HC-KAR

NC: 2026:KHC:60419
RFA No. 47 of 2016

CNR: KAHC010512392016

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

REGULAR FIRST APPEAL NO. 47 OF 2016 (MON)

BETWEEN:

BANGALORE METROPOLITAN
TRANSPORT CORPORATION
HAVING ITS CENTRAL OFFICES
K H ROAD DOUBLE ROAD
SHANTHI NAGAR, BANGALORE - 560027
REP. BY ITS CHIEF LAW OFFICER.

…APPELLANT

(BY SRI. P D SURANA., ADVOCATE)

AND:

1. SMT AKHILA BEGUM
   W/O LATE ABDUL SHAKEEL
   AGED ABOUT 60 YEARS
   R/AT NO 107/A 4TH B CROSS
   ILIYAS NAGAR J P NAGAR POST
   BANGALORE – 560070.

2. THE SYNDICATE BANK
   MANIPAL CENTRE FORMERLY
   PRESENTLY CANTONMENT BRANCH
   NO. 109 ST JOHNS ROAD OPP LAVANYA
   THEATRE NEAR COMMERCIAL STREET
   BANGALORE - 42
   REP. BY ITS MANAGER.

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3. THE NATIONAL CO-OPERATIVE BANK LTD
NO 198 9TH MAIN ROAD, 23RD CROSS
BANASHANKARI 2ND STAGE
BANGALORE - 560070
REP. BY ITS MANAGER.

…RESPONDENTS

(BY SRI. H SOMASEKHARAIAH FOR R2., ADVOCATE:
SMT. SHOBA K.R., ADVOCATE FOR R3:
R1 SERVED AND UNREPRESENTED

THIS RFA IS FILED UNDER SECTION 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED: 04.08.2015 PASSED IN O.S NO.295/2012 ON THE FILE OF THE XXIX ADDL. CITY CIVIL JUDGE, BENGALURU. (CCH-30), DISMISSING THE SUIT FOR RECOVERY OF MONEY.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL JUDGMENT

1. This appeal is filed by the appellant-BMTC under Section 96 of the Code of Civil Procedure, challenging the judgment and decree dated 04.08.2015 passed by the XXIX Additional City Civil and Sessions Judge, Bengaluru, in O.S.No.295/2012, whereby the suit filed by the plaintiff came to be dismissed.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

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3. Brief facts of the case are that defendant No.1 is the widow wife of late Abdul Shakeel, who was working as a Traffic Controller in BMTC and expired on 28.10.2002. He was entitled to gratuity of Rs.2,46,467/-, out of which Rs.90,825/- was deducted and the balance amount of Rs.1,54,642/- was paid to defendant No.1. The said deduction of Rs.90,825/- was made towards excess salary of Rs.343/- paid to the deceased, vehicle loan of Rs.56,279/- obtained by the deceased from the defendant No.2-Syndicate Bank, loan of Rs.26,327/- obtained from defendant No.3-National Co-operative Bank Ltd., income tax of Rs.6,771/- and Rs.1,105/- towards payment to the BMTC Employees Consumer Co-operative Society. Being aggrieved by the said deduction, defendant No.1 filed proceedings before the Assistant Labour Commissioner and Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'Act, 1972' for short) to re-determine the gratuity amount payable. By order dated 07.08.2007, the Assistant Labour Commissioner and

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Controlling Authority directed the appellant-BMTC to pay the gratuity amount of Rs.1,15,728/- along with interest at 10% per annum, holding that the deduction of Rs.90,825/- was not permissible. The appeal filed by the appellant-BMTC against the said order was dismissed by the Deputy Labour Commissioner and Gratuity Authority, Region-I, Bengaluru, on 26.08.2008, affirming the order dated 07.08.2007. Thereafter, W.P.No.12494/2008 filed before this Court challenging the orders of the original and appellate authorities was dismissed on 01.10.2008. W.A.No.1770/2008 filed against the order of the learned Single Judge was also dismissed by the Division Bench of this Court on 16.07.2009, and the Special Leave Petition filed before the Hon'ble Supreme Court against the said order was also dismissed. Thereafter, the plaintiff-BMTC has filed a suit for recovery of money. The Trial Court, having answered issues No.1 and 2 in favour of the plaintiff, dismissed the suit on the ground of limitation. Hence, the appellant-BMTC preferred this appeal.

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4. Learned counsel appearing for the appellant-BMTC contended that the Special Leave Petition filed before the Apex Court came to be dismissed on 19.02.2010 and the suit was filed on 06.01.2012, within a period of three years. Therefore, the Trial Court committed an error in dismissing the suit on the ground that it is barred by limitation. He further contended that the period of three years has to be reckoned from the date on which the Apex Court dismissed the Special Leave Petition and not from the date on which the Controlling Authority passed the order. The finding of the Trial Court in this regard is contrary to the law laid down by the Apex Court in the case of ***The Sales Tax Officer, Banaras and others vs. Kanhaiya Lal Makund Lal Saraf and Others*** reported in **AIR 1959 SC 135** and also the decision passed by this Court in CRP No.73/2014 disposed of on 12.09.2017. Therefore, he contended that the plaintiff-BMTC is entitled to recover the amount of Rs.90,825/- from defendant

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No.1. The Trial Court has committed an error in dismissing the suit.

5. Learned counsel appearing for respondent No.2 submits that he has supported the judgment and decree passed by the Trial Court.

6. None appears on behalf of respondent No.3.

7. Heard. Perused the material on record.

8. The point that arises for consideration in this appeal is:

"Whether the Trial Court is justified in dismissing the suit on the ground that the suit is barred by limitation, in the facts and circumstances of the case?"

9. It is not in dispute that defendant No.1 is the widow wife of late Abdul Shakeel, who was an employee of the plaintiff-BMTC and died on 28.10.2002. It is also not in dispute that he was entitled to gratuity of Rs.2,46,467/-. It is also not in dispute that the plaintiff-BMTC deducted a sum of Rs.90,825/- from the said gratuity amount and

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paid the balance amount of Rs.1,54,642/- to defendant No.1.

10. The Controlling Authority under the Act, 1972 by order dated 07.08.2007, allowed the petition filed by defendant No.1 to re-determine the gratuity payable and directed the plaintiff-BMTC to pay a sum of Rs.1,15,728/- along with interest. Being aggrieved by the same, the plaintiff-Corporation preferred an appeal before the Appellate Authority, which came to be dismissed. Thereafter, the plaintiff-BMTC filed a writ petition before this Court challenging the orders passed by the authorities, which came to be dismissed on 01.10.2008. Against the said order, the plaintiff-BMTC preferred a writ appeal, which also came to be dismissed on 16.07.2009. Thereafter, the plaintiff-BMTC filed a Special Leave Petition before the Apex Court, which came to be dismissed on 19.02.2010.

11. The limitation for filing the suit begins from the date on which the Special Leave Petition came to be dismissed

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by the Apex Court, i.e., on 19.02.2010. The Trial Court has committed an error in considering the date on which the Controlling Authority allowed the petition filed by defendant No.1, i.e., 07.08.2007.

12. The Apex Court, in the case of '**The Sales Tax Officer, Banaras' (supra)**, particularly in paragraph 27, has held as follows:

> *"If this is the true position the fact that both the parties, viz., the respondent and the appellants, were labouring under a mistake of law and the respondent made the payments voluntarily would not disentitle it from receiving the said amounts. The amounts paid by the respondent under the U.P. Sales Tax Act in respect of the forward transactions in silver, had already been deposited by the respondent in advance in accordance with the U.P. Sales Tax Rules and were appropriated by the State of U.P. towards the discharge of the liability for the sales tax on the respective assessment orders having been passed. Both the parties were then labouring under a mistake of law, the legal position as established later on by the decision of the Allahabad High Court in Messrs Budh Prakash Jai Prakash v. Sales Tax Officer,*

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Pilibhit(2), subsequently confirmed by this Court in Sales Tax Officer, Pilibhit v. Budh Prakash Jai Prakash(3) not having been known to the parties at the relevant dates. This mistake of law became apparent only on May 3, 1954, when this Court confirmed the said decision of the Allahabad High Court and on that position being established the respondent became entitled to recover back the said amounts which had been paid by mistake of law. The state of mind of the respondent would be the only thing relevant to consider in this context and once the respondent established that the payments were made by it under a mistake of law, (and it may be noted here that the whole matter proceeded before the High Court on the basis that the respondent had committed a mistake of law in making the said payments), it was entitled to recover back the said amounts and the State of U.P. was bound to repay or return the same to the respondent irrespective of any other consideration. There was nothing in the circumstances of the case to raise any estoppel against the respondent nor would the fact that the payments were made in discharge of a tax liability come within the dictum of the Privy Council above referred to. Voluntary payment of such tax liability was not by itself enough to preclude the respondent from recovering the said amounts, once it was

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established that the payments were made under a mistake of law. On a true interpretation of section 72 of the Indian Contract Act the only two circumstances there indicated as entitling the party to recover the money back are that the moneys must have been paid by mistake or under coercion. If mistake either of law or of fact is established, he is entitled to recover the moneys and the party receiving the same is bound to repay or return them irrespective of any consideration whether the moneys had been paid voluntarily, subject however to questions of estoppel, waiver, limitation or the like. If once that circumstance is established the party is entitled to the relief claimed. If, on the other hand, neither mistake of law nor of fact is established, the party may rely upon the fact of the moneys having been paid under coercion in order to entitle him to the relief claimed and it is in that position that it becomes relevant to consider whether the payment has been a voluntary payment or a payment under coercion. The latter position has been elaborated in English law in the manner following in Twyford v. Manchester Corporation(1) where Romer, J., observed:

"Even so, however, I respectfully agree with the rest of Walton, J.'s judgment, particularly with his statement that a general rule applies, namely, the

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rules that, if money is paid voluntarily, without compulsion, extortion, or undue influence, without fraud by the person to whom it is paid and with full knowledge of all the facts, it cannot be recovered, although paid without consideration, or in discharge of a claim which was not due or which might have been successfully resisted."

13. And also following the said judgment of the Apex Court, this Court, in CRP No.73/2014 disposed of on 12.09.2017, has held in paragraph No.6 as follows:

"6. In the case decided by the Hon'ble Supreme Court consisting of five judges of the Apex Court, wherein it is held that mistake of law became established only after declaration of the law by the Hon'ble Apex Court in the appeal. Hence the contention of the learned counsel for the petitioner that the limitation commenced from the date of the order of the original authority is without substance and deserves to be rejected. Even otherwise, the cause of action for the first respondent Corporation/plaintiff arose after the repayment of sum and admittedly, it is after the order passed by the

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appellate authority. Viewed from that angle, the contention raised by the learned counsel for the petitioner regarding the suit being barred by limitation is without substance and deserves to be rejected and it is rejected."

14. In view of the above, the period of limitation has to be reckoned from the date on which the Special Leave Petition came to be dismissed by the Apex Court, i.e., on 19.02.2010. The Trial Court has committed an error in taking the date of the order passed by the Controlling Authority, i.e., 07.08.2007, for computing the period of limitation. Therefore, the finding of the Trial Court that the suit is barred by limitation is contrary to the law laid down by the Apex Court and the decision passed by this Court. On this ground, the appeal deserves to be allowed and the matter requires to be remitted back to the Trial Court to reconsider the matter afresh on merits.

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15. Accordingly, the following order is passed:

ORDER

a) The appeal is ***allowed***.

b) The judgment and decree judgment and decree dated 04.08.2015 passed by the Trial Court, in O.S.No.295/2012 on the ground of limitation is hereby set aside.

c) The order of dismissal for default insofar as the respondent No.1-defendant No.1 is concerned is also set aside.

d) The Trial Court shall reconsider the matter afresh on merits.

e) Since the matter is remitted back to the Trial Court, in view of Section 66 of the Karnataka Court Fees and Suits Valuation Act, 1958, the Registry is directed to refund the court fee in favour of the appellant-BMTC, subject to due verification.

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f) Since the order of dismissal for default insofar as the first respondent is concerned is also set aside, notice shall be issued to the respondent No.1 regarding the date of appearance before the Trial Court, so as to enable respondent No.1 to appear and contest the matter.

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(H.T. NARENDRA PRASAD)
JUDGE

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LIST NO.: 1 SL NO.: 21