
(1954) 10 MP CK 0011

In the Madhya Pradesh High Court

Case No : Sm. C.C. Revision No. 17 of 1954

Gappulal

APPELLANT

Vs

Kanderwal Brothers, Metal Deptt.

RESPONDENT

Date of Decision : 14-10-1954

Acts Referred:

Citation : AIR 1955 MP 96

Hon'ble Judges : Dixit, J

Bench : Single Bench

Advocate : Kak, for the Appellant; Anand, for the Respondent

Judgement

Dixit, J.—This is a petition for revision of the order of the Small Causes Court, Lashkar returning the plaint for presentation to the proper Court.

The plaintiff-applicant is a dealer in hardware at Gwalior. The defendant non-applicant is a firm carrying on business at Bombay. The plaintiff alleged that he had agreed to purchase from the defendant 5000 ft. G. I. Pipe 1/2" at the rate of Re. 0-8-0 per foot F. O. R. Bombay, and that he paid Rs. 500/- to the defendant as advance; that subsequently the defendant failed to give delivery of the pipes according to the contract. The plaintiff, therefore, brought a suit against the defendant in the Court of Small Causes at Lashkar for the recovery of Rs. 500/- paid as advance by him to the defendant.

The defendant did not appear in the lower court and the suit proceeded ex parte against him. The learned Judge of the Small Causes Court, however, held that no part of the cause of action arose in Gwalior and returned the plaint for presentation in the proper Court. The plaintiff has now come up in revision to this Court.

2. Mr. Kak learned counsel for the applicant first contended that the contract was concluded in Gwalior. I am unable to accept this contention.

The contract was entered into by correspondence. The letter dated 15-6-1953

which the defendant addressed to the plaintiff clearly shows that by a letter dated 11th instant the plaintiff placed an order with the defendant for the supply of 5000 ft. G. I. Pipe at the rate of Re. 0-8-0 per foot F. O. R. Bombay and that the said order was accepted by the defendant by his letter dated 15-6-1953. The plaintiff's offer for the purchase of 5000 ft. G. I. Pipe was thus accepted by the defendant at Bombay where the letter of acceptance was posted. The contract was thus clearly made in Bombay.

Learned counsel for the applicant referred me to a letter addressed by the defendant on 29-5-1953 to the plaintiff wherein the defendant stated that he would be in a position to book the plaintiff's order for 10000 ft. of pipe at the rate of annas eight per foot, which was expected in Bombay from abroad sometime in June 1953. It was said that by this letter the defendant made an offer for the sale of 10000 feet of pipe and that this offer was accepted by the plaintiff by his letter dated 11-6-1953 which was posted at Gwalior. I am unable to read the defendant's letter of 29-5-1953 as containing any specific offer. By that letter the defendant expressed his willingness to supply 10000 ft. of pipe to the plaintiff in June 1953 and invited an offer from the plaintiff for such quantity of pipe as he may require. In fact by his letter dated 11-6-1953 the plaintiff placed an order for only 5000 ft. of pipe and not for 10000 ft. of pipe which the defendant was ready to supply.

Mr. Kak then urged that the contract was to be performed at Gwalior where the pipe was to be delivered. This contention must also, in my opinion, be rejected. The contract between the parties was for the supply of pipe F. O. R. Bombay. That being so, the delivery of the goods to the buyer would, in law, be presumed at the place of consignment i.e., at Bombay, (see -- AIR 1941 223 (Lahore)).

3. Mr. Kak then submitted that on the breach of the contract the amount of advance paid by the plaintiff to the defendant became a debt received by the defendant to the use of the plaintiff and that thereafter the relationship between the parties, in respect of this amount, was that of a creditor and a debtor and that under the general rule that the debtor must find his creditor, the defendant was bound to pay this amount to the plaintiff at Gwalior.

In support of this contention Mr. Kak relied on-- Muhammad Esuff Rowther Vs. M. Hateem and Co., . This contention is, in my opinion, well founded and must be accepted. The plaintiff's suit is for the recovery of the advance money, because of the breach of the contract to supply pipe. Now with regard to the recovery of the amount of deposit or advance under breach of contract, the principle of law is that unless the right is excluded by the terms of the contract, money paid for consideration which fails becomes moneys received by one party to the use of the other party and is recoverable as a debt. The moment the agreement is broken there is either failure of the consideration or there is an equity in favour of the plaintiff which impliedly makes the retention of the amount of the deposit or advance a debt due by the defendant to the plaintiff. This view is amply supported by the decision of the Bombay High Court in -- Champaklal Mohanlal

Vs. The Nectar Tea Company, , which was followed in Muhammad Esuff Rowther Vs. M. Hateem and Co., , cited by the learned counsel for the applicant.

If then, as I think, on breach of the contract the amount of advance became a debt received by the defendant to the use of the plaintiff, the rule that the debtor must find his creditor would apply and the amount of the deposit would be payable at the place where the plaintiff resides. In this view of the matter the Court of Small Causes at Gwalior would have the jurisdiction to entertain the plaintiff's suit for the recovery of the sum of Rs. 500/- from the defendant.

4. The result is that the order of the Court of Small Causes, Lashkar is set aside and the case is sent back to lower Court for trial on merits. Costs in this Court will be costs in the cause.