
(1957) 01 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 461 of 1949

Firm H. Sham Sunder and Sons

APPELLANT

Vs

Ram Chand Spinning and Weaving Mills

RESPONDENT

Date of Decision : 10-01-1957

Acts Referred:

Contract Act, 1872 — Section 73

Sales of Goods Act, 1930 — Section 57

Citation : AIR 1957 P&H 90

Hon'ble Judges : Passey, J;Kapur, J

Bench : Division Bench

Advocate : D.N. Aggarwal, for the Appellant; I.D. Dua and K.L. Kapur, for the Respondent

Final Decision : Allowed

Judgement

Kapur, J.—This is a plaintiffs' appeal against an appellate decree of District Judge S. L. Madhok, dated the 2nd of March, 1949, modifying the decree of the trial Court which had decreed the plaintiff's suit in full.

2. The plaintiffs are dealers in cloth at Amritsar. The defendants are a manufacturing firm of Hathras in U. P. On the nth of March 1944 a contract was made between the parties for the sale by the defendants to the plaintiffs of 51 bales of cloth bearing trade-mark 2840 at Rs. 12/7/- Per piece. The delivery was to be made in the months of April and May 1944. The plaintiffs deposited a sum of Rs. 2,000/- as advance price and the defendants supplied only 5 bales of cloth and did not supply the balance, i.e. 46 bales of cloth. The plaintiffs claimed a sum of Rs. 4,500/- made up as follows:

(1) (1) Profit on 46 bales of cloth-- Rs.2,860/10/- Less expenses which would have been incurred in taking the goods from. Hathras to Amritsar-- Rs. 485/- /- Rs. 2,375/10/- (2) On account of refund of the advance price. Rs. 2,000/- /- (3) Interest on (2) above at 6 per cent per annum. Rs. 150/- /- Total: Rs. 4,525/10/- (out of which Rs. 25/10/- was given up.).

3. The defence was that the defendants were not liable because there was no breach of contract and there was control over the movement of goods and as the defendants had not been able to obtain a permit the contract became impossible of performance. Several issues were raised, but the only question now in dispute in this Court is the measure of damages.

4. The trial Court held that the plaintiffs were entitled to damages at the rate of 10 per cent profit on the market price. On appeal the appellate Court varied that decree to the extent of reducing the measure of damage to Rs. 0-11-0 per piece on the ex-mill price prevailing on the 31st of May 1944, which comes to Rs. 1,581/4/- from which he has deducted Rs. 485/- on account of expenses for taking the goods from Hathras to Amritsar.

5. Mr. Dwarka Nath Aggarwal contends that the learned District Judge has erred in determining the measure of damages. According to him in accordance with Section 73 of the Contract Act the plaintiffs are entitled to get compensation for any loss or damage caused to them and submits that had the goods been supplied to the plaintiffs they would have been able to make a profit of 10 per cent and therefore that should be taken to be the measure of damages.

6. I am unable, to agree with the contention raised. The contract is governed by Section 57 of the Sale of Goods Act Which provides:

"57. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery."

And it has been held that the difference in the market price is the measure of damages for the purposes of determining the amount of compensation payable to the buyer in a case like the present.

In Mulla's Contract Act at page 385 the law has been stated in the following terms:

"Under a contract for the sale of goods the measure of damages upon a breach by the buyer is the difference between the contract price and the market price at the date of the breach. If the seller retains the goods after the breach, he cannot recover from the buyer any further loss if the market falls, nor is he liable to have the damages reduced if the market rises."

But Mr. Dwarka Nath Aggarwal relies upon a judgment of the Privy Council in *Sally Wertheim v. Chicoutimi Pulp Company* (1911) App Cas 301 (A), where it was laid down that in the case of late delivery the measure of damages is the difference between the market price at the respective dates of due and actual delivery of the goods purchased and the general intention of the law in giving damages for breach of contract is that the plaintiff should be placed in the same position as he would have been if the contract had been performed. But this principle does not militate against the law as stated by Mulla because had the contract been performed, the plaintiffs would have been able to get Rs. 0-11-0 per piece more.

There is nothing to show that on that date, i.e. 31st May 1944 which is the date of the performance, the rates were any higher than what the learned District Judge has found them to be. In these circumstances I am of the opinion that the appellate Court has rightly held the measure of damages to be Rs. 0-11-0 per piece, i.e. the difference between the price prevailing on the due date and the contract price.

7. But the learned Judge has made one mistake and that is of deducting Rs. 485/- which the plaintiffs would have expended had they taken the goods to Amritsar. That cannot be deducted from their profit because if the goods had been taken to Amritsar. the difference of price would have been Rs. 0-11-0 per piece plus expenses and I would therefore modify the decree and allow the appeal to the extent of increasing the decretal amount by Rs. 485/-. The parties will bear their own costs in this Court. The costs of the Courts below will be borne as ordered by the learned District Judge.

Passey, J.

8. I agree.