Schedule to the Limitation Act , 1963 is extracted as under:-

112. *Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir*	*Twelve Years*	*When the period of limitation would begin to run under this Act against a like suit by a private person.*

This issue has already been decided by this Court while deciding RSA No.2269 of 2012, on 26.09.2017 (Vinod Kumar v. Punjab State Electricity Board(now Punjab State Power Corporation Ltd.).This court while relying upon the judgment passed by the Hon'ble Supreme Court in the case of ***Bharat Sanchar Nigam Limited vs. Pawan Kumar Gupta, (2016) 1 SCC 663***, has held that the suit for recovery filed by the Punjab State Electricity Board cannot be said to be by or on behalf of State Government or Central Government.

In view thereof, Article 112 of the Schedule would have no application. It is not disputed that the last transaction took place between the parties in the year 1985. Even in case of mutual, open and current account, the limitation starts from the close of the finalcial year in which last transaction took place. The limitation is 3 years from the close of the year in which the last item admitted or proved is entered in the account; such year to be computed in the account as per Article 1 of the Schedule.

Still further these alleged statement of account cannot be used for the purpose of extending the limitation. As noticed, the first acknowledgment is dated 15.10.1997. By that time the limitation for filing the suit had already elapsed.

As per Section 18 of the Limitation Act, the acknowledgment, in writing has to be before the expiration of the period prescribed for filing a suit. Section 18 is extracted as under:-

> ***18.Effect of acknowledgment in writing***.*—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*
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> *(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*
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> *Explanation.—For the purposes of this section,—*
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> *(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is*

coupled with a claim to setoff, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf,and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right"

There are two requirements before Section 18 can be applied.

(i) The acknowledgment must be before the expiry of the prescribed period of limitation;

(ii) Acknowledgment should be made in writing, signed by the party against whom such acknowledgment is to be used.

In the present case, it is admitted position on the record that the acknowledgment is not signed by any defendants-appellants and the acknowledgment, if any, is beyond the period of limitation.

In view thereof, the questions framed above are answered in favour of the appellants. Hence, the judgment and decree passed by the courts below are set aside and the suit filed by the plaintiff is ordered to be dismissed.

The regular second appeal is allowed.

February 15, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No