

(1919) 06 AHC CK 0022
In the Allahabad High Court

Abdur Rahim

APPELLANT

Vs

Sital Prasad

RESPONDENT

Date of Decision : 13-06-1919

Acts Referred:

Citation : AIR 1919 All 70 : 54 Ind. Cas. 792

Hon'ble Judges : George Knox, C.J;P.C. Banerjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellant Abdur Rahim says that he kept a pedlar's shop in the City of Meerut : the goods from this shop were taken from time to time to fairs and exhibitions. His father Abdul Qayum carried on the same business sections He was declared an insolvent some time prior to 1913, Abdul Qayum had his shop in the Meerut Cantonments, quite separate and distinct from the shop kept by Abdur Rahim. In the year 1913, Abdul Rahim took a large amount of goods (most of them woollen goods) to the fair or exhibition held at Bulandshahr. According to the plaint Sital Prasad (respondent to this appeal and a creditor of Abdul Qayum, the insolvent) presented an application based on wrong allegations to the Additional Judge of Meerut. The date of the application, which is No 35C on the record, was the 13th of February 1913, and the prayer in it was that the goods of Abdur Rahim in the exhibition at Bulandshahr might be taken into the custody of the Court as. the shop and the goods were the shop and the goods of Abdul Qayum the insolvent. The Additional Judge of Meerut ordered the Receiver to attach the goods. The Receiver on the 14th of February acting upon indications given by Sital Prasad attached all the goods at the exhibition, the value of which the plaintiff says was Rs. 500, packed them in boxes and brought them into Meerut. On the 18th of February Abdul Rahim presented an application to the Court which had attached the goods and prayed that after thorough enquiry made by the Court the attached goods might be declared the property of Abdur Rahim and released in his favour. On the 4th of July 1913 the application

was granted and on the 5th Abdur Rahim asked for the return of the goods. Upon this Sital Prasad objected to the delivery, as he said he intended to appeal to the High Court at Allahabad, and prayed that the goods might remain in the custody of a Receiver pending the result of his appeal. On the 4th of July 1913 Sital Prasad got an injunction from this Court and he also got permission to appeal from the order of the Additional Judge of Meerut. This appeal was heard on the 6th of December 1913 and dismissed. The goods which had been attached were returned to Abdur Rahim on the 9th of January 1914, and were found to be badly damaged. There has been some confusion as regards the cause of damage. In certain places in the judgment of the Courts below the damage is attributed to destruction by "white ants." It is not easy to understand why or how the white ants were introduced into the case. What Abdur Rahim said was the cause of the mischief done was the work of insects such as appear in woollen goods when they are shut up and not aired during the rainy season, and this was the season in which the goods, which were to have been released on the 4th of July 1913, remained in the custody of the Receiver until the 9th of January 1914, when they were returned. The defence put in by Sital Prasad was to the effect that he was only a creditor and that; he informed the Court of what he had ascertained and from which he was satisfied that the goods were not the goods of Abdur Rahim but the goods of Abdul Qayum. He maintains that he acted in good faith and that if any damage was caused to the goods it was the Receiver's act. Abdur Rahim and Abdul Qayum, he said, were joint, had no separate capital and when the goods were at the Bulandshahr fair Abdul Qayum was ostensibly in possession of them. He maintains that he had never applied for the detention of the goods but that security should be taken from Abdur Rahim . if they were returned to him. From the above statement it will be seen that the goods (which are found to have been damaged by the agency of insects) would not have passed from the possession of the appellant on the 14th of February 1913, had it not been for the application presented by Sital Prasad in the Court of the Additional Judge at Meerut on the 13th of February 1913. We have heard the contents of the application made by Sital Prasad (paper No. 353 of the record). It is supported by an affidavit sworn to by Sital Prasad. In this affidavit Sital Prasad solemnly affirms that the insolvent Abdul Qayum had not sold his goods but had taken them to the Bulandshahr exhibition. No attempt was made to dispute the allegations that it was Sital Prasad who identified and pointed out the goods which the Receiver attached, Sital Prasad must, therefore, have been fully aware that a large number of the goods attached, more than half of them, were goods wholly or mainly manufactured from wool. The Civil Courts have found that the act of Sital Prasad was a wrongful act. This being so, he became responsible for the ordinary consequences which were likely to result from this wrongful act of attachment. Furthermore when the appellant applied for the goods to be handed back to him as they had been found by the Court to be his goods, the respondent again opposed the application (see paper No. 39C) and prevented their return. Regarding this opposition the learned Judge of this Court rightly observes that the order made by the Court which had heard the case has an important bearing

upon the question whether the defendant Sital Prasad was acting without reasonable and probable cause, because that order could not have been made unless the Court realised that although it had decided against the defendant, there was reasonable ground for the defendant appealing to the High Court. We do not for a moment question the right of appeal presented by Sital Prasad, and we allow that the Court granting leave to appeal must have considered that there was a good case for such an appeal. But was there an equal necessity" for the application which followed and in which Sital Prasad asked for an injunction restraining the release of the goods pending the appeal? The learned Judge of this Court rightly observes that from the moment Sital Prasad applied for this injunction, a totally different set of consideration arises. It was a fresh act done by Sital Prasad and he adds that it was necessary for Abdur Rahim if he had a case to show, if he relied upon this act of Sital Prasad, that such act or application was a wrong to him and that the damage done by the animals was the result of that order. The finding of the Munsif upon this matter is somewhat loosely worded. He says the goods probably got damaged during the period that the appeal was pending in the High Court. It is a well known fact that goods are generally eaten up by worms, as he calls them, during the rains. The lower Appellate Court expressed itself satisfied that the immediate result of the attachment was the damage done to the goods and the deterioration in their prices. This point, he adds, has been fully dealt with by the learned Munsif in his judgment and he decides it against the appellant before him the Sital Prasad. Some attempt was made to attack this finding as being based on no evidence, but this point was not taken in the appeal or petition either to the learned Judge of this Court or to us. Sital Prasad knew that the goods which he had attached were articles mainly made from wool, he knew as every inhabitant of this part of India knows that woolen goods packed away in boxes during the rains breed, as a natural and probable consequence, worms which riddle woolen articles through and render them worthless sections Generally speaking as Bovill, Chief Justice, pointed out in *Sharp v. Fowell* (1872) 7 C.P. 253 : 41 L.T.C.P. 95: 26 L.T 436 : 20 W.R. 584 "One who commits wrongful act is responsible for the ordinary consequences which are liable to result therefrom. But, generally speaking, he is not liable for damage which is not the natural or ordinary consequence of Each an act, unless it be shown that he knows, or has reasonable means of knowing, that consequences not usually resulting from the act are by reason of some existing cause, likely to intervene so as to occasion damage to a third person." The existing cause, of which Sital Prasad was fully aware, was that these woolen goods were about to be shut up and owing to circumstances which prevail during the rains," would be damaged most materially by insects bred and breeding in them whilst they were so shut up. Their Lordships of the Privy Council in *Kissori Mohun Roy v. Harsukh Das* 17 C. 436 (P.C.) : 17 I.A. 17 : 5 Sar. P.C.J. 472 point out that "there is no analogy between the two systems regarding the law of execution which prevails in India and which prevails in England. In England the execution of a decree for money is entrusted to the Sheriff, an officer who is bound to use his own discretion and is directly responsible to those interested for

the illegal seizure of goods which do not belong to the judgment-debtor. In India warrants for attachment in security are issued on the ex parte application of the creditor, who is bound to specify the property which he desires to attach and its estimated value." The illegal attachment of Abdur Rahim's goods was the direct act of Sital Prasad for which he became immediately responsible in law, and the litigation which underlay and consequent depreciation of the goods together with the climatic conditions which contributed still further to that depreciation may well be considered the natural and necessary consequences of that unlawful act. We do not think that in a case of this kind any question of reasonable and probable cause arises and that it is for the plaintiff to prove the absence of reasonable and probable cause.

2. As regards damages, after hearing both parties we think that the damages assessed by the Additional Judge of Meerut were fair and just damages.

3. We decree the appeal, set aside the order of the learned Judge of this Court and restore that of the lower Appellate Court with costs of both hearings in this Court.