IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

SECOND APPEAL NO. 10 OF 2024

VINOD S/o GAJANANRAO DATTATRAYA

VERSUS

WESTERN MAHARASHTRA DEVPT. CORPN., CHITALI, DIST. AMHEDNAGAR

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

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Mr. Amol S. Deshpande, Advocate for the appellant

CORAM : G. A. SANAP, J.
DATE : JANUARY 17, 2024.

1. Heard Mr. Amol S. Deshpande, learned advocate for the appellant. Perused the record and proceedings.

2. The appellant seeks to challenge the judgment and order passed by learned District Judge-2, Chandrapur, dated 12.09.2023 in Regular Civil Appeal No. 104/2013, whereby the learned District Judge upheld the judgment and decree of dismissal of the suit filed by the appellant/plaintiff for recovery of Rs. 81,023/- with interest.

3. With the able assistance of learned advocate for the appellant, I have gone through the record and proceedings.

4. The suit was filed by the appellant for recovery of Rs.81,023/-, which was the amount deducted from the bill of Rs.7,07,721.84. This was the price of coal supplied by the plaintiff to the defendant. According to the

appellant/plaintiff, despite repeated demands, the amount was not paid and therefore, final notice was issued on 26.08.1999 and the defendant was called upon to make the payment. On failure of the defendant, the suit was filed.

5. The defendant opposed the suit. One of the grounds stated in the written statement was pertaining to the bar under the Limitation Act, 1963. The defendant, *inter alia,* contended that the cause of action for filing the suit aarose in April-1997 and the suit filed beyond three years of accrual of cause of action was barred by limitation.

6. The parties adduced evidence before the trial Court. The trial Court on the issue of limitation recorded a finding that Article 14 of the Schedule to the Limitation Act, would govern the limitation for filing this suit. The trial Court held that the suit was not filed within three years from the date of accrual of cause of action and on that ground, the suit was dismissed.

7. The appellant filed the first appeal before the District Court. Learned District Judge found that even if the suit was governed by Article 113 of the Limitation Act, still the suit would be barred by limitation. It is pertinent to note that as far as accrual of cause of action is concerned, the Courts below have appreciated the entire evidence and recorded a finding that the cause of action arose in April-

1997 and as such the suit filed beyond three years from the date of cause of action was not within limitation.

8. Learned advocate for the appellant, in support of his submission, placed heavy reliance on the decisions of the Hon'ble Apex Court in ***Mst. Rukhmabai .vs. Lala Laxminarayan and others,*** reported at ***AIR 1960 SC 335*** and ***G.S. Abdul Rahiman .vs. H.R. Venkatakrishnaiya,*** reported at ***AIR 1983 Karnataka 98,*** and contended that unless and until there is clear and unequivocal threat so as to compel the plaintiff to file the suit, the cause of action in such suit arises thereafter. It would be profitable to reproduce paragraph 33 in ***Mst. Rukhmabai*** *(supra)*.

> *"33. The legal position may be briefly stated thus : The right to sue under Art.120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous if may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said, right."*

9. Even if this position is kept in mind, in my view, the same would be of no help to the case of the appellant. The cause of action, as held by the Courts below, accrued in

April-1997 when the demand was made by the appellant/ plaintiff. The Courts below have considered the subsequent correspondence between the parties in this regard. On consideration of subsequent correspondence, the Courts below have recorded a finding that the said correspondence would not, in any manner, change the date and month of accrual of cause of action.

10. The questions of law, as sought to be contended, would arise in such factual situation, if it is pointed out that concurrent finding of fact, arrived at by the Courts below, is perverse inasmuch as, it is not based on the evidence available on record or on the ground of perversity in appreciating the said evidence. It is undisputed that vide letter dated 01.04.1997 (Exh.46), the defendant had informed the plaintiff about withholding/deduction of Rs.81,023/- from the sum of Rs.7,07,721.84. It is undisputed that the letter dated 04.04.1997 (Exh.47) was issued by the plaintiff and under this letter, demand of Rs.81,023/- was made. It was contended that the amount of Rs.81,023/- was illegally deducted from the amount of Rs.7,07,721.84. In my view, irrespective of applicability of Article 14 or Article 113 of the Limitation Act, the factual scenario would not change. It is undisputedly the case of the appellant that Article 113 of the Limitation Act would apply to this case. The first Appellate Court has categorically held that even if Article 113 is applied, in that

eventuality also, the date of cause of action would be 01.04.1997 and not the one contended in the suit.

11. In view of above, I am of the view that no substantial question of law arises in this appeal. There is no perversity in the concurrent findings of fact recorded by the Courts below. Therefore, this appeal stands dismissed at admission stage. No order as to costs.

JUDGE

Diwale

Signed by: DIWALE
Designation: PS To Honourable Judge
Date: 23/01/2024 14:36:52