
(1927) 09 BOM CK 0007
In the Bombay High Court
Case No : First Appeal No. 228 of 1925

Hari Laxman Joshi

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 27-09-1927

Acts Referred:

Contract Act, 1872 — Section 56
Transfer of Property Act, 1882 — Section 108(e)

Citation : AIR 1928 Bom 61 : (1928) 30 BOMLR 49 : (1928) ILR (Bom) 142 : 108 Ind. Cas. 19

Hon'ble Judges : Patkar, J; Baker, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Patkar, J.—[His Lordship, after setting out facts, and holding that the defendants had waived the objection on the ground of lateness of acceptance, continued :] The contract between the parties, therefore, being complete, the question that arises is whether the defendants can escape from their liability for payment of rent and for making repairs under the lease by reason of the alleged fact that there was a strike of local workmen which rendered it impossible to manufacture salt. It is urged on behalf of the defendants that the purpose of the contract was the manufacture of salt, and the purpose having failed, no liability under the contract to pay rent or to make repairs arose, and that u/s 56 of the Indian Contract Act the contract became impossible and therefore became void on account of the subsequent impossibility of manufacturing salt on account of the strike of the workmen, and reliance is placed on the cases of Goculdas Madhavji v. Narsu Yenkuji ILR (1889) 13 Bom. 630, Taylor v. Caldwell (1803) 3 B. & 826. Dhuravnsey v. Ahrmedbhai ILR (1898) 23 Bom. 15, and Krell v. Henry [1903] 2 K.B. 740. It appears from the evidence of defendant No. 2 that the tenants had combined against the landlords from October 1920. Trimbak Govind Dev, Exhibit 55, says that there was a combination of workmen in the Taluka which began in July or August 1920, and in Bhadrapad, that is, September, of that year, they had

not gone to the repair work of the Agars of field-owning manufacturers. It is thus clear that the contingency of the strike of workmen was not unforeseen, and the defendants either ought to have secured other labour in order to carry out the contract, or ought to have made it an express condition with the plaintiff" that they would be bound by the contract only if they secured skilled labour to manufacture salt. It appears, however, from the evidence of Trimbak Dev, that other skilled labour was available but at prohibitive rates. He said that the Kharvaa from Gujerat were not imported for doing salt work as their wages were high, Dinkar, Exhibit 56, proves that in the first year the combination was declared in October, and the next year repairs were made with the help of other labourers, and that even persons belonging to the camp of the strikers used to come stealthily to work and that the labour of the Mahars was available. On the evidence it cannot therefore be said that there was no labour available for the manufacture of salt. It also appears from the evidence that the repairs which were to be done under the agreement were of an ordinary character.

2. The question, therefore, that falls to be decided is whether the defendants were justified in refusing to perform their contract to carry out repairs and to pay rent on account of the alleged strike of workmen. Under p. 108, Clause (e), of the Transfer of Property Act, a lease shall, at the option of the lessee, be void only if by fire, tempest or flood, or violence of army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let. The contention of the defendants does not fall within the exemption allowed u/s 108, Clause (e), of the Transfer of Property Act. I do not think that the contract to pay rent or to make the repairs to the saltpan had become impossible within the meaning of Section 56 of the Indian Contract Act.

3. It is urged, however, on behalf of the defendants that the purpose of the contract was the manufacture of the salt and that purpose having failed, no liability under the contract to pay rent or to make repairs could be enforced. In *Goculdas Madhavji v. Narsu Yenkuji* ILR (1889) 13 Bom. 630, the decision proceeded on the intention of the parties deduced from the terms of the contract, and it was held that, looking to the nature of the contract, it must be taken to have been the intention of the parties to it that the monthly payment was to be payable so long as the quarrying was permitted by the authorities. The case did not fall within Section 56 of the Indian Contract Act. In *Taylor v. Caldwell* (1863) 3 B.& 826, and in *Dhuramsey v. Ahmedbhai* ILR (1898) 23 Bom. 15, there was the destruction of the building the continued existence of which formed the basis of the contract, and the case of *Dhuramsey v. Ahmedbhai* clearly fell u/s 108, Clause (e), of the Transfer of Property Act. In the present case, there was no express contract that the liability to pay rent and to make repairs should subsist only if the salt could be manufactured in the Agar or if skilled labour was available for the manufacture of salt.

4. In *Halsbury's Laws of England*, Vol. VII, p. 430, it is stated :?

Where it appears from the nature of the contract and the surrounding circumstances that the parties have contracted on the basis that some specified thing, without which the contract cannot be fulfilled, will continue to exist, or that a for event which forms the foundation of the contract will take place, the contract, though in terms absolute, is to be construed as being subject to an implied condition, that if before breach performance becomes impossible without default of either party and owing to circumstances which were not contemplated when the contract was made, the parties are to be excused from further performance.

5. In the present case, the strike of the workmen was not unforeseen. There was no express condition that the contract was to be enforceable only if skilled labour was available. The circumstances proved in this case do not suggest that there was an implied condition of the contract that if the manufacture of salt became impossible owing to the strike of the workmen, the parties were to be excused from further performance. The evidence shows that the defendants knew that there was a strike in July and August and that, as a matter of fact, in September the workmen did not go to the repair work of the A gars of field-owning manufacturers, and they ought to have, therefore, taken precautions to secure the requisite labour, or ought to have entered into an express stipulation with the plaintiff that they would not be liable under the contract in case the manufacture of salt was rendered either difficult or impossible on account of the strike of workmen. It appears also from the evidence that labour was available from other quarters though at a higher rate.

6. In the case of *Krell v. Henry* [1903] 2 K.B. 740, the test laid down at p. 752 is as follows: "The test seems to be whether the event which causes the impossibility was or might have been anticipated and guarded against". The cases of *The Bombay and Persia Steam Navigation Company, Limited v. The Rubattino Company, Limited* ILR (1889) 14 Bom. 147, and *Purshoiamdas Tribhovandas v. Purshotamdas Mangaldas* ILR (1896) 21 Bom. 23, relied on of behalf of the plaintiff", would to a certain extent support the contention that the defendants were bound to pay the rent and make the repairs and were not excused from the performance of the contract by reason of the difficulty or impossibility of the manufacture of salt on account of the strike of the workmen. According to the view of Beaman J. in *Karl Ettlinger v. Chagandas & Co.* (1915) 40 Bom. 301 17 Bom. L.R. 1087, the performance of the contract in that case did not become impossible within the meaning of Section 56 merely because freights from Bombay to Antwerp were not procurable from a commercial point of view when the defendants repudiated the contract; and it was held that no implied condition could be read into the contract that it was agreed by the parties that normal freight conditions should continue, and that before a contract could be broken on the ground that the acts to be done had become impossible, the Courts must be very sure that they were physically impossible, and that physical impossibility must go much further than mere difficulty or the need to pay exorbitant prices,

7. We, therefore, agree with the lower Court in holding that it cannot be said that there was at the root of this contract an implied understanding as to the availability of a sufficient supply of labour for the manufacture of salt, so that when the labour supply failed, the obligations under the contract ceased to operate. It may be mentioned that in the next year the contract continued and the lessees of that year, who included the present defendants, paid their stipulated rent. We, therefore, think that the grounds on which the claim is resisted by the present defendants in this suit fail.

8. We would, therefore, confirm the decree of the lower Court and dismiss this appeal with costs.

Baker, J.

9. I agree.

10. So far as the question of the late acceptance by Government of the defendants' offer is concerned the learned Joint Judge has put the case very clearly at pp. 2 and 3 of his judgment, and I agree with his conclusions. The defendants never raised any contention that they were injured by the delay in the acceptance of their offer. On the contrary, they asked for certain concessions as late as October 22, in view of the workmen's strike and the alleged impossibility of manufacturing salt. I am not satisfied that it was impossible to get labour though at a heavy cost, which might result in a loss to the contractors. Government placed the salt-work at the disposal of the defendants; which is all they had contracted to do and they are not responsible for the inability of the defendants to secure labour at a rate which would allow them to work the salt-works at a profit.

11. The cases quoted by the appellants were mostly cases where there was complete destruction of the property regarding which the contract was made, rendering the performance of the contract impossible without the default of either party and do not apply to the present case.

12. In *Krell v. Henry* [1903] 2 K.B. 740, the property was hired for a particular purpose, viz., viewing the Coronation procession, and that purpose became impossible owing to unforeseen circumstances beyond the control of either party. That is not the case here. The salt-work was available for the manufacture of salt, and it was the defendants' business to provide labour. Knowing that labour was scarce they took the risk of entering into the contract and if they failed to find labourers that is not the fault of Government, nor are the defendants relieved from their liability to pay the rent. I agree, therefore, that the appeal should be dismissed.