
(1927) 07 AHC CK 0020
In the Allahabad High Court

Champa Ram and Another

APPELLANT

Vs

Firm Tulshi Ram-Jai Lal

RESPONDENT

Date of Decision : 15-07-1927

Acts Referred:

Citation : AIR 1927 All 617

Final Decision : Dismissed

Judgement

1. This is a plaintiff's appeal arising out of a suit for recovery of a specified sum of money after allowing deduction for brokerage, commission, etc. The allegations upon which the suit was lodged are briefly these:

The plaintiffs are pakka arahtias carrying ON business in Shahjahanpur. The defendants are pakka arahtias who do business in Cawnpore. In the months of August and September 1917 the plaintiffs engaged the service of the defendants as commission agents to purchase certain bags of cotton-seed for them. The defendants made the said purchase, and under orders from the plaintiffs they sold the said goods to certain parties, with whom we are not concerned in this suit, in the months of October and November 1917. According to the plaintiffs this brought Rs. 1,303, as profit to the plaintiffs. Hence the claim for recovery of this amount and interest. Several defences were put forward in this case, three of which are worthy of mention. The defendants pleaded that the suit was not cognizable in the Court of the Subordinate Judge of Shahjahanpur. It was next pleaded that the; contract in question was void in law and could not form the basis of a suit because it was in the nature of a wagering contract, and lastly that as a matter of fact no goods were purchased and sold because of the condition of the market they were not procurable at Cawnpore, and consequently no profit accrued to the plaintiffs. This suit unfortunately has passed through several vicissitudes. In the first instance it was dismissed upon the ground that the Shahjahanpur Court had no jurisdiction to entertain the suit. There were appeals, and ultimately this Court set aside the order of the Courts below and remanded the case on the ground that the Shahjahanpur Court possessed the necessary

competency to take cognizance of the suit.

2. On remand, however, the defendants pressed their 2nd plea, that the claim was vitiated by reason of the contract being of the nature of a wagering contract. This plea prevailed with the primary Court but was repelled by the lower appellate Court, with the result that there was a further remand. We are informed that there was an appeal from order to this Court, but it was summarily dismissed. Now the case has been dismissed upon the ground that it has not been proved that the defendants were pakka arahtias; and according to the market custom which prevails in Cawnpore there is no such institution known as pakka arahtias in the Cawnpore mercantile world. Further that it was not possible to give delivery to the purchasers from the defendant as no seed was available and consequently no profits accrued, and further that it was because of the stringency of the market and not because of any neglect on the part of the defendants, that the defendants were not in a position to fulfil their contract with third parties. In view of the pleadings of the parties the lower appellate Court has gone wrong in holding that the defendants were not pakka arahtias. The position of a pakka arahtia is analogous to that of a del credere agent. Now a del credere agent incurs only a secondary liability towards the principal. His legal position is partly that of an insurer and partly that of a surety for the parties with whom he deals to the extent of any default by reason of any insolvency or something equivalent. It has got to be borne in mind that his liability does not go to the extent of making him responsible to the principal where there can be no profit by reason of any stringency in the market. In the present case it has not been established that any money passed into the hands of the defendants from the plaintiffs for which the defendants were accountable, and in view of the finding of fact arrived at by the lower appellate Court that no profits accrued in this transaction, because no goods could pass hands through the defendants to the customers, it is impossible to say that the Court below was-not.justified in dismissing the plaintiffs' suit under these circumstances. We are therefore, compelled to affirm the decree of the Court below to this extent that-we dismiss the plaintiffs' suit, but as a mark of censure we consider it desirable to allow the plaintiffs all their costs in the Court below and also in this Court which have been incurred hitherto. The defendants most flagrantly abused their privilege in the Court below in putting, forward unsupportable defences in pleadings; first of all want of jurisdiction and next that the contract was void and unenforcible by reason of its being of the nature of a wagering contract and lastly that they were not pakka arahtias.

3. Under these circumstances we allow the plaintiffs all their costs in all Courts and deprive the defendants of their costs-throughout.