
(1905) 08 MAD CK 0008
In the Madras High Court

Manian Patter and Others

APPELLANT

Vs

The Madras Railway Co.

RESPONDENT

Date of Decision : 29-08-1905

Acts Referred:

Contract Act, 1872 — Section 76

Citation : (1906) ILR (Mad) 118 : (1906) 16 MLJ 37

Judgement

1. One Syed Ismal entered into a contract with the respondent, the Madras Railway Company, to supply for a term of 12 months 2 tons of fuel at

200. tons per month at Rs. 4 per ton. It was also agreed between the parties that even after the expiry of the year all the terms of the contract were

to hold good for an indefinite further period of time and quantity of fuel, subject to 3 months' notice from either side of an intention to withdraw

from the engagement. The written contract contained various stipulations as to the proper performance of the contract and provided that the

contract; should be liable to be considered at an end and the sum of Rs. 350 deposited with the Company for the due fulfilment of the contract

should be liable to be forfeited for the benefit of the Company, if the contractor failed to make punctual delivery in accordance with the terms of

the contract and the specification thereto annexed. The contractor having failed to supply duly, the Company in June 1901 cancelled the contract

and forfeited the sum of its. 850 deposited with them. Subsequently, in execution of a decree against the contractor, his right, title and interest, if

any, in the said deposit amount was sold and was purchased by the appellant. The question is whether he is entitled to recover the amount from the

Company as held by the Subordinate Judge, or not, as held by the learned Judge in revision.

2. Neither Section 76 of the Indian Contract Act nor the exposition of law in decisions, English or Indian, which were referred to in the argument, as to promises to pay specified sums in case of breach of contract are really in point, for the rule as to penalties dealt with in them has been uniformly held not to be applicable to cases of forfeiture of deposits for the breach of stipulations even where some of them are but trifling, while others are not such. *Wallis v. Smith* L.R. 21 Ch. D. 258. In those cases the bargain of the parties is carried out except when the forfeiture is relieved against on terms which the Court imposes to meet the justice of the case, where the circumstances warrant the grant of such equitable relief. In other words, the rule governing the class of cases under consideration is that where the instrument refers to a sum deposited as security for performance, the forfeiture will not be interfered with if reasonable in amount (*Sedgwick on Damages*, VIII Edition, Vol. I., Section 414, p. 593). It was apparently with reference to this principle of reasonableness that *Kelly. C. B. and Hawkins. J*, in *Cooper v. London, Brighton and South Coast Ry. Co.* L.R. 4 Exch. Dn. 88, upheld the forfeiture of a deposit by a season ticket holder for his failure to deliver up the ticket on the very day next after its expiry. Unless, therefore, the forfeiture of the deposit in the present case be found to be unreasonable, it must be treated as valid. With reference to this aspect of the question, no argument founded on the facts of the case were put forward on behalf of the appellant, and having regard to all the circumstances of the transaction, there is no ground whatever for saying that it is otherwise than perfectly reasonable. As to *Srinivasa v. Ruthnasabapathi* ILR (1903) 27 M. 80 the attention of the learned Judges who decided the case was not drawn to the inapplicability of the presumptions and doctrines as to penalties therein relied on to cases of forfeiture of deposits and their decision, if it proceeds solely on those doctrines, cannot, as inconsistent with the well established view of the law on the point, be followed.

3. The appeal is dismissed with costs.