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A.S.No.448 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.448 of 2006
and M.P.Nos.1 of 2009, 1 and 2 of 2010

Tamil Nadu Civil Supply Corporation Ltd.,
by its Chairman / Managing Director, Chennai.

.. Appellant

Versus

1. V.K.Ranganathan
2. A.Arulappan
3. A.Mani
4. Suseela Ammal
5. Sakunthala Ammal

6. The Govt. of Tamil Nadu,
rep. by its Collector,
Tiruvannamalai District,
Tiruvannamalai.

.. Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code against the judgment and decree in O.S.No.68 of 1983 on the file of Sub Court (in charge), Arani, dated 29.08.1997.

For Appellant : No Appearance

For Respondents : No Appearance for RR-2 and 3

: Notice served for RR-3 and 6

: RR-1 and 5 - Died



A.S.No.448 of 2006

: R4 - Dismissed

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JUDGMENT

This Appeal Suit is directed against the judgment and decree, dated 29.08.1997 in O.S.No.68 of 1983, in and by which, the suit filed by the plaintiffs for recovery of a sum of Rs.2,28,256.60 ps along with accrued interest at the rate of 18% per annum, was dismissed by the Trial Court.

2. The case of the plaintiffs is that the first defendant was the hulling agent of the first plaintiff Corporation. The defendants 2 to 4 are its partners. As per the agreement, during the period 09.02.1976 to 21.06.1976, a quantity of 706.748 tonnes of paddy was entrusted to the defendants. As per the agreement, depending on the variety of paddy, there should be an out-turn of rice between 67% and 68%. The expected out-turn of rice, which has to be handed over to the first plaintiff Corporation, is 476.005 tonnes. However, the defendants handed over only 412.779 tonnes of rice, thereby, there was a default of 63.226 tonnes. Therefore, towards the value of the said rice, being Rs.2,46,560.40 ps and another sum of Rs.26,892.10 ps towards the value of gunny bags, in all totalling, Rs.2,73,452.50 ps is due from the defendants. The defendants are liable to pay interest at the rate of 18% which comes to Rs.1,84,886.52 ps till the date of plaint. In this case,



A.S.No.448 of 2006

WEB COPY

even though the amount was due in the year 1978, even before the plaintiff could approach the Civil Court, in the year 1980, the defendants themselves had filed a Writ Petition against the proposal to initiate revenue recovery proceedings and the said Writ Petition was disposed off only in the year 1982 and even though the plaintiff had three years time to file the suit from the date of dismissal of the Writ Petition, the suit was filed in the year 1983 itself and the suit is well within the time limit. Therefore, the defendants have to be directed to pay the amount outstanding along with the interest.

3. The suit was resisted inter *alia* by filing written statements by the defendants 1 and 6 on the ground that there was a damage to the gunny bags resulting in spillage. The total out-turn could also not be realised because of the poor quality of the paddy supplied. In any event, more than 60% of out-turn which was they actually got out of the hulling, was supplied back to the Civil Supplies Corporation. It is the primary contention of the defendants that the cause of action arose in the year 1978 and the three years limitation was over in the year 1981 and the suit filed in the year 1983 is barred by limitation.



A.S.No.448 of 2006

WEB COPY

4. On the said pleadings, the Trial Court framed totally fifteen issues inter *alia* the issue of limitation also. On the said issues, the parties let in evidence. On behalf of the plaintiff, one *S.Balakrishnan*, Assistant Manager of the first plaintiff Corporation in the suit, was examined as **P.W.1** and **Exs.A-1** to **A-34** were marked. On behalf of the defendants, the first defendant namely, *V.K.Ranganathan*, was examined as **D.W.1**; one *K.Sokkalingam* was examined as **D.W.2** and the sixth defendant was examined as **D.W.3** and **Exs.B-1** to **B-3** were marked. Thereafter, the Trial Court considered the evidence on record and the submissions made on the either side and found that just because the Writ Petition was filed by the defendants, that will not in any manner save the limitation for the plaintiffs. The Trial Court further found that any proceedings before a wrong Court will not have effect of saving the limitation. Since the Trial Court found the issue of limitation against the plaintiffs, by a judgment and decree, dated 29.08.1997 dismissed the suit. Aggrieved by which, the present Appeal Suit is filed.

5. As it is seen from the above, the present Appeal Suit is filed in respect of the suit that was filed in the year 1983. However, even today,



A.S.No.448 of 2006

there was no appearance on behalf of both the sides. Therefore, this Court proceeded to consider the matter on merits by perusing the records and deliver the judgment.

6. On a perusal of the memorandum of grounds filed by the appellant and the pleadings and evidence, the point which arises for consideration is as to whether the suit is within the period of limitation? It can be seen that the primary ground, on which the appeal is filed, is that when the Writ Petition was pending, the entire period spent in the Writ Petition should be excluded and the suit should be held to be within the time of three years. It is their further contention that once the suit is within the time, as per the agreement between the first defendant and the plaintiffs, they are expected to supply the out-turn of rice as periodically specified by the first plaintiff Corporation. On a perusal of the documentary evidence on record, it can be seen that on behalf of the plaintiffs, only a letter from the learned Government Pleader - Writs from the High Court, is marked as **Ex.A-34**. Even though it is their contention that this Court has specifically excluded time spent in the Writ Petition, no such order has been marked on their behalf. On the part of the defendants, the Writ Petition, Affidavit have been



A.S.No.448 of 2006

WEB COPY

marked. Thus it can be seen that there is no order on record to exclude the time spent in the Writ Petition.

7. It is also borne out from the evidence on record that there was no interim order or interim injunction restraining the plaintiffs in the suit to proceed further in the matter. In that view of the matter, merely because an erroneous petition was filed and pending before the Court, the same will not in any manner enlarge / extend the period of limitation of three years much in the year 1981 itself. Secondly, the Writ Petition was filed by the defendants and not the plaintiff. Therefore, no exception whatsoever can be taken to the findings of the Trial Court in dismissing the suit as barred by limitation.

8. Accordingly, the Appeal Suit in A.S.No.448 of 2006 is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.06.2023

Index : yes
Speaking order
Neutral Citation : yes
grs



A.S.No.448 of 2006

WEB COPY To

1. The Sub Court (in charge), Arani.
2. The Collector,
Tiruvannamalai District,
Tiruvannamalai.



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A.S.No.448 of 2006

D.BHARATHA CHAKRAVARTHY, J.,

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