

(1948) 12 MAD CK 0014
In the Madras High Court

Hanuman Prasad Pragdas

APPELLANT

Vs

P.S. Nanjappa Chetty and Sons and Others

RESPONDENT

Date of Decision : 08-12-1948

Acts Referred:

Citation : (1949) 1 MLJ 229

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—The defendant is the appellant. The appeal is against the decree and judgment of the learned City Civil Judge

decreeing the plaintiff's suit for damages for a sum of Rs. 3,220. The plaintiff is a firm carrying on business at Madras, and the defendant is the

manufacturer of brass circles at Mirzapur in the United Provinces. In the month of June, 1944, the plaintiff booked three orders for brass circles

the particulars of which and the quantity of which have been detailed in the correspondence. There is no dispute regarding the quantity and the

quality; nor is there any dispute between the parties that there was a concluded contract between them. They are at variance however regarding

some of the terms of the contract.

2. The defendant raised three questions in the suit and the same have been repeated in the course of the arguments here. The first question was that

this Court had no jurisdiction to try the suit, secondly that the plaintiff repudiated the contract on 4th August, 1944, before a reasonable time had

elapsed for the performance of the contract, as no period was fixed under the terms of the contract, and thirdly that the damages should be fixed

with reference to the market rate at Mirzapur on the date of the breach and not

with reference to the market rate at Madras.

3. Ex. D-4, a letter from the plaintiff to the defendant shows that the arrangement between the parties with reference to the despatch of the goods

was that the goods should be despatched by the defendant F.O.R. Mirzapur and that the railway receipt should be negotiated through the Bharat

Bank, Ltd. In the final letter in which all the offers were confirmed once more, Ex. D-7 (a), dated 2nd July, 1944, from the plaintiff to the

defendant, reference was again made to the fact that the goods were to be despatched F.O.R. Mirzapur and that they might be sent at the earliest

booking day and that the defendants might draw on the plaintiff for the purchase price. It is common ground that some time between June and July

the booking at Mirzapur was stopped and there was no supply of wagons by the railway authorities. It was for that reason that no specific date for

delivery was fixed, though in Ex. D-7 (a) it was stated that the goods should be sent at the earliest booking day. On the 22nd July, 1944, the

plaintiff seems to have demanded the defendant to despatch the goods at the earliest convenience. There being no reply to this telegram he sent a

further telegram on the 26th July, 1944, Ex. P-6, whereby he intimated to the defendant that if immediate despatch of the goods was not effected

he would be liable for all loss and demanded him to despatch the goods urgently. On the 27th of July in reply to this telegram the defendant sent

Ex. P-7, a telegram which reads ""Tried station. Goods will despatch one week."" The plaintiff having learnt that some merchants of Mirzapur

booked goods even on the 3rd and as he did not hear anything further from the defendant wrote a letter Ex. D-11 on the 4th August, 1944,

intimating the defendant that as there was a default on his part the contract was cancelled and that he had covered the contract by purchasing

goods in the market. He claimed the difference in the price as damages. This was followed by a telegram of even date. The defendant does not

seem to have made any attempt whatever for securing waggons for the despatch of the goods. The only evidence on this point is that of the so-

called forwarding agent who says that he signed in some register of the railway company, which was not however produced, in order to secure the

supply of waggons for despatch of the goods. The evidence of that witness is wholly unreliable. The position therefore was that on or about this

time while other merchants of Mirzapur were trying to despatch the goods in fulfilment of their contracts the defendant did not move his little finger

to carry out the terms of the contract. The subsequent correspondence shows that the defendant was inventing untenable grounds for not

despatching goods and did not make any arrangements till September for booking goods. All this shows that defendant has not made goods for

despatch in August. In the above circumstances there was no option left to the plaintiff but to cancel the contract and he was justified in repudiating

the contract.

4. Apart from the question whether all the offers constituted one single contract or were different contracts, from the fact that the parties agreed

that the railway receipt should be sent to the Bharat Bank, which in the context could only mean the Bharat Bank at Madras, against payment by

the defendant, the Court at Madras has undoubted jurisdiction to try the suit. From this point of view the damages have also to be assessed

according to the market rate in Madras, as the performance of the contract and the payment for the goods were at Madras and not at Mirzapur.

The view of the learned City Civil Judge therefore on all the three points, in my opinion, is correct and he was justified in assessing the damages at

the market rate in Madras and granting to the plaintiff a decree on that basis.

5. This appeal fails and is dismissed with costs.