

(1944) 09 MAD CK 0002
In the Madras High Court

Karuppaswami Moopanar

APPELLANT

Vs

Chottabhai Janerbhai and Co.

RESPONDENT

Date of Decision : 19-09-1944

Acts Referred:

Citation : AIR 1945 Mad 59 : (1944) 57 LW 560

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—The plaintiff and the defendants are traders in Madura town. They entered into contracts which are really cross contracts for

purchase and re-purchase of certain quantities of yarn. The contracts wherein the plaintiff was the buyer and the defendant the seller are set out in

Scheduled A. They range between 81st July 1937 and 5th August 1937. These contracts were entered into on seven days between 31st July and

5th August 1937. The total quantity covered by these contracts is 90 cases of yarn, 30 cases for the October delivery, 30 for November delivery

and 30 for the December delivery. In respect of these 90 cases covered by the contracts mentioned above, there were contracts between 17th

August 1937 and 6th September 1937 by which 90 cases of yarn were agreed to be sold by the plaintiff and purchased by the defendant at prices

which are slightly higher than those provided in the contracts set out in Schedule A. The plaintiff filed the suit for recovery of the difference of prices

as the prices at which he agreed to sell and the defendant agreed to buy were higher than those for which he agreed to buy and the defendant

agreed to sell. If both the parties had actually gone through what I shall later on point out to be a mere farce of taking delivery and paying the price,

the plaintiff would have to pay a particular sum and get from the defendant a larger sum and the difference between the two is the subject-matter of the suit.

2. In such a case like this there is really no need to render delivery of the goods by the one or any demand by the other for delivery of the goods

on tender of the purchase price. It would be a useless and idle formality to insist upon such demands or tenders in cases of what are really

settlement contracts. The plaintiff agreed to buy the 90 cases of yarn from the defendant. Apparently the market was rising. In some cases the

person who agrees to sell and who finds the market rising generally enters into contracts with third parties, for the purchase of the goods which he

has agreed to sell under the prior contracts. Such contracts are generally known as contracts to cover the transactions which had already been

entered into. In cases where these contracts are entered into with the very person with whom the prior contracts were already entered into, they

are generally known as settlement contracts, i.e., this is with a view to settle the obligation arising under the contracts. Whether the legal effect is as

put in Ramgopal Chunilal Vs. Ramsarup Baldevdas, that a new contract has come into existence or must be necessarily inferred that only the

difference should be paid, or whether it is as Bankin J., as he then was put it in Uttam Chand Saligram v. Jevva Mamooji AIR 1920 Cal. 143 at

page 542, that the earlier contract is still alive, but the Courts allow a set-off as regards delivery and as regards the payment of price for everything

except the differences, in either case it seems to me the result is the same, viz., that if such cross-contracts are entered into, there is no necessity for

either party to either tender the goods or tender the price. The person who has to get the difference can without going through the farce of tender

claim the difference which is really in his favour. In the present case, the contract in Schedules A and B covers exactly the quantity of 90 cases.

The view taken by the lower appellate Court based upon the supposed intention of the plaintiff is obviously wrong. The plaintiff does not say that in

every case there must be an independent agreement or an independent contract that the delivery and the tender should be dispensed with, but as

elicited out in the cross-examination by the defendant himself, it is really the effect of entering into a cross-contract. It was elicited by the

defendant's cross-examination that the practice in the market was to receive and pay the difference in prices on the voida (due) dates in cases of

contracts and cross-contracts like this. The plaintiff continued:

In cases of contracts and cross-contracts between the same parties, it was never the practice to give and take delivery according to the term of the

respective contracts. Such contracts are, usually settled by payment of difference in prices. In such cases, actual delivery is not insisted on, because

it involves unnecessary trouble.

3. (The better expression would be "useless trouble"). Then the plaintiff stated that he had paid and received difference in prices in cases of similar

contracts and cross-contracts. In answer to a question from me, the respondent's learned counsel admitted that his client has not given evidence of

any instance in which actual delivery of the goods or tender thereof was insisted upon. I hold that the trial Court was right. The decree of the lower

appellate Court is reversed and that of the trial Court restored with costs here and in the lower appellate Court. (No leave).