

**HEADING OF DECISION IN CIVIL SUITS
IN THE COURT OF 1st ADDL.SENIOR CIVIL JUDGE, BHUBANESWAR**

*Present :- Pranab Kumar Routray, LL.M,
1st Addl. Senior Civil Judge,
Bhubaneswar.*

C.S. No.23/1391 of 2013/2010

Smt. Bharati Mishra, aged about 51 years,
Prop. Nagraj Plaster & Supplies
B-7, Janpath Tower, Ashok Nagar,
P.S- Capital, Bhubaneswar, Dist.Khurda

..... **Plaintiff**

-Versus-

1. Sri Chinmay Kabi
(Ex-Sales Tax Officer), Bhubaneswar-II Circle,
Bhubaneswar, A/P Deputy Commissioner (Appeal),
S.T. Office, Range-II, Cuttack
(Behind Puri Bus Stand at Cuttack).
2. C.T.O., Bhubaneswar II Circle,
Vani Vihar, Bhubaneswar.
3. Deputy Commissioner,
Bhubaneswar-II Circle, Bhubaneswar.

... **Defendants.**

4. Principal Secretary, Financial Dept.,
Govt. of Odisha, Secretariat Building,
Bhubaneswar.

... **Proforma Defendants.**

COUNSEL APPEARED

For Plaintiff : Sri K.C. Mishra

For Defendant no.1 : Sri S.K. Pattnaik and associates.

For Defendant nos.2 to 4 : Sri R.P. Nanda, Govt. Pleader.

Date Of Conclusion Of Argument : **05-12-2014**

Date Of Judgment : **26-12-2014**

J U D G M E N T

This is a suit for damage for Rs.20,13,810/- with pendentilite and future interest and with cost.

2. The plaintiff's case in brief is that the plaintiff is the proprietress of a small trading firm namely Nagraj Plaster and Suppliers commenced its commercial transaction in the year 1987. It carries business by bringing Plaster of Paris from Rajasthan and Assam for selling in Odisha. It uses Government Way bill forms issued by Sales Tax Authority to avoid suppression of purchase and evasion of tax thereon. Defendant no.1 was posted as Assistant Sales Tax Officer, Bhubaneswar II Circle for the period from 2002-2007 and his nature of work was to assess the annual turnover of the plaintiff's business and the amount of sales tax liability on the said turnover. After examining the accounts of business, he passed assessment order for the period 1999-2000 with no tax due but had demanded bribe of Rs.3,000/- from the husband of the plaintiff who was looking after the external affairs of the business and on being not paid the said amount he held up the ' C ' Form and subsequently issued the same after taking bribe of Rs.1,000/- from the plaintiff. But on 24-12-2004 defendant no.1 issued notice to the plaintiff to produce Books of Accounts for the assessment year 2000-2001 and in course of scrutiny of

Books of Accounts it was detected by him that transporting charges were not added to the purchase price for which he demanded tax of Rs.5,39,723/- in his Arbitrary Assessment Order whereas the purchase value of the commodity for the same year was Rs.6,03,292/- and this arbitrary demand was made when his demand of illegal gratification of Rs.30,000/- was not paid by the plaintiff . Being aggrieved by the impugned assessment order the plaintiff approached Appellate Forum which reduced the demand tax to Rs.2,09,792/- but the Appellate Forum did not decide the controversial issue that whether the freight is liable for tax or not. Hence, the plaintiff filed Second Appeal before Sales Tax Tribunal, Odisha, Cuttack but during the meantime plaintiff filed an application on 03-05-2005 to avail Way bill forms but it was rejected by defendant no.1 on the ground that unless the demand tax was realised no way bill form could be issued in favour of plaintiff as a result of which the business of the plaintiff virtually ceased from 03-05-2005. The plaintiff also filed writ petition before Hon'ble High Court of Orissa with a prayer to avail way bills to continue her business. Hon'ble High Court directed the plaintiff to deposit Rs.40,000/- only by two installments while granting stay in the matter. In course of time defendant no.1 passed assessment order for subsequent four years 2001-2002, 2002-2003, 2003-2004 and 2004-2005 demanding tax amount of Rs.5,00,000/- approximately. In the Second Appeal Sales Tax Tribunal on dtd.21-11-2009 confirmed the tax demand amount of Rs.2,09,792/-. It is the further case of the plaintiff that the act of

defendant no.1 to start assessment proceeding for four consecutive years speaks about his ulterior motive for his personal interest and his such conduct was also brought to the notice of Commissioner of Commercial Taxes on earlier occasions for which FIR was lodged before Vigilance Wing. The wrongful action of defendant no.1 virtually compelled the plaintiff to close business which caused much loss to her. Hence, the plaintiff filed this suit by appending the particulars of liquidated/ unliquidated / general damages in the plaint claiming total amount of Rs.20,13,810/- with interest towards damage from the defendants.

3. Defendant no.1 filed a written statement and challenged the suit as not maintainable as jurisdiction of Civil Court is barred as per Section 22 and 27 of the Orissa Sales Tax Act,1947 and Section 88 of Orissa Value Added Tax Act, 2004. The suit is grossly barred by limitation as cause of action arose on 03-05-2005. He admitted to have hold the post of Additional Commercial Tax Officer in Bhubaneswar II Circle from 23-10-2001 to 31-05-2006 and was the Assessing Officer of the business of the plaintiff. It is denied to have issued any notice for assessment year 1999-2000 nor had examined the accounts of business for the same year but has scrutinized and accepted the returns filed for that year. He denied about demand of any illegal gratification of Rs.3,000/- from the husband of the plaintiff or to have received any amount of Rs.1,000/- from the plaintiff for issuing C-Forms. He being

the competent statutory authority has issued notice for assessment for the year 2000-2001. In course of assessment the plaintiff and her representative failed to produce stock accounts of Plaster of Paris and on scrutiny of accounts, it was found that the plaintiff was bringing stock from Rajasthan and Siliguri on paying huge amount of transportation charge but has not added the said charge to the basic purchase price and profit margin while determining the sale price of goods. He denied to have demanded any illegal gratification of Rs.30,000/- or to have received Rs.2,000/- from the plaintiff. In due discharge of his official duty he had passed order of assessment for the year 2000-01 on 31-03-2004 raising a demand of Rs.5,39,723/- as sales tax. The said order of assessment was challenged in appeal before Assistant Commissioner of Sales Tax who allowed the order in part and the demand was reduced to Rs.2,09,792/- and in the said order the Appellate Authority had discussed about taxability of inward transportation cost. The plaintiff has also preferred Second Appeal before Odisha Sales Tax Tribunal and the second appeal was dismissed on 31-08-2009 to which the plaintiff has not challenged and therefore the same had become final and conclusive. It is further averred that in the interest of State Revenue he informed the plaintiff on 05-08-2005 that way bills cannot be issued unless the arrear tax dues are cleared. It is further averred that pending disposal of second appeal, the plaintiff had prayed stay for demand of Rs.2,09,792/- as ordered by First Appellate Authority and the Additional Commissioner of Sales Tax in the Stay Revision case had asked the plaintiff

to deposit Rs.80,000/- in three installments vide order dtd.31-08-2005. Plaintiff challenged this order before Hon'ble High Court of Orissa through writ petitions. The plaintiff also challenged the order passed by defendant no.1 on dtd.05-08-2005 refusing to issue way bill and C-Form through a writ petition before Hon'ble High Court. Hon'ble High Court vide order dtd.27-02-2006 disposed both the writ applications and directed the plaintiff to deposit Rs.40,000/- for the year 2000-2001, Rs.20,000/- for the year 2001-2002 and Rs.30,000/- for the year 2002-2003 by the end of March, 2006 and thereafter Way bill and C-Forms will be issued but the plaintiff failed to honour the order of Hon'ble High Court. It is specifically pleaded that his statutory action cannot be made basis for claim of compensation or to raise any allegation that he is responsible for closure of business of the plaintiff. Hence, prayed for dismissal of the suit with exemplary cost.

4. Defendant nos.2, 3 and 4 filed a joint written statement and challenged the suit on its maintainability, cause of action, limitation and non-serving of statutory notice U/s.80 of C.P.C, That the suit is barred U/s.22 and 27 of the Orissa Sales Tax Act, 1947 and U/s.88 of Orissa Valued Added Tax Act, 2004. Defendant no.4 is in no way concerned with the alleged cause of action. During alleged assessment years there was no post like defendant no.3 and defendant no.2 is in no way connected with the alleged assessment made. That on verification of issue of C-Form file and way bill it was revealed

that the dealer-plaintiff was effecting inter state purchase of Plaster and paints from different dealers of Rajasthan, West Bengal and other States on the strength declaration Form-C by utilising Government Way bills. The way bill was not issued as the dealer plaintiff did not deposit tax as per orders of defendant no.1, First Appellate Authority, Second Appellate Authority and finally as per order of Hon'ble High Court. Hence, prayed to dismiss the suit with cost.

5. With the aforesaid rival pleadings of the parties, the following issues have been settled.

ISSUES

1. Whether the suit is maintainable ?
2. Whether there is cause of action to bring the suit ?
3. Whether jurisdiction of Civil Court is barred U/s.22 and 27 of the Orissa Sales Tax Act, 1947 and U/s.88 of the Orissa Value Added Tax Act, 2004 ?
4. Whether the suit is barred by limitation ?
5. Whether the suit is hit U/s.80 of C.P.C. for non- serving of statutory notice ?
6. Whether the plaintiff is entitled for the amount as claimed towards damage from the defendants ?
7. To what other relief(s) the plaintiff is entitled ?

6. The plaintiff has examined herself as P.W.1 and her husband, founder proprietor as P.W.2 and brought some documents under Exts.1 to 9 list of which is appended at the foot of the judgment. Defendant no.1 has examined himself as D.W.1 and produced and proved documents vide Exts.A to F. No other defendants have adduced any evidence either oral or documentary.

7. With the aforesaid materials on record, the issues are to be answered.

FINDINGS

Issue no.6

8. This being the principal issue is taken up first for consideration. The plaintiff claims that her business became ceased as defendant no.1 on dtd.05-05-2005 rejected her application of dtd.03-05-2005 requesting for issuance of way bill form and this act of defendant was based on his arbitrary assessment of sale tax to which the plaintiff could not clear up and such arbitrary assessment was done when the plaintiff could not fulfill the demand of illegal gratification of Rs.30,000/-. On the other hand, defendant no.1 denying all such assertion took his stand that he has passed order on dtd.05-08-2005 in due discharge of his official duty and in good faith and his such order has been challenged by the plaintiff which has been upheld by the First Appellate Authority and Second Appellate Authority and Hon'ble High Court of Orissa also directed the

plaintiff to deposit Rs.40,000/- for the assessment year 2000-01, Rs.20,000/- 2001-02 and Rs.30,000/- for 2002-03 and thereafter the way bills and statutory C-Forms shall be issued. Similarly other defendants denied the claim of the plaintiff.

9. The plaintiff has examined herself as P.W.1 and her husband who is the founder proprietor of the firm and also the advocate looking after the tax matter for the plaintiff's firm as P.W.2. Both of them in their examination-in-chief deposed most of the facts narrated in the plaint. The main crux is that on 31-03-2004 assessment order for the year 2000-01 was passed by defendant no.1 demanding tax of Rs.5,39,723/- which is arbitrary because defendant no.1 added the freight charges into the purchase price even though it was paid separately to the transporter. It is pleaded that Section 2(e e) of Orissa Sales Tax Act defines purchase price wherein the freight will not be added into the in-voice price but Section 2(h) says the freight may be charged separately and therefore freight should not be taxable. Such refusal of defendant no.1 to issue way bill through his letter dtd.05-08-2005 virtually compelled the plaintiff to cease her business. Now it is to be examined whether the plaintiff is entitled for damage for such act of defendant no.1.

10. At the outset it is pertinent to mention that para 4 of the plaint itself reveals that the plaintiff has sought no relief against defendant no.4 but made him a

party-proforma defendant being the head of administration of the department. Therefore, as per the plaintiff, defendant no.4 is not liable to pay any damage to her.

11. Whether the action of defendant no.1 in the capacity of sales tax officer demanding tax of Rs.5,39,723/- and non issuance of way bill to the plaintiff inspite of plaintiff's application comes under tortuous liability and whether transportation charge for bringing the material from out of State is to be included in the sale price and accordingly tax is to be calculated or not, I have carefully perused the entire evidence on record both oral and documentary and found that Ext.4 is the assessment order U/s.12 of Orissa Sales Tax Act, 1947 passed by defendant no.1 on dtd.31-03-2004 demanding balance due tax of Rs.5,39,723/-. The pleadings as well as the oral evidence from the side of plaintiff itself reveals that the plaintiff preferred appeal before First Appellate Court against the order passed in Ext.4 which reduced to demand tax to Rs.2,09,742/-. It is her further pleadings that the First Appellate Court did not decide the controversial issue whether the freight is liable for tax or not and hence she filed second appeal before Sales Tax Tribunal, Odisha, Cuttack. The plaintiff has produced and proved copy of the order passed by the Assistant Commissioner of Sales Tax-cum-First Appellate Authority vide Ext.6. Certified copy of the said order is also marked from the side of defendant no.1 as Ext.E. On perusal of the same it is found that appeal was preferred against the order of defendant no.1 demanding tax of

Rs.5,39,723/- and the First Appellate Court allowed the appeal in part but reduced the demand to Rs.2,09,742/-. Further careful perusal of the said order it reveals that the First Appellate Court opined that the sale price includes the cost of bringing the goods to the place of sale and his such opinion is based on the decisions of Hon'ble Apex Court. Therefore, the plea taken by the plaintiff that the controversial issue of inclusion of freight charge with the sale price has not been decided by the First Appellate Court is not true. The pleadings as well as the evidence further reveals that being aggrieved on the order passed under Ext.6 the plaintiff preferred second appeal before the Odisha Sales Tax Tribunal, Cuttack but pending such appeal the plaintiff also preferred revision before the Commissioner of Commercial Taxes, Odisha against the order passed by First Appellate Authority (Order passed through Ext.6) praying for stay of realisation of the demanded tax pending disposal of the appeal by the Odisha Sales Tax Tribunal. Ext.G is the said order filed by defendant no.1 wherein the Additional Commissioner of Sales Tax directed the plaintiff to pay Rs.80,000/- in three installments i.e. Rs.25,000/- by dtd.31-10-2005 and Rs.25,000/- by dtd.25-11-2005 and Rs.30,000/- by dtd.25-12-2005 and on production of proof of payments the balance shall be stayed till disposal of appeal. This order was passed on 31-08-2005. Admittedly the plaintiff has not paid the said amount. It is the pleadings as well as evidence from the side of plaintiff that she filed application on dtd.03-05-2005 before defendant no.1 for issue of way bill. The

said application is Ext.2. It is her claim that defendant no.1 vide his letter dtd.05-08-2005 refused to issue way bill. The said letter of defendant no.1 is marked as Ext.3. Perusal of Ext.3 reveals that defendant no.1 has mentioned in his letter that inspite of disposal of appeals preferred by the plaintiff and in absence of any valid stay order from competent authority, the plaintiff failed to clear up the dues which proved her unwillingness to clear up the government revenue. The said letter further discloses that defendant no.1 has asked the plaintiff to clear up the dues by 19-08-2005 failing which no way bills forms will be issued. Hence, it is clear that defendant no.1 has issued this letter under Ext.3 after passing of order by First Appellate Court on 24-12-2004 and by that date there was also no stay order from the Commissioner of Sales Tax. It is also found from the documentary evidence that plaintiff preferred two writ petitions before Hon'ble High Court of Orissa through W.P.(C) no.14475/2005 and W.P(C) no.2422/2006. Common order was passed in both the writ petitions by Hon'ble High Court on dtd.27-02-2006. Copy of the said order is produced and proved by the plaintiff as Ext.5 which reveals that in W.P.(C) no.2422/2006 the plaintiff challenged the order passed under Ext.G i.e. order dtd.31-08-2005 passed by the Commissioner of Sales Tax, Cuttack directing the plaintiff to pay a sum of Rs.80,000/- against the demand amount for the assessment year 2000-01 and in W.P.(C) no.14475/2005 the plaintiff prayed for a direction to defendant no.1 and the Commissioner of Commercial Taxes to issue requisites

' C ' Forms and Way bills to her in order to enable her to carry on the business. Ext.5 reveals that Hon'ble High Court directed the plaintiff to pay a sum of Rs.40,000/- for the assessment year 2000-01, Rs.20,000/- for the assessment year 2001-02 and Rs.30,000/- for the assessment year 2002-03 by the end of March, 2006 and on being paid the way bills and statutory C Forms shall be issued by defendant no.1 and Commissioner of Commercial Taxes within seven days of such deposit. It is also observed therein that such direction was subject to the result of pending appeals preferred by the petitioner. The evidence of plaintiff as deposed in para 17 reveals that she has not paid the said amount as ordered by Hon'ble High Court. On further perusal of the documents brought into evidence it is found that the second appeal preferred by the plaintiff before the Sales Tax Tribunal was disposed on 28-08-2009. Certified copy of the said order is marked as Ext.F wherein the Second Appellate Authority upheld the order passed by the First Appellate Authority. Ext. F further discloses that Second Appellate Authority also observed that sale price of the goods is fixed by adding transportation charges, other incidental charges and profit to the invoice price of the goods. It is also observed in the said order that the plaintiff has adopted the mode of computation of sale price only to evade payment of tax. The evidence of P.W.2 in para 23 reveals that the plaintiff has not challenged the order of Second appeal i.e. order passed under Ext.F before Hon'ble High Court. Hence, the materials on record itself clearly says that assessment order passed by

defendant no.1 through Ext.4 was challenged upto Second appeal and the Second Appellate Forum i.e. Odisha Sales Tax Tribunal, Cuttack through Ext.F has finalised the said dispute with observation that the plaintiff adopted her mode of computation of “ sale price ” only to evade payment of tax.

12. It is just not possible to reflect bulky oral evidence adduced from both sides for which the relevant portion of oral evidence alongwith documentary evidence which are required to decide the allegation of the plaintiff have been reflected in the above para. From the aforesaid documents it is clear that Hon'ble High Court of Orissa vide order dtd. 27-02-2006 in Ext.5 have directed the plaintiff to deposit the amount and thereafter the way bills and statutory C Forms shall be issued within seven days after such deposit. There is material on record that the plaintiff has not deposited the amount as directed by Hon'ble High Court. Hence, refusal of defendant no.1 to issue way bill cannot be challenged in this forum and should not be a subject matter of dispute because the plaintiff herself has not carried out the order of Hon'ble High Court. This apart, Ext.3 reveals that defendant no.1 has given opportunity of 14 days to the plaintiff to clear up the dues failing which no way bill forms would be issued. Further, P.W.2 in para-20 of his evidence has admitted that issuance of ' C ' Forms is a statutory act and the Sales Tax Officer should examine all documents for satisfaction before issuance of ' C ' Forms.

12(a) It is pertinent to mention that whether defendant no.1 has assessed the tax liability of the plaintiff arbitrarily or not has already been decided by appropriate forum. Now it is to be decided whether this Court has jurisdiction to decide whether the assessment made by defendant no.1 which has been upheld by Second Appellate Authority is proper or not.

13. It is necessary to reflect the relevant sections of the Orissa Sales Act and Orissa Valued Added Tax Act, to decide the dispute about jurisdiction of this Court. Section 22 of Sales Tax Act says “ Bar to Certain proceedings – Save as is provided in section 24 no assessment made or purporting to have been made and no order passed or purporting to have been passed under the provisions of this Act and the rules made thereunder by the Commissioner, Tribunal [x x x x x x x x] or any person appointed under section 3 to assist the Commissioner shall be called in question in any Court and save as is provided in section 23, no appeal or application for revision shall lie against any such assessment or order, as the case may be.]”

13(a) Section 27 of the Sales Tax Act says “Indemnity and limitation for certain suits and prosecutions-
(1) No suit, prosecution or other legal proceedings shall lie against any servant of the [Government] for anything which is

in good faith done or intended to be done under this Act or the Rules made thereunder.

(2) No suit shall be instituted against the [Government] and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the State Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

13(b) Section 88 of the Orissa Value Added Tax, Act 2004 says “ Bar to certain proceedings- Save as provided in Section 80, no assessment made or order passed under this Act or the rules shall be called into question in any Civil Court and, save as provided in Section 77, 78 and 79, no appeal or application for revision shall lie against any such assessment or order ”.

13(c) Considering the aforesaid provisions of the said Acts and admission of the plaintiff that defendant no.1 has done his act in good faith and due discharge of his official duty as deposed in para-19 of his evidence, this Court is of the opinion that this Court has no jurisdiction to decide whether the assessment made by defendant no.1 is proper or arbitrary. Further, sale price has been defined in Orissa Sales Tax Act and the challenge of the plaintiff on sale price has been decided by First Appellate Authority through his order vide Ext.6 and by

Second Appellate Authority through their order vide Ext.G and therefore there is no necessity to interpret whether sale price includes purchase price plus freight charge or not.

14. The question of illegal gratification demanded by the plaintiff and due to non fulfillment of such demand the plaintiff was compelled to close her business can only be considered in this suit for damage. On perusal of Ext.6, order of First Appellate Authority, Ext.F, order of Second Appellate Authority, Ext.G, order dtd.31-08-2005 of Commissioner of Sales Tax and Ext.5, order of Hon'ble High Court, no document reveals that the plaintiff has ever taken the plea of demand of illegal gratification before any forum. P.W.2 in para 26 of his cross-examination has admitted that the plea of illegal gratification was not taken in the First Appeal, second appeal or in writ application as it was not necessary in those proceedings. The plaintiff (P.W.1) in her evidence in para 18 deposed that she has no personal knowledge as regards to the alleged demand nor she personally has paid the illegal gratification. Even she could not say whether in the plaint it is mentioned that defendant no.1 demanded Rs.2,000/- but volunteered that the demand was for Rs.4,000/-. Hence, the evidence of the plaintiff herself reveals that she was not aware about the demand amount of illegal gratification . She only knew about such illegal gratification from her husband (P.W.2). Hence, the moot question arises if defendant no.1 has demanded illegal gratification and when it was not fulfilled by the

plaintiff, he stopped to issue way bill, then the husband of the plaintiff who is an advocate and is looking after the tax matter of the plaintiff and particularly when gratification was demanded from him, he should have approached anti corruption wing or he should have made complaint before police but his evidence is silent on this point. P.W.1 in para 24 has admitted she has not intimated police in writing about illegal gratification demanded by defendant no.1. Therefore, the irresistible conclusion is drawn that till the order passed by the second Appellate Authority in 2009 neither the plaintiff nor her husband has ever raised this issue of illegal gratification before any forum but in the suit filed in the year 2010 they have raised this issue for the first time. This seems to be a afterthought for the purpose of this case to claim damage. It is pleaded on the conduct of defendant no.1 that FIR was lodged in vigilance office regarding misuse of way bills by defendant no.1 but during cross-examination P.W.1 admitted in para 20 that she has no document to show about pending of any vigilance case against defendant no.1. In the same para she has admitted that she could not say whether there is any vigilance case against defendant no.1. Hence, such allegation against the conduct of defendant no.1 also appears to be baseless.

15. It is already held that there is no fault on the part of defendant no.1 in assessing the tax of the plaintiff's firm nor he has any fault to stop issuance of way bill nor the plaintiff has proved that defendant no.1 stopped to issue way bill in

favour of her firm when his demand of illegal gratification was not fulfilled. Therefore, it is held that no wrong has been committed by defendant no.1 and hence he is not liable to pay any damage to the plaintiff. This apart, the damage claimed by the plaintiff for an amount of Rs.20,13,810/- is without any basis as there is no document brought into evidence nor any witness has been examined from her side to prove any of the claimed amount as mentioned in para 20 of the plaint reflected on different heads. The plaintiff has claimed damage of Rs.30,000/- towards non recovery of advance paid to the landlord for godown and office but failed to substantiate that what was the advance amount paid to the landlord for godown and office and whether her office and godown was running in a rented house. Similarly plaintiff has claimed damage of Rs.6,000/- towards wastage of office printed stationery but failed to prove how much of office stationery became unuseful or where from he had purchased the stationery articles nor produced & proved any document in support of purchase of such articles. The plaintiff also claims Rs.1,50,000/- towards non realisation of outstanding amount from the debtors but has not whispered as to who are the debtors or how much amount to be realised from which debtors or as to how defendant no.1 is responsible for non realisation of the outstanding amount from her debtors. Hence, this amount as claimed appears to be an imaginary amount. Similarly the damage claimed on the head of incapability to pay back loan to bank, waste of office furniture and fittings, sale of paternal and agricultural property in village

and hand loan from friends and relative has not been proved by the plaintiff either through oral or documentary evidence. The plaintiff and P.W.2 in their examination-in-chief filed in shape of affidavit simply have mentioned about the particulars of damages. This Court is further of the opinion that when the plaintiff fails to prove any wrong committed by defendant no.1 causing damage to her and when plaintiff fails to prove as to how she calculated the amount of damage on each head as mentioned by her in the plaint, she is not entitled to get any damage. Damage being a discretionary relief the plaintiff should approach the Court in clean hand. Instead of doing so, the plaintiff is raising allegation of illegal demand of gratification made in the year 2005 for the first time in this suit which is filed in the year 2010. This seems that the plaintiff has not approached this Court in clean hand.

16. It is already held that defendant no.4 is in no way liable to pay damage to the plaintiff. However, the evidence on record does not speak anything that as to how defendant nos.2 and 3 are liable for any wrong committed by defendant no.1 or as to how they are liable to pay damage. This apart, defendant no.3 deposing as D.W.2 when was cross-examined by plaintiff answered in para 13 that the plaintiff has not claimed any relief against defendant nos.2, 3 and 4 and further answered that they have nothing in support nor in adverse of defendant no.1. Hence, the plaintiff also fails to prove to claim damage against these defendants. Hence, the

plaintiff is not entitled for any amount claimed for damage from any of the defendants. This issue is accordingly answered in negative and against the plaintiff.

Issue no.4

17. This issue relates to the point of limitation. It is claimed by the defendants that the plaintiff is challenging the order of defendant no.1 passed on 05-08-2005. The suit is filed in the year 2010. Learned Government Pleader appearing for defendant nos. 2 to 4 submitted that as per Article 72 of the Limitation Act any compensation for doing or omitting to do an act alleged to be in pursuance of any enactment in force is to be filed within one year from the date of the act or omission takes place and in the case at hand the alleged act committed on 05-08-2005 but suit is filed in 2010 and, hence, suit is barred by limitation. It is claimed by the plaintiff that defendant no.1 stopped to issue way bill as a result she could not carry on business from 03-05-2005 as a result of which she suffered great loss. But Hon'ble High Court of Orissa vide order dtd.27-02-2006 directed the plaintiff to deposit the amount as reflected in Ext.5 and thereafter way bills and statutory C- Forms shall be issued. The plaintiff has not complied the order of Hon'ble High Court but filed the suit after lapse of more than four years of order of Hon'ble High Court. Similarly the demand of illegal gratification by defendant no.1 which was demanded in the year 2004 i.e. prior to issuance of Ext.4

(assessment order for the year 2000-01) is raised for the first time in the suit filed in the year 2010. It is already held that this Court lacks jurisdiction to observe whether the assessment order passed by defendant no.1 is proper or not. Hence, even though the Second Appellate Authority passed order on dtd.31-08-2009 and the suit is filed on 10-08-2010 but as the plaintiff has challenged the order passed by defendant no.1 on dtd.05-08-2005 rejecting to issue way bill, certainly the suit is filed beyond the period of limitation. On the aforesaid observation, it is safely held that the suit is barred by law of limitation.

Issue no.5

18. This issue relates to whether the suit is hit U/s.80 of C.P.C. It is pleaded that on 22-04-2010 the plaintiff issued notice to the defendants U/s.80 of C.P.C. But the defendants have denied to have received any such notice. P.W.1 in para 16 in her evidence deposed that she did not know anything about notice U/s.80 of C.P.C. The office copy of the notice has not been brought into evidence nor there is any evidence on record either oral or documentary to show that notice was sent to the defendants or was served on them. All the defendants have been parties in their official capacities. They are public officers. So it is the bounden duty of the plaintiff to serve notice U/s.80 of C.P.C on them prior to filing of the suit but the plaintiff failed to do the same. Hence, the suit is hit U/s.80 of C.P.C. for non-serving of statutory notice on the defendants.

Issue nos,1, 2, 3 & 7

19. It is already observed under issue no.6 that as per Section 22 and 27 of Orissa Sales Act, 1947 and as per Section 88 of Orissa Value Added Tax Act, 2004 the assessment made or order passed under the Acts or the rules cannot be called into question in this Court. In view of order of Hon'ble High Court on issuance of Way bill and in view of order of Second Appellate Authority i.e. Odisha Sales Tax Tribunal in the matter of assessment order made by defendant no.1 and in view of the aforesaid Sections of the aforesaid Acts this Court lacks jurisdiction to entertain the suit. In view of the findings under issue no.6 there is no cause of action to file the suit and the suit filed is not maintainable. The plaintiff is neither entitled to the reliefs claimed nor entitled for any other relief rather as she has not approached the Court in clean hand. Hence, she is entitled to pay cost to defendant no.1.

Hence, it is ordered

ORDER

The suit be and the same is dismissed on contest against the defendants but under the circumstances with cost of Rs.10,000/- to be paid to defendant no.1 within two months of this order.

*1st. Addl. Senior Civil Judge,
Bhubaneswar*

The judgment is typed to my dictation by the Typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today i.e. on the day of 26th day of December, 2014 under my seal and signature.

*Ist. Addl. Senior Civil Judge,
Bhubaneswar*

List of Witnesses examined for the Plaintiff:

P.W.1: Smt. Bharati Mishra

P.W.2: Keshab Chandra Mishra

List of Witnesses examined for the Defendants :

D.W.1: Chinmay Kabi (Defendant no.1)

D.W.2: Sibashis Dhal (Defendant no.3)

List of Documents marked as Exhibits for the Plaintiff:

Ext.1(with objection) : Original R.C. Copy of Sales Tax-cum-the declaration identification of paper of proprietorship paper ;

Ext.2(with objection) : Application form to avail way bill ;

Ext.3(with objection): Letter dtd.05-08-2005 which is refusal order for granting of Way bill;

Ext.4(with objection): Assessment order for the year 2000-01 ;

Ext.5: Common order dtd.27-02-2006 of Hon'ble High Court passed in W.P.(C) no.14475 of 2005 and W.P.(C) no.2422 of 2006 ;

Ext.6: Copy of order of 1st Appeal passed by Addl. Commissioner, Sales Tax, dtd.24-12-2004 obtained under R.T.I. ;

Ext.7(with objection): Balance sheet for the period ended
dtd.31-03-2005 ;

Ext.8(with objection): Letter of Punjab National Bank
dtd.30-08-2011 in favour of Nagraj
Plaster & Supplier ;

Ext.9(with objection): Bill of Stationary.

List of Documents marked as Exhibits for the Defendants :

Ext.,A : Assessment filed for the year 2002-03 ;

Ext.A/1: Hazira filed by P.W.2 ;

Ext.A/2: Signature of P.W.2 on Ext.A/1.

Ext.B: Application dtd.16-06-2003 of P.W.2 to defendant no.1
requesting to issue C-Form ;

Ext.B/1: Signature of P.W.2 on Ext.B ;

Ext.C: Wanting list for C-Form submitted of dtd.09-07-2003.

Ext.D: Certified copy of Assessment Order dtd.31-03-2004
for the year 2000-01 ;

Ext.E: Certified copy of Appellate Authority Appeal Case no.
AA/131/BH-II/2004-05 ;

Ext.F: Certified copy of order dtd.31-08-2009 passed by
Appellate Tribunal ;

Ext.G: Copy of Order dtd.31-08-2005 passed by Addl.
Commissioner, Sales Tax in Revision Case No.II-
AST/59/2005-06.

1st. Addl. Senior Civil

Judge,

Bhubaneswar.