

8CIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5886 of 2006
THOMAS MATHEW

Appellant(s)

VERSUS

THE CONSTRUCTION ENGINEER, K.L.D.C.LTD.

Respondent(s)

O R D E R

We have heard learned counsel for the parties and gone through the judgment and order dated 27.01.2005 passed by the High Court of Kerala in Writ Petition (C) No. 16782 of 2004(W). The brief facts of the case indicate that a contract was entered into between the appellant and the respondent. The respondent cancelled the agreement on 06.03.1996 allegedly at the risk and cost of the appellant.

Feeling aggrieved by the cancellation of the agreement, the appellant preferred Original Suit No. 574/96 and Original Suit No. 575/96 in the court of Subordinate Judge, Thrissur challenging the termination of the contract and for consequential relief.

The respondent filed its written statement in response to plaint some time in the year 1997. Thereafter sometime in the year 2001, the respondent filed I.A. No. 5474/2001 and I.A. No. 5475/2001 seeking to amend the written statement and file a counter claim on 07.12.2001.

Learned trial judge considered the application and found that the counter claim was barred by limitation in view of the

provisions of Article 55 of the Schedule to the Limitation Act, 1963.

Article 55 of the Schedule to the Limitation Act, 1963 reads as follows:

Description of suit Period of
Limitation Time from which period
begins to run
For compensation for the breach
of any contract, express or
implied not herein specially
provided for. Three years When the contract is
broken or (where there
are successive breaches)
when the breach in
respect of which the
suit is instituted
occurs or (where the
breach is continuing)
when it ceases.

Learned trial judge also relied upon a decision of the Division Bench of the Kerala High Court in Delta Foundations and Constructions and Ors. v. Kerala State Construction Corporation Ltd. [2003 (1) KLT 626]. We may mention that the decision in Delta Foundations and Constructions and Ors. v. Kerala State Construction Corporation Ltd. had come up for consideration before us yesterday and the appeal filed by the Kerala State Construction Corporation Ltd. was dismissed. The decision of the Kerala High Court on the applicability of Article 55 of the Schedule to the Limitation Act, 1963 was upheld.

Be that as it may, the decision of the trial judge came up for consideration before the High Court. By its impugned judgment and order dated 27.01.2005, the judgment and order passed by the trial judge was set aside. The High Court referred to the decision in Delta Foundations and Constructions v. Kerala State Construction

2

Corporation Ltd. but did not consider or deal with the decision. The High Court held that the provisions of Article 113 of the Schedule to the Limitation Act would be applicable and that the trial court had not considered when exactly the cause of action for filing a counter claim arose in the case.

Our attention has been drawn by learned counsel for the

appellant to Section 3 (2)(b)(ii) of the Limitation Act, 1963.

Section 3 reads as follows:

3. Bar of limitation.â-

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

(2) For the purposes of this Act,-

(a) a suit is instituted,-

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

A perusal of the said section clearly shows that a counter claim is required to be treated as a separate suit and therefore

3

the period of limitation would be three years from the date of accrual of the cause of action.

Similarly, Order VIII Rule 6-A of the Code of Civil Procedure

provides that a counter claim shall be treated as a plaint and is governed by the rules applicable to plaints.

We may also draw attention to Jag Mohan Chawla and Anr. v. Dera Radha Swami Satsang & Ors. [1996 (4) SCC 699] wherein it has been held by this Court in paras 4 & 5 that the purpose of introducing Order VIII Rule 6-A was to avoid multiplicity of proceedings and a counter claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver the cause of action and also payment of the requisite court fee.

From a reading of the decision rendered by this Court as well

as the provisions of the Limitation Act and the Code of Civil Procedure, it is quite clear that in so far as the present appeal is concerned, the cause of action had accrued in favour of the respondent on the date of the breach of contract i.e. 06.03.1996 or before that. For the purposes of deciding the present appeal, we

are taking the later date i.e. 06.03.1996 as the date of accrual of the cause of action in favour of the respondent.

That being the position, in view of the provisions of Article

55 of the Limitation Act, it appears to us that the counter claim filed by the respondent is barred by time.

Learned counsel for the respondent by relying upon the view rendered by this Court in some other decisions contended that a counter claim could have been filed by the respondent after the

4

written statement was filed. There is no dispute about this proposition and in fact, it has not even been contended to the contrary by learned counsel for the respondent. That issue does not arise.

Consequently, the impugned judgment and order of the High Court of Kerala is set aside. The appeal is allowed. No order as to costs.

Learned trial judge is requested to proceed to decide the matter expeditiously particularly, since it is pending since 1996.

