(1952) 09 GUJ CK 0007

In the Gujarat High Court

Case No : Second Appeal No. 45 of 1951

Hasanali Kurjibhai APPELLANT

Vs

Ratilal Nyalchand Chitalia and Another RESPONDENT

Date of Decision : 23-09-1952

Acts Referred:

Companies Act, 1956 — Section 4
Contract Act, 1872 — Section 30
Limitation Act, 1963 — Article 85, 89, 90

Citation : (1952) 09 GUJ CK 0007

Hon'ble Judges : Chhatpar, J

Bench : Single Bench

Advocate : M.U. Shah, for the Appellant; G.B. Joshi, for the Respondent

Judgement

Chhatpar, J.—This appeal arises out of a suit filed by the Respondents claiming Rs. 2000/ - against the Appellant on the foot of a commission agency account. The Plaintiffs acted as commission agents for the Defendant during the St. years 1994-1995 -- 1938-39 A.D. The last item in the account filed is dated 19-05-39. The suit was filed on 14-8-44. The period of limitation was either 5 years or as contended by Mr. Joshi, the learned Advocate for the Respondents, 6 years. The suit was originally filed in Kalawad Court in the Nawanagar State where the period of limitation was 6 years. The cause of action arose at Lodhika, which was a Taluka attached to the Nawanagar State. After the attachment scheme ceased, the case was transferred to the Agency Court at Rajkot. The period of limitation in the Agency Courts at Rajkot was 5 years. It is, however, not necessary for me to decide whether 5 years'' or 6 years'' period of limitation applies, as in view of my finding that the account in suit was mutual, open and current account, the suit would admittedly be in time, even if the five years'' period of limitation applied. The last day of the close of the year, in which the last item of the account is, was admittedly 11-11-39 and the suit having been filed on 14-8-44 was within 5 years. Various contentions were raised to the suit which were held untenable and the trial Court gave a decree to the Plaintiffs. From the decree, the Defendant appealed to the District Court, which confirmed the decree of the trial Court. The Defendant has now come to the High Court in second appeal.

2. Mr. M.U. Shah the learned Advocate for the Appellant has raised the following points:

(1) That the suit was time barred, as the accounts between the parties were not open, mutual and current falling within the purview of Article 85, Indian Limitation Act.

(2) The Plaintiff''s were members of the Rajkot Seeds and Oil Merchants'' Association, and the Rajkot State had prohibited the working of the Association, consequently the transactions which were entered into by the individual members of the Association were illegal and void in law being prohibited by the State.

(3) The association admittedly consisting of more than 20 members was illegal being unregistered u/s 4, Indian Companies Act.

(4) The transactions between the parties were wagering transactions.

(5) The forward transactions were prohibited by the State of Rajkot; this ground is related to the second ground and I will deal with both of them together.

3. So far as the question of limitation is concerned, both the lower Courts have held the account to be mutual open and current. I see no reason to differ from their finding. I have had a look at the accounts filed and I find that the present case appears to be indistinguishable from the case Dau Dayal Vs. Pearey Lal and Others which was also a case between a principal and an agent. The Defendants in that case were dealers in grain, and they had employed the Plaintiffs as commission agents and provided them to start with certain sums of money to serve as cover. The Plaintiffs were then asked to make certain purchases in the market. The Plaintiffs made the purchases spent for the purpose what money of the Defendants they had, and, when necessary supplied the balance out of their own funds. The amount advanced by the Defendants was credited to them in their account. The amount paid by the Plaintiffs was debited to the Defendants in the same account. Defendants were further debited with Plaintiff''s commission and incidental charges. Later on, Plaintiffs debited Defendants'' account with interest on the money they had spent on behalf of Defendants. The next transaction might be one of purchase or one of sale of goods previously purchased. If it was a case of purchase, the same process of entry in the account would be gone through. If, however, there was a transaction of sale of goods previously purchased under the orders of Defendants, Plaintiff sold the goods, credited Defendants with the price fetched, and debited them with the Plaintiffs'' commission and incidental charges. It was held under the circumstances of that case that Article 85, Limitation Act applied and the suit was not barred by limitation, having been instituted before the last date of the year in which the last item in the account stood. In the present case also, the Defendant placed

orders with the Plaintiffs either for sale or purchase of goods according to which the Plaintiffs entered into transactions as pacca Adatias. Sometimes the balance was in favour of the Defendant and some times in favour of the Plaintiffs; the commission and the charges are also debited to the Defendant. Rustomji in his law of Limitation, 1938 Edition at page 840 says that when there is a continuous account between principal and agent with debits and credits on each side of it, and the contract is to pay the balance of that account when it should be struck, and a suit is brought for the balance due on the accounts, Article 85 would apply. Though Articles 89 and 90 specifically provide for suits by principals against agents, the phraseology of Article 85 is wide and comprehensive and does not exclude from its purview the case of a principal and an agent between whom a mutual, open and current account may exist. In numerous cases, Article 85 has been applied to suits between agents and principals when there have been mutuality of dealings and the requisites of the article fulfilled. In the present case both the lower Courts have taken the transactions entered into between the parties into consideration and come to the conclusion that there was mutuality and that the account being current and open, Article 85 applied. I accept their finding and overrule the objection relating to it.

4. As regards the second contention, the Plaintiffs were admittedly members of the Rajkot Seeds and Oil Merchants'' Association and the Rajkot State had prohibited certain classes of forward transactions being entered into, which were of the nature of wager. There were notifications in 1919, whereafter there was a further notification of 26-02-1923 but the position was thereafter clarified in the year 1935 when the State issued its notification No. 23 dated 7-12-35. It refers to the prior notifications and says that in order to clarify any doubt arising in the minds of the merchants relating to the interpretation of the prior orders, it lays down in clear terms that the ''Teji Mandi'' contracts must be dealt with in accordance with Section 30, Indian Contract Act so far as their alleged wagering nature is concerned. It says there is sufficient provision for wagering transactions in the Indian Contract Act, and hence there is no necessity to keep more check on contracts; if transactions for commodities are of such nature that there is no intention from the very beginning to take delivery or give delivery but there is an agreement between them to pay or receive only differences between market rates, such transactions would be considered as wagering. This is exactly the law under the Indian Contract Act. So that whatever position was created by notifications prior to 7-12-35, transactions thereafter were to be judged from the view of the Indian Contract Act. The learned Advocate for the Appellant has, however, relied upon the notification No. 2265 dated 29-7-38 communicated by a letter dated 3-8-38 to the Secretary of the Association, whereby the work of the Association was suspended. But this notification was followed by Anr. notification No. 119 dated 15-6-39, which cancels it as also Anr. notification which was issued in the meantime i.e. dated 16-12-38, relating to transactions of groundnut oil. Reading the two notifications i.e. No. 23 of 7-12-35 and No. 119 of 15-6-39, it appears to me quite clear that the Rajkot State did not wish to go beyond the

provisions of the Indian Contract Act and prohibit the transactions which would be valid under the Act. The fact that for a short period the State had prohibited the association from working does not affect the position of its individual members to enter into transactions with third parties, who were not members of the association. It is admitted that the Defendant was not a member of the Association and therefore not bound by the orders affecting the association. Consequently, I overrule this contention arid hold that the contracts in suit must be judged on the same basis as if the Indian Contract Act applied.

5. The third contention that the association not being registered was illegal and therefore the transactions by its individual members were void hardly needs any discussion. What Section 4, Indian Companies Act lays down is that no company, association or partnership consisting of more than twenty persons shall be formed unless it is registered as a company, association or partnership under the Act. The effect of non-registration is that the Company, association or partnership will have no legal existence as such but it does not prevent the individual members from transacting business with third parties. The contract entered into between the members with third parties cannot be held illegal or void from the mere fact that one of the contracting parties was a member of the association which had no legal existence. The Plaintiffs in the present case had not entered into the contracts in suit on behalf of the association but in their own individual capacity with the Defendant. The mere fact that they were members of the association which was illegal has no bearing on the contracts in suit. Therefore there is no substance in this contention.

6. The next contention to be considered is that whether the contracts were wagering and therefore void u/s 30, Indian Contract Act. The law has been very clearly laid down; more than once that a contract shall not be considered wagering unless it is established that the parties intended not to take or give delivery but to pay only differences on the basis of the fluctuating market rates. An agreement to that effect to which both the parties must be assenting must be proved in order to render contracts in the nature of a wager. The mere fact that during the course of dealings between the parties no delivery was actually made is not alone sufficient for holding that contracts were wagering. In the present case, both the lower Courts have come to the conclusion that there was no such agreement between the parties; the form of the contracts (kabalas'') did contemplate delivery to be taken and given. These contracts refer to the rules of the association which provide for delivery to be taken and given. Under the circumstances, I see no reason to differ from the findings of the lower Courts that the Defendant has failed to substantiate his plea that the contracts were of the wagering character.

7. The last contention relating to invalidity of the contract, in view of the orders of the Rajkot State, has already been dealt with in dealing with the second contention of Mr. Shah.

8. No other point has been raised before me. The result is that this appeal falls

and is dismissed with costs.

