(1990) 10 OHC CK 0020

In the Orissa High Court

Case No : First Appeal No. 145 of 1979

Jain Mills and Electrical Stores APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 09-10-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Contract Act, 1872 — Section 2, 70
Sales of Goods Act, 1930 — Section 42, 46, 47, 64

Citation : AIR 1991 Ori 117

Hon'ble Judges : V. Gopalaswamy, J

Bench : Single Bench

Advocate : Ashok Mukhrjee, A.K. Misra and G. Mukherjee, for the Appellant; B.B. Ratho, N. Misra and S.N. Mahapatra, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopalaswamy, J.—The plaintiffs prefer this appeal against the judgment dated 28-3-1979 and decree dated 10-4-1979 passed by the Subordinate Judge, Bhubaneswar, in O.S. No. 41 of 1975 III, disallowing the plaintiffs'' claim to the extent of Rs. 47,792.04, while decreeing the suit in part only for a sum of Rs. 24,099.58.

2. The plaintiffs'' case may be briefly stated as follows:

The plaintiffs are the partners representing the registered partnership firm M/s. Jain Mills and Electrical Stores which deals in electrical goods and supplies electrical equipments, appliances and materials to Government and semi-Government Departments and also to the public in general. Defendant No. 2, the Executive Engineer, Lift Irrigation (Electrical, on behalf of the State of Orissa (defendant No. 1) invited tenders for supply of electrical goods and in response to the same, the plaintiffs'' firm submitted its quotations on 5-2-1973. Defendant No. 2 accepted the quotations submitted by the plaintiffs'' firm on 5-3-1973 and placed the purchase order in favour of the plaintiffs on 5-3-1973 with the direction that the materials should be supplied by 24-3-1973. The goods described in plaint Schedule A were despatched in time by rail, but in the transit there was some delay and so the said goods reached the defendants after 30-3-1973.

The defendants have duly received the plaint schedule goods but in sipte of repeated demands from the plaintiffs for the payment, the defendants did not pay the price thereof. So ultimately the plaintiffs had issued letters to the defendants on 23-8-1973 and also on 18-9-1973 demanding of the defendants to return the ''A'' schedule goods which the Lift Irrigation Department was wrongfully withholding without paying the price thereof, the defendant No. 2 by his letter dated 27-9-1973 extended the stipulated period of supply of the goods which the plaintiffs had not supplied till 7-4-1973. Ultimately, on 20-5-1974 the defendant No. 3 had amended the purchase order No. 812 dated 5-3-1973 so as to include the ''A'' schedule goods as well, indicating therein that the price payable for the same would be at the original contractual rate. As the prices of the said goods have considerably increased in the meanwhile, the plaintifs did not agree to sell them at the prices stipulated in the original contract and so insisted on their return. The plaintiffs contend that in view of the conduct of the defendants, the plaintiffs are entitled to be paid for the goods at the prevailing market rate as on the date of Section 80, C.P.C. notice. Section 80, C.P.C. notice was issued by the plaintiffs on 16-10-1974. The defendants received the notice, but neither returned the plaint ''A'' schedule goods, nor paid their price as demanded in the notice. So the plaintiffs filed the suit praying for the return of the plaint ''A'' schedule goods and in the alternative prayed demanding payment of Rs. 66,735.62 towards the market value of the plaint ''A'' schedule goods together with interest at 12 per cent per annum by way of damage from 16-10-1974, the date of issue of Section 80, C.P.C. notice. Hence the suit was filed for Rs. 72,891.62 p. as per the calculation in plaint schedule B.

3. Defendant No. 1 is the State of Orissa and defendant No. 2 is the Executive Engineer and defendant No. 5 is the Assistant Engineer of the Lift Irrigation (Electrical), defendant No. 3 is the Executive Engineer, Lift Irrigation Division, New Capital, defendant No. 4 is the Managing Director and defendant No. 6 is the Chairman of the Orissa Lift Irrigation Corporation. All the above referred defendants Nos. 1 to 6 have jointly filed a written statement, the substance of which can be briefly summarised as follows:

Defendant No. 2 has placed the purchase order with the plaintiffs by his letter No. 812 dated 5-3-1973 for supply of the goods, indicating that the goods mentioned therein should be supplied before 24-3-1973, failing which the plaintiffs would be liable to pay penalty as per the terms of the agreement. The plaintiffs have defaulted in making the timely delivery of the goods. The plaintiffs have so far not delivered cables worth Rs. 75,975.25 (valued at the rate of the purchase order). As there was some delay in the delivery of the goods, under Clause 2 of the agreement the plaintiffs were liable to pay the penalty. As the quantity of goods supplied by the plaintiffs was less than the goods ordered for, the defendants suffered a loss to the extent of about rupees one lakh due to such short supply, due to the rise in prices in the meanwhile. The plaintiffs'' claim for higher rates to the extent of 4 per cent at the initial stage and subsequently to the extent of 14 per cent on account of the alleged rise in prices, is contrary to the terms of the purchase order and the agreement and, therefore, such a claim is not sustainable in law. Considering the representation of the plaintiffs, the defendants took a liberal view in the matter. The purchase order was amended on 20-5-1974 limiting the quantity of the materials to the quantity actually supplied. The supply of goods (four types of cables of different sizes) under the purchase order was a package deal. With a view to accommodate the plaintiffs, the defendants, while agreeing to condone the short supply, proposed to pay for the goods already supplied at the contractual rate. But in the meanwhile the plaintiffs rushed to the court and filed the suit with false allegations and the same is, therefore, not maintainable and is liable to be dismissed.

4. From the pleadings, the evidence placed on record and the arguments advanced at the Bar, the following points arise for consideration and decision in this appeal:

(1) In the facts and circumstances of the present case, as the plaint ''A'' schedule goods were not supplied to the defendants within the stipulated time, whether it can be said that the supply of the goods was not in pursuance of the contract between the parties?

(2) Considering the circumstances under which the plaint ''A'' schedule goods were supplied by the plaintiffs, whether they are entitled to claim the relief prayed for in the suit by invoking the provisions of Section 70 of the Indian Contract Act?

(3) As the defendants have not paid the price for the plaint ''A'' schedule goods, in spite of repeated demands by the plaintiffs for such payment, whether the plaintiffs are entitled to claim for the return of the said goods in exercise of their right of unpaid seller''s Hen?

(4) Whether the claim of the plaintiffs that the value of the plaint ''A'' schedule goods should be calculated on the basis of the market rate prevailing by the date of Section 80, C.P.C. notice is valid and tenable?

(5) Whether the rate of interest awarded to the plaintiffs ought to have been much more than six per cent per annum in view of the provisions of Sub-section (1) of Section 34, C.P.C.?

(6) To what relief the plaintiffs are entitled?

5. Point No. 1: One of the partners of the plaintiffs'' firm Indulal Mehta examined himself as P.W. 1 and deposed in support of the case made out in the plaint. The plaintiffs have also relied on the documentary evidence Exts. 1 to 27 in support of their case. The defendants did not adduce any oral evidence. But they

exhibited Ext. A showing the conditions of contract between the parties, in the matter of supply of the goods. For appreciating the points of law involved in the appeal, it is necessary to know the factual background under which the plaint ''A'' schedule goods we''re supplied by the plaintiffs to the defendants. It is the plaintiffs'' case that the Executive Engineer, Lift Irrigation (defendant No. 2) acting for and on behalf of the State of Orissa (defendant No. 1) invited tenders for the supply of the electrical goods and in response to such invitation of tenders the plaintiffs'' firm submitted its quotations on 6-2-1973 indicating the prices at which the firm was willing to supply the goods. The plaintiffs* quotations were accepted by defendant No. 2 and on 5-3-1973 the latter placed the purchase order dated 5-3-1973 (Ext. 17) with the plaintiffs'' firm requesting it to supply the goods as per the specification and quantity given in the list appended to the purchase order. Defendant No. 2 has stipulated in the purchase order Ext. 17 that the goods were to be supplied on or before 24-3-1973, failing which penalty would be imposed as per the agreement. According to the plaintiffs though the plaint ''A'' schedule goods were despatched by rail in time, due to the delay in transit they reached the defendants after 30-3-1973.

The dealings between the parties regarding the supply of various items of goods mentioned in the purchase order (Ext. 17) and to what extent the payments were made, is indicated in the Table ''A'' below, the correctness of which is not disputed by the parties.

TABLE ''A''

Item No. Size of cable ordered. (Covex mm2) Quantity ordered (vide Ext. 17) Quantity supplied

Total Bills paid for materials

within the stipulated delivery period. Beyond the stipulated delivery period.

1. 3 x 6 mm2 1000 Mts.   1001 1001 1003

2. 3x16 mm2 4500 " 1000 4038 5038 4538

3. 3? x 35 mm2 4000 "   3021 3021 1506

4. 3? x 50 mm2 5000 "   1507 1507 1512

The purchase order was in respect of the above referred four types of cables of different sizes, though the dispute between the parties in the present suit is confined only to the two items of size 3x16 sq. mm and 3 1/2 x 36 sq. mm.

When the defendant No. 2 has invited tenders from the dealers of electrical goods, he has invited them to make their respective offers indicating the prices at which they can supply the goods. So when the plaintiffs, in response to the invitation for tenders, submitted their tenders quoting the prices at which they are willing to supply the goods, it means they made an offer agreeing to supply the goods at the prices quoted in their tender. In the present case defendant No.

2 has accepted the tender of the plaintiffs'' firm and gave the purchase order (Ext. 17) on 5-3-1973. Thus there was a contract between the parties regarding the supply of goods covered by the purchase order. The conditions of contract were reduced into writing and the same is marked as ext. A. So when the plaintiffs have despetched the plaint ''A'' schedule goods, they did so in pursuance of the said contract.

6. From Table A given in the preceding paragraph it is seen that though 1001 metres of cable of size 3 x 6 sq. mm. (item No. 1 in Table A) was received by the defendants after the stipulated delivery period, the same was paid for. Even 3538 metres of cable of size 3 x 16 sq. mm. (item No. 2 in Table A) was paid for by the defendants, though they received the same beyond the stipulated delivery period, likewise 1506 metres of cable of size 31/2 x 35 sq. mm. (item No. 3 in Table A) was paid for the defendants though the same was received beyond the stipulated delivery period. So also 1512 meters of cable of sixe 3 1/2 x 50 sq. mm. (item No. 4 of the Table A) was paid for by the defendants though the entire quantity was received beyond the delivery period. All the above four items were covered by the purchase order Ext. 17. Items Nos. 2 and 3 of Table A are respectively the plaint schedule items Nos. 1 and 2. From the above dealings between the parties it is clear that the parties have not treated time as the essence of the contract. Even regarding the suit item No. 1 cables of size 3 x 16 sq. mm. out of a quantity of cable of 4038 metres received by the defendants beyond the stipulated delivery period, price in respect of 3538 metres was duly paid. Likewise in respect of the suit item No. 2 cable of size 3 1/2 x 35 sq. mm. out of a total quantity 3021 metres received beyond the delivery period, price was paid for the quantity of 1506 metres. So the trial court was not justified in arriving at the finding that the supply of the plaint ''A'' schedule goods covered by the purchase order (Ext. 17) is not covered by the terms of the contract, merely on the ground that the defendants received the same few days after the stipulated date of delivery. So there is no basis for the assumption made by the trial court that there was no valid contract between the partiers in relation to the plaint ''A'' schedule goods by the date of their delivery to the defendants. -

7, From the plaint it is seen that though the stipulated date of supply of the said goods was on or before 24-3-1973 and though the goods were despatched in time by rail, due to delay in the transit they reached the defendants after 30-3-1973. The plaintiffs are not definite as to the exact date when the plaint ''A'' schedule goods were received by the defendants. In Section 80, C.P.C. notice (Ext. 22) the plaintiffs have said that the plaint ''A'' schedule goods reached the defendants after 24-3-1973. In the plaint, the plaintiffs stated that the plaint ''A'' schedule goods were received after 30-3-1973. In his evidence P.W. 1 stated that the goods reached the defendants after 31-3-1973. What would be the consequence of the delay in the delivery of the goods, is indicated in the contract Ext. A entered into by the parties. Clause 2 of the contract provides that for every day''s delay in the delivery of goods for a period not exceeding ten days, the contractor shall be liable to pay or allow one per cent on the total amount of the contract by way of liquidated damages. Clause 3 of the contract provides that in case such delay in the delivery of goods exceeds ten consecutive days, the Executive Engineer shall have the power to annul the contract altogether. The contract of sale in the present case is governed by the provisions of the Indian Sale of Goods Act, 1930 (hereinafter referred to as ''the Act''). Section 42 of the Act provides:

"The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them."

Section 63 of the Act provides that "The question ''what is a reasonable time'' is a question of fact". In the present case, there was delay of some days in the delivery of the goods. So the parties aggrieved, if at all, are the defendants. As earlier stated, the plaintiffs are not definite as to what exactly was the period of delay, whether it was delay of more than ten days or less than ten days. If the delay was less than ten days, then the defendants could not have rejected the goods, but they were entitled to claim damages as stipulated in the contract. If only the delay had been for a period of more than ten days, the defendants had a right to reject the contract under Clause (3). But in the present case, after the goods were received by the defendants, they have retained the goods without intimating to the seller within a reasonable time that they have rejected them. So it.can be safely inferred, that in view of the provisions of Sections 42 and 63 of the Act, the defendants must be deemed to have accepted the goods long prior to August, 1973.

The purchase order was in relation to other items of goods as well, besides the plaint ''A'' schedule goods. From paragraph 7 of the plaint it is seen that the plaintiffs had addressed letters on 11-3-1973 (Ext. 1), 17-3-1973 (Ext. 2) and 26-3-1973 (Ext. 3) informing defendant No. 2 that while they do not claim any extra charge for the plaint ''A'' schedule goods, which were already despatched, so far as the other items of goods are concerned, they would be supplied only if the defendants agree to pay 4 per cent extra price over and above the quoted price. From the various letters addressed by the plaintiffs (vide Exts. 1 to 6) it is seen that the plaintiffs were anxious to get a higher price for the goods not yet despatched by them and they never entertained any doubt regarding the acceptance of the plaint ''A'' schedule goods by the defendants. The above circumstances confirms that the plaint ''A'' schedule goods must be deemed to have been accepted by the defendants long prior to 23-8-1979.

8. From the Table-A in paragraph 5 above, it is seen that 4028 metres of cable of size 3x16 sq. mt. and 3021 metres of cable of size 3 1/2 x 35 sq. mt. were supplied beyond the stipulated delivery period and the said two items of cables are the subject matter of the present suit. Out of the said quantities of cable so supplied after the stipulated delivery period, the price of 3538 metres of size 3 x

16 and 1506 metres of size 3 1/2 x 35 mt. was in fact paid by the defendants to the plaintiff. So the plaintiff Indulal (P.W. 1) is not speaking the truth when he deposed that as some of the goods reached after 31-3-1973 they were not accepted by the defendants. Likewise, the plea of the plaintiffs that as they had supplied some excess materials, they are entitled to claim their return, has no substance in view of the fact that so far as the suit item No. 2 is concerned, what was supplied was only 3021 metres, whereas the quantity ordered was 4,000 metres. So far as suit item No. 1 is concerned, from out of the excess quantity of 538 metres of cables of size 3 x 16 sq. mt. price was paid for 38 metres.

9. Point No. 2: The learned counsel for the appellants contended that they are entitled to claim market value of the goods as on the date of issue of Section 80, C.P.C. notice, by virtue of the provisions of Section 70 of the Indian Contract Act.

Chapter V of the Indian Contract Act comprises of only five sections, from Sections 68 to 72. The Chapter is headed "of certain relations resembling those created by contract". These relations do not create a contract between the parties, but merely impose obligations of payment on equitable con- siderations. Obligations under a contract originate in an agreement, express or implied, between the parties.

Section 70 of the Contract Act provides :

"70. Obligation of person enjoying benefit of non-gratuitous act,-- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore the thing so done or delivered."

The three ingredients to support the cause of action u/s 70 are these: First, the goods are to be delivered lawfully or anything has to be done for another person lawfully. Second, the thing done or the goods delivered is so done or delivered "not intending to do so gratuitously "..Third, the person to whom the goods are delivered "enjoys the benefit thereof. It is only whom three ingredients are pleaded in the plaint that a cause of action is constituted u/s 70 of the Contract Act. (See Union of India (UOI) Vs. Sita Ram Jaiswal,).

Section 70 of the Contract Act is not founded on contract, but embodies the equitable principle of restitution and prevention of unjust enrichment. In the present case the plaint ''A'' schedule goods were sent in pursuance of the defendants'' purchase order placed with the plaintiff. Where the goods are delivered pursuant to a request, Section 70 does not apply. (See B.N. Elias and Co. Ltd. Vs. State of West Bengal,). So the plaintiffs'' claim that they are entitled to the reliefs prayed for by invoking Section 70 is not legally tenable. The trial Court acted illegally in invoking the provision u/s 70 while granting the relief to the plaintiffs. Perhaps the plaintiffs also were aware of the non-applicability of Section 70 in the facts of the present case. Hence only, it was only during the course of arguments, they introduced in paragraph 11(a) of the plaint, by way of amendment at that belated stage, the ingredients of Section 70 without expressly mentioning Section 70. Because the plea that the plaintiffs are entitled to the benefit of Section 70 was taken belatedly, no issue was also framed regarding the applicability of Section 70 in the facts of the present case.

10. Even if it is held, as the trial Court erroneously did, that the plaintiffs are entitled to compensation u/s 70 of the Contract Act, the relief that the plaintiffs would be entitled to, would be in no way different from what the plaintiffs are entitled to on the basis of a subsisting contract. u/s 70, a person lawfully delivering goods to another, and not intending to do so gratuitously, is entitled to demand that the goods delivered shall be returned, or that compensation for the goods shall be made. Compensation would normally be the market price of the goods. (See Piloo Dhunjishaw Sidhwa Vs. Municipal Corporation of The City of Poona,). In the Supreme Court case reference was made to the decision of the Lahore High Court, Secretary of State v. G. T. Sarin and Co. ILR Lah 375: AIR 1930 Lah 364, wherein it was held that a person without an enforceable contract in his favour supplying goods to a Government Department is entitled to a money equivalent of the goods delivered assessed at the market rate prevailing on the date on which the supplies were made. In Pillo Dhunji''s case (supra), the Supreme Court, while applying S.70 of the Contract Act, held that the plaintiff was entitled to the market value of the goods at the date of the supply. In the present case, as no evidence was adduced on the side of the plaintiffs as to what was the market price of the cables by the date of their supply, the contractual rate can be safely taken to be the market value of the goods on the relevant date and more so as 4538 metres of cables of 3 x 16 mt. size (that is of the same size as item No. 1 of the plaint schedule) and 1506 metres of cables of size 31/: x 36 sq. mt. (that is of the same size as item No. 2) of the plaint schedule) were paid at that rate.

11. Point No. 3 : The learned counsel for the appellants during the course of his arguments in this Court strongly urged that as the appellants are shown to be unpaid seller, in exercise of their right of lien under Sections 46 and 47 of the Act, they are entitled to the return of the goods. Section 46(l) of the Act provides:

"Subject to the provisions of this Act and of any law for the time being in force notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

(a) alien on the goods for the price while he is in possession of them; (Emphasis is mine)

The relevant portion of Section 47(1) reads :

"Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price...." (Emphasis is mine)

On a perusal of the above quoted provisions it is seen that the lien is founded on possession and unless there is possession there is no lien. (See Maneckji Pestonji Bharucha v. Wadilal Sarabhai and Co. AIR 1926 PC 38). From Section 46(l)(a) it is seen that notwithstanding that the property in the goods has passed to the buyer, the unpaid seller of goods has, as such, by implication of law, a lien on the goods for the price while he is in possession of them. The unpaid seller has a right to detain the goods in his custody until the whole of the price is paid. A lien necessarily presupposes that the property in the goods has passed, as the seller cannot be said to possess a right of lien on his own property, which is in the nature of a right of distress over the property of another. The plaint ''A'' schedule goods were despatched by rail to the defendants and the defendants received the same after 30-3-1973. The lien ceases to subsist the moment the seller loses possession of the goods. So in the present case, in view of the admitted facts that the possession of the plaint ''A'' schedule goods was delivered to the defendant on or about 30-3-1973, the plea of the appellants that they are entitled to the return of goods in exercise of their right of lien as unpaid sellers is without any basis and, therefore, merits no consideration,

12. Point No. 4: The plaint ''A'' schedule goods were delivered to the defendants in pursuance of the purchase order (Ext. 17) and the terms of the contract between the parties (Ext. A). The plaint ''A'' schedule goods were delivered to the defendants in or about first week of April, 1973. The parties have by agreement fixed the price of these goods. By the first week of April, 1973 the defendants have obtained possession of the plaint ''A* schedule goods and the property therein has passed in favour of the defendants. So the plaintiffs are entitled to sue for the price of the plaint ''A'' schedule goods u/s 55 of the Act. But then the plaintiff are entitled to receive for the plaint ''A'' schedule goods price only at the contractual rate. In fact, even the plaintiffs, till 23-8-1973, were demanding of the defendants to pay them at the contractul rate. That apart, out of a total consignment of 5038 metres of cable of size 3 x 16 sq. mt. (that is the type of plaint schedule item No. 1) supplied to the defendants, price for 4538 metres was paid to the plaintiffs at the contractual rate. Likewise out of a total consignment of 3021 metres of cable of size 3 1/2 x 35 mm. (that is of the type of plaint schedule item No. 2) price was paid to the defendants for 1606 metres at the contractual rate. In view of the above facts. I find that the price fixed in the contract for the plaint ''A'' schedule goods is also a reasonable price and so that plaintiffs are entitled to payment for the plaint ''A'' schedule properties at the contractual rate.

13. Point No. 5: Though under the contract of sale, the property in the plaint ''A'' schedule goods has passed to the defendants, the latter have not paid the price of those goods in spite of repeated demands. Section 61(2) of the Act provides that interest may be payable in spite of the absence of any provision therefore in the contract. u/s 61(2), the Court may award interest at such rate as it thinks fit on the amount of the price to the seller in a suit by him for the amount of the price -- from the date of the tender of the goods or from the date on which the price was payable. In Clause (6) of the purchase order it was stated that

payment will be made after receipts of the materials in good condition and verification thereof. It is not in dispute that while 4538 metres of cables of the same size as suit item No. 1 was promptly paid, only price for 500 metres of cable {suit item No. 1) remained unpaid. Likewise, 1506 metres of cable of the same size as suit item No. 2 was promptly paid, and only price for 1515 metres of cable (suit item No. 2) remained unpaid. The above two items of cables are part of a package deal comprising of 4 items covered by the purchase order Ext. 17 (vide Table-A above). From the averments in the written statement it is seen that while about 500 metres of item No. 2 of the purchase order was sent in excess, there was short supply of cable under items Nos. 3 and 4 of the purchase order (vide Tab!e-A supra). Hence from Table-A in para 5 it is seen that there is basis for the defendants'' complaint that because of this laches there was delay in the matter of payment of the price of the plaint''A''schedule goods. In the present case, the plaintiffs have claimed interest from 16-10-1974, the date of Section 80, C.P.C. notice. The trial Court, on a consideration of the facts, awarded interest at the rate of 6 per cent per annum from 23-2-1973, the date when the plaintiffs addressed the letter demanding for the return of the plaint ''A'' schedule goods. During the course of the arguments, the learned counsel for the plaintiffs has urged that he is entitled to a higher rate of interest u/s 34, C.P.C. Section 61 of the Act expressly provides for payment of interest on the amount of the price. The proviso to Sub-section (1) of Section 34 enables the Court to award interest at the rate higher than 6 per cent, but the plaintiffs filing the suit cannot claim as of right a higher rate of interest merely by relying on the proviso. From the dealings between the parties as reflected in Table-A in para 5 it is clear that the plaintiffs themselves were guilty of serious laches in the matter of supply of goods covered by the purchase order. Hence, taking all the aspects into consideration I find that it is quite reasonable to award interest at the rate of 6 per cent per annum on the value of plaint ''A'' schedule goods from 23-8-1973 till the date of payment of the amount decreed.

14. Point No. 6: So the plaintiffs are entitled to a decree only for the sum of Rs. 24,099.58 together with interest on the said sum at the rate of 6 per cent per annum from 23-8-1973 till the date of realisation. Hence the judgment and decree of the trial Court decreeing the plaintiffs'' suit in part is hereby confirmed.

15. In the result, in view of my findings on the several points raised in the appeal, the appeal is found to be without any merit, and therefore, the same is dismissed on contest, but in the circumstances of the case, without costs.

