

04.09.2023
Court No.13
Item No.32
AP

FA 131 of 2013

**M/s T. K. Choudhury & Brothers
Vs.
The Secretary, Irrigation &
Waterways Directorate and Ors.**

Mr. Arnab Roy
Mr. Satyam Mukherjee

... For the Appellant.

1. The appeal arises out of a judgement and order dated 29th November, 2012 passed by the learned Civil Judge (Senior Division), 2nd Court, Barasat, North 24-Parganas in Money Suit No.80 of 2009.

2. The brief facts relevant to the case are that the petitioner participated in, and was successfully awarded tender for Re-excavation of SWF Channel (Phase -1) from Ch. 529.00 to Ch. 585.00 in connection with Land Development of Calcutta Leather Complex, under Calcutta Drainage Outfall Division during 1996-97.

3. The plaintiff completed the work on 24th June 1997 and received part payment. An amount of Rs.9,62,175/- was due and payable, together with a claim for refund of Rs.62,000/-.

4. Counsel for the plaintiff submits that there was some correspondence between the appellant and the respondent authorities until 2000. The claim had admittedly become barred by the law of limitation in June, 2003.

5. Notwithstanding the above, the writ petitioner approached this Court under Article 226 of the Constitution of India by way of WP No.15566 (W) of 2003. The said writ petition was disposed of by a Single Bench of this Court on 8th March, 2004 directing the respondent authorities to consider the writ petitioner's representation in accordance with law and pass a reasoned order.

6. The Director of Personnel & Ex-Officio Chief Engineer, Irrigation and Waterways Directorate, by an order dated 21st June, 2004 held that the writ petitioner's claims are all justified and due to them. The Directorate ordered the Executive Engineer, Calcutta Drainage Outfall Division to make all efforts to clear payments to the appellant by December 2004 without fail. However in the said order dated 21st June, 2004 there was no mention or finding of interest on any payment to the appellant.

7. The appellant has not challenged the said order any further. Admittedly, the appellant received payment from the respondents for a sum of Rs.9,62,175/- on 16th November, 2006. The payment was received by the appellants with the endorsement "Full and final settlement of all claims", noted by them.

8. The instant suit was filed on 1st July, 2009 claiming a total sum of Rs.20,03,629/- towards interest on the delayed payment. The respondents filed written statement. On the objection taken by the defendants that payment was received with the remark "full and final

settlement of all dues”, the appellant amended his plaint under Order 6 Rule 17, stating that the expression “full and final settlement” was put in by the appellant under force, threat and coercion from the respondents that they would not release payment to them without such endorsement.

9. The Court below framed six issues, three of which are relevant viz:- 1) As to whether the suit was barred by limitation? 2) Whether notices under section 80 were served in accordance with law? 3) Whether the plaintiff had cause of action for filing the suit.

10. In a clear and succinct discussion on all the issues the Court below found favour with the appellant on the question of service of notice under sections 79 and 80 of the CPC. On the issue of cause of action, the Court below relied upon decisions of the Supreme Court and found that the plaintiff has disentitled himself to any further claim of interest in view of the endorsement made by him on 16th November, 2006 that the payment was in full and final settlement of all claims against him. The Court also found that the claim of the plaintiff may have been barred by limitation.

11. There is substance in the finding of the Court below that the original cause of action of the plaintiff arose when he completed the work. Admittedly the last bit of work was done in June 1997. The cause of action of the plaintiff/appellant stood extinguished in June 2000.

12. In view of certain part payments made in the year 1999, the plaintiff may have got an extension. Even the limitation expired in the year 2002. As on the date of the filing of the writ petition in 2003, the plaintiff's debt was already barred by limitation. Any acknowledgement made thereafter by the respondent authorities cannot and does not extend the period of limitation of the plaintiff/appellant of an expired and/or time barred debt. The question of paying any interest to the appellant from 1997, therefore, did not and could not arise. The actual payment received by the appellant on 16th November, 2006 cannot and does not extend any original limitation that expired in the year 2002.

13. Coming to the endorsement made by the appellant against the payment made on 16th November, 2006 that the same constitutes a full and final settlement of all dues, this Court finds that the same estopps the plaintiff/appellant from making any further claim against the respondents thereunder.

14. Apart from resiling from the said endorsement for the first time after filing the suit by an application for amending the plaint, there is no other material or evidence before this Court that the plaintiff was coerced and compelled to make the same.

15. The plaintiff/appellant could have lodged a complaint with the police in this regard. There is no such evidence before this Court or the Court below.

16. In view of the above, this Court is of the clear and unequivocal view that the Court below was fully justified in dismissing the suit and holding against the plaintiff/appellant.

17. This Court finds absolutely no infirmity with the impugned judgement and order.

18. Hence, the appeal is dismissed.

19. Interim orders, if any, shall stand vacated.

20. There shall be no order as to costs.

21. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)