

(1950) 08 MAD CK 0037
In the Madras High Court

Boddu Seetharamaswami and Others

APPELLANT

Vs

Bhagavathi Oil Company

RESPONDENT

Date of Decision : 03-08-1950

Acts Referred:

Citation : (1951) ILR (Mad) 723 : (1951) 1 MLJ 147

Hon'ble Judges : Satyanarayana Rao, J

Bench : Single Bench

Judgement

Satyanarayana Rao, J.—The defendants are the appellants. The suit which has given rise to this appeal was instituted by the respondent to recover damages in a sum of Rs. 7,392 for breach of the contract to sell 2,800 tins of ground-nut oil. The plaintiff is a firm of merchants with their registered office at Calcutta, but they have a branch also at Vizianagararn. The defendants are brothers being members of an undivided Hindu family and carry on business at Vizianagaram under the name and style of Boddu Pydanna and Sons. They deal in ground-nut oil and other commodities. On the 9th November, 1944, the defendants agreed to sell to the plaintiff 2,800 tins of ground-nut oil at Rs. 148 per candy, the delivery of goods to continue from 8th December, 1944. The plaintiff's case was that they had applied for the delivery of the goods on the 8th December, 1944, but the defendants wanted more time, and ultimately as the market was rising the defendants with a view to escape from their liability under the contract alleged in their reply notice that the contract was cancelled at the instance of the plaintiff. The plaintiff claimed in the suit the difference in the market rate and the price stipulated in the contract, and it is on that basis he arrived at the damages claimed by him. There were various defences to the suit, the primary question of fact being whether the plaintiff was in default or the defendants. There was also a legal objection raised by the defendants based upon the Vegetable Oils and Oil Cakes (Forward Contracts Prohibition). Order, 1944. According to the contention of the defendants the suit contract was invalid and unenforceable by reason of the provisions of the said Order. The learned Subordinate Judge disagreed with the contentions put forward on behalf of the defendants and granted a decree to

the plaintiff for a sum of Rs. 2,548 together with interest thereon at 6 per cent, per annum from the date of the plaint till payment. He arrived at this sum by reducing the claim for damages, as, according to him, the market rate was lower than what was claimed by the plaintiff.

2. In this appeal by the defendants the sole point that arises for consideration is whether in view of the Vegetable Oils and Oil Cakes (Forward Contracts Prohibition) Order, 1944, the contract is enforceable. The Order in question was promulgated by the Government of India on the 8th January, 1944, and came into force immediately. Clause 3 of the Order prohibited a person from entering into any forward contract in respect of any article to which the Order applied, and Clause 4 laid down that notwithstanding any custom, usage or practice of the trade or the terms of any contract or any regulation of an Association relating to any contract, the contracts already entered into should be settled in the manner provided in Sub-clauses (1), (2) and (3) thereto. They applied only to forward contracts entered into prior to the date of the Order. Under Clause 5 power was given to the Central Government by notification in the Official Gazette to exclude from the operation of the Order any contract or class of contracts. On the 12th January, 1944, the Central Government in the exercise of the powers conferred upon them under Clause 5 of the Order excluded from the provisions of the Order certain classes of contracts. The exclusion read as follows :

Forward contracts for specific qualities or types of any article to which the said Order applies, and for specific delivery at a specified price, delivery orders, railway receipts or bills of lading against which contracts are not transferable to third parties.

3. While the defendants contend that the forward contract in suit was unenforceable by virtue of the provisions of the Order, the plaintiff claims that he is within the exclusion set out above, and that therefore the contract is enforceable.

4. The scope and ambit of this exclusion were considered by this Court by two Division Benches and also by the Bombay High Court. There is one point on which there is unanimity of opinion, namely, that the language in the notification is by no means clear, and that it is possible to take more than one view of that notification. If the object of the notification is to prevent speculation in forward contracts relating to those commodities specified in the order, it is achieved by prohibiting forward contracts under the provisions of the Order and granting an exemption only in case of contracts under which parties stipulated delivery of specific goods at a specified price, in other words, if they contemplated spot delivery. When the contract contemplated spot delivery, it is rather difficult to infer that it might have been intended also for speculation and to transfer the right to take delivery of the goods under the contract. The exclusion is expressly restricted in the second part which relates to contracts under which parties contemplated delivery orders or railway receipts or bills of lading as substitutes for delivery and where the contracts provide that they should not be transferable

to third parties. In such cases, the exclusion would operate only if the delivery orders, railway receipts or bills of lading contemplated by the contracts are made expressly not transferable. In other words, in both the class of contracts, whether they related to delivery on the spot or where they contemplated delivery orders, railway receipts or bills of lading as substitutes for delivery, the speculation is prevented in the former case by providing for specific delivery of goods at specified prices and in the latter case by making the delivery orders or railway receipts not transferable to third parties. This is one possible construction. If this is the correct view, the contract in the present case being one which provides for specific delivery of goods at a specified price and not a contract contemplating either delivery orders or railway receipts as substitutes for such delivery, the exclusion would seem to apply.

5. The two Bench decisions of this Court and a decision of the Bombay High Court have put upon the exclusion a restricted construction. The latest of the decisions on the point is that of the learned Chief Justice and Krishnaswami Nayudu, J., in *Satyanarayanamurthy v. Sitaramayya & Co.* (1950) 1 M.L.J. 557 . The learned Chief Justice after referring to the decision of Horwill and Raghava Rao, JJ., in A.S. No. 97 of 1948 refers to the opinion of Desai, J., in *Firm Hansraj v. Vasanji* (1948) 4 D.L.R. Bom. 7 and lays down at page 559 of the Report in the following words what he considered to be the correct interpretation of the exclusion:

With respect to the learned Judge we agree with this construction of the notification. The intention underlying the notification appears to be to grant the exemption only to cases of forward contracts in respect of which there could be some guarantee that they would not be subject to speculation. In our opinion, before any forward contract could fall within the notification, it must also be established that one of the terms of the contract is that a delivery order or railway receipt or bill of lading relating to it is not transferable. In this case, it may be that none of these documents was contemplated, but it cannot be said that they were prohibited. There was nothing to prevent the buyers sending the delivery order in respect of the goods covered by the contract and in that case there is no provision in the contract to make such a delivery order non-transferable. The result would be that the very mischief sought to be prevented by the Order and the notification would occur.

It follows from this that unless there is a prohibition in the contract preventing the parties from transferring a delivery order or a railway receipt or a bill of lading, even though the contract on its face does not contemplate such delivery order, the benefit of the exclusion does not apply. As two Benches of this Court have taken this as the proper construction of the exclusion, we do not think we will be justified in differing from the view so taken. Applying the test laid down by the learned Chief Justice in the judgment already referred to, we find no prohibition in the contract now in suit, Exhibit P.-1 though it is a contract only for specific delivery of goods at a specified price. It follows therefore that the view of

the learned Judge that the plaintiff is entitled to the benefit of the exclusion is wrong. The contract therefore in suit is unenforceable, and the plaintiff would not be entitled to a decree in his favour for damages for breach of contract.

6. The appeal has therefore to be allowed, and the decree of the lower Court has to be vacated but in the circumstances of this case we think this a fit case in which both the parties should bear their respective costs throughout.