

(2006) 04 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 373 of 1999

Charu Bhatnagar

APPELLANT

Vs

H.P.M.C.

RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Contract Act, 1872 — Section 70

Citation : AIR 2006 HP 119 : (2007) 2 CTLJ 126 : (2006) 1 ShimLC 465

Hon'ble Judges : K.C. Sood, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; Balbir Singh Chauhan, for the Respondent

Judgement

K.C. Sood, J.—This second appeal arises out of the judgment of reversal of learned District Judge, Shimla dated September 1, 1999.

2. It appears pursuant to the decision taken by the Government of Himachal Pradesh, the Horticulture Produce Marketing and Processing Corporation, a Government of Himachal Pradesh undertaking, was charged with the responsibility to purchase unmarketable "Culled Apple" under the "Support Price Scheme" to help the farmers from financial crisis as all the apple crop had gone bad. Under the Scheme, the "Culled" fruit was to be received by the Incharge of the concerned Centre and issue receipt indicating the net weight of the fruit and the amount to be paid to the fruit grower in prescribed form.

3. The plaintiff-appellant laid a suit before the learned Sub-Judge 1st Class, Rohru for the recovery of rupees 49,794/-. The case of the plaintiff as disclosed in the plaint is:

4. The plaintiff is owner of "Charu orchards". This orchard was jointly managed, at the relevant time, alongwith other orchards belonging to the relatives of the plaintiff and expenditure was incurred jointly by all of them. Mohammad Sadiq

was managing all the orchards, including "Charu Orchards" owned by the plaintiff. On 27.9.1989, Ram Singh Negi, a labour Contractor, employed by Mohammad Sadiq, the Manager, delivered 200 bags of Culled Apple at "Asthani Depot" of the defendant Corporation in the name of, Charu Orchards vide receipt No 00907 of the even date (Exhibit PW9/C). This receipt was also signed by Ram Singh Negi on behalf of the plaintiff. Net amount payable to the owner of the fruit is shown to be rupees 33,000. i The plaintiff claimed rupees 600/- towards cost of 200 empty bags at rupees 3/- per bag and in all claimed rupees 33,600/-.

5. It is the further case of the plaintiff that Ram Singh Negi, the Labour Contractor, also brought fruit of the other orchards belonging to the relatives of the plaintiff and signed all the receipts on behalf of the respective owners. At that point of time, the Manager Mohammad Sadiq was not available and on the receipt (Exhibit PW9/C) name of Smt. Pushpa Bhatnagar, the plaintiff's mother and owner of "Junu orchards" in village Asthani was recorded as owner of the "Charu Orchards". This was done for the reason that payment in respect of all the orchards were received by Smt. Pushpa Bhatnagar on behalf of the owners of the orchards as expenditure was jointly incurred in maintaining the orchards. The sale proceeds used to be remitted to the respective owners after deducting the share of the expenditure.

6. The defendant Corporation, however, did not make the payment despite repeated requests and legal notice by the plaintiff. The plaintiff claims, apart from an amount of rupees 33,600/-, rupees 16,194/- as interest at the rate of 18% per annum upto 31st of July 1992, the date of the filing of the suit and interest pendent lite and future at the" same rate.

7. The suit was resisted by the defendant corporation on several grounds. One of the grounds taken was that the fruit was supplied by Ram Singh Negi on behalf of Smt. Pushpa Bhatnagar and not on behalf of Charu Bhatnagar as also that this orchard did not belong to Charu Bhatnagar, the plaintiff at the relevant time.

8. Learned Trial Court, on appreciation of the evidence, found that the plaintiff was the owner of "Charu Orchards" and that the fruit was delivered to the defendant Corporation on behalf of Charu Bhatnagar and therefore, the defendant was liable to pay the amount in suit. The suit of the plaintiff was decreed with interest at 18% per annum as claimed by the plaintiff from the date the amount was due till the filing of the suit and interest pendent lite and future at the same rate.

9. Aggrieved, the defendant Corporation filed an appeal before the learned District Judge, Shimla who by his impugned judgment accepted the appeal and dismissed the suit of the plaintiff on the ground that the plaintiff could not prove that she was the owner of Charu Orchards as the mutation of ownership was recorded in the Jamabandi on 30.11.1989 whereas, the fruit had been supplied on 23.9.1989, i.e., one and half month after the supply of the fruit.

10. Dis-satisfied, the plaintiff is in this second appeal.

11. This appeal was admitted on 8.11.1999 on the following substantial questions of law:

1. Whether the defendant could deny payment of the balance price of culled apples and interest thereon to the appellant when the receipt of apples is not disputed and the defendant had enjoyed the benefit of such apples and whether the appellant was entitled to such payment u/s 70 of the Indian Contract Act, 1872.

2. Whether the findings of the learned District Judge, Shimla, are not sustainable in law for non-consideration of material oral and documentary evidence and particularly document Ext. PW8/27, PW9/C, Ext. PW3/A and Ext. PW8/33 and statements of PW8 Shri Mohammad Sadiq, PW10 Shri Prit Pal Monga and PW9 Shri Ram Singh and the findings of fact and appreciation of evidence by the Trial Court could be reversed by the learned District Judge, Shimla without consideration of material evidence on the case file.

12. Heard Mr. Kapil Dev Sood, learned Counsel for the appellant and Mr. Balbir Chauhan, Advocate learned Counsel for the respondent.

13. The substantial questions of law arising in this appeal are reframed as under:

1. Whether the findings of reversal by first Appellate Court that Charu Bhatnagar was not the owner of Charu Orchards and Culled Apple are de hors the evidence on record.

2. Whether the plaintiff is legally entitled to claim interest at the rate of 18% per annum.

Learned First appellate Court had no material on record to reverse the findings of fact of the Trial Court that "Charu Orchard" was owned by Charu Bhatnagar, at the relevant time and the fruit supplied to the defendant Corporation as per the receipt of the defendant Corporation Exhibit PW9/ C belonged to the plaintiff. The only reason given by the learned first Appellate Court to reverse the findings is that the receipt Exhibit PW9/C shows that the fruit was brought from "Charu Orchards" which belong to Smt. Pushpa Bhatnagar. However, the evidence on record as discussed by the learned Trial Court proves that the name of the owner was given by Ram Singh as Pushpa Bhatnagar for the reason that she used to receive the amount in respect of all the orchards belonging to close relatives including the plaintiff and after deducting the expenditure in respect of the share of each of the owner, would remit the amount to the respective owners. This part of testimony is not disputed in cross-examination. It is true that note in the Jamabandi shows that the mutation was sanctioned in the name of the Plaintiff in respect of ownership of this orchard on 30.11.1989 whereas, the fruit was supplied on 23.9.1989. True it is that per the Jamabandi Exhibit PW8/27 shows Prit Pal as owner in possession of this orchard. Prit Pal is close relative of the plaintiff and he also had an orchard in the name of "Pal Orchards". Appearing as PW10, Prit Pal says that Charu orchard is owned by Charu Bhatnagar. He also

says that Charu Orchard is about five bighas. This position is not disputed in the cross-examination by the defendant-Mohammad Sadiq appearing as PW8 is categorical that area of Charu Orchards is about five bighas and there are about 110 fruit bearing apple plants on this. In the absence of any evidence to the contrary, learned District Judge misled himself to hold that "Charu Orchard" did not belong to the Plaintiff Charu Bhatnagar and the fruit which was sold, admittedly from Charu orchard to the Defendant Corporation did not belong to Charu Bhatnagar. Merely because the mutation was sanctioned at a later date would not mean that this orchard did not belong to the plaintiff or belonged to Prit Pal Monga, earlier owner of this orchard as per Jamabandi Exhibit PW8/27. A transfer has necessarily to be anterior to the sanction of mutation.

14. In any event, once the plaintiff claims the Culled Apple in question and no body else claims that fruit, it will not be open to the defendant to dispute that this fruit did not belong to the plaintiff particularly when the earlier owner had stepped in the witness box to say that at the relevant time this orchard was owned by Charu Bhatnagar.

15. The inescapable conclusion is that the fruit which was sold to the defendant Corporation under the Support Price Scheme belonged to the plaintiff and she was entitled to receive the payment thereof. The findings to the contrary by the District Judge are without any evidence on record.

The question is accordingly answered.

Question No. 2.

16. Mr. Kapil Dev Sood, learned Counsel for the plaintiff strenuously urges that this was a commercial transaction and therefore, plaintiff would be entitled to interest at commercial rate, i.e. 18% per annum. Mr. Sood contends that the defendant Corporation charges interest at the rate of 18% per annum from its customers and therefore, under Support Price Scheme, they are liable to pay this commercial rate of interest.

17. The contention is fallacious. The defendant purchased the Culled Apple under the Support Price Scheme which was designed and formulated to save the farmers from financial crises as the apple crop had gone bad in the State. In fact evidence of Ram Singh, Labour Contractor (PW9) shows that the good apple was purchased by him and it was only bad apple which was supplied to the defendant Corporation. In these circumstances, by no stretch it can be said that it was a commercial transaction justifying commercial rate of interest.

18. Section 34 of the CPC provides for the grant of interest in decrees for payment of money. Section 34 reads:

34. Interest.?(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal

sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum, as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation 1.?In this sub-section, "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation-II.?For the purposes of this Section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

19. It may be noticed that before the amendment of 1976, the maximum interest which the Court could award was 6% per annum. However, in appropriate cases, the Court had the discretion to award interest at a lesser rate but in no case exceeding 6%. Now the Courts are empowered to increase post decretal interest in relation to a liability arising out of a commercial transaction on the principal sum adjudged. Explanation-11 to Section 34 clearly says that a transaction would be commercial only if it is connected with trade or business of the party incurring liability. The Culled Apple was not purchased by the defendant Corporation as a commercial transaction. The Support Price Scheme was introduced to save the farmers from financial crisis. The Culled Apple was not marketable and therefore, Support Price Scheme was introduced that year. There is nothing on the record to suggest even remotely that the Support Price Scheme was introduced to earn profits or as a commercial venture.

20. In the instant case, the title of the plaintiff so far fruit in question is concerned, in view of receipt Exhibit PW9/C and mutation was clouded. The title was cleared only after the Trial Court judgment holding that the plaintiff was the owner of the fruit which she supplied to the defendant Corporation, i.e. 5.8.1998.

21. In the circumstances, the plaintiff is not entitled to any interest till the decree of the Trial Court as her title over the fruit in question was under cloud. She would only be entitled to interest at the rate of 6% per annum in terms of Section 34 of the CPC from the date of decree till the realization of the amount in its entirety. The question is answered accordingly.

22. In result, the appeal is partly allowed. A decree in the amount of rupees 33,600 /- is passed in favour of the plaintiff and against the defendant Corporation with interest at the rate of 6% per annum from the date of decree, i.e., 5.8.1998 till decretal amount is paid in full. The defendant shall also pay

costs.