

(1908) 08 MAD CK 0010
In the Madras High Court

Hassan Kassim Sett

APPELLANT

Vs

The Asiatic Petroleum Co. Ltd. and Another

RESPONDENT

Date of Decision : 28-08-1908

Acts Referred:

Citation : 4 Ind. Cas. 1124

Hon'ble Judges : Pinhey, J

Bench : Single Bench

Judgement

1. I am not prepared to hold that the judgment of the District Court is defective merely by reason of Section 203, C.P.C. It is true that no specific

issues were framed but the District Judge found that there was no breach of contract by the defendants and even if there was, that no damages

were proved.

2. I am, however, clearly of opinion that the decision was not according to law. The Judge appears to have held that there was no breach of

contract because there was no stipulation as to time in the contract because the defendants could hardly be held to have undertaken to supply the

goods 9 days after making their offer and because the plaintiff would not wait for the arrival of the next shipment of oil.

3. It is true that the defendants first agreed to supply kerosine oil for cash on the 4th February 1907, and that the plaintiff only paid the cash on the

13th February 1907, but it seems to me the defendants must be taken to have overlooked this delay when they wrote Exhibits C and D. In Ex. C

they acknowledged receipt of the plaintiff's draft for Rs. 3,120, ""which will be passed to credit on realisation"" and in Ex. D having apparently

cashd the draft they wrote that "as desired" they had wired their Calicut agents

to supply the oil ordered.

4. Paragraph 2 of Ex. D ""we are not prepared to sell forward"" clearly shows that the defendants undertook on receipt of the money to supply at

once. This they admittedly failed to do and the reason for their failure is quite irrelevant to the issue.

5. The District Judge appears also to have completely misapprehended the law and the purport of the plaintiff's evidence regarding damages. The

contract price for cross brand" oil between the plaintiff and the defendants was Rs. 3-4-0 a case. The damages the plaintiff was entitled to, was the

difference between this price and the market price of similar oil at that time. To secure damages it was not incumbent on the plaintiff to prove that

he had sold the whole three wagon-loads forward at a profit of 8 annas. As the best evidence of the market rate of cross brand oil at the time, the

plaintiff tendered evidence of his own sales and Contracts. He proved, that he altogether lost one contract for 100 tins at Rs. 3-12-0 a case, that

to fulfil another contract for 500 tins he had to purchase a different brand of oil at Rs. 3-8-0 thus making a profit of only 4 annas instead of 8 annas

a case and that in the case of another contract for 500 tins at Rs. 3-12-0 he was only able to supply 477 tins out of his existing stock and failed to

supply the rest.

6. The District Judge's statement ""there is nothing to show that the flower brand of oil spoken to by plaintiff's witnesses Nos. 2&3 is the same as

"cross brand oil" is incorrect."" The plaintiff's 2nd witness when shown the "cross" design appears to have recognised it as what he called flower

"saying" it is something like this."" From the evidence it would seem that the market price of oil at the date of the contract was Rs. 3-12-0, a case

and that the plaintiff, therefore, lost a profit of 8 annas a case through the defendants' failure to perform the contract. But it also appears that in one

case at least he was able to fulfil a forward contract for 500 tins by purchasing the oil at Rs. 3-8-0 a case. In the light of the explanation to Section

73 of the Indian Contract Act, I think 4 annas a case should be taken as the measure of the plaintiff's damages.

7. The decision of the District Court must be reversed and the plaintiff will have a decree for Rs. 240, half the damages claimed with proportionate

costs in both Courts.