

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on: 06.01.2020

Delivered on: 09.01.2020

Coram:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.No.1337 of 2009

1.The Branch Manager,
Kada Mark Beedi,
Arcot,
No.12/A, Fakir Ahmed Street,
Arcot

2.Asiam Sahib
Managing Partner,
V.A.Abdul Jabbar Sahib & Sons,
No.186, Chitteri Road,
Ariyoor, Vellore-632010, ... Appellants/Appellants/Defendants

vs.

G.Balu ... Respondent/Respondent/Plaintiff

Second Appeal is filed against the judgement and decree dated 31.07.2009 passed by the Subordinate Judge, Ranipet, Vellore District in A.S.No.02 of 2008 confirming the judgement and decree dated 26.10.2007, passed by the District Munsif cum Judicial Magistrate, Arcot, in O.S.No.111 of 2005.

For appellants :: Mr.K.M.Aasim Shehzad for
M/s.BFS Legal

For Respondent :: Mr.K.M.Ramesh

JUDGEMENT

This Second Appeal is filed by the defendants in the suit as against the judgement and decree, dated 31.07.2009 passed by the Subordinate Judge, Ranipet, Vellore District, in A.S.No.02 of 2008, confirming the judgement and decree, dated 26.10.2007,

passed by the District Munsif-cum-Judicial Magistrate, Arcot, in O.S.No.111 of 2005.

2.The appellants herein are the defendants in the suit and the respondent is the plaintiff, before the trial Court. The respondent herein has approached the trial Court seeking direction to pay him a sum of Rs.1 lakh towards compensation for the breach of oral contract for the period from 30.03.1994 to 29.03.1997. In fact, the respondent/plaintiff filed the suit as an indigent person and the trial Court has allowed the same and permitted the respondent/plaintiff to maintain the suit as indigent person.

3.The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

4.According to the plaintiff, the first defendant was the Branch Manager of 'Kada Mark Beedi' Company and was involved in the Beedi manufacture and distribution. There was an oral agreement between the plaintiff and the defendants in regard to supply of Beedi through 30 workers and as per the agreement, the plaintiff had to obtain the leaves known as 'pugaiyilai' and thread as raw materials. The defendants have also issued valid licence in favour of the plaintiff. The defendants failed to supply the thread for production of Beedi, which forced the plaintiff to file a petition before the District Labour Officer, Vellore, to direct the defendants to supply the thread. In the said application, a direction was issued by the Labour Officer. According to the plaintiff, this had provoked the defendants, which ultimately resulted in the stopping of supply of raw materials to the plaintiff on 30.08.1994. This action on the part of the defendants was a clear breach of Contract and since the income earned from the Contract was discontinued in view of the unilateral breach of the terms of Contract by the defendants, a suit was filed seeking damages to the tune of Rs.1 lakh.

5.On behalf of the appellants/defendants, a written statement was filed resisting the claim of the plaintiff. The defendants took a preliminary objection that the suit was barred by limitation since it was filed beyond the period of three years after the cause of action had arisen. In the written statement it was also contended that the suit was not maintainable even otherwise for the reason that the plaintiff was a Trade Unionist and he raised an Industrial Dispute before the Labour Court, under Section 2-A of the Industrial Disputes Act, claiming that he was working since 1966 under the Contractor Mr.G.Subramani and he was illegally terminated from service in September 1994 and the dispute was pending, in I.D.No.151 of 2003, before the Labour Court, Vellore.

Therefore, it is the contention of the defendants that the claim of the plaintiff that he was a Beedi Contractor was an utter falsehood, since during the same period he claims to have worked under one Mr.G.Subramani as worker and filed an Industrial Dispute before the Labour Court, Vellore. Even otherwise, it was contended in the written statement that the claim of the plaintiff was not established, since there was no principal-agent relationship and therefore, prayed for dismissal of the suit.

6.After framing of the issues, the trial Court passed the judgement and decree in favour of the plaintiff, after adverting to various material evidence and the pleadings of the parties. According to the trial Court, the preliminary objection of limitation was discountenanced for the simple reason that the suit was filed in 1997 itself originally, but thereafter, due to some defect, it was re-presented, after compliance, in 2001 and therefore, the trial Court found that the suit was filed in time and therefore, the objection of limitation was not sustainable. According to the plaintiff, the legal notice was issued on 12.02.1996 and the plaintiff had filed the suit originally on 29.08.1997. Therefore, the trial Court found that the question of limitation had not arisen in the case.

7.As regards the contention of filing of case before the Labour Court by the plaintiff, the trial Court found that when a legal notice Ex.A1 was issued by the plaintiff claiming compensation, on 12.02.1996, the defendants did not choose to give any reply. The legal notice Ex.A1 was received by the defendants and the acknowledgement card was marked as Ex.A2. Ex.A3 is a xerox copy of Challan and Ex.A4 is the registration certificate issued in the name of plaintiff to do business as a Contractor. Ex.A4 was issued on 21.07.1992. Ex.A5 is the Provident Fund Slip of P.W.2. Ex.A6 is the original form of Challan, dated 30.06.1994. Ex.A7 series are the Challan copies issued for the period from 1991 to 1993. The trial Court also found that the Manager, who was examined as D.W.1, on the defendants side, has admitted that the plaintiff was the licence Contractor, who supplied Beedi to the defendants on contract basis and he also admitted that the Contract was an oral one. D.W.1 also deposed that the plaintiff had stopped the supply of Beedies at a particular point of time and the Contract had come to an end. Therefore, the Contract between the plaintiff and the defendants had been established in no uncertain terms. Moreover, the defendants also did not care to send a reply to the legal notice Ex.A1, issued on behalf of the plaintiff, claiming compensation, which was the basis of laying the suit.

8. In the above circumstances, the trial Court found that the plaintiff had established the contractual agreement between him and the defendants and therefore, found that the plaintiff had suffered loss and ultimately decreed the suit in his favour as prayed for. As against the said judgement and decree of the trial Court, the defendants filed an appeal before the lower appellate Court in A.S.No.02 of 2008. Before the appellate Court, the defendants, as appellants, have raised the objections which they have raised before the trial Court and the lower appellate Court has dealt with all the contentions raised before it and ultimately dismissed the appeal. The appellate Court, while dismissing the appeal, has in extenso relied on all the exhibits marked in the trial Court and dealt with all legal objections, including the limitation point and the aspect of the plaintiff describing himself as a 'workman' and the filing of the Industrial Dispute before the Labour Court by the plaintiff. The lower appellate Court has passed a detailed judgement, dated 31.07.2000, dismissing the appeal filed by the defendants, confirming the judgement and decree of the trial Court. Aggrieved by the said judgement and decree of the lower appellate Court, the present Second Appeal has been filed by the defendants.

9. While admitting the Second Appeal, this Court has framed the following Substantial Questions of Law:

"1. Whether the lower Court below can decide the issue of limitation contrary to law of the land, contrary to orders of the Hon'ble Supreme Court and High Courts and contrary to available records without assigning valid reasons?

2. Whether the Courts below are right in holding that the agreement was in force when the respondent himself has deposed in his proof affidavit that the agreement was not in force.?"

10. From the above narrative, it could be seen that the legal objections, regarding the maintainability of the suit, were found to be without any merit and discountenanced both on facts and in law, by both the Courts below. On the aspect of limitation it was established that the suit was filed in 1997 within a period of three years from the date the cause of action had arisen and later on when the suit papers were returned, the same was resubmitted after a particular point of time. Therefore, both the Courts below have found that the preliminary objection as to the maintainability of the suit was not to be

maintained, factually. Therefore, the first Question of Law framed by this Court is to be answered against the appellants/defendants. When factually the trial Court as well as the lower appellate Court have given a finding that the suit was filed in time, as found in the judgements and decrees of the Courts below, the Substantial Question of Law No.1, as framed by this Court, has no legs to stand on.

11. Moreover, as regards the other legal objection regarding the plaintiff claiming himself as a 'workman' during the same relevant period and going before the Labour Court by filing an Industrial Dispute, the said objection was brushed aside by both the Courts below stating that there were overwhelming evidence available through various exhibits marked on the side of the plaintiff, viz., Exs.A3 to A6 and Ex.A7 series, establishing the factum of the plaintiff being a licence holder of Beedi Contractor. In fact, the defendants' witness, who was the Branch Manager of the defendant Beedi company, had admitted about the Beedi Contract until a particular point of time and therefore, the factum of relationship was established and the fact that the defendants stopped the supply of raw materials to the plaintiff was also admitted by the said defendant witness. Further, it was an admitted case even by the defendant that there was an agreement in force up to a particular point of time i.e. till 1994 and also the breach of Contract during the time when the Contract was subsisting and in force. Therefore, the other substantial question of law framed by this Court, while admitting the Second Appeal, needs to be answered against the appellants/defendants.

12. Although on behalf of the appellants the learned counsel argued strenuously and emphasized the legal contention about the limitation and also about the plaintiff filing Industrial Dispute, before the Labour Court, claiming himself as workman, against one G.Subramaniam, yet considering the factual finding given by both the Courts below in regard to limitation, the said argument advanced by the learned counsel needs to be rejected outright. The learned counsel, in fact, took pains to impress upon this Court that the plaintiff described himself as a 'workman' during the relevant period and therefore, he could not have acted as a business partner of the defendants. This Court is of the considered view that both the Courts below have rightly ignored such submission, since, independent of the pendency of the Industrial dispute, the Courts below have come to a conclusion that there existed a contractual partnership between the defendants and the plaintiff. Their relationship was overwhelmingly established through several exhibits marked on the side of the plaintiff and

further when the legal notice-Ex.A1 was issued in 1996, on behalf of the plaintiff, the defendants had not chosen to give any reply. Only when a suit was filed, several objections were taken in the written statement.

13.The learned counsel for the appellants/defendants would submit that this is a case where no written contract was placed and therefore, the onus was on the plaintiff to establish the actual damage suffered by him for the Courts below to award the compensation as claimed by the plaintiff.

14.Although the above argument appeared to be convincing to some extent, yet both the trial Court as well as the appellate Court have found factually that the plaintiff had established the case overwhelmingly, through several exhibits marked on his side. Unless the finding of both the Courts below are extremely perverse and legally unacceptable, it is not for this Court, sitting in Second Appeal, to re-appreciate the evidence. All this Court is entrusted with the jurisdiction under Section 100 of C.P.C. is to see as to whether Substantial Question of Law arises for consideration with reference to the judgements and decrees of the Courts below. In this case, this Court does not find any infirmity in the findings of both the Courts below and the judgements and decrees of both the Courts below are founded on sound facts and reasons and the Courts below have also applied the correct legal principle while allowing the claim of the plaintiff.

15.In the above circumstances, this Court does not find any infirmity at all in the approach of both the Courts below and therefore, the judgements and decrees of both the Courts below have to be upheld.

16.In the result, the Second Appeal is dismissed. Both the Substantial Questions of Law, framed by this Court, are answered against the appellants/defendants. No costs.

Sd/-

Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

Msk

To

1.The Subordinate Judge, Ranipet, Vellore District

2.The District Munsif cum Judicial Magistrate, Arcot

Copy To
The Section officer,
VR Section, High Court, Madras-104

+1cc to Mr.K.M.Ramesh, Advocate SR.No.2174

S.A.No.1337 of 2009

PVS (CO)
GMY (24/08/2020)



WEB COPY