
(1923) 01 AHC CK 0005
In the Allahabad High Court
Case No : S.A. No. 293 of 1922

(Firm) Kesho Das Ram Gopal

APPELLANT

Vs

(Firm) Hazari Lal Chhanga Mal

RESPONDENT

Date of Decision : 09-01-1923

Acts Referred:

Citation : (1923) 01 AHC CK 0005

Judgement

1. The following is. the Judgment of the District Judge from which the second Appeal came up before the High Court:

This is a plaintiff's appeal arising out of a suit for damages for non-delivery of 150 bags of sugar under a forward contract for January, February, March, 1920 delivery.

The defence that found favour with the lower Court was that the contract was a wagering one; and that is the one main question in this appeal.

To correctly appreciate the points in the case some general observations are necessary.

Sugar transactions at Cawnpore may be classified first under two heads.

1. Dealings in foreign imported sugar known as Java sugar. From the number of cases that have come before me, it may be provisionally accepted that about September, 1919 owing to wagon restrictions the import of this class of sugar was nominal and so, the prices went up from near Rs. 11 to near Rs. 40. There was a fever of speculation in the market and in case of dealings in such sugar it is not impossible to say that most of them were highly speculative and probably a good many of them bordered on, if not actually, wagering. A set of circumstances attending transactions on this class of sugar may, in particular cases, be sufficient to justify a finding of "wagering."

2. Contracts in sugar known as.-

(a) "Cawnpore special." These are of local manufacture, Messrs. Begg

Sutherland and Company, are sole agents for the manufacture and there is a certain firm here who are sole agents for Begg Sutherland Company Auctions at Begg Sutherland and Company, commence in October when contracts for future delivery are sold. A large number of these are secured by few firms, who then, in a way retail out by entering into contract with others. Such contracts may pass from hand to hand- and ultimately the last link in the chain must take delivery. Thus, so far as these series of contracts are concerned every link in the chain would be backed by actual commodity to be ultimately delivered to the last holder. None of the intermediate chain actually handle the goods or have sufficient funds to pay in full. With a very moderate capital, a very large business in this class of contracts may be done. From the above it would be clear that the same set of circumstances that may be sufficient to support a finding of wagering in the first class of contracts would be wholly insufficient to support such a finding in this latter class of cases.

(b) A sub-head of this class of transaction will include the following :-

1. Private contracts before the Begg Suther's auctions, where there would be no actual delivery order then available.
2. Even after the auctions by a person who has not yet secured any contract backed by delivery orders.

It is in these latter class of cases that the question becomes difficult and in such cases, the course of dealings of the parties becomes almost all important. It may be that these contracts are entered into in anticipation of securing contracts backed by delivery orders. Where it is shown in a particular case that parties never dealt in contracts actually backed by genuine delivery orders, it would be a very strong circumstance in support of the contention that the parties were really gambling. But where it is shown that at least one party has been dealing in the actual commodity in the sense that he has been actually securing Begg Suther's contracts or subcontracts backed by delivery orders, then it would become very difficult to say that other contracts of his not so backed by actual commodity to be delivered to the last link in the chain-were wagering.

Coming now to the facts of the case before me, I find it falls under the last mentioned class, Plaintiff's accounts extracts show he had (at least) 18 " sold notes." Of these 500 bags for " immediate delivery" and 875 bags " forward contract." It was practically conceded that these may be regarded as genuine transactions. Though, I must say, my attention was called to one item in which differences had been adjusted with the sole agent of the mills. That may be due to the fact that on that particular date that mill or the sole agent was short of stock and had to adjust. But it was not seriously disputed that in cases of such " sold notes" the transaction must be regarded as genuine though speculative.

On the face of the above, it is difficult for any one to say that the plaintiff at least, never intended actual delivery so far as the contract in suit is concerned. Take the defendant's firm. They had also to admit dealing in sugars so far that

they entered into transactions for their constituents. Thus we may be sure so far that the defendants would be prepared to take deliveries for their constituents at least-unless these constituents are also shown to have been only gambling.

Next we have three cases in which the defendants themselves obtained decrees or award in similar transactions. Could it therefore be said that the defendant had always been gambling only and his dealings must have been known to the plaintiff that the defendant would never deliver but only adjust differences ?

Now, in the light of the above facts let us examine the other circumstances relied on in defence.

(1) Means and position of parties:-I need not discuss defendant's, for even if it be assumed that the defendant was gambling it will not avail, so far as the plaintiffs are concerned. We have direct evidence that on all the three due dates actual tenders were made to the defendant. This would ordinarily clinch the matter. It is, however, said that plaintiff's dealings extended over 12 1/2 lakhs in those months. True. But according to the figures given to me by defendant's learned vakil, I find the plaintiff's pocketed clear profit of Rs. 22,000. He received Rs. 32,000, in differences and paid Rs. 10,000. All this could fairly be done genuinely, with a modest capital when, what you purchase from one party you pass on to another- without having to put out more than the earnest (and you receive the same earnest in your turn). In any case take those 18 sold notes covering 1,375 bags. These transactions were genuine and without the plaintiff having to pay more than the earnest.

(2) Availability of the stock -On the one hand as I said in the opening remarks, these contracts refer to local manufacture and must be backed with output at least what is contended is that while the output is only about 50,000 bags the total number of bags if all the transactions in Cawnpore are taken, it may give us a number 10-20, or even 100 times the output. Granted though such an enquiry would be impossible and on the present record if you reject the vague and hearsay evidence there would be nothing to support it. But you must remember that the same contract may pass a dozen hand in succession and so the total if ascertained must have to be divided by the dozen or the number of links in the chain. The result is that given a 50,000 bags as output, it is impossible to build any argument under this head.

(3) Plaintiff's books disclose all adjustment in differences. Possibly, it is so. But then, what will you say about the 1,375 bags covered by the 18 sold notes ? Will you say that even in those cases with the actual goods behind each of those 18 sold notes the transactions were merely gambling because the plaintiff by counter contracts simply passed on the goods and received as profits only the differences ?

(4) It is however urged that the contracts referred in S. 2 may have been-genuine, but highly speculative and therefore, given that the plaintiff had always been speculating, in this particular contract which is not so backed up the

plaintiff must have been gambling. It must, however, be remembered that the plaintiff is a purchaser not seller. It is not his (plaintiff's) business to enquire how the defendant would meet these contracts on due dates whether by actual delivery of the goods or by passing on sold notes in a chain, which the plaintiff could equally pass on and direct actual delivery to the last link in the chain.

On the whole, I am afraid the evidence and circumstances disclosed in this case will not to my mind support the finding of wagering and I am not prepared to support the decree of the lower Court.

JUDGMENT

2. This appeal arises out of a suit brought by the plaintiff to recover damages on account of a contract entered into with the defendant to supply 150 bags of a special kind of sugar weighing 375 maunds at Rs. 17-8-0 per maund. The bags were to be delivered 50 at a time, in the months of January, February and March 1920. The contract itself was entered into on the 18th September 1919. It is admitted that the plaintiff did not get delivery on the due dates. The defence was that the contract was a purely wagering one and that the suit was not therefore maintainable u/s 30 of the Indian Contract Act. This defence was accepted by the trial Court, but on appeal the learned District judge of Cawnpore in a very careful judgment, in which he has in our opinion properly set out the law on the question and has given all the facts affecting the issue, ultimately came to the conclusion that the contract, while a speculative one, was not a wager within the meaning of S. 30. It seems to us that the view of the law which he has taken is in accordance with that laid down by their Lordships of the Privy Council in *Bhagwan Das Parasram v. Burjorji Ruttonji Bomanji*, (1918) 42 Bom. 373 : 45 I.A. 29 : 23 M.L.T. 203 : 34 M.L.J. 305 : 4 P.L.W. 129 : 16 A.L.J. 241 : 27 C.L.J. 358 : 1918 M.W.N. 315 : 22 C.W.N. 625 : 20 Bom. L.R. 561 : 7 L.W. 577 : 11 Bur LT 211: 44 IC 284 (P.C.). In our opinion therefore his decision was right.

3. On behalf of the plaintiff a cross-objection has been filed with respect to interest from the date of the institution of the suit until its final determination by this Court. It seems to us that this was a point which was overlooked by the lower appellate Court. In our opinion the plaintiff is entitled to interest. We therefore modify the decree of the Court below by awarding the plaintiff interest at the rate of 6 per cent from the date of the suit up till this date on the amount decreed by the lower appellate Court.

4. The defendant will pay the costs of this appeal and of the cross objection including in this Court fees on the higher scale, We allow Mr. Iqbal Ahmed three days time within which to file his certificate of fees.