

(2006) 04 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 374 of 1999

Madan Mohan and Another

APPELLANT

Vs

H.P.M.C.

RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Contract Act, 1872 — Section 70

Citation : AIR 2006 HP 105 : (2007) 2 BC 602 : (2007) 4 CivCC 313 : (2008) 1 RCR(Civil) 328

Hon'ble Judges : K.C. Sood, J

Bench : Single Bench

Advocate : R.L. Sood, Assisted by K.D. Sood and Ajay Kumar, for the Appellant;
Balbir Singh Chauhan, for the Respondent

Judgement

K.C. Sood, J.—This second appeal arises out of the judgment and decree of reversal of the learned District Judge, Shimla, dated 1st September, 1999 in Civil Appeal No. 37-S/13 of 1999.

2. The appeal was admitted by this Court on 8th November, 1999, on the following substantial questions of law:

(1) Whether the defendant could deny payment of the balance price of culled apples and interest thereon to the appellants when the receipt of apples is not disputed and the defendants had enjoyed the benefit of such apples and whether the appellants were entitled to such payment u/s 70 of the Indian Contract Act, 1872? (2) Whether the findings of the learned District Judge, Shimla are not sustainable in law for non-consideration of material oral and documentary evidence and particularly documents Ex. PW-1/A, PW8/1, PW8/2, PW3/A and PX and statements of PW8 Shri Mohd. Sadiqu, PW10 Sh. Preet Pal Monga and PW9 Sh. Ram Singh and the findings of fact and appreciation of evidence by the trial Court could be reversed by the learned District Judge, Shimla without consideration of material evidence on the case file?

3. In order to appreciate the controversy, relevant facts may be noticed:

The plaintiffs-Dr. Madan Mohan and Dr. Shakuntla Bhatnagar filed a suit for recovery of Rs. 54,766/- i.e. Rs. 32,584/- as principal amount and Rs. 22,182/- as interest at 18% per annum up to the date of the filing of the suit and, pendente lite as well as future interest at the same rate on account of the apple supplied by the plaintiffs to the defendant H. P. Horticultural Produce Marketing and Processing Corporation Ltd., hereinafter to be referred as "the defendant - Corporation", under the Support Price Scheme of 1989 of the Government of Himachal Pradesh, which was implemented by the defendant-Corporation.

4. Under the Scheme, various centers were established in different parts of the State to purchase culled apple (bad apple) from the farmers to save them from financial crises. According to the plaintiffs, they are owners of Rishi Orchard in Village Astani of Tehsil Rohru in District Shimla. This orchard along with other orchards of close relatives, was jointly managed by one Mohd. Sadiq. On 20th September, 1989 Mohd. Sadiq delivered to the defendant-Corporation 373 bags of culled apple at Astani Depot from "Rishi Orchard" vide receipt of even date. As per the receipt, a sum of Rs. 61,545/- was payable to the plaintiffs on account of the apples supplied. The plaintiffs also claimed Rs. 1,119/- on account of the price of 373 empty bags at the rate of Rs. 3/- per bag. The total payment in the receipt, as acknowledged by the defendant-Corporation, was Rs. 62,664/-. This receipt was signed on behalf of the plaintiffs by Mohd. Sadiq, though the name of Pushpa Bhatnagar was entered in the receipt as owner of Rishi Orchard. This was done for the reason that payment was to be first received by Pushpa Bhatnagar and the sale proceeds were to be remitted to the plaintiffs after deducting the share of expenditure incurred jointly in maintaining the orchards of various close relatives. A sum of Rs. 10,080/- were adjusted by the defendant-Corporation on 5-1-1991 against the cost of three drums of "tree spray oil" (TSO) supplied to Pushpa Bhatnagar through the Manager Mohd. Sadiq. Another sum of Rs. 20,000/- was paid by the defendant-Corporation through a cheque, dated 1-2-1991, in the name of Pushpa Bhatnagar. The plaintiffs acknowledged the receipt of this amount and claim amount of Rs. 32,584/- only. The defendant-Corporation failed to pay the balance amount in spite of repeated requests. Plaintiffs claim Rs. 32,584/- as principal and Rs. 22,182/- as interest @ 18% till the date of filing of the suit and interest pendente lite as well as future interest at the same rate.

5. The suit was resisted by the defendant-Corporation on several grounds, including that the orchard has been shown, belonging to Pushpa Bhatnagar and the fruit receipt was not valid as it was signed by the owner himself and in any event "Rishi Orchard" did not belong to the plaintiffs.

6. The learned trial Court by its judgment dated 5th August, 1998 decreed the suit with interest at the rate of 18% per annum from the date of the institution of the suit till realization of the amount in full.

7. Aggrieved the defendant-Corporation laid an appeal before the learned District Judge. The learned District Judge, by his impugned judgment dismissed the suit of the plaintiffs with costs by holding that the plaintiffs were not the owners of the orchard and fruit did not come from the orchard of the plaintiffs.

8. Dissatisfied, the plaintiffs are in this second appeal.

9. Heard Mr. R. L. Sood, learned Senior Advocate for the appellants and Mr. Balbir Singh Chauhan, learned Counsel for the respondent-Corporation.

10. The Substantial questions of law are re-framed as under:

1. Whether the findings of the learned District Judge, that the plaintiffs were not the owner of Rishi Orchard or that fruit did not belong to the plaintiffs, are dehors the evidence on record?

2. Whether the plaintiffs would be entitled to interest at commercial rate of 18%?

11. The only reason given by the learned District Judge in reversing the findings of the learned trial Court about the ownership of "Rishi Orchards" and fruit which was supplied to the defendant-Corporation is that in the revenue record Dr. Madan Mohan is shown in the possession of the orchard and name of second owner i.e. his wife is not mentioned, the learned District Judge failed to appreciate the other evidence on record. As the first Appellate (Court), it was necessary for him to have discussed the entire evidence. In fact the learned District Judge misdirected himself in not re-appreciating the entire evidence. The learned trial Court has referred to Misal Haquiat Ex. PW 8/1 and Ex. PW8/2. Though as per Ex. PW8/1, one Raj Kumar is the owner but plaintiff No. 1 Madan Mohan is recorded in possession and the land has been described as "Orchard" but as per Ex. PW8/2 the plaintiffs are shown to be the joint owners of this orchard and this land is described as "Orchard". This apart, the Manager Mohd. Sadiq has unambiguously on oath stated that the Rishi Orchard measuring 28-29 bighas is owned by Dr. Madan Mohan and his wife Dr. Shakuntla Bhatnagar. This statement is not at all disputed in the cross-examination. Thus, the conclusion reached by the learned District Judge that the Rishi Orchard did not belong to the plaintiffs or that fruit which was supplied to the defendant-Corporation did not belong to the plaintiffs is without any foundation in evidence. On the other hand there is overwhelming evince, which has been ignored by the learned District Judge that the fruit which was supplied to the defendant-Corporation from the Rishi Orchard belong to them. PW-10 P. P. Monga clearly states that Rishi Orchard "is owned by Dr. Madan Mohan Bhatnagar and Smt. Shakuntla Bhatnagar". He proceeded to say that Dr. Madan Mohan is cousin of Smt. Pushpa Bhatnagar's husband. He also says that in most of the receipts, issued by the defendant-Corporation, Smt. Pushpa Bhatnagar has been shown as owner of the apples supplied to the defendant-Corporation. Reason being the expenditure used to be incurred by her for all the orchards, as owners are close relatives, and after deducting the expenditure, the sale proceeds used to be distributed amongst the owners of these orchards. This was an internal arrangement for the

sake of convenience says this witness. Even witness of the defendants Ram Lal (DW-1), Branch Manager, HPMC clearly admits in his cross-examination that under receipt Ex. PW-1/A the fruit was received and even cheque was issued in the name of Pushpa Bhatnagar for Rs. 20,000/-. Now Smt. Pushpa Bhatnagar does not claim either ownership of Rishi Orchard nor to the fruit which was supplied, it was Mohd. Sadiq who gave the name of Smt. Pushpa Bhatnagar as owner of the Orchard but he in his evidence clarify the same. The findings given by the learned District Judge are dehors the evidence on record. The evidence noticed above proves that the "Rishi Orchard" was owned by the plaintiffs at the relevant time and the fruit which was supplied under receipt Ex. PW1/ A came from Rishi Orchard and the plaintiffs are entitled to the balance of the amount, as claimed by them. The question is accordingly answered.

Question No. 2.

12. Mr. R. L. Sood, learned Senior Counsel for the appellants strenuously urges that this was a commercial transaction and, therefore, plaintiffs would be entitled to interest at the commercial rate, i.e., 18% per annum. Mr. Sood contends that the defendant-Corporation charges interest at the rate of 18% per annum from its customers and, therefore, in Support Price also they are liable to pay this commercial interest. The argument is misplaced. The defendant purchased the culled apple under the Support Price Scheme which was designed and formulated to help the farmers from financial crises as the fruit had gone bad. In fact evidence of Ram Singh Labour Contractor shows that the good apple was purchased by him and it was only bad apple which was supplied to the defendant-Corporation. In these circumstances, by no stretch it can be said that it was a commercial transaction justifying commercial rate of interest.

13. Section 34 of the CPC provides for the grant of interest in decrees for payment of money.

Section 34 reads:

34. Interest. - (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six percent per annum, as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation-I. In this sub-section, "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation-II. For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

14. It may be noticed that before the amendment of 1976, the maximum interest which the court could award was 6% per annum. However, in appropriate cases, the Court had the discretion to award interest at a lesser rate but in no case exceeding 6%. Now the Courts are empowered to increase post-decretal interest in relation to a liability arising out of a commercial transaction on the principal sum adjudged. Explanation-II to Section 34 clearly says that a transaction would be commercial only if it is connected with trade or business of the party incurring liability. The culled apple was not purchased by the defendant-Corporation as a commercial transaction. It was only purchased to help the farmers from financial crisis as the culled apple was not marketable and, therefore, Support Price Scheme was provided. There is nothing on the record to suggest, even remotely, that the defendant-Corporation earned any profit out of the fruit purchased under the Support Price Scheme or the Scheme was designed to earn any profits.

15. In result, the judgment and decree of the learned District Judge, is set aside. The Suit of the plaintiffs is decreed for Rs. 32,584/- along with interest pendente lite, at the rate of 12% per annum, i.e. the date of filing of the suit till the date of the decree and at the rate of 6% per annum from the date of the decree of the learned trial Court till realization of the decretal amount in full. The respondent-Corporation shall also pay costs throughout.