
(1956) 01 AHC CK 0006

In the Allahabad High Court

Case No : Special Appeal No"s. 121 and 122 of 1955

Firm Gobardhan Das Kailasnath

APPELLANT

Vs

Collector of Mirzapur

RESPONDENT

Date of Decision : 27-01-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 73
Forest Act, 1927 — Section 82
Sales of Goods Act, 1930 — Section 54

Citation : AIR 1956 All 721

Hon'ble Judges : Desai, J;Agarwala, J

Bench : Division Bench

Advocate : Ambika Prasad and K.M. Sinha, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Agarwala, J.—These are two connected appeals from a judgment of a learned single Judge of this Court upon petitions presented under Article 226 of the Constitution. The facts briefly stated are these.

2. The Chief Conservator of Forests, Vindhya Pradesh invited sealed tenders for the sale of lac and lac products in the forests belonging to that state. In the notice it was stated that the tenders were to be submitted by the end of January 1952. The appellant firm which carries on business at Mirzapur submitted tenders on 31-1-1952. The tenders were opened the same day and the appellant's tenders were accepted by the Divisional Forest Officer of Vindhya Pradesh.

One of the terms announced at the time of the opening of the tenders was that 25% of the price shall be deposited on the acceptance of the tender and the balance was to be paid within one month.

The tenders were in respect of eight lots, six of Umaria division, one of Rewa division and one of Chhatturpur division. The price of the six lots of Umaria division was Rs. 3,29,959/6/- and the price of the lot of Chhatturpur division was Rs. 7,022/8/-. As we are not concerned with the Rewa lot, it is not necessary to mention anything further about it.

The appellant was to deposit 1/4th of the total price, but he deposited only Rs. 7,000/- in respect of the six lots of Umaria division and Rs. 500/- in respect of the lot of Chhatturpur division. It is al-ledged on behalf of the respondent, the Collector of Mirzapur, that because the appellant did not possess the whole of the 25% of the sale price, he asked for one month's time to deposit the same which was allowed to him.

The remaining amount of 25% was however not deposited by the appellant and on 7-3-1952 the Divisional Forest Officer wrote to the appellant telling him that the lots will be re-sold on 14-3-1952, unless by that date the balance of the 25% of the price was deposited. The amount not having been deposited, the six lots of Umaria were re-sold on 14-3-1952 for a sum of Rs. 1,83,400/- leaving a deficit of over Rs. 1,39,000/-. The lot of Chhatturpur was resold on 16-7-1952 for a certain sum, leaving a deficit of about Rs. 3816/-.

The Divisional Forest Officer thereafter sent a demand certificate for the two amounts to the Collector of Mirzapur for being recovered from the appellant as arrears of land revenue. It was alleged by the appellant that in the case of the amount due upon the six lots of Umaria division, the Collector sent the Tahsildar to demand the amount from the appellant and in the case of the amount due in respect of the lot of Chhatturpur division, notice of arrest was issued against the appellant.

3. The appellant thereupon filed two writ petitions in this Court, one being Civil Misc. Writ No. 349 of 1952 in respect of the six lots of Umaria division and the other being Civil Misc. Writ No. 90 of 1953 in respect of the lot of Chhatturpur division praying for the issue of a direction or a writ commanding the Collector, Mirzapur, not to proceed to recover the amounts as arrears of land revenue from the appellant and further asking him to inform the Divisional Forest Officer Umaria division that the amount was not realisable as arrears of land revenue. There was a further prayer in Writ No. 90 of 1953 to the effect that the demand certificate be quashed.

4. The case for the petitioner was firstly that there was no completed contract between the parties and secondly that the money due was not recoverable as arrears of land revenue. On behalf of the Collector of Mirzapur it was pleaded that there was a completed contract between the parties and that the balance of the consideration of the sales was recoverable as arrears of land revenue u/s 82, Indian Forest Act read with Rule 30 of the Rewa Forest Contract Rules.

5. The learned Single Judge accepted the contentions raised on behalf of the respondent and by a common judgment dismissed the petitions. Against that

judgment the petitioner has filed these special appeals.

6. The points which were urged before the learned single Judge have been reagitated in these appeals. It has been contended by the learned counsel for the appellant that the payment of 25% of the price was a condition precedent to the completion of the contract, or, in other words, the offer made by the appellant by means of the tenders which were submitted by him was accepted conditionally, the condition being that 25 per cent of the sale price was to be deposited forthwith and since the appellant did not perform the condition as he failed to deposit the full amount of 25%, there was no unconditional acceptance and therefore there was no completed contract between the parties, and as such the respondent was not entitled to recover either the price of the goods or any damages.

7. As regards the contention that the amount due to the Government could not be recovered as arrears of land revenue, the case for the appellant was that assuming that there was a completed contract, the re-sale having been made after notice to the appellant, the amount due to the Government was not the balance of the consideration of the price of the goods but was recoverable as damages u/s 54, Sale of Goods Act and as neither in the Indian Forest Act nor in the Rewa Forest Contract Rules there was any provision for recovering damages for breach of the contract of sale as arrears of land revenue, the amount that may be due to the Government could not be recovered as such. The Government may of course recover it otherwise by an ordinary proceeding in a Court of law.

8. It appears to us that having regard to our view on the second of these contentions it is not necessary for us to express any opinion on the first point urged on behalf of the appellant.

9. Assuming that there was a completed contract between the parties, the question is what is the nature of the claim which the Government is trying to recover from the appellant. It will be noted that out of 25% of the sale-consideration which the appellant had to deposit, he paid only a very small portion. The rest of the 25% and the whole of the remaining 75% of the sale price was not paid at all by the appellant.

The Government was in the position of an unpaid seller in possession of the goods sold and as such it was entitled to retain possession of the goods until payment or tender of the price u/s 47, Sale of Goods Act was made, and it was thereafter also entitled u/s 54 of the said Act to give notice to the appellant of its intention to resell. This was done by the Government in the case of six lots of Umaria division by means of a notice dated 7-3-1952 and in the case of the Chatturpur lot by means of another notice of the same date. The date of re-sale in the case of the six lots of Umaria division was fixed as 14th March, whereas in the case of the Chhaturpur division, the date was 16-7-1952.

It was stated in both the notices that unless the appellant paid the balance of the price, the goods will be re-sold on the dates mentioned. The balance of the price

was not paid by the appellant and consequently the goods were re-sold on the aforementioned dates. There was a deficit and the Government was entitled to realise this deficit, but as what? as balance of price or as damages? Section 54 expressly mentions the word "damages" for such deficit. It says:

"Where the goods are of a perishable nature or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, resell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the resale. If such notice is not given the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale."

From the perusal of this section it is quite clear that in case the seller gives notice of re-sale and resells the goods then the difference between the original sale price and the price obtained after the resale minus other expenses incurred is to be recovered as "damages" for the loss occasioned by the breach of contract. It is not described as balance of price because the property is not sold as the property of the buyer. If it were the property of the buyer, the buyer would have been entitled to the excess price, if any, obtained on the re-sale.

But in this case the law says that the excess price shall go to the seller. If however notice of resale is not given then the property is treated as property of the buyer and it is he who is entitled to the profit, if any, on the resale. As was stated by a Bench of this Court in *Prag Narain v. Mull Chand* 19 All 535 (A).

"In the case of a resale the buyer is entirely deprived of his property and that distinguishes the lease of a claim for damages upon a re-sale from that of a claim for the unpaid price. In the latter case the buyer would get the property and be in a position subsequently to compensate himself by waiting for a rise in the market."

10. This being the nature of the Government's claim, we have to see whether it can be recovered as arrears of land revenue. We have been referred to Section 82, Indian Forest Act and it has been alleged that it is under that section that this amount can be recovered from the appellant. Section 82 runs as follows:

"All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue." It is conceded before us on behalf of the learned counsel for the respondent that if this claim cannot be described as "price of any forest produce, it is not money payable to Government under the Act or any rule framed under the Act, keeping aside the Rev/a Forest Contract Rules for the present. If the claim cannot be termed as "price", as we have shown it cannot be

so termed, then it cannot be recovered u/s 82, Indian Forest Act as arrears of land revenue.

11. Reliance was also placed on Rule 30 of the Rewa Forest Contract Rules which reads as follows:--

"(1) A forest contract may be terminated by the officer empowered to execute it on behalf of the Darbar if the forest contractor makes default in the payment of the consideration for his contract or of any instalment thereof, or commits a breach of any of the other conditions of his contract.

(2) Such termination shall be notified to the forest contractor by a written notice delivered to him personally or sent to him by registered post, and thereupon all the contractor's rights under the contract including all accessory licenses, shall cease, and all the forest produce remaining within the contract area or at the depots specified under Rule 13 shall become the absolute property of Darbar.

(3) On such termination Darbar shall be entitled :

(a) to keep all sums already paid by the contractor as consideration or part consideration of the forest contract;

(b) to recover as arrears of land revenue any part of the consideration which has fallen due but is still unpaid on the date of the termination of the contract:

(c) to recover as arrears of land revenue any penalty which may be recoverable under Rule 28; and (d) to recover any damage which may be assessed under Rule 15."

12. It is urged that Clause (3) (b) of Rule 30 applied to the present case, but we do not think that it can be said that the amount which is realisable as damages for the breach of a contract u/s 64, Sale of Goods Act can be said to be a "consideration for sale which has fallen due & is still unpaid." The consideration mentioned in the sub-rule is nothing else but the price mentioned in Section 82, Indian Forest Act.

We do not think that the amount in dispute can be said to be either consideration or price of the original contract as in our opinion its real character is of damages for the loss which has been sustained by the seller on account of the breach of contract by the buyer.

13. It was urged by the learned counsel for the appellant that these rules do not apply to the present case. It is not necessary for us to express any opinion on this point. In this view of the matter the appeals succeed.

14. In the result, we allow the appeals and direct the respondent to forbear from recovering the amount claimed by the Government as arrears of revenue as has been proposed to be done in the present case.

15. On behalf of the respondent it was urged that the appellant had an alternative remedy by a regular suit and that his petition under Article 226

should not be entertained on that ground. In our opinion this is a fit case in which this Court may interfere because if the appellant were thrown upon his remedy by way of a suit, he may have to give due notice to the respondent before he could get any relief & if he were to do that he might well be arrested before he could file a suit. In the circumstances we think that the appellant was entitled to claim a relief from us under Article 226.

16. As the appellant was in default, we consider that ends of justice would be met by directing the parties to bear their own costs both of the appeals and of the proceedings before the learned single Judge.