
(1987) 01 MP CK 0036
In the Madhya Pradesh High Court
Case No : F. A. No. 14 of 1982

Bhagwati Trading Company (M/s)	Vs	APPELLANT
M/s Krishnadas Bhagchand		RESPONDENT

Date of Decision : 09-01-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Forward Contracts (Regulation) Act, 1952 — Section 17

Citation : (1987) J LJ 209

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : K.P. Munshi and Y.K. Munshi, for the Appellant; B.R. Kriplani, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.—This is defendant's appeal u/s 96 of the CPC and is directed against the judgment and decree dated 30-6-1977, passed by Shri N.P. Mishra, IV Additional District Judge, Raipur in Civil Suit No. 14-B of 75.

2. The respondents-plaintiffs had filed their suit for damages amounting to Rs 15,500/- and interest thereon for the alleged breach of two contracts by the appellants. There is no dispute between the parties that two contracts were entered into by them on 17-2-73 and 23-3-73. Both these contracts were oral. By the first contract, dated 17-2-1973 the respondents had agreed to purchase and the appellants had agreed to sell one wagon load of Kulthi weighing 220 quintals at the rate of Rs 91/- per quintal bilti cut, consigned to Poona (Maharashtra). From the facts on record there appears to be no agreement between the parties about the time during which the contract was to be executed. The second contract dated 23-3-1973 was for 3 meter gauge railway wagons of Juwar weighing 165 quintals each at the rate of Rs. 135/- per quintal built cut ex-Purla Ki Mandi (Orissa) to Aasangaon (Maharashtra). There is nothing on record to indicate the period during which this sale was to be

completed. It is not in dispute that the appellants were required to show the goods to the respondents' man who was to be satisfied about the quality and thereafter got the same weighed in his presence. It was the responsibility of the appellant? thereafter to book the goods to the destination station and obtain payment of the goods at Raipur against railway receipt. It is also not in dispute that out of 3 wagons of Juwar 2 wagons were supplied and dispute between the parties remains for one wagon only. The respondents plaintiffs claimed that since the appellants had failed to consign and give delivery of goods under contract they have committed the breach of those contracts resulting in damages. The respondents, therefore, claimed a sum of Rs. 15,500/- on this score. The appellants resisted the claim on several grounds, including the objection that contracts were forward contracts within the meaning of Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "the Act") and were illegal. It was also their case that they were not guilty of any breach of contract and hence not liable to pay any damages. The learned trial judge held that the contracts were not forward contracts and therefore decreed the suit with costs. It is this judgment and decree which is impugned in this appeal.

3. The Act was enacted to provide for regulation of forward contracts and therefore prohibits forward trading in commodities essential to the community. It is a valid piece of legislative enactment. Section 17 of the Act empowers the Central Government to ban forward contract by issuing a notification in the official Gazette. After the notification has been issued all those contracts which are in contravention thereof are treated to be illegal contracts. Section 18, however, makes this provision inapplicable to non-transfer-able specific delivery contract for sale or purchase of goods Forward contract as defined in section 2(c) means a contract for delivery of goods and excludes a ready delivery contract defined in clause (i) of this section. A ready delivery contract is a contract which provides for delivery of goods and the payment of its price either immediately or for such period not exceeding 11 days after the date of the contract. A combined reading of these provisions would therefore lead one to conclude that after issuing notification u/s 17(1) of the Act all forward contracts in violation of the provision and notification become illegal. However, non-transfer able specific delivery contracts remain unaffected by this notification provided they settled requirements of section 18. These provisions do not affect ready delivery contracts which are not included in the definition of the forward contract. There is no dispute between the parties that necessary notification to bring these provisions in operation have been issued by the Central Government. Under the circumstances, only question requiring consideration of this Court is whether the contract between the parties is a forward contract within the meaning of the Act or the ready delivery contract. In case the contract can be classified as a forward contract the transaction would be illegal and this Court would not be able to grant any benefit of the same to any of the parties. In case, however, the contract is the ready delivery contract, the contract would be legal and valid and the Court would be justified in awarding compensation for its breach.

4. Since forward contract has been defined as a contract for delivery of goods which term is broad enough to include almost every contract for delivery of goods, the transaction between the parties considered in the aforesaid context would certainly be covered by the aforesaid definition. It may, therefore, be necessary to consider whether the contracts between the parties can be treated to be a ready delivery contract which is excluded from the definition of forward contract. Where the transaction of sale of goods relates to ready delivery in respect of goods which are ready and available and with regard to which the buyer is to apply as soon as he can, the transaction would be a ready delivery contract and not a forward contract. A bare reading of the provision regarding ready delivery contract would indicate that for constituting a ready delivery contract not only the delivery of goods but also agreement and payment of price must always be immediate or within a period of 11 days. Indeed, a combined reading of two definitions would indicate that a forward contract is a contract for the sale and purchase of goods which postpones the delivery of goods and the payment of price thereof for a period exceeding 11 days. In *State of Gujarat Vs. Manilal Joitaram and Co.*, it was noticed by the Supreme Court that effect of these definitions is to distinguish forward contracts from ready delivery contracts by limiting time in which ready delivery contracts must be completed by delivery and payment of price. It may, therefore, be examined if the facts of the case would justify to conclude that the contract between the parties was the ready delivery contract. Terms and conditions of the two contracts dated 17-12-1973 and 23-3-1973 are alleged in para 4 of the plaint and provide no time limit either for delivery or payment of price thereof. On the contrary the contracts were *bilti cut* ex Vijaynagar or such other station of the choice of the appellants and the price was to be paid against the railway receipt to be presented at Raipur. Bhagchand (P. W. 1) has deposed that the bargain was of wagon load and payment was made on presentation of railway receipt including the expenses for gunny bags (para 9). It is true that the goods were available for ready delivery and the appellants could indent wagon immediately and supply them within 2-3 days. From his evidence it is clear that the goods, as available with the appellants were not alone the subject matter of the contract. The goods had to be transported and loaded into railway wagons and railway receipt obtained. As long as the railway receipt was not presented, the respondents were not bound to pay price of the goods, Considering the delay involved in indenting and obtaining wagons, the parties did not fix any time limit for performance of the contract. It is, therefore, clear that though according to the respondents plaintiffs goods were available in ready stock their delivery could not be affected immediately. In order to bring a contract between the parties within the definition of the ready delivery contract and availability of goods alone is not sufficient. It is the delivery of goods and the payment of price which are essential elements of ready delivery contracts. If the goods which are available cannot be delivered and payment thereof cannot be made by virtue of some condition in the contract, the contract would not be a ready delivery contract. Under the circumstances, it is not possible to accept the submission of the respondents that

simply because the goods were available the contract was a ready delivery contract. Since there was no stipulation that the delivery and payment of price would be affected within 11 days from the date of contract, the two contracts under consideration fall outside the definition of ready delivery contract. Since they are contracts for supply of goods and receiving payment in future, are covered by the definition of forward contract as appearing in section 2(c) of the Act. Since a notification in respect of these contracts have been issued u/s 17(1) of the Act and conditions of the notifications remain violated, these contracts must be held to be illegal under sub-section (2) of section 17 of the Act. This view of this Court is in accordance with the decisions of the Supreme Court in *Khardah Company Ltd. Vs. Raymon and Co. (India) Private Ltd.*, ; *Waverly Jute Mills Co. Ltd. Vs. Raymon and Co. (India) Private Ltd.*, and *Modi and Co. Vs. Union of India (UOI)*, . Since the contracts are illegal even if a party has committed a breach thereof the process of this Court would not recognise the right of a party to claim compensation to be benefitted by the illegality. The illegal contracts cannot be enforced through the process of the Court.

5. Even if it was permissible to hold that the contracts were ready delivery contracts as in the absence of any stipulation regarding time limit, they could be performed within 11 days, the respondents would not get any benefit as they have placed nothing on record to indicate that its breach was committed within that period. As far as agreement dated 17-3-1973 is concerned, the appellant by his letter dated 20-2-1973 (Ex. P-2) had requested them to send his person for weighment, etc. The evidence on record does not show when in pursuance to this letter the respondents sent their person for getting the goods weighed. According to Bhagchand soon after the receipt of the letter. Ex P-2 he sent his man to Mera Mandi but the weighment could not be done. Eventually when the weighment was done, it was only of 165 bags out of 220 bags covered by the contract. The submission of the Learned Counsel for the respondents is that they were not bound to purchase 220 bags as the contract between them was for one wagon load which one wagon would contain only 165 bags. That is how the respondents justified weighment of only 165 bags and claimed that the same should be sent to Poona (Ex. P-3), Apparently, therefore, the respondents were not ready and willing to take 220 bags. This amounted to a variation of the original contract which could not be done by the respondents alone. From the letter (Ex. D 2) it would appear that the respondents did not send the person for weighment of Kulthi immediately on receipt of letter, Ex. P-2 but sent him after some time by the end of March, 1973. If the contract was ready delivery contract its performance should have been demanded within the statutory period. Only if the appellants had failed to perform the contract at that time the respondents would have been entitled to claim damages. From the evidence on record it is clear that it is the appellants who offered to perform the contract within the statutory period and not the respondents. It is also clear that the respondents even after the period of the expiry of 11 days were not in a position to take the entire contracted quantity. They cannot claim any damages in such a situation.

6. As far as the second contract dated 23-3 73 is concerned, the same admittedly was for despatch of Juwar to Aasangaon in Maharashtra. This destination was, however, changed to different places outside Maharashtra as would be clear from document Ex. D-1. The fact that the wagon was to be sent to Aasangaon is admitted by P. W. 1 Bhagchand. This witness was, however, confronted with the document, D 1 and admitted that the same was written by Shri Narayan Dalai (P. W. 3). According to him Shri Narayan Dalai had no authority to write such letter. The witness white in the witness-box accepted that the document contained correct facts. It is therefore clear that the original contract to send the goods to Aasangaon in Maharashtra was sought to be changed with a view to avoid the ban imposed by the Government of Maharashtra. This could not be the unilateral act of the respondents. Since the variation related to the vital condition of the contract it could be done by the agreement of both. Be that as it may, it sufficiently indicates that respondents were not in a position to accept the goods in terms of the original agreement. They cannot therefore claim any damages from the appellants

7. It is further unfortunate that the learned trial judge did not consider the defence of ready delivery contract in its proper perspective and did not apply the same to the facts and circumstances of the case. His observations that time limit of 11 days is one of the creteria and that alone cannot make a ready delivery contract a forward contract really reflects the hurry in which the learned trial judge was. Indeed, a fair reading of his judgment would indicate that the learned judge having made up his mind to award damages somenow rejected the defence even if rejection was patently illegal. Such an approach from the senior judge does not add to the reputation of the judiciary and should be avoided. The very purpose of assigning important cases to the members of the Higher Judicial Service is to get the benefit of their knowledge and experience and ensure little more satisfaction to the litigant public. This purpose cannot be achieved either by a careless handling of the case or casual attitude

8. In view of the findings aforesaid, it is really not necessary to consider whether the contract had really frustrated by the ban imposed by Maharashtra Government importing Juwar or for any other valid reason.

9. The appeal succeeds and is allowed. The impugned judgment and decree are set-aside and the suit of the respondents is dismissed with costs in both Courts. Counsel's fee as per schedule, if certified.