

HIGH COURT OF ORISSA, CUTTACK

R.S.A. No. 340 OF 2005

From the judgment and decree dated 16.10.2004 and 01.11.2004 respectively passed by the learned Ad hoc Additional District Judge, (FTC-II), Puri in Money Appeal No. 31/1 of 2001/1994.

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Sri Jagannatha Labour Co-operative
Society, Puri

Appellant

Versus.

State of Orissa & ors.

Respondents

For Appellant : M/s. Sougat Dash, C.N.Jena,
Bhaskar Chandra Panda, Sangeeta Mishra,
J.N.Panda, L.Das, advocates.

For Respondents: Mr. R.P.Mohapatra,
Additional Standing Counsel.

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PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of hearing : 22.06.2015 : Date of judgment: 30.06.2015

The plaintiff being an unsuccessful both in the trial court as well as appellate court has filed this appeal.

2. The plaintiff, a Co-operative Society filed Money Suit No. 250 of 1992 in the court of Civil Judge (Sr. Division), Puri against the State through its Agent, Surendera Nath Panda. It is the case that the Society was a registered contractor and was executing various works under different departments of the Government of Orissa including the Department of Irrigation. In the year 1983, tenders being invited for execution of FDR work to right Bhargabi

embankment from 48 kms to 54 kms, the society participated in the tender process and its tender was accepted. So on 24.01.1983, work order was issued followed by execution of agreement on 31.01.1983. It is stated that the work was completed on 15.02.1983. But in spite of demand, no payment was made towards the bills raised by the plaintiff/ society. So, a notice was given to defendants on 01.04.1983 demanding the payment.

3. It may be stated here that prior to filing of this suit, in the year 1986 the plaintiff / society had filed a Money Suit No. 04 of 1986 along with a petition under order 33 rule 1 of the Code of Civil Procedure to permit the plaintiff to sue in forma pauperis. The petition was dismissed and consequently the plaint stood rejected on 10.03.1987. Thereafter, the plaintiff filed another suit vide O.S. No. 05 of 1988 for referring the dispute to the Arbitrator under section 20 of the Arbitration Act 1940. The matter being referred to the State Arbitration Tribunal, nil award was passed out of which the appeal arises.

The defendants contested the suit on the ground of limitation. It is also stated that the affairs of the Society has been managed by Asst. Registrar Co-operative Societies, Puri and therefore, Surendera Nath Panda as the Agent cannot file the suit in the name of the Society and he has absolutely no authority whatsoever. It is stated that Surendra Nath Panda was authorized only to purchase the tender paper and to submit the same. The tender papers were

duly prepared and signed by the Secretary. It is further stated that Shri Panda was having no authorization to execute work. It is also the case of the defendants that though this work order was issued, there was no agreement preceding the same. One Rajkishore Panda executed the work under one F-2 agreement. The work has been checked and measured. It is stated that wrongly two work orders were issued one to Society and other one to Rajkishore Panda, defendant no. 4 and this was intimated to the plaintiff society in June 1983.

4. On such rival pleadings, the trial court framed seven issues and has taken up issue relating to the contractual relationship between the plaintiff and defendant no. 2 and 3; the issuance of the work order pursuant to the same and completion of the work etc.

On analysis of evidence, the trial court has come to a conclusion that Shri Surendra Nath Panda who has now filed the suit as the Agent of the Co-operative Society had neither executed any F-2 agreement with the defendants nor did he execute any work. The suit has also been held to be barred by limitation.

5. The lower appellate court having concurred with the finding of the trial court as regards the suit being barred by limitation has disallowed the appeal.

6. Learned counsel for the appellant submits that the courts below have completely erred in law by holding the suit to be barred by limitation under Article 18 of the Limitation Act and therefore it

cannot be allowed to stand. He further contends that the factual finding rendered by the trial court that there was no agreement and also as regards the locus-standi of Surendra Nath Panda to represent the society is perverse. Thus, he submits that the above are the substantial questions of law to be certified for admission of this appeal.

7. There being refusal to permit the plaintiff to sue as an indigent person the plaintiff did not further sue by paying court fees, subsequent suit for the same reliefs and based on same cause of action has been filed. It is provided in Order 33, Rule 15 (A) that the Court while rejecting an application filed to sue in forma pauperis can grant time to the applicant to pay requisite court fee within such time as would be fixed or extended from time to time and on such payment as well as payment of cost, if any, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented. Rule 15 states that the rejection of an application refusing the applicant to sue as an indigent person though is a bar to any subsequent application of the like nature by the same applicant in respect of the same right to sue, the applicant is however is at liberty to institute a suit in the ordinary manner in respect of such right.

In the present case subsequent suit has been filed on 11.01.1988 independently. Therefore, the presentation of the plaint of that suit cannot relate back to the date of presentation of the

application filed by the plaintiff seeking leave to sue as an indigent person on the earlier occasion, which has been refused. Thus, O.S. No.5 of 1988 having been filed beyond the period of limitation as prescribed under Article 18 of the Act cannot be saved in the present case as the period spent in the proceeding on the earlier occasion would stand to be computed for the purpose of limitation and that period cannot be saved.

8. Admittedly, the plaintiff had first filed Money Suit No. 04 of 1986 after completion of the work as per their case on 15.02.1983. It is stated that the said suit was instituted seeking leave of the court to sue as indigent person. Prayer to sue as an indigent person was disallowed on 04.03.1987. The fact remains that after such rejection, the plaintiff did not continue with the suit by paying the court fees. So, the plaintiff cannot take advantage of saying and that even though subsequently the suit was filed in regular manner, it would relate back to the date of presentation of the plaint in earlier suit i.e. M.S. No. 04 of 1986. The subsequent suit has been filed on 11.01.1988 and that has ultimately been heard and disposed of on merit. The date of presentation of the plaint in the subsequent suit is 11.01.1988. The present suit thus clearly found to have been filed beyond the period of limitation. The finding of lower appellate court agreeing with the trial court on the question of limitation leading to dismissal of the suit thus remains unassailable.

In view of above, the submission of the learned counsel for the appellant cannot be countenanced that there surfaces any such substantial questions of law for being answered in this appeal. The appeal, thus does not merit for admission.

9. Resultantly, the appeal stands dismissed.

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D. Dash, J.

Orissa High Court, Cuttack
The 30th June, 2015/Narayan