(2009) 02 OHC CK 0021

In the Orissa High Court

Killamsetty Vasudeva Rao and Sons and Others APPELLANT

Vs

Ippilli Sanyasayya Sons and Others RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Citation : (2009) 107 CLT 656 : (2009) 2 OLR 707 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanju Panda, J.—The Appellants-Plaintiff filed a suit, i.e, M.S. No. 36 of 1976 for recovery of Rs. 3,531.10p. with interest from the date of filing of the suit till realization, costs and such other relief.

2. In the plaint the Plaintiffs specifically averred that the Plaintiff is a registered firm carrying on business of running a rice mill and whole-sale business in commodities like Niger, Pulses. The Defendants were also carrying on whole-sale and retail business in several commodities. On 22.7.1973, Defendant No. 1, one of the partners of the firm came to Jeypore and made an offer to the Plaintiffs-firm for purchase of Jowar. After some discussions, it was agreed that the Plaintiffs would supply 225 bags of Jowar each weighing one quintal for a price of Rs. 140 per bag. They also decided that delivery of the said goods were to be made at the mill premises of the Plaintiffs at Jeypore. Accordingly, delivery was given within 15 days and Defendant No. 1 promised to send Rs. 15,000 as advance and the balance was to be paid at the time of taking delivery of goods. He further told the Plaintiffs to go ahead with the purchase of the contracted quantity of Jowar at the earliest. One A. Ganga Raju and Chitty clerk of Sri K. Kurma Rao (Defendant No. 1) were present at the time of negotiation. The Plaintiffs purchased two truck loads of Jowar from Kalimela area and made arrangements for purchase of the remaining truck load also and sent two trucks to Kalimela for bringing the Jowar to Jeypore and simultaneously informed the Defendants over phone on 28.7.1973 about the purchase and requested him to

send the promised advance forthwith. But to utter surprise of the Plaintiffs, the Defendants informed him that the price of Jowar had, in the meantime, suddenly fallen unexpectedly and he would not lift the goods. However, the Plaintiffs told that they were bound to pay the amount and take delivery of goods as the goods had already been purchased, but the Defendants refused to take delivery of the said goods. The Plaintiffs further stated that at the time of the contract on 22.7.1973 Defendants requested the Plaintiffs to bring Jowar from Kalimela on the strength of the way-bills sent by the Defendant-firm which he filled up at the time of transport and gave three sets of way-bills. The Defendants offered sales tax and requested the Plaintiffs to use his way-bills to which the Plaintiffs agreed. The Plaintiffs brought two truck loads of Jowar using the way-bills given by Defendant No. 1 Thereafter, the Plaintiffs with a view to creating a false defence and avoiding the liability of payment of damages intentionally made a report at the Jeypore police station on false allegations that the Jowar was purchased by the Defendants firm out of its own money and the goods were only entrusted to the Plaintiffs-firm for transporting the same to Jeypore on commission basis and the Plaintiffs-firm was not delivering the same to the Defendants-firm. The police enquiry revealed that the allegations were false. A Panchayat of respectable business people of Jeypore was convened on 7.8.1973 which was attended by Laxman Rao one of the partners of the Defendants-firm. In the Panchayat, Defendant No. 1 admitted that he gave a false report regarding purchase of Jowar by the Defendants-firm. The Plaintiffs purchased the said goods at Rs. 140 per bag. On 11.8.1973 Sri Sultal Patel of Cuttack and Sri Nalin Patro called the Plaintiffs to the shop of Sivanarayana Patro for an amicable settlement as Laxman Rao was waiting in their shop for the same. At that time Sri Panalal Jain and Sri Doraya Singh were present in the shop of Sivanarayana Patro. Defendant No. 1 admitted the contract and other facts in the shop and the gentlemen present there asked Defendant No. 1 to pay the contracted price and to take delivery of goods. But Defendant No. 1 refused. Thereafter, the Plaintiffs issued a notice on 15.8.1973 to the Defendants-firm through their advocate calling upon the Defendants to take delivery of the stock on payment at the contracted rate within seven days and also informed them that in the event they fail to take delivery of the goods, the Plaintiffs would be obliged to sell the goods for whatever price the goods fetch in open market and that the loss on account of deficiency of price would be recovered from the Defendants firm. The Defendants sent reply through their advocate with false and untenable allegations. The Defendants thus having repudiated their liability to lift the goods, the Plaintiffs had no option to send the goods to Jwala Prasad Agrawala, General Merchant and Commission Agent of Calcutta as the market was available only at Calcutta. The Plaintiffs firm transferred the goods from Jeypore to Rayagada by road and Calcutta by rail on 12.1.1973. He booked 25 bags of Jowar each bag of one quintal. The said goods were sold at the rate of Rs. 141 per quintal at Calcutta and 100 q. 89.500 Kgs of Jowar contained in 108 bags at the rate of Rs. 145 per quintal. So there was shortage of 8.71.000 quintals of Jowar during transit by railways.Thus the Plaintiffs-firm had to incur expenditure of Rs. 1,283.35p.

towards loading, unloading charges, truck hire, wagon booking charges, booking commission, etc. for transporting the goods from Jeypore to Rayagada and up to loading of the goods in the wagons including expenses of the Plaintiffs to go to Calcutta to study the market and to arrange for sale of the goods. The Plaintiffs firm had to incur a further expenditure of Rs. 1,637.22p. towards railway freight charges to Calcutta, Bank Commission, cart hires, etc. till the goods were sold as per the sale particular sent by the agent at Calcutta. The Plaintiffs also stated that as per the terms of the contract between the parties, the Plaintiffs were entitled to get Rs. 30,000 as per the contract price of the goods at Jeypore. As the goods were sent to Calcutta market, the Plaintiffs firm could only get Rs. 29,484.47p. being the sale proceeds and besides that they had spent money for dispatching the goods to Rayagada and then to Calcutta. After sale of the goods'' at Calcutta, the Plaintiffs demanded payment of the amount of Rs. 3,531.10p. by registered notice on 18.3.1974 and as the Defendants gave a reply denying the liability and making false allegations on 17.4.1973, the Plaintiffs filed the suit.

3. The Defendants filed their written-statement traversing all allegations of the Plaintiffs. They stated that Defendant No. 1 did not make any offer to the Plaintiffs to purchase 225 bags of Jowar at Rs. 140 per bag. On 20.7.1973 Defendant No. 1 came to Jeypore and paid Rs. 20,000 to K. Kurma Rao as advance for purchase of 150 bags of Jowar. In an oral agreement the stock was delivered in two instalments of 80 bags on 23.7.1973 at the rate of Rs. 138 per bag and 70 bags on 24.7.1973 at Rs. 150 per bag. The balance amount of Rs. 2,370 was paid on 24.7.1975. For transporting the above goods from the place of purchase in Kalimela area, the Plaintiffs firm wanted blank way bills of the Defendants firm so that they could transport the same in the account of the Defendants without carrying in the account of the Plaintiffs and thus to avoid payment Sales Tax and Income Tax on the profits. Since the Plaintiffs were doing their business clandestinely, they were also not issuing any receipt for payment of the amount. The above transactions were known to Sri Tankalla Satyanarayana of Rayagada who was present at Jeypore on 24.7.1973 when the sum of Rs. 2,370 was paid to Plaintiff No. 1. The Plaintiffs firm gave delivery of the above goods at Jeypore and not at Kalimela. On 27.7.1973 Defendant No. 1 again paid Rs. 25,000 as advance to Plaintiff No. 1 as Plaintiff No. 1 had the stock of 135 bags of Jowar at Kalimela and the rate agreed was Rs. 150 per bag. Plaintiff No. 1 informed Defendant No. 1 that further stock of 25 bags of Jowar might be available and the Plaintiffs agreed to give delivery at Theruvali railway station about 15 miles from Rayagada and the Defendants firm was to pay the Plaintiffs firm the incidental charge, transport charges and a commission of Rs. 1 per bag. The Plaintiffs were not accounting the above transaction in their accounts and it was agreed that the goods were to be transported through the way-bills of the Defendants firm as the Defendants firm became the owner of the said goods since all these transactions were made verbally and the terms of bargain regarding the price and delivery of goods were accepted by the Plaintiffs. Plaintiff No. 1 on 29.7.1973 and 31.7.1973 brought two truck loads of Jowar on

the strength of the blank way bills furnished to him by Defendant No. 1. However, the Plaintiffs did not transfer the said goods to Theruvalli which he should have done by 31.7.1973. Therefore, on 4.8.1973 Defendant No. 1 enquired about the said goods to which Plaintiff No. 1 stated that he had not received any stock from Kalimela. The Defendants filed a suit against the Plaintiffs before the Learned Subordinate Judge, Rayagada for realization of money and the same was registered as Money Suit No. 5 of 1976.

4. The Defendants further stated in their written-statement that they were always ready and willing to take delivery of Jowar as per the contract dated 27.7.1973, but the Plaintiffs failed to deliver the same and the Defendants had no knowledge of the Plaintiffs having entered into any transaction for sale of Jowar at Calcutta or about quality or the rate at which they sold the goods. The transaction made by the Plaintiffs at Calcutta has nothing to do with the Defendants as there was no contract between the parties and the Plaintiffs made a false claim. They further stated that they sold Jowar at Rs. 162 per quintal in August, 1973 F.O.R. Singpur Road which is 10 K.M. away from Rayagada. As such the Plaintiffs also could have easily sold Jowar at Rayagada for a price of Rs. 161 per quintal without waiting till October, 1973 and selling the stock at Calcutta at Rs. 141 or Rs. 145 per bag. Thus the claim of the Plaintiffs for the alleged loss is against the true state of the market and is only a pure invention. Therefore, the Defendants were not liable to pay any damage to the Plaintiffs and they prayed for dismissal of the suit.

5. On the above pleadings, the Trial Court formulated as many as six issues. Those are as follows:

1. Whether it was agreed between the parties on 22.7.1973 that the Plaintiffs would supply 225 bags of Jowar at Rs. 140 per bag to the Defendants to be delivered at Jeypore?

2. Whether the Plaintiffs procured two truck loads of Jowar from Kalimela area and whether the Defendants repudiated the contract and refused to take delivery?

3. Whether the Defendants committed breach of contract?

4. Whether the Plaintiffs are entitled for damages and if so the quantum?

5. Whether the transaction on 20.7.1973 and 27.7.1973 as alleged by the Defendants are true?

6. To what relief?

6. Both the Plaintiffs and Defendants adduced oral as well as documentary evidence in support of their respective pleas. The Plaintiffs examined seven witnesses and the Defendants examined five witnesses. The documents admitted in evidence for the Plaintiffs and Defendants were marked as Exts.1 to 16 and Exts.A to P/4 respectively. Analysing the evidence, the Learned Subordinate Judge came to the following findings:

As per the evidence adduced by the Plaintiffs sending of Jowar for sale to Calcutta market without enquiring to dispose of the same at Jeypore and Rayagada is unnecessary, as the decision was totally taken by the Plaintiffs, so also the purchase of Jowar in Kalimela area was disbelieved as the Plaintiffs failed to produce any receipt to that effect. So also, no evidence was produced by them to show that the goods were sent to Calcutta by railway. Apart from that, the Defendants had also filed a suit against the Plaintiffs regarding the transaction dated 27.7.1973 in the Court of Learned Sub-ordinate Judge, Jeypore which was subjudice. Therefore, the Plaintiffs completely failed to prove their case against the Defendants for breach of contract. On the above findings, he dismissed the suit.

7. Learned Counsel for the Appellant argued that the Trial Court has not properly appreciated the evidence adduced by the Plaintiffs and the loss sustained by them though they have proved the telephonic conversation made by them and adduced evidence by producing the telephone bills and other materials and documents in respect of the transaction.

8. Learned Counsel for the Respondent-Defendant supported the Judgment and findings of the Trial Court and submitted that there is no illegality and perversity in the same as the Trial Court has touched each aspect of the matter and assessed the evidence adduced by the Plaintiffs and therefore, interference of this Court is not warranted.

9. Analyzing the whole evidence, it is seen that P.W.1 the Managing Partner of the Plaintiff firm failed to file any written agreement relating to the transaction in between himself and the Defendant firm and his evidence that he agreed to go ahead in purchasing Jowar of the contracted quantity without taking any advance from the Defendant in such a transaction where huge money is involved, seems to be unbelievable. The Plaintiff witness P.W.4, the clerk of the Plaintiff firm was unable to say from whom Jowar was purchased by the Plaintiff firm on 28.7.1973, but he has admitted that there was no voucher to that effect and the entry under Ext.5 in the account book does not connect with the transaction in question and that those entries were made by him as per the direction of the Plaintiff. P.W.1''s statement regarding purchase of Jowar at Kalimela area has been disbelieved as the Plaintiffs failed to produce any receipt to show that he or his brother purchased Jowar at Kalimela area and they have also not claimed any damage from the railway in respect of the loss sustained by them. The shortage during the transit has also not been proved by the Plaintiffs.

10. On the above analysis from the evidence on record, this Court confirms the finding of the Learned Sub-ordinate Judge, Jeypore that the Plaintiffs have failed to prove their case. The Plaintiffs have to prove their case and if they fail to do so, they are not entitled to any relief. In the present case, since the Plaintiffs have failed to prove their case for breach of contract against the Defendants, they are not entitled to any damage for breach of contract.

11. Accordingly, the First Appeal is dismissed.

