

04.08.2023.
Item No. 9.
Court No. 13
ap

F.A. No. 94 of 2010

Mridul Acharjee
Versus
M/s. Engo Tea Company Limited

Mr. Raj Narayan Datta,
Mr. Bibhuti Bhusan Chaudhuri.
...For the appellant.

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta,
Mr. Ankit Chatterjee.
....For the respondent.

1. This first appeal arises out of a judgment and decree dated 30th September, 2009 passed by the learned 12th Bench, City Civil Court at Calcutta in Money Suit No. 491 of 1997.

2. By the impugned judgment, the Court below allowed the claim of the plaintiff only to the extent of Rs.13,800 plus statutory interest as per the Reserve Bank of India Guidelines.

3. The brief facts relevant to the case are that the plaintiff/appellant was engaged by a letter dated 4th February, 1994 for repair of a conveyor belt at New Land Tea Garden of the defendant/respondent at Jalpaiguri.

4. The appellant completed the work and submitted a bill by a letter dated 17th May, 1994 for a sum of Rs.1,08,560/-. The respondent refused payment and

hence the appellant filed M.S. No. 491 of 1997 for recovery of Rs. 1,08,560/- together with interest.

5. The defendant filed written statement and contended in the Court below that the work in question was not completed. It was also contended that in terms of the work order issued to the appellant, only four men were supposed to be engaged at the work site for repairing work against payment of Rs.100/- per day per Engineer/Mechanic to include food. The train and bus fare was to be paid by the appellant.

6. The appellant, however, claims that he had engaged six men to expeditiously complete the work at the request and with the consent of Mr. B.K. Bhuwarka, Director of the defendant. The appellant claimed Rs.100/- for six men for four hours for 56 days.

7. The appellant deposed oral evidence and exhibited several documents. Exhibit-2 is the Quotation of the plaintiff and Exhibit-1 is the work order. Exhibit-2(i) is the letter dated 17th May, 1994. Exhibit – 2(iii) is the letter dated 19th September, 1994 issued by the appellant to the respondent. The disputes between the parties centered around the overtime claimed by the appellant/plaintiff and the extra two persons engaged to complete the work and also the claim for extra work.

8. It has come on record that by a letter dated 21st September, 1994, the Director of the defendant denied and refuted the claims of the appellant. It was further alleged by the respondent that far from making any payment to the appellant, it is the letter that is supposed to reimburse a sum of Rs.8000/- towards blanket taken away by the workers of the plaintiff/appellant. Apart from filing of the written statement, the defendant only cross-examined the plaintiff's witness and did not adduce any evidence from his side.

9. The Court below analyzed the evidence on record and found that the appellant was only entitled to a sum of Rs.13,800/-. The Court below disallowed the claim for overtime and the engagement of two extra persons or any claim for any excess work. Three documents were exhibited through the plaintiff's witness.

10. Counsel appearing on behalf of the respondent urges that the suit ought to have been dismissed on the ground of limitation.

11. The Court below did not find any bar of limitation in the judgment of the plaintiff's claim and only quantum of claim was found not justified. This Court also finds that the respondent has not filed the

cross-objection or challenged the decree on the ground of limitation.

12. It appears from the cross-examination that the respondent/defendant had placed reliance upon a letter dated 21st September, 1994 which is available in the Lower Court's Record. In the said letter, the plaintiff has denied and refuted the claim of the plaintiff for the first time in writing. The suit having been filed on 18th September, 1997 is, therefore, within three years of such refutation and/or counter demand on the appellant.

13. It was evinced in cross-examination that the respondent/defendant did not issue any completion certificate of the work.

14. Apart from cross-examining the appellant, the defendant has not made out any case or prove any document to indicate that the work done by the plaintiff was not complete or unsatisfactory. There is also no document or letter denying that the plaintiff was not authorized to engage extra labour or work overtime or that it was not authorized by the B. K. Bhuwalka.

15. In the backdrop of the above, this Court is of the view that the Court below has erred in rejecting the claim of the appellant towards engagement of extra

labour or doing more work under the expression 'overtime'.

16. The defendant has not therefore been able to dispel or dislodge or disprove the claim of the appellant. The plaintiff has discharged the burden of proof. The claim of the appellant for a sum of Rs.1,08,560/-, therefore, ought to have been allowed.

17. The impugned judgment and decree is, therefore, modified to the extent that there shall be a decree of Rs.1,08,560/- payable by the defendant/respondent to the appellant/plaintiff together with simple interest at the rate of 10% per annum from 17th May, 1994 till the date of filing of the suit i.e. 18th September, 1997. Interim interest and interest on judgment shall be paid on the said sum of Rs.1,08,560/- at the simple rate of 7.5% per annum till date of actual payment. There shall be a decree to this effect.

18. The Decree shall be drawn up as expeditiously as possible.

19. Let the Lower Court's Records be sent down to the Court below expeditiously by a Special Messenger. Costs of such Special Messenger shall be deposited by the appellant by 8th August, 2023 before the concerned Department.

20. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)