

(1964) 03 KAR CK 0012

In the Karnataka High Court

Case No : Regular Appeal No. 215 of 1959

Coffee Board, Bangalore

APPELLANT

Vs

Janab Dada Haji Ibrahim Halari

RESPONDENT

Date of Decision : 31-03-1964

Acts Referred:

Citation : AIR 1966 Kar 118 : (1965) 1 MysLJ 546

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Judgement

Somnath Iyer, J.

(1) This is a plaintiff's appeal from the Decree of the Subordinate Judge, South Kanara who dismissed the suit brought by the Plaintiff for the recovery of a sum of Rs. 2,19,490-37 nP. by way of damages.

(2) The material facts are these:

On January 21, 1957 the plaintiff which is a statutory body called the Coffee Act (Central Act VII of 1942) invited tenders for the purpose of 839 tons of various types and grades of Coffee specified in the tender notice. The defendant who is a merchant of Mangalore carrying on business in the export of coffee to foreign markets, submitted his tender on February 13, 1957. It was found by the Coffee Board that the rates specified by the defendant in his tender were the highest rates in respect of 319 tons of Coffee of various types and grades. The Coffee Board which will be referred to as the "Board" accordingly communicated to the defendant by its letter of February 14, 1957 its acceptance of the tender of the defendant with respect to those 319 tons of coffee. The defendant was called upon to deposit 10 per cent of the value of the Coffee in accordance with the terms of the tender within ten days from the date of the letter. That letter addressed by the Board in marked Exhibit A4.

(3) Immediately on the receipt of that letter, the defendant despatched a

telegram to the Board in which he pointed out that he had not made any offer to purchase the 319 tons of coffee in respect of which the Board had purported to accept his tender and that he intended to purchase no more than 25 tons of plantation A coffee, 25 tons of plantation B coffee and ten tons of what is described as triage coffee. In his telegram the defendant also stated that these quantities of coffee intended to be purchased by him were omitted to be specified in the tender by inadvertence on the part of his clerk. There was further correspondence between the parties to which a more detailed reference will be made in due course.

But what happened in the course of that correspondence was that, while the Board insisted that there was a concluded contract between the defendant and the Board for the purchase of the 319 tons of coffee at the rates specified by the defendant in his tender, Exhibit A-3, the defendant was maintaining at one stage that he never intended to purchase such a large quantity of coffee and at another that there was no concluded contract between the parties, since, in the portions of the tender in the form supplied by the Board in which the defendant had to specify the quantities of coffee which he intended to purchase, those quantities were omitted to be specified and those portions were left blank. Eventually on March 2, 1957 the Board intimated the defendant that, since there was a breach of the contract on the part of the defendant, there would be a resale of the 319 tons of coffee on March 26, 1957 and that if there was deficiency in the resale that deficiency will be claimed by way of damages from the defendant. The defendant was also informed that the sum of Rs. 2,500 which he had deposited with the Board along with his tender would also stand forfeited.

(4) The defendant having made no endeavour to accede to the demand of the Board that he should pay the price and take delivery of the coffee, there was a resale on March 26, 1957. That resale fetched a sum of Rupees 19,60,308-75 np, as against a sum of Rupees 21,29,265-00 which according to the Board was the price which the defendant had agreed to pay for the 319 tons of coffee. The defendant was called upon to pay this deficiency together with interest and insurance charges and godown charges, in all amounting to Rs.2,19,490-37 up. On the repudiation of this demand, the suit out of which this appeal arises was instituted on March 26, 1958.

(5) There were many defences to the suit amongst which the only pleas which succeeded were, that there was no concluded contract between the defendant and the Board and that in any event the defendant was not liable to pay any interest on the resultant deficiency which arose out of the resale. In consequence of the finding that there was no enforceable contract between the parties, the suit brought by the Board was dismissed, although the Subordinate Judge recorded findings on all the other issues in favour of the Board.

(6) In this appeal Mr. Sunderswamy appearing for the Board challenges the finding of the Subordinate Judge that there was no concluded contract between the parties, and Mr. Advocate General appearing for the defendant does not dispute

the correctness of the other findings recorded by the Subordinate Judge. The only question arising in this appeal is whether the tender made by the defendant is an offer which in law was capable of being accepted and whether its acceptance by the Board on February 14, 1957 by its letter Exhibit A-4 brought intervened being an enforceable contract between the parties. If this question is answered in favour of the Board, then it follows that there should be a decree in favour of the Board except for the interest claimed on the deficiency which arose out of the resale. But, if, on the contrary we should be able to say that the Subordinate Judge was right in thinking that there was no enforceable contract between the parties, this appeal should fail.

(7) The material question presented by this appeal depends mostly upon the interpretation to be placed on what was stated in the tender submitted by the defendant in answer to the invitation by the Board. Exhibit A-1 is the tender notice by which tenders were invited and that notice was issued on January 21, 1957. The Board invited through that notice sealed tenders from registered exporters of coffee "for the quantities of coffee mentioned in the attached tender from proposed to be released for export out of India." Paragraph 3(a) of this notice required the tenderers to state the maximum grade of coffee described in the tender form annexed to the notice. That clause reads:--

"3(a) Tenderers should indicate in the tender the maximum quantity required in each type and grade, provided that such indication of the maximum quantity required does not involve the division of the lot or lots for this purpose."

(8) The tender which was sent by the defendant was the very document which formed the annexure to Exhibit A-1. That tender is Exhibit A-3. The form in which the tender was made was thus what was supplied by the Board, and that form consisted of four columns. The first column mentioned the serial number or the lot number assigned to a particular quantity of coffee of a particular grade or type. The second column specified the quantity of coffee comprised in that lot. The third column specified the name of the curing works where delivery could be obtained. The fourth column was made available for the specification of the price to be offered by the tenderer. One portion of this form, it has been explained to us, is really a counterfoil which could be retained by the tenderer.

(9) What the defendant did was to state against every one of those lots and against every one of those types and grades of coffee mentioned in the tender form, the prices which he proposed to offer. For each type or grade of coffee he offered his own price and that price was mentioned against that type or grade which was bracketed. The price offered by him varied between Rs. 286-11-0 and Rs. 346-10-0 for a hundred weight. But in the form of the tender supplied by the Board, the tenderer was asked to affix his signature underneath the cyclostyled portion which reads:--

"Subject to and in accordance with the terms and conditions contained in the Tender Notice S.L. No.174(18)/57/6758, dated 21st January 1957 issued by the

Chief Coffee Marketing offer for the lots shown above at the prices mentioned against the respective lots. These prices are exclusive of Sales Tax, Central Excise Duty and Customs Duty.

Quantity required by me/us out of the lots covered by this tender form is:--

(1) Plantation "A"..... Tons (2) Plantation "B"..... Tons (3)
Plantation Triage..... Tons. ----- Total Tons"

The defendant did not fill up the blanks in the part of the tender form. So, he did not state how many tons were required by him out of plantation "A" type, how many tons he required out of plantation "B" type and how many tons he required out of the plantation triage grade.

(10) The expression "type and grade occurring in paragraph 3(a) of the tender notice has been explained to us by Mr. Sundaraswamy in the following way:

It is seen from the tender form supplied by the Board that the coffee which was offered for sale falls broadly within three categories. The first category is described as plantation "A" the second Category is what is described as plantation "B" and the third is what is called plantation triage. It has been explained to us that the coffee which was offered to be sold was of the plantation type and that it consisted of three grades, namely, plantation "A" plantation "B" and plantation triage. It should also be mentioned here that the tender form referred to coffee grown in more than one geographical area.

(11) So, it becomes clear from Exhibit A-3 which is the tender sent by the defendant that, although the defendant did specify against every type and grade of coffee the price which he was willing to offer, he did not however specify the quantities of coffee which he required from a particular type or grade. The portions where those quantities had to be specified were left blank.

(12) When the Board wrote to the defendant on February 14, 1957 that it had accepted the tender made by the defendant, the assumption made by it was that notwithstanding the omission on the part of the defendant to state the quantities of coffee which he was willing to buy, the clear meaning of what the defendant did, when he specified the price against every type and grade of coffee, was, that there was an offer by him to purchase all the 839 tons of coffee. But, since the prices offered by the defendant were the highest prices only in respect of 319 tons of coffee, the Board purported to accept what it considered to be an offer of the defendant to buy those 319 tons of coffee.

(13) In the telegram despatched by the defendant on February 14, 1957, soon after he received the letter of acceptance of the Board, he intimated the Board that it was not his intention to purchase all the 839 tons of coffee and that his intention was to purchase only 60 tons of coffee in the aggregate. He stated that he wished to buy 25 tons of the Plantation "A" grade, 25 tons of the Plantation "B" grade and 10 tons of the triage grade and that by an inadvertent mistake his clerk neglected to say so in the tender. This telegram was confirmed by his letter

Exhibit A-5 which he wrote on February 14, 1957. But the Board refused to accept the explanation given by the defendant and so informed the defendant by its letter of February 23, 1957(Exhibit A-7) that the Board could not exonerate the defendant from his obligation to purchase all the 319 tons of coffee. The defendant was called upon to make the required deposit and was intimated that if he did not do so, there would be a resale and forfeiture of the initial deposit. Meanwhile, there was a telegram by the Board to the defendant on February 15, 1957 declining to modify its acceptance to which there was a reply by the defendant on February 16, 1957(Exhibit A-6) in which the defendant repudiated the contract.

(14) So it was that on March 2, 1957 by its letter, Exhibit A-9, the Board intimated the defendant that there would be a resale of 319 tons of coffee on March 26, 1957 by the adoption of the same old method of calling for tenders. In his reply, Exhibit A-17, which the defendant sent to the Board, which bears no date but which was received by the Board on March 7, 1957, the defendant stated that since there was no enforceable contract between the parties by reason of the omission on the part of the defendant to specify the quantities of coffee which he was willing to buy from the Board, the Board could not make a resale for the purpose of enforcing any liability for damages against the defendant. Exhibit A-18 was the reply sent by the Board on March 27, 1957 in which it was asserted by the Board that the effect of the tender sent by the defendant was that he made an offer for the purchase of all the 839 tons of coffee.

(15) After there was a resale on March 26, 1957 as proposed by the Board, the defendant was informed by the Board by its letter Exhibit A-20 which was addressed on April 18, 1957, that the defendant had become liable to pay damages in the sum of Rs. 2,00, 563-36 up and the defendant was called upon to pay this amount within ten days from date of the letter. On April 26, 1957, the defendant's advocate to whom the matter was entrusted sent an interim reply. Exhibit A-29, in which it was stated that the claim of the Board was not admitted and that a detailed reply would follow. Exhibit A-32 was the further reply which was sent on, June 5, 1957 in which among other matters what was asserted was that there was no enforceable contract between the parties. In Exhibit A-33 which was the reply to Exhibit A 32, the Board maintained the stand that there was a contract of which there was a breach on the part of the defendant, and then there was a suit.

(16) The important question arising for decision is whether the tender sent by the defendant can be understood as an offer on his part to purchase all the quantities of coffee specified in Exhibit A3. That there was that offer on his part is the argument advanced before us and that argument is constructed principally upon the fact that in Exhibit A3 the defendant stated the price at which he was willing to purchase the various lots of coffee described in it and omitted to delimit in any other way the quantities of coffee which he intended to buy, which he

should have done by filling up the blanks in the portion at the bottom of the last page of Exhibit A3.

(17) Before proceeding to consider the validity of this postulate, it would be necessary to explain by way of illustration what exactly the defendant did when he filled up the tender form supplied to him by the Board. By way of illustration, the portion of the tender which relates to the grade described as "Naidubattam plantation "A" coffee is reproduced hereunder:

"NAIDUBATTAM PLANTATION A. Lot Number. Quantity (tons). Delivery of ex-bags ex-curing works. Price per Cwt/ ex-bags ex-works 84 10 Peirce, Leslie & Co., Ltd., Kozikode. 85 10 do 86 10 do 87 10 do 88 10 do 335-10-0" 89 10 do 90 5 do 91 5 do

This is exactly how the tender form was filled up by the defence in the case of every other type or grade of coffee. So, what he did was to state the price in respect of every type or grade of coffee. So, what he did was to state the price in respect of every type or grade of coffee specified in Exhibit A3. Having done that, what he next did was to merely affix his signature on the last page of Ex. A3 underneath the portion which I have already extracted.

(18) Although Clause 3(a) of the tender notice required the defendant to indicate in his tender the maximum quantity required by him in each type and grade, he never made any such indication. It is clear that that indication had to be made by him in the blank portion at the bottom of the last page of the tender.

(19) The Subordinate Judge was of the view that the absence of any such indication divested the tender of the character of an offer which in law was capable of being accepted, since an essential term of the offer was not to be found in Ex. A3. It is true, as Mr. Sundaraswamy submits, that the Subordinate Judge was at one stage inclined to take the view that some mistake which had been committed by the defendant's clerk in not specifying the quantities, entitled the defendant to make a repudiation of the Board's right to enforce the contract. But Mr. Sundaraswamy is quite right in pointing out that since that mistake was not a mutual mistake, it could be of little assistance to the defendant, and Mr. Advocate General did not dispute the correctness of that position. The stand as an offer which could have been accepted by the Board so as to produce an enforceable contract on such acceptance.

(20) It is a firmly established rule that, as in the case of a contract the terms of an offer must be certain, and, the offer should be such as in law is capable of being accepted and gives rise to a legal relationship if the terms of an offer are unsettled or indefinite, its acceptance cannot create any contractual relationship and the vagueness of the Offer would not carry any contractual force. Nothing is more firmly settled than that the parties must make their own contract, which means that they must agree as to its terms and that if they do not make any such contract in that way, the Court cannot make a contract for them.

(21) There is also an equally familiar principle that is the duty of the Court as far as possible to uphold a bargain between the parties and to give efficacy to a commercial transaction and that it should for that purpose interpret the contract or the Offer, as the case may be, fairly broadly without astuteness for discovery of defects.

(22) It is likewise clear that, whether an Offer or contract, as the case may be, is enforceable or capable of being accepted in law, is a question the answer to which should necessarily depend upon the facts and circumstances of each case, no formula of universal application being possible for the solution of all such cases.

(23) In *May and Butcher v. The King* 1934 2 KB 17 which is decision of the House of Lords contained in a note to the reported decision in *Foley v. Classique Coaches, Ltd.* 1934 2 KB 1, Lord Buckmaster said thus in the year 1929:--

"In my opinion there never was a concluded contract between the parties. It has long been a well recognized principle of contract law that an agreement between two parties to enter into an agreement in which some critical part of the contract matter is left determination is no contract at all.

(24) In *Hillas and Co. Ltd. v. Arcos Ltd.* (1932) 147 LT 503, the Court of Appeal, following the decision in *May and Butcher's* case 1934 2 KB 17, repelled the claim based on a contract which in its opinion was bad for indefiniteness, and in doing as Greer, L.J. said this at page 508 of the report:--

"It seems to me that the effect of *Loftus v. Roberts* (1902) 18 T LR532 and the *tentage* case, *May and Butcher Ltd. v. Regum* 1934 2 KB 17 in the House of Lords, of which we have been supplied with a note, is that if there are any essential terms of a contract of sale undetermined, and therefore to be determined by a subsequent contract, there is no enforceable contract."

It is true that when this decision was taken up in appeal, the House of Lords reversed the decision of the Court of Appeal taking the view that the contract did not suffer from the infirmity of indefiniteness, but Lord Tomlin said thus at page 512--

"The problem for a court of construction must always be so to balance matters, that without violation of essential principle the dealings of men may as far as possible be treated as effective, and that the law may not incur the reproach of being the destroyer of bargains."

(25) In 1934 2 KB 1 the Court of appeal again was discussing the question whether the contract before them was incapable of enforcement on account of uncertainty of its terms. After referring to the two previous pronouncements of the House of Lords to which I have referred, Scrutton, L.J. thought that the two decisions of the House of Lords to which I have referred were to some extent irreconcilable, and this is what he said at pages 9 and 10 of the report:

"A good deal of the case turns upon the effect of two decisions of the House of Lords which are not easy to fit in with each other.... In (1932) 147 LT 503 House of Lords said that they had not laid down universal principle of construction in *May and Butcher v. The King* 1934 2 KB 17 and that each case must be decided on the construction of the particular document, while in (1932) 147 LT 503 they found that the parties believed they had a contract."

Greer, L.J. pointed out at page 12 of the report that it was a common observation that a decision upon the construction of one contract is not an authority upon the construction of another contract in different words and entered into in different circumstances.

(26) There is in my opinion, a very clear elucidation of the principles which should govern our decision in this appeal in a more recent pronouncement of the House of Lords in *Scammell and Nephew Ltd. V. Ouston* 1941 AC 251. The following passages from the speeches of the Noble Lords are pertinent. At page 255 of the report Viscount Maugham said thus:--

"In order to constitute a valid contract the parties must so express themselves that their meaning can be determined with a reasonable degree of certainty. It is plain that unless this can be done it would be impossible to hold that the contracting parties had the same intention; in other words the consensus ad idem would be a matter of mere conjecture. This general rule, different cases. In commercial documents connected with dealings in a trade with which the parties are perfectly familiar the Court is very willing, if satisfied that the parties thought that they made a binding contract to imply terms and in particular terms as to the method of carrying out the contract which it would be impossible to supply in other kinds of contract: see (1932) 147 LT 503."

To the same effect is what was said by Lord Wright at page 269 of the report. What he said reads:

"But as Lord Dunedin said in *May and Butcher v. The King* 1934 2 KB 17 reported in a note to 1934 2 KB 1. "To be a good contract there must be a concluded bargain and a concluded contract is one which settles everything that is necessary to be settled and leaves nothing to be settled by agreement between the parties. Of course it may leave something which has still to be determined but then that determination must be determination which does not depend upon the agreement between the parties"." Again at page 272 the Noble Lord observed:--

"The Court could not, indeed, make a contract for the parties or go outside the words they had used except in so far as there were appropriate implications of law, as, for instance, the implication of what was just and reasonable where the contractual intention was clear but the contract was silent in some detail which the court could thus fill in."

The question, therefore, in the case before us is whether we can say that the

tender, Ex. A-3, sent by the defendant means that he agreed to purchase all the 839 tons of coffee for which he specified the price which he was willing to offer. If we can say so, then it is clear that here is nothing indefinite about it. If, on the contrary, we cannot understand the tender as an offer to purchase all the 839 tons and we find it possible to say that an essential term of the contract was missing since there was the omission to specify the quantities required by the defendant, the case would not be one in which the court could make a contract for the parties outside the words of the tender and uphold the bargain in some way or other. What we could do is only to depend upon the appropriate implications of law in a matter on which the contract is silent in some detail which we can fill in. And, that, we could do in a case where there is a binding contract between the parties, but the contract is silent as to the method of carrying it out.

(27) We were asked by Mr. Sundaraswamy to say that there was in this case an offer to purchase all the 839 tons of coffee. The method by which he asked as to deduce that offer may be briefly explained. Mr. Sundaraswamy says that paragraph 3(a) of the tender which requires the tenders to indicate the maximum quantity required in a particular type or grade, does not insist upon the specification of any maximum quantity in order to make the offer an acceptable offer, but that it gives the tenderer an option to indicate the maximum quantity only if he does not wish to buy the entire quantity specified in the tender. He asked us to substitute for the word "should" occurring in that clause the word "may" and suggested that if we do so what follows is that the tenderer is at liberty to specify the maximum quantity, in which event the offer extends only to that quantity, and that if he does not do so, the offer is to buy the entire quantity specified in the tender form.

(28) In support of this proposition our attention was asked to a decision of the Supreme Court in the State of U.P. Vs. Manbodhan Lal Srivastava, in which it was pointed out that the word "shall" in a statutory provision may in certain circumstances be understood as being equivalent to the word "may". It does not appear to me that that decision can help Mr. Sundaraswamy in his contention that the word "should" in Exhibit A-1 which is the tender notice should be understood as being equivalent to the word "may".

(29) That this is so is clear from the fact that the intention of the Board which invited the tender was that each tenderer should indicate in his tender the quantity which he is willing to buy. A perusal of the tender notice and the tender form makes it clear that the tenderer was required to do two things. He was first asked to quote his price. He was next asked to state the quantities which he would be willing to buy at that price. That, in my opinion, is the clear meaning of the two paragraphs appearing on the last page of the tender form, exhibit A-3.

(30) Now, in this case the defendant did only one of those two things. He stated the prices, but he did not state the quantities which he wanted. If a person is told that goods of more than one description are available for sale and he is

asked to state what prices he would be willing to offer for those goods and which of those goods he would be willing to buy at those prices, and that person states only his prices but never indicates the goods required by him, it is, I think, impossible for any one to suggest that there was any acceptable offer made by him. I do not find it possible to accede to the argument that in a case in which a tenderer who had to submit his tender in the form Exhibit A-3 which was sent in this case, does not fill in the blanks in the last paragraph of that tender, the necessary and inevitable inference is that he is willing to buy all the goods to which the tender form referred.

(31) The fact that paragraph 3(a) of Exhibit A-1 required the tenderer to state the quantities and the fact that Ex A-3 contains separate columns for the price and the quantity, makes the position abundantly clear that unless a tender like Ex A-3 not only states the prices but also states the quantities, the tender is no offer which in law can be accepted. In my opinion, the specification of the quantity required by the tenderer was an essential term of the offer, and if that term was not to be found in the offer his offer was vague for uncertainty and indefiniteness, on the acceptance of which no contract is ever born or comes into being.

(32) What I have said so far is the exposition on the terms and conditions of Exhibit A-1 and of the form of the tender which was sent by the defendant. It is of course clear, and nothing that I have said can constitute an impediment to an alteration of the form of the tender by the Board or the tender notice so as to obviate the difficulties such as those which have arisen in this case. If, for example, the tender notice itself had contained a stipulation that in the absence of the specification of the maximum quantity by the tenderer it would be assumed that the tenderer was willing to purchase might perhaps support a contention that the tender was an offer to purchase the entire quantity. On that question we should not say anything in this case, since that is not the question on which we are required to make any pronouncement.

(33) However that may be, on the foundation of the tender notice to this case and the tender which was sent by the defendant, it is impossible to escape the conclusion that the offer was susceptible to the criticism that it was vague, imperfect and incomplete and bad for uncertainty.

(34) I do not find anything either in the opening sentence contained in Exhibit A-1 which refers to the quantities of coffee mentioned in the tender form proposed to be released for export out of India or in clause 13 which empowered the Board to reject the tenders which were defective, which can support the argument advanced on the basis of those portions of Ex. A-1 that when the defendant did not specify the quantity in Exhibit A-3, he must be understood to have made an offer for the purchase of the entire quantity.

(35) Mr. Sundaraswamy however depended upon two decisions which according to him sustain the contention that the offer made by the defendant was a good

offer. The first of them was a decision of the High Court of Bombay in *Gani Latif v. Manilal Mulji* AIR 1916 Bom 315 (2). That was a case in which the plaintiffs contracted with the defendants for the purchase of alizarin dyes. One of the conditions of the contract was that the defendants were responsible for the immediate despatch of good ordered which were in their godown and as to the balance intimation must be given to the plaintiffs of their probable arrival. In pursuance of this agreement the plaintiffs ordered which were in their godown and as to the balance intimation must be given to the plaintiffs of their probable arrival. In pursuance of this agreement the plaintiffs ordered from the defendants on various does various quantities of dye which were all supplied. Subsequently further orders were placed for large quantities of the same commodity which the defendants were unable to supply owing to conditions created by the war.

When they were sued for damages for breach of the contract, it was contended that there was no enforceable contract between the parties since there was no specification of the maximum quantity which the defendants were bound to supply to the plaintiffs under the agreement. Their Lordships repelled that contention and that the contract was not indefinite by reason of the omission of the maximum limit of the purchase, but that it was however open to the court to reject dishonest claims for damages based on alleged failure to comply with large and unreasonable orders.

(36) It is obvious from the statement of facts stated above that there is no similarity whatsoever between the case before us and that decided by the High Court of Bombay.

(37) In *Dwarkadas and Co. Vs. Daluram Goganmull*, all that was expounded was that the terms of a document can be incorporated by reference when they are not inconsistent with the express terms of the incorporating document or are not repugnant to the transaction which that document represents. It was further pointed out that when a contract is uncertain, the performance of which could never be enforced, then it must be held that the contract is void for uncertainty. The principles expounded in this decision are similar to those enunciated by the House of Lords in *Scammell's case* 1941 AC 251. There is nothing therefore in the *Calcutta* decision which can be of any assistance to Mr. Sundaraswamy in the appeal before us.

(38) In my opinion, we should not dissent from the view taken by the Subordinate Judge that there was no offer made by the defendant such as could on its acceptance give rise to a contractual relationship between the parties.

(39) This is the view I am disposed to take notwithstanding the argument advanced by Mr. Sundaraswamy that there is something in the penultimate paragraph of Exhibit A-3 which justifies the view that the offer of the defendant was to purchase all the coffee specified in the tender notice. That portion reads:--

"I/we hereby offer for the lots shown above at the prices mentioned against the

respective lots. These prices are exclusive of Sales Tax, Central Excise Duty and Customs Duty."

We were asked to say that the meaning of the part of Exhibit A-3 is that the defendant made an offer to purchase all the lots mentioned in Exhibit A-3 and that he was willing to buy them at the prices mentioned against the respective lots. The foundation for this argument consisted of the two prepositions "for" and "at". The preposition "for" appearing between the word "offer:" and the words "the lots" and the preposition "at" appearing between the word "above" and the words "the prices" are the two prepositions on which Mr. Sundaraswamy depended. I do not think that we can read this passage in Exhibit A-3 in the way in which Mr. Sundaraswamy asks us to read it. It should be remembered that this passage occurs in the cyclostyled tender form supplied by the Board and the defendant cannot be understood, on the basis of this vague sentence appearing in that tender form supplied, on the basis of this vague sentence appearing in that tender form, to have agreed to buy all the lots of coffee shown in that form.

That view does not fit into the next paragraph in which the tenderer was required to specify the quantities which he was willing to buy.

In my opinion this passage in Exhibit A-3 on which Mr. Sundaraswamy depends only means that the tenderer was willing to purchase the quantities required by him at the prices shown against the respective lots, provide the quantities were specified, and not that he was willing to buy all the coffee shown in Exhibit A3.

(40) In regard to the other issues, it is not necessary for us to say anything. Mr. Sundaraswamy told us that on the question whether the Board is entitled to interest on the deficiency arising from the resale he would not address any argument, having regard to the fact that on the main issue arising in the case we have found against the Board. On behalf of the defendant Mr. Advocate-General told us that he would not assail the correctness of the other findings of the Subordinate Judge which are adverse to the defendant. So, it is not necessary to advert to those matters in this appeal.

(41) This appeal is dismissed.

(42) In regard to costs Mr. Sundaraswamy appealed to us to desist from making a direction that the Board should pay the costs of the defendant. Mr. Advocate-General however insisted that the costs should follow the event and that, since the Board has failed in the appeal it should pay the costs of the defendant. After some discussion it was agreed between Mr. Advocate-General and Mr. Sundaraswamy that the Board should refund to the defendant the sum of Rupees 2,500 which is the tender deposit and which the Board has claimed the power to forfeit, and that there should be a record made of the undertaking by the Board that that amount should be refunded to the defendant.

It was also further agreed that on this undertaking given by the Board there should be no direction in regard to costs in this appeal. Mr. Sundaraswamy has

no objection to our also making a direction that the tender deposit should be refunded by the Board and we make a direction accordingly. And in consequence of the agreement reached between the parties we make no order as to costs in this appeal.

Kalagate, J.

(43) I agree

(44) Appeal dismissed.