

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 421 of 2000

1. Food Corporation of India, Through its Sr. Regional Manager, Chetak Building, Maharana Pratap Nagar, Bhopal.
2. District Manager, Food Corporation of India, Madina Manjil, Jail Road, Raipur (MP)
3. Godown Incharge, Food Corporation of India, Madina Manjil, Jail Road, Raipur (MP)

---- Appellants

Versus

M.P. Rice Trading Company, Mahasamund (MP) registered partnership firm Through Bajrang Agrawal S/o Shri Uday Ram Agrawal, Station Road, Mahasamund (MP)

---- Respondent

For appellants-Shri B.P. Gupta, Advocate.
For respondent -Shri Vikash Pradhan, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

3/01/2019

Heard.

1. Instant appeal is against the order dated 15/03/2000 passed in Civil Suit No.4-B/99 passed by the Second Additional District Judge, Mahasamund whereby suit was decreed for recovery of the rent of Rs.72365.84. The appeal is preferred by the defendants.
2. Facts of this case are that plaintiff M.P. Rice Trading Company registered partnership firm had given 8 godowns to the FCI. The eight godowns were given on rent which was vacated on 12/04/97. Likewise the plaintiff stated that consolidated rent was to be paid after vacating the godown. It was stated that after vacating godown for recovery of the rent on 7/08/97 bill was sent through partner Bajrang Agrawal which was signed by defendant No.3 and defendant agreed to pay. However the amount was not paid, therefore for recovery of amount of Rs.72365.84 suit was filed.

3. Defendants in their written statement contended that godown No.1 was taken on rent from 28/12/94 to 12/04/97 admeasuring 961 sq.ft., godown No.2 was taken from 28/12/94 to 4/09/95. Subsequently, it was again taken on rent from 15/05/96 to 10/10/96. Likewise godown No.3 was taken on rent from 28/12/94 to 12/04/97, godown no.4 was taken on rent from 28/12/94 to 2/09/95, godown no.5 was taken on rent from 2/02/95 to 26/06/95, godown No.6 was taken on rent from 16/02/95 to 12/04/97 and godown No.7 was taken on rent from 14/02/95 to 5/01/96. Defendants contended that payment of rent was monthly and suit which was filed for arrears of rent was barred by time prior to 3 years of filing suit. It was further stated that agreement was entered in between the plaintiff and defendants to pay rent @ 60 ps per sq.ft. and the plaintiff was only entitled to Rs.15954/- which was within time @ 60 ps per sq.ft. whereas other amount was barred by time was not recoverable. On the basis of the pleading of the parties the trial court framed three issues and held that entire suit was within time and the plaintiff was entitled to Rs.72365.84 ps alongwith interest, therefore this instant appeal.

4. Learned counsel for the appellants would submit that the trial court failed to appreciate the fact that the suit was filed on 26/07/99 and prior to it three years rent was recoverable. Beyond that earlier rent which was claimed was barred by time. It is further contended that trial court which held acknowledgement on the basis of document Ex.D-2 to D-9 cannot be held to be acknowledgement as it is only forwarding letter of the bill which cannot be treated as acknowledgement. It is further contended that the person who has forwarded the bill has no authority to acknowledge the liability as per section 18 of the Indian Limitation Act, therefore the decree and the suit its entirety is bad.

5. Per contra, learned counsel for the respondent opposes the argument and would submit that the trial court has clearly held Ex.D-2 to D-9 would be acknowledgement and placed his reliance in **(2004) 12 SCC 360** in between **Food Corporation of India Vs. Assam State Cooperative Marketing & Consumer Federation Ltd. And others** and submit that in like nature when there is dispute about rate and letter has been forwarded it would amount to acknowledgement. Consequently, Ex.D-2 to D-9 which was given on 7/08/97 amount to fresh cause of action for limitation under Section 18 of the Indian Limitation Act and the suit which is filed in the year 1999 was rightly decreed.

6. Heard learned counsel for the parties.

7. Perused the record. Record reveals that suit was filed on 28/07/99. Suit was for recovery of the arrears of rent for 8 godowns for which pre receipts was submitted on 7/08/97 which is held to be acknowledgement by the trial court. Perusal of the Ex.D-2 to D-9 would show that Ex.D-2 is for godown No.1 for period from 28/12/94 to 12/04/97, Ex.D-3 is for godown No.2 for period from 28/12/94 to 4/09/95, Ex.D-4 is for godown No.3 for period from 28/12/94 to 12/04/97, Ex.D-5 is for godown No.4 for period from 28/12/94 to 2/09/95, Ex.D-6 is for godown No.5 for period from 2/02/95 to 26/06/95, Ex.D-7 is for godown No.6 for period from 16/02/95 to 12/04/97 and Ex.D-8 is for godown No.7 for period from 14/02/95 to 5/01/96 and Ex.D-9 is for godown No.2 for the arrears of rent from period 15/05/96 to 16/10/96. Perusal of the Ex.D-2 to D-9 shows that they are dated 7/08/97. Statement of DW-2 S.L. Sahu admitted the fact that Ex.D-2 to D-9 bears his signature. He stated that he has endorsed some recovery amount, however has not checked the amount of bill. In the cross examination defendant's witness has stated that though bill was

filed for recovery of the amount for rent in one consolidated amount but no recovery demand was earlier made to it.

8. DW-1 G. Surya Narayan stated that he was godown incharge and he did not have authority to settle any terms, however has forwarded Ex.D-2 to D-9 for release of payment. Perusal of the said documents it do not show that there was bilateral agreement in between the parties neither they contain a promise to pay in express terms. Therefore, contention of the plaintiff PW-1 that it amounts to acknowledgement will not take within the purview of section 18 of the Indian Limitation Act and it would be an unilateral act of the plaintiff which contains an admission of plaintiff but not acknowledged within period of limitation. Statement of the defendant that in respect of godown No.1 plaintiff was entitled to 10 months arrears, in respect of godown No.2 plaintiff was entitled to 4 months arrears, in respect of godown No.3 plaintiff was entitled to 10 months arrears, in respect of godown No.6 plaintiff was entitled to 10 months arrears appears to be in conformity to the article 52 of the Indian Limitation Act as the recovery can be made only for the previous three years. Suit having been filed on 26/07/99 cut of date for the back period would be 25/07/96 as such before 25/07/96 any recovery so claimed would be barred under article 52 of the Indian Limitation Act.

9. Learned court below has further held that rate of the godown were 80 ps per sq.ft also cannot be appreciated in view of the document Ex.D-1. Ex.D-1 is letter written by the plaintiff which is proved by DW-2 and stated that it was written by plaintiff Bajrang Arawal and that too before him. Finding of the court below that signature should have been proved by the expert cannot be held good and reading of Ex.D-1 would show that the plaintiff has accepted rent @ 60 ps sq.ft. instead of 80 ps

sq.ft. No rental agreement has been produced by either side. Therefore what was the terms of the agreement it is not clear and placed before the court. In view of the same, it is held that except admission which is made by the defendant of Rs.15954/- which would be within limitation plaintiff would be entitled to receive. Under the facts and circumstances, decree is modified to the extent that the plaintiff would be entitled to claim of Rs.15954/- instead of Rs.72365.84. Amount shall carry interest @ 6% per annum from 7/08/97. Decree be accordingly drawn and modified. Parties shall bear their own cost.

10. Accordingly, with the above observation the appeal stands disposed of.

Sd/-
(Goutam Bhaduri)
JUDGE