



THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMI NATHAN

S.A.(MD)No.1168 of 2008

Subahani

... Appellant/Respondent/Plaintiff

-Vs-

Minar Textiles Industries Limited,
Managiri,
Through its Managing Director,
Having Office at Managiri,
Karaikudi Taluk,
Sivagangai District.

...Respondent/Appellant/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 04.06.2008 of the learned District Judge, Sivagangai and made in A.S.No.3 of 2008 on his file reversing the Judgment and decree dated 10.07.2007 of the learned Subordinate Judge, Devakottai and made in O.S.No.94 of 1999 on his file.

For Appellant : Mr.K.N.Thampi

For Respondent : Mr.R.Sundar Srinivasan

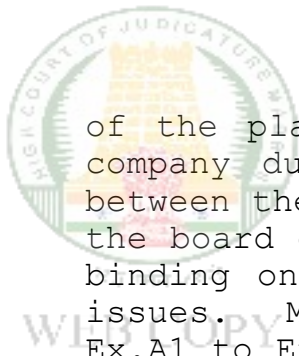
JUDGMENT

The plaintiff in O.S.No.94 of 1999 on the file of the Sub Court, Devakottai is the appellant in this second appeal.

2.The case of the plaintiff is as follows:-

The plaintiff is the owner of the suit well. The defendant approached the plaintiff for permission to lift water from the well on payment of Rs.100/- per day. The defendant is a textile manufacturing industry. The defendant paid a sum of Rs.5,000/- on 11.03.1993 as security deposit. On 23.08.1993, they paid a further sum of Rs.30,000/-. Even though the defendant continued to draw water from the plaintiff's well, no further amount was paid. The defendant owed to pay a total sum of Rs.1,90,000/- by way of arrears. Since the said amount remained unpaid even after the repeated demands, the plaintiff instituted the aforesaid suit.

3.The defendant denied the plaint allegations. The defendant claimed that the amount of Rs.35,000/- paid by the defendant in March 1993 represented advance amount for purchase of the land on which the well is situated. The defendant would further claim that the well was dug by the defendant only. The defendant denied that they had agreed to pay a sum of Rs.100/- per day for lifting water from the said well. The defendant further pointed out that the plaintiff's power agent Mohammed Thasthakir was not only the brother



of the plaintiff but also the managing director of the defendant company during the relevant time. Since the so called contract between the plaintiff and the defendant was not formally approved by the board of directors, the so called suit agreement cannot be made binding on the defendant. The trial Judge framed as many as five issues. Mohammed Thasthakir examined himself as P.W.1 and marked Ex.A1 to Ex.A8. On the side of the defendant, three witnesses were examined and Ex.B1 to Ex.B23 were marked. The learned trial Judge came to the conclusion that the defendant was liable to satisfy the suit claim. By Judgment and decree dated 10.07.2007, the suit was decreed. Questioning the same, the defendant filed A.S.No.3 of 2008 before the District Judge, Sivagangai. By Judgment and decree dated 04.06.2008, the Judgment and decree passed by the trial Court was set aside and the first appeal was allowed. Challenging the same, this second appeal came to be filed.

4.The second appeal was admitted on the following substantial questions of law:-

"1.Whether the Judgment and decree of the lower Appellate Court are correct and sustainable since the contract between the respondent and the appellant has not been legally avoided by the respondent, as per Section 297(5) of the Companies Act?

2.Whether the Judgment and decree of the lower Appellate Court dismissing the appellant's suit as barred by limitation are correct and sustainable, since the appellant's case is that the respondent owes to her the cost of the water lifter during the period from 11.03.1993 and 11.06.1999 minus Rs.35,000/- already paid, and the suit was filed on 13.08.1999?

3.Whether the Judgment and decree of the lower appellate Court are correct and sustainable, since the suit claim is not for arrears of rent and hence, Article 52 of the Limitation Act is inapplicable to the case?"

5.Heard the learned counsel on either side.

6.The learned counsel appearing for the appellant submitted that the First Appellate Court erred in reversing the well considered decision of the trial Court. The appellate Court ought not to have invoked Section 297 of the Companies Act for non suiting the appellant herein. The defendant in their written statements have not categorically stated as to when they notified the plaintiff about the voiding of the contract. The learned counsel for the appellant would submit that Section 297 of the Companies Act cannot be applied in the abstract. He also would point out that the defence of the defendant that there was a sale agreement between the parties had already been rejected in the other proceedings instituted by the defendant. When it has been categorically established that the defendant had been drawing water from the suit well that belonged to the plaintiff, then, the defendant is obliged to pay charges for the same. He called for setting aside the



Judgment and decree passed by the First Appellate Court and restoring the decision of the trial Court.

7. Per contra, the learned counsel appearing for the respondent submitted that the impugned Judgment passed by the first Appellate Court does not call for any interference. He pressed for dismissal of the second appeal.

8. I carefully considered the rival contentions and went through the evidence on record. The first Appellate Court framed the following two issues for consideration:-

(1) Whether the claim of the plaintiff that on oral agreement with the defendant company agreed to pay a sum of Rs.100/- per day for lifting water is true? and if so whether such oral agreement is enforceable against the defendant company in view of the provisions under Section 297 of Companies Act?

(2) Whether the suit is barred by limitation?

9. The Appellate Court answered both the issues in favour of the defendant and non suited the plaintiff. The Appellate Court rendered a finding that there was a oral agreement between the parties as regards the lifting of water from the suit well. The only question that arises for determination is whether such an agreement can be enforced against the defendant. To answer the said question, it is necessary to have a look at Section 46 and Section 297 of the Companies Act, 1956. The said provisions read as under:-

46. Form of contract: (1) Contracts on behalf of a company may be made as follows:-

(a) a contract which, if made between private persons, would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

(b) a contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) A contract made according to this Section shall bind the company.

297. Board's sanction to be required for certain contracts in which particular directors are interested- (1) Except with the consent of the Board of Directors of a company, a director of the company or his relatives, a firm in which such a director or relative is a partner, any other partner in such a firm or a private company of which the director is a member or director, shall not enter into any contract with the company-

(a) for the sale, purchase or supply of any goods,



materials or services;

(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company;

(provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government)

(2) Nothing contained in clause(a) of sub-section (1) shall affect

(a) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner, private company as aforesaid for cash at prevailing market prices; or

(b) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business:

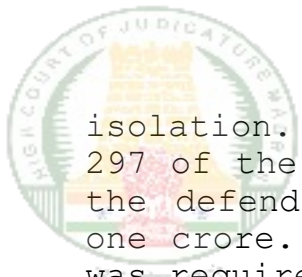
(c) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner, or private company as aforesaid.

(3) Notwithstanding anything contained in sub-sections (1) and (2) a director, relative, firm, partner, or private company as aforesaid may in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials, or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract; but in such a case, the consent of the Board shall be obtained at a meeting within three meeting three months of the date on which the contract was entered into.

(4) Every consent of the Board required under this Section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.

(5) If consent is not accorded to any contract under this Section, anything done in pursuance of the contract shall be voidable at the option of the Board.

(6) Nothing in this Section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1960.



isolation. Section 46 of the Act must be read along with Section 297 of the Companies Act. It has been established in evidence that the defendant company was having paid-up capital of not less than one crore. Therefore, the prior approval of the central government was required for entering into a contract, in which, the director of the company or his relative is having an interest. The suit well belongs to the appellant Subahani and her brother Mohammed Thasthakir was the managing director of the defendant company. Therefore, two conditions will have to be fulfilled. Firstly, the consent of the board of directors was required. Without such consent, the contract could not have been entered into. Secondly, the prior approval of the central government was also required. In this case, both the conditions had not been fulfilled. In view of the requirements set out in Section 297 of the Companies Act, 1956, the contract could have been only in writing and it could not have been oral. Only if the contract had been in writing and had also fulfilled the conditions set out in Section 297 of the Companies Act, the contract could have bound the company. In this case, Mohammed Thasthakir after entering into a oral contract with his sister in his capacity as managing director of the defendant company crossed over and filed the suit on behalf of the sister against the company of which, he was the erstwhile managing director. The proposition that oral agreements can also bind a company will not hold good in cases attracting Section 297 of the Act. The first Appellate Court rightly came to the conclusion that there has been a breach of Section 297 of the Companies Act. Since I have held that a oral contract of this nature cannot bind the defendant, the question of avoiding such a contract also does not arise.

11.As regards the point of limitation, it has been dealt with by the Appellate Court in the following terms.

"20.Now coming on to the question of limitation, Article 52 Limitation Act prescribes three years period for claiming the arrears of rent from the date the arrears become due. As seen from Ex.A1 legal notice sent by the plaintiff and Ex.A2 acknowledgment card, the plaintiff sent legal notice dated 31.01.1996 calling upon the defendant company to pay a sum of Rs.69,000/- towards the cost of water and Rs.500/- being the cost of notice. The suit is filed in the year 1999 claiming the rent for lifting of water for the period from 11.03.1993 to 11.06.1999 for six years, three months after deducting Rs.35,000/- given by the defendant company. So, it is clear that the suit is filed after the lapse of three years on which the rent for lifting of water become due from the defendant company. In the plaint, it has been stated that because of the suits filed by the defendant in O.S.No.39/96 for permanent injunction and O.S.No.115/97 for specific performance, the right of claim of the arrears of rent is being suspended under Article 52 of Limitation Act. But as submitted by the learned counsel appearing for the defendant, there is no stay



preventing the plaintiff from filing any suit despite pending of suits filed by the defendant for the recovery of the rent arrears due from the defendant company within the period of limitation. So, filing of the suits by the defendant cannot operate as stay or suspension of the operation of the period of limitation for the claim of the plaintiff regarding the arrears of rent for lifting of water on the basis of oral contract. So, the allegation in the plaint that the earlier suits filed by the defendant operate as stay or suspension of right of claim of arrears cannot be sustainable and is liable to be rejected. This suit has been filed for the recovery of rent arrears for lifting of water on the basis of oral agreement entered into between the plaintiff and defendant company only in the year 1999 after the expiry of three years from the date on which the arrears of rent become due from the defendant company and as such the suit barred by limitation under Article 52 of Limitation Act."

12.I have already held that the suit agreement was clearly not binding on the respondent herein. The substantial questions of law are answered against the appellant. The Judgment and decree passed by the first Appellate Court is confirmed. The second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Subordinate Judge, Devakottai.

2.The District Judge, Sivagangai.

3.The Record Keeper, (2C)

V.R.Section,

Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.N.THAMPI, Advocate (SR-18015[F] dated 29/04/2021)

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-17981[F] dated 29/04/2021)

S.A. (MD)No.1168 of 2008

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KMK (CO)

KB(09.06.2021) 6P 7C

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