

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.12 of 2005**

1. South Eastern Coal Fields Limited, Through Chairman Cum Managing Director, SECL, Regd. Office Seepat Road, Bilaspur, Tahsil & Distt. Bilaspur (CG)
2. Staff Officer (E & M), SECL Office Korba Tahsil & Distt. Korba (CG)
3. Chief General Manager, South Eastern Coal Field Limited, Tahsil and Distt. Korba (CG)

---- Appellants**Versus**

1. Tosh Kamal Ari (dead) and deleted through following legal representatives.
 - A. Smt. Jyoti Ari, Wd/o. Late Tosh Kamal Ari, aged about 65 years,
 - B. Kushal Ari S/o. Late Tosh Kamal Ari, aged about 37 years,
 - C. Mridal Ari S/o. Late Tosh Kamal Ari, aged about 34 years,
 - D. Kapil Ari, S/o. Late Tosh Kamal Ari, aged about 30 years,

All the above are R/o. Karbala Road, Bilaspur Tahsil and District Bilaspur (CG)

---- Respondents

For the Appellants : Shri Vaibhav Agrawal, Advocate on behalf of Shri Om Prakash Agrawal, Advocate

For the Respondents : Shri Malay Shrivastava, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****11.3.2019.**

1. This appeal is directed against judgment dated 18.10.2004 passed by Fifth Additional District Judge, Bilaspur (CG) in Civil Suit No.18B/2004 wherein the said Court decreed the suit filed by the respondent/plaintiff namely Tosh Kamal Ari for a sum of Rs.93,150/- which is the amount of installing one transformer.
2. Admittedly, the transformer was installed in the year 1992 but the bill of the said transformer was not cleared by the

appellants and it was outstanding. As per Letter No.254/2000 (Ex-P/5), the appellants acknowledged that amount of the said transformer is not paid to the respondent and they requested the respondent to submit a new bill. New bill was submitted on 28.4.2000. From the evidence of PK Sarkar, who was the Deputy Chief Engineer of the appellant organization, it is clear that the transformer was installed after repair on 19.01.2000. He further admitted that the said transformer worked upto May 2001 and it is more than period of guarantee which is one year. He further admitted that the respondent is entitled for payment in the month of February 2001 and the same was not paid.

3. From Ex-P/5 the appellants have acknowledged their liability of payment in writing, therefore, limitation shall be computed from the period when the acknowledgment was so signed as per Section 18 of the Limitation Act, 1963. The bill was submitted later on and the appellants have received transformer on 19.01.2000 which was worked upto May 2001. The guarantee period was one year, therefore, cause of action will arise only when the transformer is not working which is May 2001.

4. In the present case, suit filed on 11.7.2003 and looking to the acknowledgement and working of the transformer properly upto May 2001 it appears that cause of action arose in the month of May 2001 and the suit filed by the respondent was within limitation as per Article 18 of the Limitation Act.

5. The trial Court has elaborately discussed the entire evidence and recorded finding that Rs.93,150/- is outstanding against the appellants and decreed for the same with interest @

6%. After reassessing the evidence, this Court has no reason to hold that the said suit was time barred. There is nothing to substitute a contrary finding. The appeal is liable to be dismissed.

6. Accordingly, decree is passed in favour of the respondent/representatives and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) The appellants to bear the cost of the respondent throughout.
- (iii) Pleader's fee, if certified be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE