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(1919) 07 PRI CK 0019

In the Privy Council

Case No : Privy Council Appeal No. 86 of 1918

Balthazay and Son — APPELLANT

Vs

Firm E. M. Abowath — RESPONDENT

Date of Decision : 01-07-1919

Acts Referred:

Citation : (1921) AIR(PC) 129

Hon'ble Judges : Dunedin, Buckmaster, Viscount Haldane, JJ.

Advocate : Fulton, Light, Son, Arould, for the Appearing Parties.

Judgement

Lord Dunedin

The plaintiffs (respondents) are merchants in Rangoon who deal in produce and have occasion to purchase sugar, which they were in the habit of getting from the defendants (appellants) who are also merchants in Rangoon. The appellants did not themselves grow sugar, but got sugar from a firm of Joakitn and Company, in Sourabaya. Joakim and Company had offered a consignment to the appellants, and the appellants had approached the respondents as to whether they would take sugar at the price quoted. After consultation, the appellants, with the approval of the respondents, sent a telegram to Joakim and Company on the 22nd May, 1914. The telegram was in cipher, but decoded read as follows :-

" 3 27 91 65

49 6

" 3 = Cannot accept your offer but counter offer subject to reply within 24 hours.

" 27=100 tons sup. white T. M. O., G. W. and/or similar.

" 91 = July/December in equal monthly quantities.

" 65=11/8 per cwt. c.i.f.

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" 49=Option Rangoon/Calcutta.

" 6=Check."

This telegram having been despatched, the respondents on the 23rd May handed to the appellants a document in the following terms :-

"Buyers, Messrs. E. M. Abowath and Co.

"I/We hereby make the following firm offer to Messrs. Balthazar and Son, Rangoon.

"On Burma Chamber of Commerce Contract Terms.

Pkgs. Goods. Price Shipment.

6000 tons (six-hundred tons.) Superior white T.M.O., G.W. and/or similar sugar. 11s. 8d. per cwt. Eleven shillings and eight pence per cwt. Monthly shipments of 100 tons each July to December.

Option Rangoon/Calcutta.

Signature . . . Signed in Native Character.)"

On the 25th May the appellants received from Sourabaya a telegram as follows :-

"We confirm the sale of 100 tons superior White T. M. O., G. W. and/or similar. July/December in equal monthly quantities 11/8 per cwt. c.i f. Option Rangoon/ Calcutta.

On receipt of this telegram the appellants on the 26th May wrote to the respondents the following letter :-

"Messrs. E. M. Abowath and Co.,

" Rangoon,

"Dear Sirs,

"Sugar.

"We have pleasure in advising you that your offer of 11/8 for 600 tons Sup. White T.M.O., G.W. and/or similar, divided into equal shipments of 100 tons a month, from July to December, has been accepted. Kindly call over and sign the necessary contract.

"Yours faithfully,

"Balthazar and Son." The respondents did call and signed an indent. The indent form was really printed on a form of offer not appropriate to a contract. The space for the names of the parties was left blank, but there was filled in in writing as follows :-

"Six hundred tons.....

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Bales/Cases each containing,

"Superior White T.M.O., G.W. and/or similar Java sugar.

"at 11s. 8d. per cwt. c i.f. Rangoon (Option Rangoon/Calcutta).

Shipments July, August, September, October, November, December, monthly 100 tons.

"Delivery ex Wharf.

"Delivery of the Goods to be made on the necessary Security for the goods being furnished.

"..... Stamps

"..... .....

"Half per cent. commission for 30 d/s. credit'' "One per cent. commission for 60 d/s. credit.

....

and it was signed by the respondents.

The sugar was duly shipped and instalments delivered. Under a separate arrangement the appellants helped the respondents in the financing necessary, but it is immaterial to the present question to go into these arrangements. Upon the War breaking out three hundred tons out of the six hundred had been delivered, but the other three hundred tons were not delivered owing to the presence of the "Emden" in these waters.

The present action is for damages for non-delivery. The defence was that the appellants had acted only as agents in the whole matter and on the distinct understanding that they themselves accepted no responsibility under the contract.

The learned Trial Judge, considering that the terms of the documents left the matter ambiguous admitted parol evidence. The managing partner of the appellants and one of the partners of the respondents were examined. They gave the same history as to the execution of the various documents, but, as was to be expected, differed as to whether anything was said as to absence of responsibility on the appellants'' part. The learned Trial Judge gave effect to the defence and dismissed the action. On appeal the judgment was reversed and judgment given in favour of the respondents. Appeal has now been taken to this Board.

Their Lordships agree with the conclusion arrived at by the Appeal Court, and

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upon this very short ground. The contract was made by an offer to buy of the 23rd May on the part of the respondents and an acceptance of that offer by the appellants by the letter of the 26th May. An acceptance of an offer to buy must infer an obligation to sell. Now the appellants must either have sold as principals, in which case there is liability on their part to perform, or they must have sold as agents for Joakim and Company, but there is not a tittle of evidence to show that the appellants ever were agents for Joakim and Company. On the contrary, the evidence is all the other way. The communications between Joakim and Company and the appellants are all on the footing that the appellants were buying from Joakim and Company, and when there was a delay in the delivery by Joakim and Company the appellants sent a letter saying : "As written you before, our buyer will on no account agree to any part of the shipment being cancelled." It comes to this, that all the documents show on the face of them a contract as between principals. The mere mention of commission in the contract as signed is not in any way, as pointed out by the learned Judges of the Court of Appeal, inconsistent with the relation being between principal and principal. Then when you turn to the parol evidence, there is nothing except the statement of the appellants that the terms of their business with the respondents which had been going on for six years, were the same as those which the appellants had had with one Oomerjee-terms which are in no way identified or even specified. In such circumstances the contract must remain as the leading documents make it, and a mere statement of the appellants, contradicted by the respondents, that it was made a condition that there was to be no liability on their part cannot be allowed to displace the ordinary results which a contract between principals entails.

Their Lordships will, therefore, humbly advise His Majesty to dismiss the appeal with costs.

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