

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.97/2019

Western Coalfields Ltd. Through Chief General Manager .vs. Pramod
Panjabrao Thakare

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. D. L. Dharmadhikari, Advocate for appellant.

CORAM : V. M. DESHPANDE, J.

DATED : JUNE 10, 2019

Heard Mr. Dharmadhikari, learned counsel for the appellant.

By the present appeal, appellant is challenging the judgment and decree passed by learned 2nd Joint Civil Judge Senior Division, Chandrapur in Special Civil Suit No.165/1995 dated 16.07.2011, which is confirmed and modified in Regular Civil Appeal No.76/2014 passed by District Judge-1, Chandrapur on 29.03.2017. The appeal was carried before the learned lower appellate Court by the present appellant.

According to the learned counsel for appellant, the suit was barred by limitation and, therefore, both the Courts below have committed mistake in granting the decree. Only the question of limitation was pressed into service before this Court at the time of admission. Admittedly, the appellant, a subsidiary of Coal India Ltd.,

issued tenders for plantation at three different sites. Admittedly, the respondent was a successful bidder of the said tender notice. An agreement was entered into in between the appellant and the successful bidder on 02.03.1991. The period of contract was from June-1990 to June-1992. Undisputedly, insofar as Majri area is concerned, the plantation was successfully completed and full payment was made to the respondent. The plantation was also completed at the sites of Ghuggus, Tadali and New Majri.

Admittedly, at no point of time, any objection was raised in respect of the plantation. As per clause (3) of agreement (Exh.-52), the appellant was required to release monthly installment of Rs.33,750/- regularly for a period of 20 months starting from October-1990.

It is the submission of the learned counsel for the appellant that since the period of contract had expired in June-1992 and the last payment by the appellant became due in June-1992, the suit which was filed in the year November-1995 is barred by limitation. According to the plaintiff's case, since the contract period was over in the year 1992 and the suit is filed in November-1995, it is hit by the provisions of the Limitation Act. Exh.-52 specifically states that the appellant was to pay the amount for 20 months starting from October-1990. The last demand for such was made by the respondent in the year 1993. Further, the measurement book shows that the last entry made on 03.12.1995 is the specific finding of the fact recorded by the learned lower appellate Court. Measurement book is the last

word insofar as the measurement undertaken by the appellant in respect of the work done by the respondent. Thus, in my view, till 1995, the contract was not over. The Courts below have specifically considered that since no time was fixed, Article 18 of the Limitation Act will not be applicable. However, residuary clause of Article 113 will govern the period of limitation.

In view of the said, the Court below has correctly reached to the conclusion that the suit was filed within the period of limitation. Since no other substantial question is involved in the present second appeal, the appeal is rejected. No order as to costs.

JUDGE

kahale