



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S.(MD)No.26 of 2014

and

M.P.(MD)No.1 of 2015

WEB COPY

Jothi Brick Works
Through its Partner,
A.S.A.Baharudeen,
Kaliyavoor, Srivaikundam,
Thoothukudi District.

... Appellant/Plaintiff

-Vs-

1.The State of Tamil Nadu
Rep., by its Secretary,
Commercial Tax Department,
Fort St.George, Chennai.

2.The Deputy Commercial Tax Officer,
Beach Road,
Tuticorin.

... Respondents/Defendants

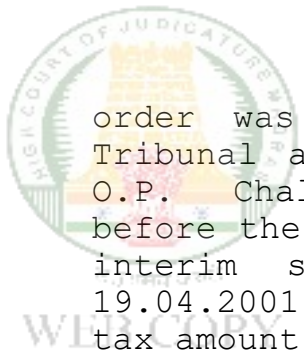
PRAYER: Appeal filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 26.09.2012 made in O.S.No.53 of 2008 on the file of the Principal District Judge, Thoothukudi.

For Appellant	: Mr.K.Vadivelu for Mr.A.S.Mujibur Rahman
For Respondents	: Mr.R.Ragavendran Government Advocate

JUDGMENT

The plaintiff in O.S.No.53 of 2008 on the file of the Principal District Judge, Thoothukudi, is the appellant herein.

2.The plaintiff is a partnership firm carrying on their business at Kaliyavoor, Srivaikuntam Taluk, Thoothukudi District. It was an assessee under the second defendant. The plaintiff's partnership accounts for the period from 1985-86 to 1993-94 were verified by the second defendant and an order of nil assessment was also made. However, a demand notice under form B-6 was sent calling upon the plaintiff to pay a sum of Rs.9,31,349/-. Questioning the same, the plaintiff filed O.P.No.407 of 2000 before the Tamilnadu Taxation Special Tribunal. The case of the plaintiff before the Tribunal was that the order reopening the assessments was not served on it. The said contention was controverted by the authorities who claimed that the assessment



order was served on the plaintiff on 24.05.1999 itself. The Tribunal accepted the stand of the authorities and dismissed the O.P. Challenging the same, the plaintiff filed W.P.No.980 of 2001 before the Division Bench of the Madras High Court. While granting interim stay, the Hon'ble Division Bench vide order dated 19.04.2001, directed the plaintiff to deposit 50% of the assessed tax amount within a period of five weeks.

3.Challenging the same, the plaintiff moved the Hon'ble Supreme Court of India which upheld the submission of the plaintiff as regards non-service of the assessment order. The department was directed to serve the assessment order, so as to enable the plaintiff to file an appeal before the appellate authority. Pursuant to the direction given by the Supreme Court, copies of the assessment order were served on the plaintiff. The plaintiff filed an appeal before the Assistant Commissioner, Commercial Taxes, Tirunelveli who vide order dated 11.05.2004 allowed the appeal and set aside the levy of sales tax.

4.Earlier, the plaintiff issued legal notice dated 14.12.2002 addressed to the defendants demanding damages to the tune of Rs.15,00,000/-. The plaintiff wanted to know as to how the defendants took the stand that the assessment order was served on the plaintiff on 24.05.1999. After succeeding before the appellate authority, the plaintiff filed W.P.(MD)No.1872 of 2005 for directing the Government of Tamilnadu and the assessing officer to pay a sum of Rs.15,00,000/- as compensation. The Writ Petition was dismissed on 26.06.2007. W.A.(MD)No.38 of 2007 questioning the said order was also dismissed. Review Application (MD)No.50 of 2007 also met the same fate. Thereafter, the present suit came to be laid for directing the defendants to pay a sum of Rs.15,00,000/- as damages with subsequent interest. The suit was dismissed by the Court below by the impugned judgment and decree dated 26.09.2012. Challenging the same, this appeal has been filed.

5.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to reverse the decision of the trial Court and allow the appeal and decree the suit as prayed for. According to him, without any justification, concluded assessments were re-opened. The plaintiff was made to run literally from pillar to post. The plaintiff had to move the tribunal, single Judge of the High Court, Division Bench of the High Court and then the Supreme Court. In terms of the liberty given by the Supreme Court, the plaintiff moved the appellate authority. The plaintiff was put to untold hardship only because the defendants took a false stand that the order reopening the assessments was served on the plaintiff. In fact, the said order was served on an unconnected entity by name R.K.Enterprises. Therefore, the defendants ought to appropriately compensate the plaintiff. The Court below had erroneously applied the doctrine of estoppel and non- suited the plaintiff. According to



the appellant's counsel, there has been a gross miscarriage of justice.

6.Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

7.The point that arises for my consideration is as to whether the suit in question can be said to be time barred. No doubt, the appellant has been unnecessarily vexed by the action of the second defendant. The second defendant made a false representation before the tribunal which caused so much hardship to the plaintiff. Therefore, the plaintiff was definitely justified in claiming compensation from the defendants. But the plaintiff ought to have filed the suit for compensation within time. The assessments were made under the TNGST Act, 1959. Section 50 of the said Act prescribes a special rule of limitation. It reads as under :-

"50.Limitation for certain suits and prosecutions:- No suit shall be instituted against the Government and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of."

The cause of action for the plaintiff arose on 11.05.2004. The plaintiff instead of filing a suit for damages within six months from the said date chose to file writ petition followed by writ appeal and review petition. In the review petition, the plaintiff pleaded that since his writ appeal was dismissed by granting him liberty to work out his remedy before the civil Court, it should be clarified that the same would be a common law remedy *dehors* Section 49 and 50 of the TNGST Act. Though such a specific plea was made, it was not granted. The Hon'ble Division Bench observed that it was for the plaintiff herein to work out his remedy in the manner known to law and dismissed the review petition.

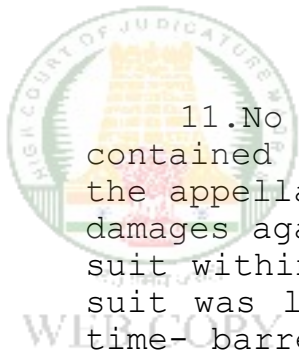
8.The observation made by the Hon'ble Division Bench cannot in any manner advance the case of the plaintiff. The suit in question was filed only on 10.09.2008 more than four years after the cause of action arose.

9.Section 50 of TNGST Act, 1959, would clearly apply to the case on hand. That is why, the trial Court non-suited the plaintiff on that ground. I wondered if by invoking Section 14 of the Limitation Act, 1963, the bar of limitation could be overcome. In computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the



proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which is unable to entertain it. This provision has been given an expansive and liberal interpretation in the decision reported in **(2015) 7 SCC 58 (M.P.Steel Corporation Vs. CCE)**. It is true that the TNGST Act, 1959, is a special enactment which would exclude the applicability of Section 14 of the Limitation Act, 1963. As per Section 2(j) of the Limitation Act, 1963, "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule and "prescribed period" means the period of limitation computed in accordance with the provision of the Limitation Act. According to Section 29(2), where any period of limitation has been prescribed for any suit or appeal or application by any special or local law, the provisions contained in Section 4 to 24 shall apply only insofar as and to the extent to which they are not expressly excluded by such special or local law. But in *M.P. Steel Corporation case*, the Hon'ble Supreme Court held that even where Section 14 of the Limitation Act may not apply, the principles on which Section 14 of the Limitation Act is based, being principles which advance the cause of justice, would nevertheless apply. Whenever a person bonafide prosecutes with due diligence another proceeding which proves to be abortive and no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the Court in such proceeding would be penalized for no fault of his own. The Hon'ble Supreme Court however clarified that the period prior to the initiation of any abortive proceeding cannot be excluded for the simple reason that Section 14 of the Limitation Act, 1963, does not enable the litigant to get a benefit beyond what is contemplated by the section- that is to put the litigant in the same position as if the abortive proceeding had never taken place.

10. In the case on hand, the limitation period was six months. The cause of action commenced on 11.05.2004 when the appellate authority allowed the plaintiff's statutory appeal. Limitation began to run from the said date. I am prepared to assume that the plaintiff was prosecuting the writ proceedings to get the same relief with due diligence. Writ proceedings under Article 226 of the Constitution of India would fall within the expression "civil proceeding" occurring in Section 14 of the Limitation Act. But the plaintiff herein filed W.P.(MD)No.1872 of 2005 only on 09.03.2005. By then, the limitation prescribed by Section 50 of the TNGST Act had already expired. Invocation of Section 14 of the Limitation Act would be of no avail. That is why, the plaintiff filed Review Application No.50 of 2007 and pleaded for grant of appropriate liberty which would help him to surmount the himalayan barrier erected by the said provision. Unfortunately, the Division Bench did not grant any such relief.



11.No doubt, the result of applying the limitation bar contained in Section 50 of TNGST Act has operated very harshly on the appellant. But I am helpless. The appellant did have a case for damages against the respondents but on account of his not filing the suit within six months from the cause of action arose, his right to suit was lost. The trial Court correctly held that the suit was time-barred. There is no ground to interfere. The appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

To

1.The Principal District Judge, Thoothukudi.

Copy to:

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-25643[F] dated 09/08/2021)

+1 CC to M/s.GP (SR-25786[F] dated 10/08/2021)

Judgment made in
A.S.(MD)No.26 of 2014
and
M.P.(MD)No.1 of 2015
09.08.2021

KS (CO)/RS (20.10.2021) 5P 6C