
(1962) 11 KL CK 0009
In the High Court Of Kerala
Case No : A.S. No. 814 of 1958

Messrs. Blanden Cole and Co. Ltd.

APPELLANT

Vs

New Guna Shenoy Company

RESPONDENT

Date of Decision : 06-11-1962

Acts Referred:

Citation : (1963) KLJ 273

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : C.M. Ramachandra Menon, for the Appellant; M.U. Isaac, for the Respondent

Final Decision : Dismissed

Judgement

Mathew J.

1. The Defendant is the appellant. The suit was for recovery of money alleged to be due to the plaintiff on account of goods purchased by the defendant Company. The plaintiff is a hardware merchant in Ernakulam. The defendant company is running the business of sanitary engineers and contractors. The defendant, from 11th Thulam 1128 to 21st Karkkitakam of that year purchased hardware and other goods from the plaintiff on credit. As per the plaintiff's account, a sum of Rs. 4,445-14-3 was due to the plaintiff from the defendant, and the plaintiff, after issuing notice to the defendant, instituted the suit for recovery of the above sum with interest. The contention of the defendant was that the goods covered by three bills i.e. Bill Nos. 3287, 3301 and 3398 were not purchased by the defendant, that it issued no orders for the goods covered by these bills and that the goods were never delivered to the company. The defendant admitted that the invariable practice of the company was to order for the goods in the name of Mr. Ledlie who was its representative at Koratty, that it was usual for him to issue the orders and take delivery of the goods covered by the orders and that the delivery of the chalans used to be signed by the employees of the company. The defendant's further contention was that the delivery receipt in respect of these

three bills were signed only by one Varghese who was not an employee of the defendant but only a servant of Mr. Ledlie, and that a few days before the dates of these bills Ledlie had taken a loan of Rs. 2,650/- from the plaintiff and that the bills and the delivery receipts were created by the plaintiff in collusion with Ledlie and Varghese, as the plaintiff wanted to make good the amount loaned to Ledlie, who went away without paying the same.

2. The plaintiff had also instituted another suit against Messrs R.A. Cole Ltd., who is the Managing Agent of the defendant company in this case, as O.S. No. 224 of 1956 for a sum of Rs. 1,527-11-6 out of which the defendant company has taken up the liability for Rs. 1,114-8-6 and deposited that amount to the credit of that suit. The entire amount as per the bills except those covered by the three bills mentioned above were deposited by the defendant.

3. The lower court found that the goods covered by bill Nos. 3287 and 3398 were ordered by Ledlie, the representative of the company, and that the goods were in fact delivered over to one Varghese who was the servant of Mr. Ledlie and that the plaintiff obtained the delivery receipts for them from Mr. Varghese. The orders are seen to be under the signature of Mr. Ledlie and they are also in the printed forms of the defendant company. So far as the bill No. 3301 is concerned the lower court found that there was no order by Ledlie to support it and therefore the defendant company was not bound to pay that bill. The lower court also found that the amount borrowed by Ledlie in his personal capacity was repaid by him on 28-10-1953. The court below therefore decreed the suit except in respect of the amount covered by bill No. 3301.

4. In this appeal the main point raised by counsel for the appellant was that there is no evidence that the goods covered by the two bill Nos. 3287 and 3398 were supplied to the defendant company. He also contended that there is no evidence that the goods were really required by the company and that it was to cover the liability of Mr. Ledlie for the amount borrowed from the plaintiff that these bills were cooked up by the plaintiff with the active connivance of Ledlie and Varghese, his servant. I do not think that it is possible to come to a conclusion that Ledlie had no authority to order for the goods. He was the representative of the company at Koratty and most of the previous orders were signed by him and the company was prepared to abide by those orders. Although D.W. 1 set up a case that he alone had authority to sign the orders, that case miserably failed, he himself admitting that the orders were invariably signed by Mr. Ledlie. It is significant to note that in the early stages of the correspondence between the parties no question about the binding character of these bills was raised. The controversy between the parties at that time centered round the high prices charged by the plaintiff for the articles supplied to the defendant. The defendant was only insisting for a reduction of at least 20% in the prices of the goods supplied to it.

5. It is seen that the Manager of the defendant company came to Ernakulam and had a talk with the representative of the plaintiff Firm on 13-12-1953. On

14-12-1953 a letter was sent from Bombay by him to the plaintiff. The plaintiff's case was that this letter was never received by it and some little argument was raised at the Bar whether as a matter of fact the plaintiff did receive that letter. We find the defendant sending a copy of that letter to the plaintiff subsequently, and at the time of Ext. D3 dated 9-6-1954 the plaintiff knew the contents of Ext. D2 letter and therefore there is nothing strange in Ext. D3 referring to Ext. D2 letter.

6. It was contended by counsel for the appellant that the goods covered by the two bills were never received by any authorized representative of the company but by Varghese who was not an employee of the company and therefore the delivery receipt given by Varghese is no legal evidence for proving actual delivery to the company. It is admitted by the defendant that Varghese was a servant of Ledlie and that Ledlie issued the orders and sent them through Varghese who was authorized by Ledlie to receive the articles. If that be so, there is no reason to think that Varghese had no authority on behalf of the company to receive the goods. The defendant has not produced its account books to show whether as a matter of fact these goods were delivered to the company. Counsel submitted that it was to cover up the loan of Mr. Ledlie to the plaintiff that these bills were fabricated. He pointed out that the amount borrowed by Ledlie is seen to have been repaid on 28-10-1953, which according to him is impossible, as Ledlie had left this place before that date. According to him Ledlie had left the service of the defendant on 29-9-1953. Counsel placed considerable reliance upon Exts. D4, D5, D6, D7 and D8 to show that Ledlie had left the place on 29-9-1953 itself and therefore the case of the plaintiff that Ledlie had paid the amount on 28-10-1953 was false. I do not think that it is necessary for me in this case to decide the question whether Ledlie paid the amount or not. There is the evidence of P.W. 1 to the effect that Ledlie paid the amount.

7. The only point which I am called upon to decide is whether the goods covered by the two bills mentioned above were really ordered by the company through its authorized representative and whether the goods were, as a matter of fact, supplied. If Ledlie was acting in the course of his employment in ordering the goods and getting delivery of them through his servant, I think the defendant company will be bound even if it be proved that Ledlie misappropriated these goods or otherwise acted fraudulently to the detriment of the defendant company. So long as there is no proof that the plaintiff participated in the commission of any fraud on the defendant, the mere fact that Ledlie was acting frequently in diverting the goods or the proceeds thereof for his own purposes will not affect the liability of the defendant to the plaintiff. There was at one time some doubt on the question whether principal will be bound by the fraud committed by an agent for his own benefit in the course of his employment. Now the question seems to be settled by the decision of the House of Lords in *Llyod v. Grace Smith & Co.* (1912 A.C. 716). In his speech at page 730 Lord Macnaghten said :

The other line of defense, which found favor with the Court of Appeal, requires more consideration. It was rested on the fact that the fraud was committed, not for the benefit of the firm but for the benefit of Sandies himself. It was contended that Barwick's case is an authority for the proposition that a principal is not liable for the fraud of his agent unless the fraud is committed for the benefit of the principal.

8. After considering the authorities on the subject the learned law Lord accepts the statement of law by Lord Blackburn in Barwick's case. At page 735 this is what he says:

Lord Blackburn's view of the judgment in Barwick's Case (L.R. 2 Ex. 259) requires no explanation. It is clear enough. After referring to Barwick's case he expresses himself as follows : "I may here observe that one point there decided was that, in the old forms of English pleading, the fraud of the agent was described as the fraud of the principal, though innocent. This no doubt was a very technical question;" and then come these important words: "The substantial point decided was, as I think, that an innocent principal was civilly responsible for the fraud of his authorized agent, acting within his authority, to the same extent as if it was his own fraud.

That My Lords, I think is the true principle. It is, I think, a mistake to qualify it by saying that it only applies when the principal has profited by the fraud. I think, too, that the expressions "acting within his authority," "acting in the course of his employment," and the expression "acting within the scope of his agency" (which Story uses) as applied to an agent, speaking broadly mean one and the same thing. What is meant by those expressions is not easy to define with exactitude. To the circumstances of a particular case one may be more appropriate than the other. Whichever expression is used it must be construed liberally, and probably, as Sir Montague Smith observed, "the explanation given by Wilks J. is the best that can be given".

In Story on Agency, the learned author states, in section 452, the general rule that the principal is liable to third persons in a civil suit "for the frauds, deceits, concealments, misrepresentations, torts, negligences, and other malfeasances, or misfeasance, and omissions of duty of his agent in the course of his employment, although the principal did not authorize, or justify, or participate in, or indeed know of such misconduct, or even if he forbade the acts, or disapproved of them." He then proceeds, in section 456: "But although the principal is thus liable for the torts and negligences of his agent, yet we are to understand the doctrine with its just limitations, that the tort or negligence occurs in the course of the agency. For, the principal is not liable for the torts or negligences of his agent in any matters beyond the scope of the agency, unless he has expressly authorized them to be done, or he has subsequently adopted them for his own use and benefit.

9. I think the company is bound by the orders placed by Ledlie and that the plea

that the goods covered by the two bills were never required by the defendant or that the goods never reached the defendant, are irrelevant, so long as there is no proof that plaintiff participated in any fraud that Ledlie may have committed. The contention that Ledlie was committing a fraud for his own benefit, is really foreign to the issue whether the defendant is liable for the acts of Ledhe committed in the course of his employment. I therefore hold that the defendant is liable for the amounts covered by the two bills. In the result, the decree of the lower court is confirmed and the appeal dismissed with costs.