

(1982) 01 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Special Appeal No. 303 of 1971

Mewar Textiles Mills Ltd., Bhilwara

APPELLANT

Vs

Sita Ram Basanti Lal Jain

RESPONDENT

Date of Decision : 05-01-1982

Acts Referred:

Colliery Control Order, 1945 — Section 12A, 12B, 6

Contract Act, 1872 — Section 221

Sales of Goods Act, 1930 — Section 45, 45(2)

Citation : AIR 1982 Raj 215

Hon'ble Judges : N.M. Kasliwal, J;Mahindra Bhushan Sharma, J

Bench : Division Bench

Advocate : S.N. Deedwania and B.R. Arora, for the Appellant;

Final Decision : Dismissed

Judgement

Kasliwal, J.—This special appeal u/s 18 of the Rajasthan High Court Ordinance is directed against the judgment of learned single Judge dated 14th April, 1971, affirming the judgment and decree of learned District Judge, Bhil-wara dated 5th Oct. 1966.

2. Brief facts giving rise to this appeal are that the defendant-appellant M/s. Mewar Textile Mills Ltd., Bhilwara (hereinafter referred to as "the Textile Mills") was allotted wagons of coal for its use by the Deputy Coal Controller, Government of India. The Textile Mills used to send permits of coal to the plaintiff-respondent and the plaintiff then used to obtain priority sanctions in the name of the Textile Mills. After obtaining such sanctions the plaintiff then used to approach the collieries, pay the money for the coal, and get the coal loaded in Railway wagons, The railway receipts were got prepared by the collieries as consignors in the name of the Textile Mills as consignee. The case of the plaintiff was that between 15th Oct. to 6th Dec. 1959, 25 wagons of coal were despatched to the Textile Mills and a sum of Rs. 11,936-70 paise remained due to the plaintiff from the Textile Mills. The coal wagons reached their destination,

but the Textile Mills did not take delivery of the goods by taking the rail-way receipts from the Bank after making the payments. As the Textile Mills "did not take the delivery of the coal wagons the amount of wharfage and de murrage swelled to the extent of Rupees 46,800/-. As this amount was not paid, the railway authorities appropriated the coal. The plaintiff's case was that it had paid the price of the coal to that collieries on behalf of the Textile Mills and as such it was entitled to recover the: amount from the Textile Mills. The plaintiffs claimed Rs. 11,936-70 paise as the principal amount plus interest @ 9% per annum in all Rs. 18,200/-.

3. The case set up by the defendant Textile Mills inter alia was that the plaintiff had acted in violation of the agreement in the course of the dealings inasmuch as instead of sending the railway receipts direct to the defendant, it sent them through the bank knowing fully well that the defendant was short of funds with the result that the railway receipt could not be taken and the consignment remained undelivered and wharfage and demurrage rose up to the tune of Rs. 46,8007-. It was further pleaded that after having come to know that the delivery of the coal wagons had not been taken by the defendant and the amount of demurrage and wharfage had risen to Rs. 46,800/-, the plaintiff took the responsibility of recovering the prices of the coal from the railway and also requested the railway to forgo the amount of demurrage and wharfage as a special case. The plaintiff had also given a notice to the railway for the recovery of the price of the coal and to institute a suit against the railway. On a request made by the plaintiff the power of attorney was also given by the Textile Mills to the plaintiff, but the plaintiff did not file any suit against the railway and returned the railway receipt to the Textile Mills after the limitation had expired against the railway. Under these circumstances the Textile Mills was not liable to pay any amount to the plaintiff. Some other objections were also taken in the written statement. On the aforesaid pleadings of the parties the trial Court framed the following issues :--

1. Is the plaintiff's firm duly registered?
2. (a) Whether there was an agreement and practice between the parties that the plaintiff would send the railway receipts in respect of the coal direct to the defendant and not through bank and the plaintiff went against that agreement in sending the railway receipt through the bank?
(b) If so what is its effect upon the suit?
3. Is the plaintiffs suit time barred?
4. Is the defendant not liable to pay any amount to the plaintiff for reasons mentioned in paras 11 to 14 of the written statement?
5. Is the plaintiff firm entitled to a sum of Rs. 11,936-70 p. as cost of the coal and Rs. 6,263-30 p. as interest upon it?
6. Does the plaint not disclose any cause of action and therefore, is liable to be

rejected?

7. Is the defendant entitled to special costs?

8. What relief

4. Apart from the documentary evidence filed by both the parties the plaintiff examined, Basanti Lal PW 1 and Guman Mal Doshi in support of its case. The Textile Mills examined Bhanwar Lal DW 1 and Damodar Lal DW 2 in support of its case. The learned District Judge after thorough perusal of the oral and documentary evidence held that the plaintiff had not violated any agreement between the parties in sending the railway receipt through the bank and not directly to the Textile Mills. The suit was within limitation. The plaintiff was a registered firm. The plaintiff having paid the price of coal to the collieries on behalf of the defendant, was entitled to recover it back along with interest @ 9% per annum. The learned District Judge as such decreed the suit for Rs. 18,200/- in favour of the plaintiff and against the defendant. The plaintiff was also allowed pendent lite and future interest upon Rs. 11,936.70 p. @ 6% per annum from the date of the suit i.e. 4th Feb. 1966 till realisation.

5. The Textile Mills aggrieved against the judgment and decree of the learned District Judge filed an appeal which came up for consideration before the learned single Judge. Before the learned single Judge two contentions were raised on behalf of Textile Mills; (1) that the jural relationship between the parties in regard to the transaction in dispute was that of a seller and purchaser; and (2) since the plaintiff had purchased the coal from the collieries in its own name and bills for the same had also been issued in its name, it is not entitled to recover the price from the Textile Mills because the property in the case vested in the plaintiff and did not pass to the Company until the price for the goods was paid.

The learned single Judge referred to certain provisions of the Colliery Control Order, 1945, and held that under the provisions of Sections 12A, 12B & Section 6 of the Colliery Control Order, the Coal was allotted to the Textile Mills by the Deputy Coal Controller (Distribution) Calcutta, and it was to be purchased through the plaintiff, a middle-man, who was to act as del credere agent and was entitled to receive commission over the price fixed at the rate mentioned in Clause 6 (2) of the Order, The plaintiff in its own right could not purchase the coal from the collieries nor was the Textile Mills entitled to use, divert or transfer any coal allotted to it except under the written authority from the Central Government. The learned single Judge, therefore, held that the relationship between the parties could not be of a vendor and a vendee. The plaintiff only worked as a middleman to purchase coal on behalf of the Textile Mills. It did not buy and indeed it could not buy coal for itself. As regards the second contention the learned single Judge held that the question as to when property in goods passes, depends upon the intention of the parties having regard to the terms of the contract, their conduct, and the circumstances of the case. Simply for the fact that the agent had paid the price of goods on behalf of its principal, it cannot

be held that the property in the goods vests in it until the price is paid by the principal. The learned single Judge held that the plaintiff occupied a dual capacity; (1) as agent for purchasing coal on behalf of the defendant; and (2) as a lender of money to the defendant for the purchase of coal. As agent the plaintiff had lien over the goods for the money during the course of transit or before the actual delivery of the goods, but it had no property in the goods. The property in the goods was never intended to vest in the plaintiff. The learned single Judge thus finally held that the property in the goods never vested in the plaintiff and it was entitled as agent to recover the price of goods along with the amount of its commission from the defendant. In the result the appeal was dismissed with costs.

6. Aggrieved against the judgment and decree of the learned single Judge the defendant Textile Mills has filed this special appeal.

7. Mr. Deedwania, learned counsel for the Textile Mills did not seriously challenge the finding of the courts below on issue No. 2 (a). In our opinion, issue No. 2 (a) raised a dispute over a question of fact whether there was an agreement and practice between the parties that the plaintiff would send the railway receipts in respect of coal direct to the defendant and not through the bank and the plaintiff went against that agreement in sending the railway receipts through the bank. The learned trial Court after thorough discussion of the oral and documentary evidence found that the defendant had been accepting the delivery of the railway receipts through Bank since last part of the year 1957, whole of the year 1958 and up to September 1959. The defendant had also admitted that all the railway receipts in the year 1959 were sent by the plaintiff through the bank and not directly to the defendant. The defendant had not produced a single intimation pertaining to year 1958 which might prove that any railway receipt was sent directly to the defendant and not through the bank. The learned trial court in this regard took into consideration Exs. 7, 11, 12 and 16 which also went in favour of the plaintiff in deciding issue No. 2 (a). Thus, the finding of fact decided under issue No. 2 (a) suffers from no error and is binding in second appeal.

8. Mr. Deedwania, however, contended that in the facts and circumstances of the case, there was only an agreement to sell on behalf of the plaintiff and it was not a completed sale. It is contended that unless the payment was made by the defendant to the bank and got the delivery of the railway receipt, it was not a completed sale and the plaintiff in these circumstances had no right to bring a suit for the recovery of price, but the remedy was to file a suit for specific performance of the contract or to claim damages. It was also argued that the plaintiff is bound by the pleadings of his own case and it is well set-, tied as laid down in *Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar*, that no case can be made out beyond the pleadings. In this regard it is pointed out that in the plaint the plaintiff had come forward with a clear case that the plaintiff had paid the price of 25 wagons of coal and the same was consigned to the defendant and as such the plaintiff was entitled to the price of the coal. It is argued that the

plaintiff had come toward with a clear case of purchasing the coal by paying the money to the collieries and thereafter selling it to the defendant and now the plaintiff is not entitled to make out a case of agent. We find no force in the contention. When the plaint is read as a whole it is clear that the plaintiff had come forward with a case that the defendant Textile Mills was allotted for the own use wagons of coal by Deputy Coal Controller. The defendant had appointed the plaintiff as a supplier for sending the coal to the defendant. The plaintiff then sent 25 wagons of coal on different dates in the year 1959 and sent the railway receipts through Bank, but the defendant did not take the delivery of the coal in time on account of which it incurred heavy demurrage. The defendant wrote to the railway authorities to reduce the demurrage but the railway authorities did not agree and the charges of demurrage itself became higher than the price of the coal itself. The defendant did not take the delivery of the coal and the railway thus appropriated the coal towards the demurrage charges. Thus, when we see the entire allegations it leaves no manner of doubt that the plaintiff had come forward with a case of agency in the plaint.

9. Mr. Deedwania, next contended that even if the plaintiff was acting in the capacity of an agent, still he could be considered as a seller under the Sale of Goods Act. Reliance was placed on the provisions of Sections 4, 19, 23, 45 and 46 of the Sale of Goods Act, 1930. It was contended that under Sub-section (3) of Section 4 where in a contract of sale, the property of the goods is transferred from the seller to the buyer, the contract is called, a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called as an agreement to sell. u/s 19 for the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. Under Sub-section (2) of Section 23, where in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. Section 25 deals with reservation of right of disposal by the seller. It is provided that the seller may by the terms of the contract or appropriation reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case notwithstanding the delivery of the goods to a buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the case does not pass to the buyer until the conditions imposed by the seller are fulfilled. Sub-section (2) of Section 25 lays down that where goods are shipped or delivered to a Railway Administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal. Section 45 defines "unpaid seller". Under Sub-section 21 of Section 45 it is mentioned that the term "seller" includes any person who is in the position of a seller as for instance, an agent of the seller to whom the bill of lading is endorsed or consignor or agent who has

himself paid, or is directly responsible for, the price. Section 46 then provides for the unpaid seller's right. On the basis of the aforesaid provisions it was strenuously contended by Mr. Deedwania that the plaintiff, even if, it was an agent of the defendant Textile Mills, yet having paid the price of the coal himself, came within the term "seller" under the Sale of Goods Act and was entitled to exercise the right of unpaid seller's lien and when the railway receipt could not be released, as the amount was not paid by the defendant, it was a clear case where the property in the coal remained vested in the plaintiff and did not pass to the defendant. Reliance in this regard is placed on Bhagubai Tukaram Jogdunde Vs. Appaji Sitaram Charathe, Babasa Bakale Vs. Hombanna Rayappa Hombannavar, ; L. Jagram Das V. Banarsi Das AIR 1936 Oudh 308 ; and A. Ramaswami Vs. K. Venkamma, On the proposition that in case of agreement to sell the only remedy of the plaintiff was to bring a suit for damages on account of breach of a contract, reliance is placed on the following authorities :

The Ford Automobiles India Ltd. Vs. The Delhi Motor and Engineering Co., Gulab Rai Sagar Mal v. Nirble Ram Nagar Mal AIR 1924 Lah 239, and Ram Niwas Satyanarayana v. Commissioner of Taxes, Assam AIR 1952 Ass 178.

10. In order to deal with the contention raised by Mr. Deedwania we may point out the real nature of transaction between the parties in the present case. Under the provisions of the Colliery Control Order, 1945, the coal was allotted to the defendant Textile Mills by the Deputy Coal Controller (Distribution), Calcutta. The plaintiff, in his own right could not purchase the coal. The defendant being a consumer could have purchased coal through a middleman, who acts as del credere agent and under Sub-section (2) of Section 6 of the Colliery Control Order such del credere agent was entitled to receive commission from the consumer over the price fixed under the above provisions. The defendant Textile Mills also could not use, divert or transfer any coal allotted to it except under the written authority from the Central Government. The plaintiff of course paid the money to the collieries and purchased the coal but it was done on behalf of the Textile Mills, and they despatched the coal wagons in favour of the Textile Mills. Admittedly, the consignor were the collieries and the consignee was the Textile Mills. There was only one transaction of sale i.e. by the collieries to the defendant Textile Mills through the plaintiff who was acting as a middleman. There is no further question of making another sale by the plaintiff in favour of the defendant and therefore, the question that there was any sale by the plaintiff in favour of the defendant or there was an agreement to sell only does not arise.

11. It is no doubt true that under Sub-section (2) of Section 45 of the Sale of Goods Act, a consignor or agent, who has himself paid, or is directly responsible for the price is also included in the term "seller". However, we fail to understand as to how the above definition can render any help to the defendant-appellant in this case. The above definition of the term "seller" has been made applicable under Sub-section (2) of Section 45 of this chapter i.e. for Chapter V alone. That means a consignor or agent, who himself has paid, can also exercise the rights of

unpaid seller against the goods. This is an additional right conferred on a consignor agent, who has himself paid, to exercise the right of unpaid seller's lien. However, it does not mean that an agent, who has himself paid, will become a seller for all purposes, even though the nature of the transaction clearly shows that there was [no sale by the agent to the principal. An agent, who has himself paid, may or may not exercise the unpaid seller's lien, but there is no bar under any law that he cannot file a suit for the recovery of the amount paid by him on behalf of the principal when such agent is authorised by the principal to buy or purchase on behalf of the principal. Section 221 of the Contract Act clearly lays down that in absence of any contract to the contrary an agent is entitled to retain goods, papers and other property. whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has "been paid or accounted for to him. Thus, this agent's lien apart from the provisions of the Sale of Goods Act has also been recognised under S. 221 of the Contract Act. We are clearly of the opinion that under this provision of S. 221 of the Contract Act, the plaintiff being an agent had a lien on the goods for the price paid by him as well as the commission. The authorities relied upon by Mr. Deedwania regarding the point that agent can be considered a seller and in case of agreement to sell, the remedy is only to file a suit for damages, are wholly irrelevant and besides the controversy raised in the case before us. The sole question raised before us is whether in the transaction of the present kind, the plaintiff in the capacity of an agent having paid the entire money for his principal i.e. the defendant Textile Mills, was entitled to bring a suit for the money paid by him and the commission charges. On the facts already found proved by the two lower courts, there was no fault committed by the plaintiff as an agent and it was the defendant Textile Mills, who committed a breach of contract in not taking the delivery of the coal by getting the rail-way receipt released from the bank and as such the plaintiff was certainly entitled to file a suit for the recovery of the money paid by him on behalf of the defendant and for the commission charges. The unpaid seller's Lien or an agent's lien to stop goods in transit is entirely different from passing of a title in the "property. The agent holds the goods but the principal owns the title. The plaintiff as an agent may not exercise his; right of lien and may opt to recover the money paid by him on behalf of the principal. We find support in our above conclusion in *Kishun Das and Another Vs. Ganesh Ram and Others*, and *K. Muneyya and Co. Vs. K. Varadarajulu*, it was held as under:--

"The Lien of an agent is as a general rule, lost by his parting with the possession. If possession is given to a bailee for safe custody or for some other purpose consistent with the continuance of the lien, and the circumstances are such as to show that the agent intends to retain his rights, his Lien will not be prejudiced by his parting with the possession. But if the goods themselves are lost the agent loses his lien, and the proprietor or owner loses the goods. The loss of the goods must fall on the owner, or the person in whom the property in the goods is vested. Such a loss cannot fall on the agent. If the agent had paid for the price

as a money-lender, he cannot lose his lien as also the money which he had paid for his principal. There is a well understood distinction in law between a lien on property and a title to property. The agent holds the lien, but the principal owns the title. When the goods are lost, the agent loses the lien and the principal loses the goods."

12. In the result, we do not find any force in this appeal and the case is dismissed with no costs as nobody has appeared on behalf of the respondent.