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Supreme Court Of India

A.K. Sikri, Ashok Bhushan, JJ.

Ramji Singh Patel v. Gyan Chandra Jaiswal

Civil Appeal No. 1799-1800/2018 (Special Leave Petition (C) No. 30733-30734/2013)

11.01.2018

Limitation Act, Section 3 - Second Appeal - Substantial question of law - Plea of limitation could have been taken in the Second Appeal before the High Court only if the issue was raised was a pure question of law - No plea was taken up by the respondent in the written submissions filed by him to the suit , no issue on limitation came to be casted - Obviously, in the absence of any such issue framed, the parties did not lead any evidence - No doubt, even in the absence of any specific issue of limitation, by virtue of Section 3 of the Limitation Act, power is cast on the Court to see whether the suit is within limitation or time barred - However, such a plea could have been taken by the respondent in the Second Appeal before the High Court only if the issue of limitation was raised as a pure question of law - In the instant case, we find it to be a mixed question of law and fact and, therefore, it could not have been entertained by the High Court for the first time in the second appeal filed by the respondent.

Held,

Nuisance - Atta Chaki - Installed on 1999 - From the year 2003 the respondent started operating the above said flour mill with machines, on diesel engine – High court held that Atta Chakki was started in 1990 and the suit was filed 14 years thereafter, i.e. in the year 2004, and held to be time barred - Appellant had categorically stated that nuisance started in operating the said Atta Chakki (Floor Mill) when the respondent had installed DG Set in the year 2003 as it emitted smoke thereby creating air pollution and had also started creating noise pollution. Therefore, the cause of action for filing the suit was the installation of DG Set which was installed in the year 2003. The suit was filed in the year 2004 and was, thus, well within time. b) Furthermore, we find that the High Court has taken a very myopic view of the matter. The findings of fact which were recorded by the courts below were clear to the effect that after the use of DG Set by the respondent and because of the vibration created by it and the machines run through it, cracks on the wall of the appellant side developed at many places. This has happened after 2003. Another categorical finding is that running of the business is detrimental to the health of the appellant and his family. Once there are categorical findings that the flour mill of the respondent is causing noise as well as air pollution, it would be a continuing cause of action. Such a grave consequence of running this mill should not have been ignored by the High Court.

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A.K.SIKRI, J.

1. Leave granted.

2. By means of these appeals the appellant challenged the judgment and order dated 29.05.2013 passed by the High Court of Judicature at Allahabad in Second Appeal Nos. 622 of 2013 and 623 of 2013 whereby the High Court has allowed these appeals of the respondent and set aside the judgment and decree that was passed by the Trial Court in favour of the appellant and also upheld by the First Appellate Court. The chronology of the events is as under:

3. The respondent started running the business of Flour Mill, Oil Mill and Expeller, Ice Factory etc. which were operated on electricity from his residential accommodation. The appellant, who is an advocate, is the owner and resident of the adjoining house, which has a common wall with the house of the respondent.

4. According to the appellant, from the year 2003 the respondent started operating the above said flour mill with machines, on diesel engine, which started causing severe vibrations and air pollution. The vibrations caused by the machines cracked the wall of the appellant and the pollution emitted was detrimentally affecting the health of the appellant and his family members. The appellant being an advocate also runs his chambers from his residence and, therefore, the severe vibration and air pollution also started adversely affecting his professional activities.

5. Due to the aforesaid harassment and nuisance the appellant made a complaint to the Sub-Divisional Magistrate, who directed the Administrative Officer to file his report on the complaint of the appellant. The Administrative Officer, after enquiry, submitted his report on 02.12.2003.

6. Upon the report filed by the Administrative Officer, the Sub-Divisional Magistrate directed the Station House Officer to investigate the matter. The SHO directed the respondent to stop the nuisance and pollution but the respondent did not comply with the said direction. At that stage, the respondent filed Original Suit No. 2518/2003 against the appellant wherein the respondent prayed for perpetual injunction against the appellant from interfering in the running of the business of the respondent.

7. Thereafter the appellant also filed Original Suit No. 26/2004 against the respondent wherein the appellant prayed for perpetual injunction against the running of the business of the respondent which was causing nuisance and pollution. After the trial, the suit of the appellant was decreed and the Trial Court passed a decree of permanent injunction dated 03.12.2012 prohibiting the respondent from operating the said machines and from spreading air and noise pollution. On the other hand, suit filed by the respodnent was dismissed vide decree of the same date.

8. The respondent being aggrieved by the judgments and decree passed by the Civil Judge (Junior Division) Sakri, Allahabad filed Civil Appeal No. 206/2012 and 207/2012 before the Additional District Judge, Court No.2, Allahabad. The Additional District Judge, Allahabad passed a common confirmatory judgment and decreed dated 25.02.2013 in Civil Appeal Nos. 206 and 207 of 2012 observing that:

"i. The house of the respondent is adjacent to appellants house and there was a wall of 4" breadth between the two houses.

ii. The respondent has a business of Flour Mill, Oil Mill and expeller, Ice factory etc. and he uses the said machines on diesel.

iii. The respondent started his business in 1990 but at that time his machines were operated on electricity.

iv. In 2003 the respondent started using expeller machine etc. which was operated on diesel which produced a lot of vibrations and air and noise pollution.

v. Because of a vibrations caused by the said machines the wall on the appellants side cracked at many places.

vi. The running of his business is detrimental to the health of the appellant and his family.

vii. The oral evidences of the witnesses made it clear that the machines used by the respondent caused vibrations and emitted air and noise pollution.

viii. It was admitted by the respondent that the machines caused air and noise pollution.

ix. The running of said business came under the ambit of private nuisance and that such activities should not be carried out in residential areas as it is detrimental to physical and mental health of people at large.

x. The defence of volunti non fit injuria does not sustain as when the appellant started living in this house in 1990 the respondent was operating the machines on electricity and it was in 2003 that the respondent started operating the machines on diesel which caused vibrations and pollution.

xi. The appellant is entitled to perpetual injunction against the respondent."

9. Being aggrieved by the judgment and decree in Civil Appeal No. 206/2012 and 207/2012 passed by the Additional District Judge, Allahabad, the respondent filed Second Appeals Nos. 622/2013 and 623/2013 before the Allahabad High Court. The High Court has been pleased to allow both the Second Appeals and set aside judgments and decree dated 03.10.2012 passed by the Civil Judge (Junior Division), Sakri, Allahabad and 25.02.2013 passed by the Additional District Judge, Court No. 2, Allahabad and also dismissed Original Suit No. 26/2004.

10. A perusal of the judgment of the High Court shows that it is not tinkered with any of the findings recorded by the Trial Court and affirmed by the first appellate court. On the contrary, the substantial question of law which was formulated by the High Court pertains to the limitation in filing the suit which reads as under:

"Whether the suit in question was barred by time inasmcuh as prayer sought in the plaint shows that cause of action arose in 1990 though the suit was filed in 2004 and admittedly the period of limitation is only three years."

11. According to the High Court the evidence on record shows that the Atta Chakki was installed initially in 1990, but no inconvenience was felt by the appellant herein and, therefore, he did not make any complaint. The only explanation is that at that time the respondent was running the aforesaid machine with electricity which was not causing pollution or any inconvenience and since from the year 2003 the respondent started using diesel generator set (DG Set), the smoke and noise created by DG Set has caused serious air and other pollution. This explanation has not been found to be convincing by the High Court. Thus, influenced by the fact that the Atta Chakki was started in 1990 and the suit was filed 14 years thereafter, i.e. in the year 2004, it was held to be time barred.

12. After hearing the learned counsel for the parties, we do not find ourselves in agreement with the approach of the High Court. It may be noted that in the first instance no such plea was taken up by the respondent in the written submissions filed by him to the suit which was filed by the plaintiff/appellant and no issue on limitation came to be casted. Obviously, in the absence of any such issue framed, the parties did not lead any evidence. No doubt, even in the absence of any specific issue of limitation, by virtue of Section 3 of the Limitation Act, power is cast on the Court to see whether the suit is within limitation or time barred. However, such a plea could have been taken by the respondent in the Second Appeal before the High Court only if the issue of limitation was raised as a pure question of law. In the instant case, we find it to be a mixed question of law and fact and, therefore, it could not have been entertained by the High Court for the first time in the second appeal filed by the respondent.

13. That apart, even on merits we find blemish in the approach of the High Court. There are at least two reasons for that which are as under: a) The explanation given by the appellant was justified. He had categorically stated that nuisance started in operating the said Atta Chakki (Floor Mill) when the respondent had installed DG Set in the year 2003 as it emitted smoke thereby creating air pollution and had also started creating noise pollution. Therefore, the cause of action for filing the suit was the installation of DG Set which was installed in the year 2003. The suit was filed in the year 2004 and was, thus, well within time. b) Furthermore, we find that the High Court has taken a very myopic view of the matter. The findings of fact which were recorded by the courts below were clear to the effect that after the use of DG Set by the respondent and because of the vibration created by it and the machines run through it, cracks on the wall of the appellant side developed at many places. This has happened after 2003. Another categorical finding is that running of the business is detrimental to the health of the appellant and his family. Once there are categorical findings that the flour mill of the respondent is causing noise as well as air pollution, it would be a continuing cause of action. Such a grave consequence of running this mill should not have been ignored by the High Court.

14. To sum up, we find that the High Court was in error in allowing the appeals in the aforesaid manner. These appeals are accordingly allowed, the impugned judgment of the High Court is set aside and the decree passed by the Courts below is restored.

15. No order as to costs.