

ITEM NO.101 (PH)

COURT NO.4

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S). 1034/2008

M/S ARIES & ARIES

APPELLANT(S)

VERSUS

T.NADU ELECTRICITY BOARD
(WITH OFFICE REPORT)

RESPONDENT(S)

Date : 21/03/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. E. M. S. Anam, Adv.

For Respondent(s) Mr. K. Ramamoorthy, Sr. Adv.
Mr. B. Balaji, Adv.
For Mr. T. Harish Kumar, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S) . 1034/2008

M/S ARIES & ARIES . . . APPELLANT

VERSUS

TAMIL NADU ELECTRICITY BOARD . . . RESPONDENT

ORDER

1. The plaintiff's suit for recovery of money claimed under a contract executed by and between the plaintiff and the defendant was partly decreed by the learned trial Court. In appeal, the suit has been dismissed by the High Court by holding the same to be barred by limitation. Aggrieved, the plaintiff has filed the instant appeal.

2. We have heard the learned counsels for the parties.

3. The High Court, in the order under challenge, firstly dealt with the

individual claims made by the plaintiff for payment claimed to be due on account of extra works executed; for escalation of charges, etc. and thereafter went on to hold that the suit was barred by limitation. In holding the same, the High Court took into account the date of payment of the final bill to the plaintiff i.e. 13th January, 1981 to be the relevant date for determining the period of limitation for filing the suit which was so filed on 6th November, 1984. In its order, the High Court took the view that on an application of either Article 18 or 55 or 113 of the Limitation Act, 1963, as may be, as the claim in the suit was not made within a period of three years from the date of final payment i.e. 13th January, 1981 the same would be barred by time.

4. Learned counsel for the appellant - plaintiff has drawn the attention of the

Court to certain documents exchanged between the parties subsequent to the date of final payment i.e. 13th January, 1981. The first is the legal notice by the plaintiff dated 16th May, 1981 (Exhibit P-20) wherein the plaintiff made a claim of Rs.32,19,994.99 under different heads including escalation in cost of materials and labour and also for extra items of works undertaken.

5. The defendant on receipt of the aforesaid notice, by communication dated 25th August, 1981 (Exhibit P-22), informed the plaintiff that "the matter is under study and a reply will be sent in due course" (underlining is ours). Thereafter, on 6th November, 1981 (Exhibit P-2) the defendant through its advocate informed the advocate of the plaintiff that the claims raised in the notice dated 16th May, 1981 (Exhibit P-20) stands rejected. Insofar

as the claim (5), which pertains to the escalation in cost of materials and labour, the reply of the defendant is in the following terms:

"There is no escalation clause in the contract and as per the accepted conditions the rates shall be firm. As such, the above request of your clients is not acceptable. In fact your client is alone responsible for the delay in execution of the contract and the Board is entitled for damages and to levy penalty against your client."

6. Learned counsel for the appellant has argued that notwithstanding the receipt of final payment on 13th January, 1981 the plaintiff raised a claim for further payments on 16th May, 1981 by means of the legal notice (i.e. Exhibit P-20). The claim of the plaintiff was entertained by the defendant as would be evident from the defendant's letter dated 25th August, 1981 (Exhibit P-22) and the said claim was

finally rejected on 6th November, 1981 (Exhibit P-2). According to the learned counsel in the aforesaid facts the communication dated 6th November, 1981 (Exhibit P-2) has to be understood to be the starting point for the computation of the period of limitation inasmuch as the cause of action for the suit arose on rejection of the claims made by the plaintiff by its legal notice dated 16th May, 1981 (Exhibit P-20). So construed, according to the learned counsel, the suit having been filed on 6th November, 1984 is within limitation as provided for under Article 113 of the Limitation Act, 1963.

7. Learned counsel for the appellant has further argued that insofar as the claim for escalation on account of materials and labour is concerned, the same has been rejected on the ground that the plaintiff is responsible for the delay and

allowing any such escalation would be contrary to the express term of the agreement which provides that the rates offered by the plaintiff would remain firm for the entire duration of the contract. Learned counsel has argued that this finding is opposed to the admitted case of the defendant that it is the defendant who was responsible for a part of the delay (19½ months) that has occurred in the execution of the work. Therefore, according to the learned counsel, the learned trial Court was perfectly justified in awarding escalation at the rate of 50% which has been wrongly reversed by the High Court.

8. Opposing the contentions advanced on behalf of the appellant - plaintiff, Shri K. Ramamoorthy, learned Senior Counsel appearing for the respondent - defendant (Tamil Nadu Electricity Board) has

submitted that the plaintiff having taken full and final payment of all amounts due on 13th January, 1981, the suit ought to have been filed within three years of the said date. The same having not been done and the suit having been filed on 6th November, 1984 is clearly barred by limitation. The crucial date, whatever be the perspective adopted, is the date of the final payment i.e. 13th January, 1981. Therefore, according to the learned counsel for the respondent - defendant, the High Court was perfectly justified in coming to its conclusion that the suit is barred by limitation. Accordingly, learned counsel for the respondent submits that no other issue need be gone into in the present appeal by this Court.

9. We have considered the submissions of the parties.

10. Article 18 of the Limitation Act,

1963 provides for filing of a suit for recovery of money for work done by the plaintiff, within three years from the date when the work is done, in a situation where no time has been fixed for payment. Article 55 of the Limitation Act, 1963, on the other hand, provides for limitation of three years from the date of breach of a contract in a case of a suit for compensation for damages arising out of such breach. Article 113 of the Limitation Act, 1963 is the residuary provision which provides for a suit to be instituted within three years from the date when the right to sue accrues.

11. In the present case, *de hors* the correspondences that had been exchanged by and between the parties after the date of final payment i.e. 13th January, 1981, the aforesaid date of final payment would have been crucial for determination of the

period of limitation for filing the instant suit. However, in the present case, from the correspondences that had been exchanged after the date of final payment it clearly appears that the plaintiff after receipt of the payment on 13th January, 1981, reiterated its claim for additional payment on different counts including escalation and for extra works done. The defendant instead of rejecting the said claim entertained the same and kept the matter pending. Finally on 6th November, 1981 (Exhibit P-2) the said claims were rejected. If the claims raised by the plaintiff were entertained and rejected finally on 6th November, 1981, it would be reasonable to assume that the cause of action for the suit in respect of the said rejected claims arose on 6th November, 1981 and the suit could have been filed at any point of time prior to the expiry of three

years from the said date i.e. 6th November, 1981 in view of Article 113 of the Limitation Act, 1963. The suit having been filed on 6th November, 1984, the same, therefore, will have to be considered to be within the period of limitation. The High Court, therefore, was not justified in holding the contrary.

12. This will require the Court to consider the additional plea urged on behalf of the plaintiff, namely, that the High Court was not justified in reversing the decree passed by the learned trial Court so far as 50% of the escalation charges is concerned.

13. The High Court in coming to the aforesaid conclusion took the view that the specific clause in the agreement which obliges the plaintiff to continue to offer his rates for the entire duration of the contract prohibits grant of the said claim.

We have also noticed that it is the defendant's own case that it was responsible for the delay to the extent of nineteen and half ($19\frac{1}{2}$) months that had occurred in the execution of the contract whereas the plaintiff was responsible for the delay of the remaining fifteen and half ($15\frac{1}{2}$) months. The said specific admission on the part of the defendant and the finding arrived at by the High Court on the aforesaid basis could not have permitted the High Court to reverse the decree passed by the learned trial Court on the aforesaid count which coincidentally entitled the plaintiff to only 50% of the escalation charges, as claimed. The aforesaid percentage (50%) roughly corresponds to the percentage of the delay attributable to the plaintiff out of the total delay of 35 months. The clause in the contract which obliged the plaintiff to continue to offer

the rates initially offered by him would, naturally, be for the duration of the contract and cannot work to his peril for the period of delay for which the Department was admittedly responsible. Such a construction of the clause in the contract would not be reasonable. We, therefore, reverse the aforesaid finding of the High Court and hold that the plaintiff would be entitled to the 50% of the escalation charges as decreed by the learned trial Court.

14. Consequently and in the light of the above we allow the appeal; set aside the order of the High Court and direct that the amount on account of escalation charges that would now be payable to the plaintiff will carry interest at the rate of six per cent (6%) per annum from the date of filing of the suit till the date of the payment.

15. The appeal consequently is allowed
as indicated above.

....., J.
(RANJAN GOGOI)

....., J.
(NAVIN SINHA)

NEW DELHI
MARCH 21, 2017