

(1955) 05 GAU CK 0002
In the Gauhati High Court
Case No : First Appeal No. 33 of 1951

Bhattacharjee and Co.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-05-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Government of India Act, 1935 — Section 175, 175(3)
Partnership Act, 1932 — Section 69(2)

Citation : AIR 1957 Guw 159

Hon'ble Judges : Sarjoo Prasad, C.J.; Haliram Deka, J

Bench : Division Bench

Advocate : S.K. Ghose and P. Chaudhury, for the Appellant; D.N. Medhi, Sr. Govt. Advocate, for the Respondent

Judgement

Sarjoo Prasad, C.J.—The Plaintiffs who have preferred this appeal claim that they were owners of some Salvage Air Straps and materials lying in Makum Depot Area and also of Dunips purchased by the Plaintiffs at a public auction from Messrs. Chawringhee Sales Bureau Ltd. the agents of the Defendant, the Union of India, for that purposes. The Plaintiffs purchased the materials on the 21st September by a cash Bill No. G. 2923. According to the Plaintiffs, there was no time limit fixed for collection of the materials purchased. They collected the purchased materials up to the 12th January, 1948 when the Officer-in-charge of the Makum Ordnance Depot interfered wren their work of collection and stopped the Plaintiffs from salvaging the goods. It was also alleged that the Officer-in-charge of the Ordnance on 19-1-1948 took 1,000 pieces of air strip from the dump for the use of the ordnance depot. The Plaintiffs made representations against the prohibitory order and conduct of the officer-in charge but they got no relief from the authorities concerned. The authorities as a matter of fact advertised for sale of 1,200 steel plates under different lots all of which are claimed by the Plaintiffs as goods, purchased by them at the sad auction. Plaintiffs have accordingly sued for recovery of the value of the materials sold by

the Defendants as also those appropriated by the Defendant No 2 for the use of the ordnance depot. They assessed their to claim at about Rs. 6,000/-. Notice u/s 80 of the CPC was duly served before the Institution of the suit.

2. The Defendant, the Dominion of India, contested the suit on various grounds. It was urged that the suit was barred u/s 69(2) of the Indian Partnership Act as also u/s 175 of the Government of India Act, 1935. The Dominion of India claimed exemption from any liability under the sale effected in favour of the Plaintiffs. At the same time, in paragraph 4 of the written statement, the Dominion of India admitted that the Plaintiffs had purchased the items mentioned in cash Bill No. G 2fl23 dated 21-9-1947 but it averred that the Plaintiffs had already collected the materials purchased. The Defendant denied that there was no time limit given for salvaging or collecting the goods. According to the Defendant, fifteen days" time was the period allowed for collecting all the materials purchased, but as the Plaintiffs did not do so inspite of sufficient time having been given to them, they had no further right to collect the materials which they purchased under the said cash bill. Thereafter it was open to the Defendant to refuse permission to the Plaintiffs to collect the materials or to sell the same. They also stated that the receipt given by the Plaintiffs was in full discharge of all obligations arising under the cash, bill in question. The Plaintiffs according to the Defendant admitted the removal of the materials in spite of the warnings of the officer-in-charge. Makum Depot and Continued to collect it till 12-1-1948 without any authority whatsoever.

3. On these pleadings, various issues were framed by the Court below which decided the suit in favour of the Defendants. The learned Subordinate Judge held that the suit was barred u/s 69(2) of the Indian Partnership Act because at the time when the notice u/s 80 was given, the firm was unregistered and the subsequent registration thereof did not legalise the notice. The learned Subordinate Judge also held that the cash " bill had "been signed by one B.S. Rastori who does riot appear to have been authorised by the Government of India or for that matter the Governor General to enter into contract on their behalf and therefore u/s 175 of Government of India Act, the contract could not be enforced against the Dominion of India. It was further held by the learned Subordinate Judge that the cash bill itself did not give time-limit; but paragraph 2 of Ex. "A" which embodies the conditions of sale shows that the purchased lots had to be removed within fifteen days failing which the buyer had to pay all costs and charges as demanded by the authorities concerned while paragraph. 10 of the document provided that goods not removed within that period might be resold on the first suitable opportunity by public auction or by private sale without any notice to the first purchaser who would be liable for any deficiency in price arising from such sale as well as for all the costs thereof. On these grounds, the learned"6ubordinate Judge thought that the Plaintiffs were not authorised to collect the materials after fifteen days, the period mentioned in Ex. "A". The learned Subordinate Judge therefore dismissed the suit.

4. The first point concerns the application of Section 69(2) of the Indian Partnership Act as also the validity of the notice u/s 80 of the CPC. It appears that the suit was filed on 28-11-1949 and the firm was actually registered on the 23-11-1949. In other words, the Plaintiffs' firm was already registered before the institution of the suit. Therefore on the face of Section 69(2) of the Indian Partnership Act would be no bar to the institution of the suit and the suit could be in the firm name. But the learned Subordinate Judge was of the view that the notice u/s 80 was sent on 26-8-1949 and at that time, the partnership was not registered. The point has not much substance and has therefore not been seriously pressed before us by the learned Counsel for the Respondent. It appears from the notice that the description of the Plaintiffs given therein was Messrs. Bhattacharjee and Co, Makum Junction, P. O. Makum, District Lakhimpur, Assam. It is pointed out that this description is not identical with the description given in the plaint wherein the Plaintiffs have been described as Messrs. Bhattacharjee and Co. having their place of business at Makum Junction District Lakhimpur. We are unable to find any difference worth the name in the two descriptions of the plaintiffs and therefore we cannot accept the finding of the learned Subordinate Judge that the notice u/s 80 was illegal on account of any misdescription. Section 69(2) of the Indian Partnership Act, though it may be a bar to the institution of the suit in the name of the firm is no bar to the service of the notice u/s 80 of the CPC on behalf of the Plaintiffs as such, merely because at that time the Plaintiffs were not registered, provided, the description is otherwise substantially correct.

5. The next question is whether Section 175 of the Government of India Act, 1935 applies to the suit. On behalf of the Respondent, reliance has been placed on Sub-section (3) of Section 175, wherein it is said that subject to the provision of the Act with respect to the federal railway authority all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the Governor General of the federation or the Governor of a Province as the case may be. It is true that in this case there was no specific contract in writing expressly made in the name of the Governor-General. The words shall be expressed to be made" it is suggested, must contemplate a contract in writing. But there is no particular form of contract provided under Section 175 of the Government of India Act and the contract can be ascertained from other documents here the material documents are Ex. 2, the certified copy of Cash Bill dated 21-9-47, the receipt Ex. 3 with the endorsement of the Plaintiff and Ex. A the conditions of sale. These documents drove the nature of the contract and the authority of the Agent to sell. It is true that the name of the Governor General does not appear on the face, doubt on the point is removed by the admission in the written statement itself. In fact, the sale in question has not been repudiated by the Defendants in this case; and although in paragraph 3 the legal objection under G. 175 was taken but in paragraph 4, the Defendants have accepted the position that there was sale of the goods in question in favour of the Plaintiffs under which the latter were entitled to recover their materials

within fifteen days and they not having done so had no right to remove them thereafter the whole question then is whether this defence was justified by the conditions of sale Ex, A which has been produced by the Defendants themselves. The relevant paragraphs of the document re paragraphs 2 and 10. Paragraph 2 undoubtedly fixes a time-limit within which the lots purchased have to be removed; but the consequence of non-removal is forfeiture of the properties but what is clearly stated in paragraph 10 internally that if no removal takes place within the period, the goods may be resold at the first suitable opportunity by auction or by private sale and if there is any deficiency in the price fetched the purchaser shall be liable for the same. The purchaser all also be liable for all costs, charges and commission and shall not be entitled to claim any higher price or profits which could have been obtained at the resale. There was therefore no question of the Plaintiffs being deprived completely of the value of the properties which they had purchased. The Defendants have not disputed that they sold about 1,200 sheets which the Plaintiffs had purchased. In fact, no oral evidence has been given by them" to dispute Plaintiffs" evidence on the point. They merely relied upon the conditions of sale in support of their contention that the Plaintiffs after the expiry of fifteen days were no longer entitled to any of the materials. The Plaintiffs are therefore entitled to the price fetched after deducting incidental charges.

We are informed by the learned Counsel for the Respondents that these 1,200 sheets have been sold for a sum of about Rs. 1,800/-. The Defendants are, however, entitled to costs, charges and commission on account of the delay in removing the materials, in salvaging them and in putting them to sale at auction. We think in the circumstances that it would be fair to direct the Defendants to refund half of the amount with they got on account of the sale proceeds of these 1,200"" sheets. - The other claim of the Plaintiffs" is vague and cannot be allowed. We accordingly hold that the appeal should be allowed and a modified decree for a sum of Rs. 900/- only should be passed in favour of the Plaintiffs in full satisfaction of their claim. In the circumstances of the case parties will bear their own costs of litigation throughout. The amount should be paid within two months from the date of this judgment failing which the Plaintiffs will be entitled to levy execution of the decree.

Deka, J.

6. I agree.