

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 89 of 2017

- Chandrakant Yadu S/o Ramnarayan Yadu, Aged About 44 Years
Occupation Contractor Civil Grade A-2, R/o Ramsagarpara, Bhatapara,
Tahsil Bhatapara, District Baloda Bazar-Bhatapara,
ChhattisgarhPlaintiff

---- Appellant

Versus

1. Municipalities, Bhatapara District Raipur Now At Present District Baloda
Bazar, Through Chief Municipal Officer, Municipalities, Bhatapara, District
Baloda Bazar-Bhatapara, ChhattisgarhDefendant No.1
2. State Of Chhattisgarh, Through Collector, Baloda Bazar, District Baloda
Bazar-Bhatapara, ChhattisgarhDefendant No.2

---- Respondents

For Appellant : Shri VK Pandey, Advocate

For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer

**Hon'ble Shri Prashant Kumar Mishra, Actg CJ &
Hon'ble Shri Justice Parth Prateem Sahu**

Order on Board by Prashant Kumar Mishra, Actg CJ.

10.04.2019

1) This First Appeal under Section 96 of the Code of Civil Procedure has been preferred by the appellant/plaintiff challenging dismissal of his suit for recovery of sum of Rs.6,98,662/- together with interest @ 18% from the date of filing of the suit till its recovery.

2) The plaintiff preferred the suit on 25.01.2011 for recovery of his dues as the defendant-Municipality failed to make payment of the contract amount for execution of different works by the plaintiff for which the Municipality awarded contract as is mentioned in paragraph-5 of the plaint. The defendant did not dispute award of contract to the appellant nor was it disputed that the appellant has executed the contract. In addition to denial of all the plaint allegations, the defendant pleaded that the suit is barred by

limitation as well as for non-service of notice under Section 319(1) of the Madhya Pradesh Municipalities Act, 1961 (for short, 'the Act 1961').

3) At the end of trial, the trial Court found that the plaintiff has executed the contract and is entitled to the plaint amount but the suit was found barred by limitation as well as barred under Section 319(2) of the Act 1961.

4) Assailing the impugned judgment and decree on both the counts, it is argued by learned counsel for the appellant on the strength of law laid down by the Division Bench of Madhya Pradesh High Court in the matter of **Bhaiyalal Pannalal Vs Municipal Committee, Murwara** reported in 1958 MPLJ 251 and that of a Single Bench in the matter of **Buddiprakash Sharma Vs Nagar Palika, Jaura** reported in 1991 MPLJ 933, that in a suit for recovery of money due on a contract, the provisions contained in Section 319(1) of the Act 1961 would not apply. He would also submit that the suit was apparently within limitation and the finding to the contrary is illegal and perverse.

5) We have heard learned counsel for the appellant and examined the record in the absence of counsel for respondent-Municipality.

6) In course of evidence, plaintiff has filed documents in form of letter issued to him by the Municipal Council, Bhatapara on 31.08.2010 (Ex.P/1) and 16.10.2012 (Ex.P/5) in which the Municipal Council has admitted the dues payable to the plaintiff. It is also to be seen that in the document Ex.P/5 the last column is the date on which final bill was prepared. It shows that the earliest preparation of final bill in the construction work at

Lal Bahadur Sastry ward was on 15.02.2008, the other final bill being prepared much later, the suit filed within three years from the date of preparation of final bill would be within limitation. Even otherwise, in a suit for recovery of amount, it is the date of denial of payment of amount or the date on which the final bill was prepared would be treated as the date on which the limitation begins to run. The Municipality never replied to the legal notice served by the appellant through his counsel on 07.09.2010 Ex.P/2. If the Municipality failed to submit any reply to the legal notice, the suit could have been filed within three years from the date the dues were admitted or the final bills were prepared by the Municipal Council which is clearly available on record in form of Ex.P/1 and Ex.P/5. We thus hold that the plaintiff's suit was within limitation and the trial Court's finding to the contrary is illegal and perverse.

7) The next ground on which the plaintiff has been non-suited is for non-compliance of Section 319(1) of the Act 1961 inasmuch as the plaintiff has not served any notice under that provision before institution of suit.

8) Section 319(1) of the Act 1961 provides that no suit shall be instituted against any Council or any Councillor, Officer or servant thereof or any person acting under the direction of any such Council, Councillor, Officer or servant for anything done or purporting to be done under this Act, until the expiration of two months next after the notice, in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.

9) Admittedly, plaintiff has not served any notice under this provision to the Council before institution of the suit. However, the question is whether at all, in a suit of this nature for recovery of unpaid dues arising out of a contract, the provision would apply.

10) In **Bhaiyalal Pannalal** (supra) the Division Bench of Madhya Pradesh High court would hold that the omission to pay a sum due under a contract is not an act done or purporting to be done under the Act but under the contract itself. Referring to several earlier decisions of the Nagpur and other High Courts, Division Bench opined that the Municipal Committee was doubtless empowered under the Act to enter into the contract in suit to get the works executed, which were within its duties and discretionary powers, but in the absence of a provision in the Act empowering it to withhold the payment for such works its omission to pay would not be referable to the Act. In other words, what the Division Bench would hold that an act performed under the Act and an action pursuant to a contract are two different situations.

11) Following **Bhaiyalal Pannalal** (supra), a Single Bench in the matter of **Buddiprakash Sharma** (supra) has reiterated the law to hold that suit against Municipal Council for recovery of money due on a contract cannot be defeated for non-service of notice under Section 319(1) of the Act 1961. In this matter reference is made to another judgment of Division Bench of MP High Court in the matter of **NK Gupta Vs Mungaturam Bhagwandas (Firm)**, reported in 1969 JLJ Note 59 in which the court was considering scope of Section 401 of the MP Municipal Corporation Act.

12) Considering the provisions contained under Section 319 of the Act 1961, we have no hesitation in following the law laid down by the Division Bench of MP High Court in the matter of **Bhaiyalal Pannalal** (supra) therefore, following the said dictum, we are inclined to hold that the trial Court was not justified in dismissing plaintiff's suit for non-compliance of Section 319(1) of the Act 1961.

13) In view of the aforesaid discussion, both the grounds on which plaintiff has been non-suited have not been decided in accordance with law. Therefore, the findings on those issues are set aside. Since the trial Court has found the plaintiff to be entitled to the sum of Rs.6,98,662/-, but the suit has been dismissed on the above two technical grounds, while setting aside the impugned judgment and decree, we allow the appeal decreeing the plaintiff suit for Rs.6,98,662/- along with interest @ 9% per annum from the date of filing of suit till its recovery. The defendant shall also pay the cost of suit throughout to the plaintiff.

Sd/-
(Prashant Kumar Mishra)
Actg Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge