

Assam Schedule VII, Form No. 133

Form No. (J) 3
HEADING OF JUDGMENT IN APPEAL

District: KAMRUP.

IN THE COURT OF CIVIL JUDGE NO. 3, KAMRUP, GUWAHATI.

Present:- Sri S. K. Poddar, A.J.S.
Civil Judge No. 3, Kamrup, Guwahati.

Wednesday, the 22nd Day of August, 2012.

Money Appeal No. 10/2009

M/s Siotia Steels Ltd..... Appellant/Plaintiff

-versus-

Dr. Dhani Ram Baruah Heart Institute & Anr. Respondent/Defendants.

This appeal coming on for final hearing on **24.07.2012** in the presence of –

Mr. S. P. Roy Advocate/Pleader for Appellant.

Dr. G. Lal Advocate/Pleader for Respondent.

And having stood for consideration to this day, the Court delivered the following Judgment:-

J U D G M E N T

1. This appeal u/s 96 of the CPC has been preferred by the plaintiff/ appellant against the judgment and decree dated 03/08/2009 passed by learned Munsiff No. 2, Kamrup, Guwahati in Money Suit No. 152/2006.

2. On receipt of the appeal memo, notices were issued to the defendants/respondents and case record of Money Suit No. 152/06 (MS 3/05 old) was called for. Respondents appeared through their engaged Advocate and contested the appeal. Contd. at P/2

3. I have heard learned advocates for both the sides, gone through the appeal memo and the case record of Money Suit No. 152/06.

4. The facts leading to the appeal, in brief, are that the plaintiff M/S Siotia Steels Ltd. is a registered company and also a registered SSI Unit under the Directorate of Industries. On verbal supply orders from defendants, plaintiff company has supplied Steel HSD Bar etc. and other materials and raised bills of Rs. 3,78,516/- for payment. Out of the said amount, the defendants paid an amount of Rs. 2,76,000/- in installments and a sum of Rs. 1,02,516/- remained outstanding. In spite of repeated oral demands for timely payment of the outstanding dues and even by serving legal notice, the defendants failed to pay the amount. Finding no alternative, plaintiff has filed this suit claiming due amount and also interest as per the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (here-in-after termed as "1993 Act").

5. The defendants appeared in the suit but they failed to file any written statement in time but participated in the entire proceedings of the suit and cross-examined the witnesses adduced by the plaintiff side.

6. During trial, the plaintiff side examined two witnesses. Plaintiff side also exhibited certain documents. Defendant side did not adduce any evidence. After hearing both sides, the Ld. Court below framed the following points for determination of the issues involved in the suit :-

1. *Whether the plaintiff is entitled to get a principal sum of Rs. 1,02,516/-?*
2. *Whether the plaintiff is entitled to get interest as per the provisions of the Act?*
3. *Whether the plaintiff is entitled to get a decree as prayed for?*

7. After hearing the arguments from both sides, learned trial court vide the impugned judgment and decree dismissed the suit of the plaintiff by holding the plaintiff has received the principle amount during pendency of the suit and is not entitled for any interest as claimed.

8. Against the above judgment and decree of dismissal of the suit, the plaintiff has preferred the instant appeal on the following amongst other grounds:-

- a) *That the Ld. Trial Court has mis-conceived the facts of the case and passed the judgment illegally;*

..... Contd. at P/3

b) *That the Ld. Trial Court has discussed the points framed in a mechanical way and without going through the crux of the matter and without touching the real question has decided the points against the plaintiff;*

c) *That the Ld. Trial Court has wrongly interpreted the provisions of law;*

d) *That the Ld. Trial Court has failed to differentiate between the Small Scale Industrial Undertaking and Ancillary Industrial Undertaking and arrived at a wrong finding;*

e) *That the Ld. Trial Court has failed to consider the Ext-2 i.e. the Certificate of Registration as SSI Unit in proper perspective;*

f) *That the Ld. Trial Court has also ignored the findings of Hon'ble High Court, wherein in another case, the unit of the plaintiff has been declared as SSI Unit;*

g) *That Ld. Trial Court has also ignored the acknowledgment dated 23/10/07 by which the engaged advocate of the defendants has acknowledged the debt due to the plaintiff and sought time for payment.*

9. **Points for determination in this appeal are:-**

i) *Whether the judgment passed by the Ld. Trial Court is just and proper or needs to be interfered with?*

10. During argument hearing, Ld. Advocate for the appellant while drawing my attention on various documents and aspects of law, has submitted that the Ld. Trial Court while passing the judgment has gone on wrong notion and by holding the plaintiff unit as ancillary undertaking and not as small scale industry is the prime cause of dismissal of the suit which needs to be rectified in this appeal. He also pointed out that as the defendants did not submit their written statement and furthermore they have admitted the claim of the plaintiff of their dues, Ld. Trial Court ought to have decreed the suit as prayed for. On the other hand Ld. Advocate for the defendants stated that though the plaintiff's industrial unit is a SSI Unit, but they are not entitled to get interest under the "1993 Act" as because it is a suit only for delayed payment. He further pointed out that during pendency of the suit, the defendant has paid an amount of Rs. 1,06,000/- which is more than the outstanding principal amount of Rs. 1,03,000/- and as such, Learned Trial Court has rightly dismissed the suit.

..... Contd. at P/4

11. On going through the plaintiff's case, as narrated above and in the absence of any denial from the defendant side, let me re-appreciate the materials available on record.

12. Ld. Trial Court has taken up point 1 regarding entitlement of the plaintiff about his dues of Rs. 1,02,516/-. While deciding this point, the Ld. Trial Court without ascertaining the liability of the defendants has jumped to the conclusion that during pendency of the suit, defendant has paid Rs. 1,06,000/- and as such plaintiff is not entitled to get the principal amount of Rs. 1,02,516/-. In my considered opinion, Ld. Trial Court has committed an error by taking the subsequent event without deciding the point taken up for discussion. It is in the plaint that for the materials supplied to the defendants, there was an outstanding of Rs. 1,02,516/-. There was no denial on this aspect from the defendant side. From the documents of the plaintiff, as annexed with the appeal memo which are also part of the suit, it appears that plaintiff has supplied various articles including rod, cement and some other miscellaneous articles and raised bills of Rs. 3,78,516/- for payment. Till the date of filing of the suit, the defendants have only paid Rs. 2,76,000/- and thus there was a due of Rs. 1,02,516/-. The above amount was proved by the respective bills and challans. Before filling of the suit, plaintiff, through his engaged advocate vide Ext-23 served a demand notice upon the defendant and in reply to that notice, the defendants have given a reply vide Ext-25 and admitted the claim of the plaintiff but sought six months time to clear up the dues. In view of above factual position, it is clear that on the date of filing of the suit, plaintiff was entitled for payment of Rs. 1,02,516/- from the defendants.

13. It may be noted here that plaintiff has filed the suit for realisation of Rs. 1,56,000/- out of which Rs. 1,02,500/- is principal amount and rest amount of Rs. 53,484.36 towards interest by calculating the same on 1.5 times on the prime lending rate (PLR). While taking up the point, the learned did not take up the entire claim for consideration even though there was no denial through written statement.

14. Now coming to the point No. 2 as framed by learned trial court, regarding the claim of the plaintiff for interest under the 1993 Act, Ld. Trial Court has discussed Section 11B of Industrial (Development and Regulation) Act, 1951 and did not discuss the various provisions of Section 3(j) of the 1993 Act. While criticising the findings of trial court, Contd. at P/5

Ld. Advocate for the appellant has strongly argued that the entire approach of the Ld. Trial Court is erroneous and needs re-appreciation of the matter. It is also pointed out that not a single line has been discussed on the documents submitted by the plaintiff side showing that the Unit of the plaintiff is an SSI Unit. Ld. Advocate for the appellant have drawn my attention on the various exhibits to support his claim. Let me go through the record and evidence to determine as to whether the industrial unit of the plaintiff is a SSI unit?

15. On going through the record, it appears that vide Ext-2, M/S Siotia Steels Ltd. of Dharapur, Guwahati-33 has been permanently registered as an SSI Industry vide Registration No. 020504450 dated 25/3/92 and the said licence was revalidated from 24/2/97 to 23/3/02. From the above certificate, it is clear that Govt. of Assam through Deptt. of Industry, has recognised the plaintiff as an SSI Unit. Ld. Trial Court has ignored the existence of Ext-2. Ld. Advocate for the appellant has also drawn my attention on the judgment passed by Hon'ble Gauhati High Court in FAO No. 16/2000 wherein the Hon'ble High Court relating to a matter of the plaintiff M/s Siotia Steels Ltd. has held the industry as SSI unit and entitled for benefit under 1993 Act. By referring above judgment, learned advocate for appellant tried to impress upon that in the said case, Hon'ble High Court, has already been settled the basic fact that the plaintiff is an SSI Unit and is entitled to be covered by the provision of the Act of 1993. Though the above judgment cannot be used as binding on the defendant of this case, I found sufficient force on the argument that while deciding the point in issue, it should be treated as a guiding principle.

16. Section 2 (e) defines a industrial undertaking as SSI unit as follows:- *(e) "small scale industrial undertaking" has the meaning assigned to it by clause (j) of section 3 of the Industries (Development and Regulation) Act, 1951 (65 of 1951);*

17. Section 3 (j) of the Industries (Development and Regulation) Act, 1951 (65 of 1951) provides that "A *small scale industrial undertaking@ means an industrial undertaking which, in accordance with the requirements specified under sub-section (1) of section 11B, is entitled to be regarded as a small scale industrial undertaking for the purposes of this Act;*"

18. Learned trial court has decided the provisions of Section 11B (i) but failed to appreciate the law in answering the point in affirmative most probably due to due non-consideration of Exbt. 2. Contd. at P/6

Without going through the further details , Ext-2 itself, shows that the plaintiff unit is an SSI Unit and the defendant has not challenged the above status of the plaintiff. The findings of Learned Trial Court that it is an ancillary industrial undertaking is certainly beyond pleadings. Even for the argument sake, assuming that the plaintiff unit is an ancillary industrial undertaking then also, plaintiff is covered by 1993 Act. Hence, the findings of the Learned Trial Court the plaintiff is not entitled benefit under 1993 Act needs to be modified. In view of my discussions, I hold that plaintiff unit is a small scale industry and is entitled for the benefits under the 1993 Act.

19. Now coming to factual aspect, during argument hearing, Ld. Advocate for the appellant has admitted that during pendency of the suit, they have received payment of Rs. 1,06,000/- from the defendants on various dates but said payment, as made during pendency of the suit, cannot be a ground for rejecting the claim of the plaintiff for interest under the 1993 Act. In his argument, he has stressed on this point that non-consideration of the fact of non-payment of interest by the defendants is a vital error on the part of the Ld. Trial Court. On a pointed query from court regarding the bills relating to cements which was not produced by the plaintiff, learned advocate for appellant has submitted that while making part payment, as there was no specific mention against which of the bills, payments were made, as such, it is the prerogative of the plaintiff to adjust the said amount against any of the pending bills as provided u/s 60 of the Indian Contract Act. By submitting a chart, learned advocate for appellant has demonstrated that even applying the principle for 'first in first out' principle it will reveal that the outstanding amount will be in relation to bill for supply of M S Rod produced by plaintiff unit. He also pointed out that two bills for supply of steel amounting to Rs. 1,06,520/- and Rs. 1,21,784/- were raised and the outstanding amount may be treated for those bills. I find force in the submissions. Section 59 of the Indian Contract Act provides for adjustment against specific bills whereas Section 60 of the Indian Contract Act provides the prerogative to plaintiff to adjust the amount as per his choice. As the outstanding amount is Rs. 1,02,516/- and the bills for supply M S Rod is more than that amount, it can be said that the outstanding relates to said supply of steels produced by the plaintiff unit. It may be noted here that the payment of Rs. 1,06,000/- was made after

..... Contd. at P/7

pendency of the suit certainly will not dissolve the liability of interest as per the Act of 1993 if the plaintiff is able to prove that his unit is a SSI Unit and is covered under the said Act of 1993.

20. Before proceeding further let me consider the related provisions of the 1993 Act upon which the plaintiff based his claim. Section 3, 4 and 5 of the 1993 Act read as follows:-

3. *Liability of buyer to make payment.- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: 2[Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.]*

4. *Date from which and rate at which interest is payable.- Where any buyer fails to make payment of the amount to the supplier, as required under section 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one and half time of prime Lending Rate charged by the State Bank of India. Explanation.- For the purposes of this section, "Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank.*

5. *Liability of buyer to pay compound interest.- Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly interests) at the rate mentioned in section 4 on the amount due to the supplier.*

21. From bare reading of above provisions of Act 1993, it is clear that As per section 3, a buyer is required to make payment within the appointed day.

22. Section 2 (b) defined the appointed day as follows:

(b) *"appointed day" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. Explanation.- For the purposes of this clause,-*

(i) *"the day of acceptance" means,-*

(a) *the day of the actual delivery of goods or the rendering of services;*

(b) *where any objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;*

(ii) *"the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;*

..... Contd. at P/8

23. In the present case, the plaintiff has not stated regarding any appointed day for payment. In the suit, from the statement of account it appears that the last bill of Rs. 1,21,784.00 was raised on 09.01.2002 for supply of MS rod and last payment was made by the defendant was on 06.02.2002. As shown in the statement, the above part of the above amount adjusted against previous bills and the outstanding was Rs. 1,02,500/- on the date of last payment. There is no proof of any payment within 30 days of amount due. As admitted by plaintiff and noted by learned trial court, defendants have paid Rs. 20,000/- on 13/11/06, Rs. 10,000/- on 9/1/07, Rs. 30,000/- 15/9/07, and 46,000/- on 24/11/07 and thus paid Rs. 1,06,000/- against the claim of the plaintiff. Plaintiff has instituted the suit on 07/01/2005 claiming interest on delayed payment and worked out the interest amount at Rs. 53,484.36 by calculating the same on 1.5 times on the PLR as provided in section 4 and 5 of 1993 Act and thus filed the suit for realisation of Rs. 1,56,000/- [out of which Rs. 1,02,516/- is principal amount and rest amount of Rs. 53,484.36]. For this purpose, the plaintiffs have proved a statement of accounts and also proved bank rates prevailing at that relevant time. The defendant did not contest the above calculation either as wrong or highly charged. So, I have no option than to accept the statement of accounts shown by the plaintiff as true and hold that on the date of filing of the suit, the plaintiff was entitled to get Rs. 1,56,000/-. Out of the above amount, admittedly, defendants have paid Rs. 20,000/- on 13/11/06, Rs. 10,000/- on 9/1/07, Rs. 30,000/- 15/9/07, and 46,000/- on 24/11/07 and thus paid Rs. 1,06,000/- only. The suit was filed on 7/1/05. So, the plaintiff is entitled for the future interest on the outstanding amount including the interest under the 1993 Act i.e. 1.5 times at the PLR.

24. While discussing the point 2 learned trial court has totally ignored the above aspect and misdirected it in dismissing the claim of the plaintiff on the ground that the defendant has paid more amount than the principle due. Ld. Trial Court ought to have decreed the suit for the aforesaid remaining amount of Rs. 50,000/- with pendent lite and future interest as per the provisions of section 4 and 5 of 1993 Act. For the purpose of simplifying the matter of interest and due to non availability of the PLR during pendency of the suit and also for future interest, I am of the opinion that it will be just and proper to fix the rate of interest at the rate of 15% (fifteen) Contd. at P/9

per annum for making calculation on the remaining amount of unsatisfied claim for the pendent lite part and future interest after adjusting the amount already paid by defendant.

25. In view of my above discussion, I am of the considered opinion that the plaintiff is entitled for the interest under the 1993 Act and defendants are liable to pay the same provisions of section 4 and 5 of 1993 Act. The finding of the Ld. Court below is thus needs to be set aside.

26. In the result, I hold that the appeal has merit and as such same is allowed. The judgment and decree passed by Ld. Trial Court in M.S. No. 152/06 is set aside. The appellant is entitled for the reliefs granted here-in-below.

ORDER

27. Appeal is allowed on contest with costs. Judgment and decree passed by Ld. Trial Court in M.S. No. 152/06 is set aside. Plaintiff's suit is decreed on contest with costs with the following reliefs :-

- a) On 07.01.2005, plaintiff was entitled to get Rs. 1,56,000/- (one lakh fifty six thousand) with pendent lite and future compound interest @ 15% p.a. subject to adjustment of payment of Rs. 1,06,000/- (one lakh six thousand) as made by defendant during pendency of the suit [Rs. 20,000/- on 13/11/06, Rs. 10,000/- on 9/1/07, Rs. 30,000/- 15/9/07, and 46,000/- on 24/11/07].
- b) The interest is payable as per the provisions of section 4 and 5 of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 till realisation of entire due amount.
- c) For the purpose of the calculating the amount of pendent lite and future interest, the executing court may take help of experts, if so necessitated.

28. Prepare the decree within 15 days from today accordingly.

29. Judgment is pronounced in open court. Appeal is disposed on contest.

30. Send down the case record of M.S. No. 152/06 to learned Munsiff No. 2, Kamrup, Guwahati with a copy of this judgment and decree.

Given under my hand and seal of this court on this 22nd day of August, 2012.

(S. K. Poddar),
Civil Judge No. 3,
Kamrup, Guwahati.