
(1927) 02 AHC CK 0012
In the Allahabad High Court

Jugal Kishore

APPELLANT

Vs

Chari and Co. and Another

RESPONDENT

Date of Decision : 15-02-1927

Acts Referred:

Citation : (1927) 02 AHC CK 0012

Hon'ble Judges : Mears, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mears, C.J.—Lala Jugal Kishore, son of Lala Har Chand Rai, was the original proprietor of a firm Bundelkhand Cycle and Motor Agency, at Jhansi, and Messrs. Chari & Co., Limited, is a firm carrying on business in Calcutta. Mr. Naidu was the manager-in-charge at Lalitpur.

2. The case made by the plaintiffs was that they had delivered goods to the first defendant through the agent of the first defendant Mr. Naidu of a total value of Rs. 12,731-12-0. A written statement was filed challenging the liability of the defendants especially in relation to a large item of Rs. 11,336 alleging that the receipt relied upon by the plaintiffs was forgery inasmuch as the figure "1" had been added in front of the "1,000" changing there the apparent liability from Rs. 1,336 to Rs. 11,336. After a great deal of delay there came a moment when the Vakil for Mr. Naidu put forward to the Court a letter signed by Sant Lal dated 15th August 1922. Now 15th of August 1922 was the date on which Mr. Naidu had acknowledged the receipt of goods of the value of Rs. 145 and Rs. 1,336 and, according to the plaintiffs, the receipt of goods of the value of Rs. 145 and 11,336, and on this 15th of August 1922, in the absence of any agreement to the contrary, the law would presume that delivery and payment were concurrent conditions, and as regards the two items of 15th of August 1922, they became due and payable on that date, whilst other items were due and payable some months previously. In that condition of affairs Sant Lal, who was accepted by the Judge as the son of the plaintiff, Lala Jugal Kishore, and his duly authorized

agent, wrote the following letter (presumably it is addressed to Mr. Naidu, but in the text given at p. 10 no addressee is given):

Dear Sir,

Your account up to date either against you or your Company shall be recovered by me after 2 months from this date and, in the meantime, I shall not compel you for payment.

3. This is a letter written by a man not very well versed in the English language, and we must, therefore, try to ascertain for ourselves whether we agree with the construction which has been put upon it by the Subordinate Judge. He regards it as a promise or an undertaking by the plaintiffs through their agent Sant Lal to give Naidu or the company or both two months credit from the 15th of August 1922, and we think that that was the meaning of the letter. The phrase "and in the meantime I shall not compel you for payment" must mean that whilst the two months were running I shall not compel you to pay. In the same way "your account shall be recovered by me after two months" means that Mr. Naidu and the company are to have two months credit before any steps are taken to recover the money. We, therefore, agree with the learned Subordinate Judge on the construction put on the document, and inasmuch as the suit was commenced on the 26th of August, a point was raised that the suit was premature and it is on that ground that the learned Judge has dismissed the action altogether. We are of opinion that the learned Judge is right and the only point that can be urged, apart from the proper construction of the letter on which we have already expressed our opinion, is that the letter is not supported by any consideration, and that, therefore, it was a mere nudum pactum or a promise which the plaintiff firm were at liberty to disregard immediately after it was given or at any moment during the currency of the two months if it seemed convenient to them. We are of opinion that Section 63 of the Contract Act was drafted with the definite object of making an alteration in the law from that which prevailed in England in regard to the doctrine of consideration. In our opinion Section 63 does enable a defendant, who has got such a letter in his hands, to plead that although the letter is not supported by any consideration, it is nevertheless a binding extension of time and prevents any action being taken within the period of credit given. There are two cases, one of *Davis v. Cundasami Mudali* [1896] 19 Mad. 398 which is an authority directly and clearly in point, and another Madras case of *K.M.P.R.N.M. Firm merchants carrying on business Vs. P. Theperumal Chetty a Merchant carrying on business*, Mr. Justice Odgers, while discussing Section 63, refers to the authority of other cases and says that there is authority for saying that Section 63 "not only modifies but is in direct antagonism to the law in England." We are satisfied that in a case of this character Section 63 can be relied upon and that the learned Subordinate Judge came to a proper decision when he dismissed the suit as premature. Although it is not a necessary part of our decision, we cannot help remarking that it is strange that the plaintiff should not have preferred to have commenced another suit immediately upon the

dismissal of this action in December 1923, at which date the defence of the premature suit could not have been taken. It has been pressed before us that this was a proper case for an amendment either by the Subordinate Judge himself or by this Court, but we have pointed out that there can be no amendment in a case of this kind, where the whole foundation is sought to be destroyed by the allegation that the action itself is premature. If the action is found to be premature, amendment cannot cure a defect of that character.

4. The result is that this appeal must be dismissed. The defendants do not appear. The appeal is, therefore, dismissed without costs.