
(1976) 02 MAD CK 0034
In the Madras High Court

Kamala Sugar Mills Ltd.

APPELLANT

Vs

Ganga Bishen Bhajan Singh and Another

RESPONDENT

Date of Decision : 19-02-1976

Acts Referred:

Contract Act, 1872 — Section 23

Sales of Goods Act, 1930 — Section 23(1)

Citation : (1977) 1 MLJ 149

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

Ramaprasada Rao, J.—The defendant in O.S. Nos. 628, 656 and 663 of 1967 on the file of the Court of the Subordinate Judge of

Coimbatore has preferred these appeals.

2. The defendant Messrs Kamala Sugar Mills Limited, are manufacturers of starch flour and liquid glucose. The plaintiff who was interested in the

said goods entered into five contracts in December, 1964 with the agent of the defendant at Delhi. The contracts are exhibited as Exhibits A-1, A-

2, A-3, A-4 and A-5. Exhibit A-1 is dated 3rd December, 1964 which was for the supply of one wagon (220 bags) of starch flour at Rs. 42.50

per 50 k.gms. Exhibits A-2 and A-3 dated 8th December, 1964 were each for the supply of 2 wagons of starch flour (here there is no further

description as to the quantity of bags at Rs. 42.50P. per 50 K.gms. Exhibit A-4 dated 17th December, 1964 is another contract for the supply of

two wagons of starch flour (here the descriptive content of each wagon is given as 200 bags) at Rs. 45 per 50 k.gms. The fifth contract is under

Exhibit A-3 dated 26th December, 1964. This was for the supply of. one wagon (200 bags) of starch flour at Rs. 50 per 50 k.gms. and One

wagon of liquid glucose (50 barrels) at Rs. 345 per barrel. These contracts were entered into at Delhi and the defendant was represented by their agent.

3. The relevant terms of the contract under which the parties stipulated to sell and purchase may be immediately referred to. The mode of payment was understood as cash against R.R. or documents through Bank or per V.P.P. The despatch of the goods was at the buyer's risk and responsibility. The defendant stipulated that they should not be held responsible for any loss or damage or any mishappening to the goods after they leave their premises. The prices quoted were subject to revision without any notice or adjustment in accordance with the price ruling at the time of despatch and the goods were to be supplied subject to availability. Inter alia, the contract provided that all orders were booked subject to confirmation by the defendant whose representative was at Delhi. The defendant also reserved the right to accept or reject any order in part or in full (Clause 3). We have already referred to the right vested in the seller to revise the prices in accordance with the ruling rate. This is in Clause 9.

We are not referring to the other clauses as they are not quite relevant.

4. The plaintiff paid the stipulated advance payable under each of those contracts. Excepting for the supply of 150 bags. of starch flour under Exhibit A-1, no other supply was made. The plaintiff made incessant demands and issued reminders to the defendant for the supply of starch flour and liquid glucose. Exhibits A-7 and A-8 are some of such reminders issued by the plaintiff reminding the defendant of their obligation to supply the agreed quantities of goods under the respective contracts. They called upon the defendant to start execution of the orders under Exhibit A-8 dated 28th December, 1964. To this, the defendant sent a reply under Exhibit A-9 which reads as follows:

...We thank you for your letter dated 28th December, 1964 (Regd.). Every effort is being made to despatch the goods ordered through our sales depot agents in Delhi. Due to nonavailability of railway wagons, we could not despatch earlier. We shall despatch as soon as the position improves.

5. Our current rate for Glucose and starch is as follows :

1. Liquid Glucose in New drums Rs. 73 for 50 kg. Ex. Depot at Delhi.

2. Liquid Glucose in Old drums Rs. 69 for 50 kg. Ex. Depot at Delhi.

3. Starch in Bag Rs. 1,200 per M. Ton ex-factory.

Regarding booking advance orders for the above items for the year 1965 you are requested to kindly contact our Depot Agents in Delhi for further information.

...

6. The plaintiff having had no satisfaction in spite of such reminders and having reasonably complained about the inaction in the matter of supply of

goods, was interested in claiming compensation for the non-supply of the goods and non-performance of the contracts.

7. The defendant, however, far from respecting their obligations under the contract, wrote to the plaintiff on 17th January, 1965 that the orders

cannot be executed at the rates booked by their agent as the price of raw materials had suddenly shot up and that the supply would be made if the

plaintiff was prepared to pay Rs. 70 per 50 k.gms. of starch. The plaintiff naturally resisted this counter-offer and after exchange of

correspondence through lawyers, instituted the present suit. The plaintiff alleges that the contract has been broken by the defendant on or about

21st January, 1965 and it is not in dispute that this averment applies to all the contracts in question which are the subject-matter of the three suits

under consideration by us. After having pleaded that the defendant broke the contracts on or about 21st January, 1965 the plaintiff, for reasons not

clear, assessed the market value of the goods which were not supplied to them during the first week of March, 1965 and claimed the difference

between that market rate and the contract rate as damages. The plaintiff also admits in the course of his " pleadings that the price of. the

commodities which he bargained to purchase from the defendant was fluctuating during the time when he entered into the contracts and soon

thereafter.

8. The defendants in their written, statement after admitting that the contracts were entered into referred to their right under the contract to ask for

enhanced price from time to time. They stated that they tendered the goods for despatch at such enhanced rates and as the plaintiff insisted that the

supply should be made at the contract rates, they could not further the supplies as contracted. Their case is that since the plaintiff was not inclined

to pay the revised price for starch or for liquid glucose, they treated the said orders as cancelled. They would refer , to the opportunity which they gave to the plaintiff to perform the contract by paying a higher price. According to them, the plaintiff not having availed themselves of the said opportunity, cannot come to Court and seek for damages, when, in the circumstances of this case, they (defendant) were always ready and willing to supply the goods though for a higher price and not for the contract price. Explaining the delay in the matter of the despatch of the goods, the defendant would plead that it was beyond their control and they could not do so because of the non-availability of the railway wagons. In these circumstances, the claim for damages is disputed. One other defence taken was that a wagon could contain only 150 bags of starch and in the absence of the descriptive content in each of the orders regarding the number of bags which were to be supplied under each of such contracts, the ordinary presumption is that a wagon could contain only 150 bags as, according to the plaintiff, when they executed Exhibit A-1 contract, they secured one wagon from the Railway and that wagon could contain only 150 bags. On the basis of this, the defendant wants to raise the presumption that if there was a contract for the supply of one or two wagons of starch flour, it meant that it was only for the supply of 150 bags or multiples thereof, and not 200 bags and multiples thereof as claimed by the plaintiff.

9. In the written statement, the defendant has curiously referred to another date as the date when there was a breach of the contract. According to the defendant, the plaintiff committed a breach and that breach was on 16th February, 1965. There is no particular pleading refuting the allegation made by the plaintiff that the contracts are to be deemed to have been broken by the defendant on or about 21st January, 1965.

10. In the light of the above pleadings, the following issues were framed by the learned trial Judge in each of the suits:

O.S. to. 628 of 1967:

1. Who committed breach of contract?
2. Whether there is privity of contract between plaintiff and defendant?
3. Whether Clauses 3, 4 and 9 of the contract are not just, valid and binding on the parties?

4. Whether the defendant is entitled by virtue of Clause 9 to claim higher rate of price prevailing at the time of despatch?
5. Whether the defendant is entitled to reject any contract as manufacturers by virtue of Clause 3?
6. Whether the defendant was proper in refusing to perform the contract as plaintiff refused to abide by the claim for the higher price?
7. Whether the defendant agreed to or accepted the contracts?
8. Whether the contract was only for 2 wagon-loads of starch and not for 400 bags?
9. Whether the contract K-4 was only for one wagon load of starch or for 200 bags?
10. Whether the claim in respect of the contract K-4 is in time?
11. Whether Bholaram Rangalal Jain was selling agent or only a depot agent of defendant?
12. Whether Bholaram Rangalal Jain was authorised to assure that one waggon load is 200 bags?
13. Whether Bholaram Rangalal Jain . fixed any period for performance?
14. What is the period agreed, if any for performance?
15. Whether plaintiff is entitled to any damages, and if so, to what extent?
16. Whether plaintiff is entitled to interest?
17. Whether plaintiff is entitled to return of the advance amount, of Rs. 1,000?
18. To what relief?

O.S. No. 656 of 1967:

1. Whether the defendants have committed breach of contract and have failed to supply the goods as agreed upon and for agreed price?
2. Whether Clauses 3, 4 and 9 of the printed conditions are not just, valid and binding on the plaintiff?
3. Whether the defendant was proper in rejecting the contracts?
4. Whether Bholaram Ranghulal Jain was a selling agent or only a depot agent of defendant?
5. What is the period, if any, agreed for performance?
6. Whether the plaintiff is entitled to interest?
7. Whether the plaintiff is entitled to return of advance amount of Rs. 2,000?

8. Whether the plaintiff is entitled to the decree as prayed for with costs?

9. To what relief, is the plaintiff entitled to?

O.S. No. 663 of 1967:

1. Who committed the breach of contract?

2. What is the date of breach?

3. Whether Bholaram Ranghulal Jain was not the agent of the defendant and whether the contracts entered into by the agent are not binding upon

the defendants as contended in paragraphs 7 to 9 of the written statement?

4. Whether the defendant has not accepted the contract as alleged in paragraph 8 of the written statement, in view of the defendant's letter- dated

28th December, 1964 and other correspondence?

5. Whether the alleged cancellation of the contracts by the defendant as alleged in paragraph 4 of the plaint is true, valid and binding on the plain

tiff?

6. Whether the alleged printed conditions 3, 4 and 9 are true, valid and binding upon the plaintiff and whether the defendant is entitled to rely upon

them and refuse to supply the goods at the contract rate?

7. To what damage, if any, is the plaintiff entitled? What is the market rate of starch on the dates of breach of contract?

8. Whether the contention of the defendant that one wagon of goods would mean only 150 hags of starch and not 200 bags is true and valid? and

whether the acceptance of the defendant's agent that one wagon means 200 bags is unauthorised, erroneous and not binding upon the defendant

as alleged in paragraph 10 of. the written statement?

9. Whether the order in respect of K-4 has been performed by the defendant as contracted by him in paragraph 12 of the written statement and

whether the claim, in respect of 50 bags of starch not supplied under the contract and the order ""is barred by limitation?

10. Whether the plaintiff is entitled to interest?

11. To what relief?

As seen from the substance of the issues as above, they are overlapping.

11. On the main issue which was urged by the plaintiff, the Court agreed with them when it held that Clauses 3 and 9 are not enforceable,

repugnant, void and against public policy. Having found thus and made certain observations in connection thereto, the learned Judge was of the view that the defendant was not entitled to raise the price unilaterally. On an appreciation of the documentary and oral evidence, the lower Court found that there was a breach as complained of. While assessing damages, the lower Court, not for any clear or cogent reason, totally agreed with the plaintiff's claim and decreed the suit. Lastly, when a wagon of starch flour is the subject-matter of, the contract, on the question whether it is a contract to sell 200 bags of starch flour or 150 bags, he held that the parties intended that the seller should supply 200 bags of starch, even though the contract was to supply one wagon of starch flour. It is as against this judgment and decree of the Court below, the defendant has come up in appeal.

12. This is a case where the defendants admittedly did not supply the goods contracted for under Exhibits A-2, A-3, A-4 and A-5. A hesitant reference was made in the course of the argument as to whether the contract under Exhibit A-5 was received prior to Exhibit A-9. Exhibit A-9 is dated 1st January, 1965. Under it, the defendant unequivocally said on being incessantly reminded of their failure to supply the goods under the contract that every effort was being made to despatch the goods ordered through their sales depot agents in Delhi. The defendant would unhesitatingly confess that due to non-availability of Railway wagons, they could not despatch the goods earlier.

13. The learned Counsel for the appellant (defendant) in these appeals say that as Exhibit A-5 was received by the defendant only on 3rd January, 1965, after service of Exhibit A-9 and even if this factor does affect the defendant, it cannot make any impact on the supervening contract entered into between themselves and the plaintiff under Exhibit A-5. That the contract Exhibit A-5 dated 26th December, 1964 was received by the defendant on 3rd January, 1965 is spoken to by D.W.1. Besides this, there is no acceptable material to take it for granted that Exhibit A-5 contract was received by the defendant only on 3rd January, 1965. While referring to this in passing at this stage only to complete the narration, in our view, the receipt of the contract Exhibit A-5 on 3rd January, 1965 by the defendant, even if true, would not alter the legal position of the

conclusion which would reasonably flow from the admitted facts in this case.

14. Learned Counsel for the appellant defendant would refer to Exhibit A-12 which appears to be the sheet anchor of the defendant's case. This is

dated 17th January, 1965. We have already seen that in Exhibit A-9 dated 1st January, 1965 the defendant unequivocally presented the situation

that they were ready to despatch the goods ordered by the plaintiff, but they were unable to do so because of the non availability of Railway

wagons. But about two weeks later, the defendant would take up the position, that the orders cannot be executed at the rates booked by their

agent as the prices of raw materials had suddenly shot up. They demanded a higher price as a condition precedent for the supply of the goods

already contracted for. They made it clear that if the plaintiff was inclined to purchase at Rs. 70 per 50 k.gms of starch, they would continue the

supplies. Exhibit A-12 makes the mind of the defendant very clear. They were not prepared to supply any more goods under the various contracts

unless the plaintiff was prepared to pay the higher rate demanded by them.

15. The question which immediately arises for consideration is whether one of the terms in the contract which enables the defendant to fix; a price

of their choice in the case of the execution of the contract is a binding term and whether the non-observance of it will deny the plaintiff the right to

claim damages, if the seller (defendant) failed to perform the contract.

16. It is in this context that Exhibit A-9 looms very large. Even though in the pleadings, the plaintiff also would refer to the fact that the price of

starch was hopelessly fluctuating, yet, it cannot be said that as between the 1st of January and 17th of January, 1965, there was so much of

fluctuations, which would enable the defendant to claim an increased rate and avoid the contract rate. Excepting for the ipse dixit of the defendant,

there is no evidence to show that such was the position or situation. Even otherwise, under Exhibit A-9, the defendants committed themselves to

the fact that the goods which were initially unascertained were ascertained by them and delineated by them and they were ready for despatch and

but for non availability of wagons, the defendant would have despatched the same. After having committed themselves to that position, the

defendant innocuously refers to the current rate of glucose and starch in that letter and obviously, the said quotations as current rate on 1st January,

1965 were given by them, so that the plaintiff, if they were inclined to place any further orders, such would be the price for future supplies. The

defendant, on that date, did not take up the position that the goods covered by the contracts could only be supplied to the plaintiff if and when they

pay a higher rate or the current rate referred to by them in Exhibit A-9. The learned Counsel for the appellant, relying upon the terms of the

contract and particularly Exhibit A-12, would say that the plaintiff is bound to pay the increased rate. Clause 9 of the contract reads thus:

Prices: Prices quoted are subject to revision without any notice or adjustment in accordance with the price ruling at the time of despatch and the

goods will be supplied subject to availability.

Even though on a first blush, the clause would enable the seller to unilaterally assume a right in himself to increase the contract price without notice,

yet, this power contracted for by the seller is conditioned by the fact that the ruling price at the time of despatch is higher than the contract price.

Therefore, it follows that the seller cannot on his own motion and without any more proof of the increase in price demand the same under Clause 9.

We searched in vain in the records and in fact, the learned Counsel for the appellant fairly stated that excepting for the evidence of D.W.1 who

was the only witness examined, there was no such proof of the increase in the price of the contracted goods at or about the time when Exhibit A-

12 was written. Even otherwise, we are of the view that the burden which lay very heavily on the defendant to prove that the prices were

fluctuating as between the 1st and 17th January has not been discharged in a manner known to law.

17. The lower Court, however, put it on the ground that Clause 3 and Clause 9 of the contract are opposed to public conforms civil Courts, while

interpreting the documents and instruments entered into inter vivos between the parties as also by conduct of parties, is not an immutable doctrine.

With the passage and march of time, it change, and has to change. Unless the Court is satisfied on the pleadings and the evidence let in. that the

bargain contained in a contract is so irrational, unconscionable, illegal and avoidable, the normal course of a contract ought not to be stemmed, but,

on the other hand, the Court should aid to follow up such contracts and ease the methods to implement them.

Section 23 of the Contract Act which provides the basis for Courts to find whether a contract is opposed to public policy says that a contract with consideration or object which is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another is a contract which is opposed to public policy. The foundation on which the principle of public policy is based is that no Court will lend aid to man who founds his cause of action upon an immoral or illegal act. If the cause of action springs from ex turpi cause then the Courts are prevented from assisting a litigant who bases his caused action on such immoral and illegal causes. But it is always necessary that the Court's con-science should be satisfied that the illegality, immorality or irrationality complained of in a contract goes to the very root of the matter and shakes its foundation. If such is the situation, then the Courts will not assist the litigant who seeks its assistance under such circumstance.

18. If the above is the basic concept which surrounds public policy, we are unable to agree with the trial Court that Clauses 3 and 9, the former vesting right formerly booked its representative and the latter clause whereunder a higher price was demanded by the seller under certain circumstances, have to be whittled down and thrown out as clauses which are opposed to public policy.

19. Commercial transactions couched in easy and understandable language and contained in a contract have to be respected according to its tenor. This is so because, the parties with open eyes and being conscious of the merit of the letter and spirit of the clauses in such a contract do enter into them.

20. The Courts, therefore, ought not to be astute to defeat the efficacy of such document or destroy such bargains. While interpreting a commercial contract, a broader outlook has to be adopted and care should be taken to avoid an artificial and unrealistic approach in the matter of the understanding the meaning and purpose of such documents. In such cases, the Courts should occupy the chair of the contracting parties and reasonably understand their minds and intents. If after such an approach the instrument still presents circumstances which the conscience of a reasonable and prudent, person cannot accept and if ex facie the terms are so

unconscionable, illegal and designed to avoid or evade law, then

only the doctrine of public policy will intervene, and will not implement such bargains.

21. In the instant case, we are satisfied that Clauses 3 and 9, nay the tenor of Exhibits A-1 to A-5, do not pose any irrational principle in

commercial practice; nor could it be said to be so unconscionable as to be ignored by Courts as being opposed to public policy

22. But the question is whether, in the circumstances, the plaintiff who has come to Court claiming damages or compensation for non-performance

of the contract is entitled to damages at all. As we said, the appellant-defendant under Exhibit A-12 made it clear that they would not supply or

perform the contract unless an increased price was paid for the goods. In particular, while dealing with the contract made under Exhibit A-5, the

defendant would say under Exhibit A-14 that due to the increase in the price of raw materials, they were unable to register their order. Obviously,

they were trying to take advantage of Clause 3 of the contract. But their conduct in having written about Exhibit A-5 belatedly on 15th February,

1965 after encashing the draft which was sent as advance by the plaintiff towards Exhibit A-5 is something which obviously exposes the appellant-

defendant who uniformly was bent upon avoiding performance of the contracts including Exhibit A-5. The defendant would admit that they did not

perform the contracts under Exhibits A-2, A-3 and A-4 and they partly performed the contract under Exhibit A-1. They would rely upon their

right to demand a higher price being not satisfied with the payment of the contract rate. But, in our view, there is no proof of increase in market rate

as between the 1st and 15th January, 1965, which would prompt a reasonable person to demand a rate higher than the contract rate. Even under

Exhibit A-9, the defendant made it clear that the rates quoted by them would apply for the year, 1965 and the orders booked in that year. They

did not refer to the 1964 contracts at all. This is also an indication to show that in so far as 1964 contracts are concerned, for which they

(defendant) had already made the necessary preparation to despatch the goods, they cannot wriggle out and insist on an increase in price under the

guise of the so-called power vested under Clause 9 of the contract. On the ground that there is no proof of the increase in the market price in the

month of January, 1965 excepting for the bare statements from time to time by the defendant or by D.W.1 in the box and also on the ground that

the goods had been ascertained by the defendants, as is seen from the text of Exhibit A-9, they (defendant) cannot escape reasonable damages

which flow from the breach, which breach is referable to their conduct in the non-supply of the contracted goods.

23. The question incidentally arose whether the Rule of intention in Section 23 of the Sale of Goods Act would apply to the facts of this case. It

would be convenient to refresh about the terms of the contract. No doubt, Clause 1 says that the R.R. was deliverable against cash or documents

negotiated through Bank. But Clause 4 says that the goods would be despatched at the buyer's risk and responsibility. Clause 6 says that the

defendants were not responsible for any loss or damages or any mishappening to the goods after they had left their premises.

24. The learned Counsel for the appellant (defendant) basing his contention on Clause 1 would say that the property in the goods did not pass until

the R.R. was honoured by payment either in cash or through the agency of the bank. This may be so if Clause 1 stood alone. But Clauses 4 and 6

which cannot be reconciled with Clause 1 would give the reasonable impression that once the defendant despatched the goods, they travel at the

buyer's risk. This Clause cannot, therefore, avoid the Rule of intention provided for in Section 23 (1) of the Sale of Goods Act which says:

Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are

unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the

property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the

appropriation is made.

The very fact that under Exhibit A-9, the defendant made it clear that all the goods had been appropriated and were ready for despatch, and which

communication the plaintiff took it for granted, raises the usual presumption that the defendant as seller had appropriate the goods unconditionally

to the respective contracts and they were in a deliverable state, and the only thing which remained in order to perform the contract was to put them

in a wagon for onward transport. In the instant case, the assent of the buyer (plaintiff) is implied and it has been given by them even before the appropriation was made. In our view, therefore, in the light of the disclosed facts, the property in the goods under the various contracts had passed to the plaintiff,

25. If, therefore, the sellers fail to perform their part of the bargain, the buyer would certainly be entitled to damages which flow reasonably from such breach. The plaintiff themselves in the pleadings would say that the date of breach on each of the contracts was 21st January, 1965.

Therefore, they cannot shift from this date, so as to get higher damages to March, 1965. We should, therefore, find from the records whether there

is reasonable material to find the market rate of the goods in or about 21st January, 1965. The defendant themselves have provided the market

rate under Exhibits A-9 and A-12. Under Exhibit A-9, they would say that the rates at which they would book orders in 1965 was Rs. 60 per 50

Kgms. for the supply of starch and Rs. 69 for 50 Kgms. in old drums for the supply of liquid glucose. We accept this, in the absence of any other

acceptable evidence, as the measure to be adopted for the award of damages. The lower Court obviously relied upon P.W.1. But P.W.1's

evidence is again his own bare ipse dixit. Having regard to the stand taken by the plaintiff that the breach had occurred on 21st January, 1965 and

as the defendant themselves have stated in Exhibit A-9 as to what possibly can be the market price in January, 1965 at the earliest, we adopt the

price in Exhibit A-9 as reflecting the correct market price in January, 1965. The plaintiff would be entitled to damages that flow from the breach.

There has been no supply in so far as the contracts covered by Exhibits A-2, A-3, A-4 and A-5 are concerned. Only 150 bags were supplied

under the contract Exhibit A-1.

26. Before we assess the damages, it is necessary to find as to what was the intention of the parties when they contracted to buy one wagon of

starch whether it was to purchase 150 bags or 200 bags. Exhibits A-1, A-4 and A-5 give the clue that the intention of the parties was to supply

200 bags or purchase 200 bags, when they referred to the supply of one wagon of starch. In fact, the above contracts referred to 200 bags as the

normal content of a wagon. But the learned Counsel for the appellant-defendant

relying upon Exhibit A-11 which was the bill prepared by them

when they supplied 150 bags of starch under Exhibit A-1 argued that the said bags were sent in a wagon and therefore, one wagon could contain

only 150 bags. We are unable to agree. No expert evidence was let in to show that a wagon which could be despatched by the defendant from its

nearest Railway Station in South India could hold only 150 bags and not more. Even otherwise, there is intrinsic evidence as per, the recitals in

Exhibits A-1, A-4 and A-5 that what was contracted for was 200 bags of starch and that the parties intended to sell and purchase 200 bags when

they contracted to supply one wagon. There is evidence on the side of the plaintiff to show that one wagon could contain 200 bags--vide Exhibits

A-27 and A-28. The plaintiff, therefore, would be entitled to damages as per the calculations below:

27. So far as the non-supply of starch is concerned, the prevailing market rate on or about the date of breach should be deemed as Rs. 60 per 50

Kgms. It is worked out by us on. the quotation given by the defendant in Exhibit A-9. Therefore, the plaintiff would be entitled to damages for the

non-supply of the goods under Exhibits A-2, A-3 A-4, and A-5 and the damages for non-supply of starch would be worked out on the basis of

the difference between Rs. 60 and the contracted rate. So far as the non-supply of liquid glucose is concerned, the damages would be worked out

again at Rs. 69 per 50 Kgms. which was the quotation of the defendants themselves under Exhibit A-9. This works out to Rs. 414 per barrel. The

contract rate was Rs. 345 per barrel. The plaintiff would be entitled to the difference as above for each barrel.

28. The appeals are partly allowed and each party will bear their own costs in this Court. This plaintiff would be entitled to interest at 6% on the

amount worked out from the date of suit till the date of payment.

ORDER

29. In the lower Court also, the appellant, who succeeded will suffer only proportionate costs.