

(1967) 07 AP CK 0008

In the Andhra Pradesh High Court

Case No : Second Appeal No. 291 of 1962

Miryala Venkateswarlu and Co. and Others

APPELLANT

Vs

Battula Venkata Peraiah and Venkateswarlu and Co. and
Another

RESPONDENT

Date of Decision : 12-07-1967

Acts Referred:

Contract Act, 1872 — Section 10, 72

Evidence Act, 1872 — Section 92

Forward Contracts (Regulation) Act, 1952 — Section 15, 2

Citation : AIR 1969 AP 88

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Venkatesam, J

Bench : Division Bench

Advocate : Venkata Subbarao, for the Appellant; G.V.L. Narasimharao, for the Respondent

Judgement

Jaganmohan Reddy, C.J.—This second appeal has been referred to the bench by our learned brother Ekbote, J., In view of the important question raised as it is likely that more than one case is affected and also because there is no direct authority available.

2. The question that falls for determination is a simple one, whether the contract in question is hit by Section 15 read with Section 2(c) of the Forward Contracts (Regulation) Act, 74 of 1952 (herein called the Forward Contracts Act).

3. The appellant and the respondents are merchants whose business consists of buying and selling ginned cotton. The appellant agreed to sell 60 bales of Narasaraopet Bale Cotton at the rate of Rs. 332/- per putti of 784 Ibs. before 25-11-1955 the payment to be made after the weighment of bales and to be delivered at the site of Raleigh Company or Valcot Company. This agreement was entered into on 10-11-1955. When the goods were not delivered, the respondent filed a suit to claim damages for the non-performance and breach of the contract.

4. The appellant raised several contentions, one of them being that the

transaction is hit by the Forward Contracts Act. IN view of that plea, an issue was framed as to whether the suit contract was a forward contract, and so not valid and enforceable. Since this is the only point which we are called upon to consider it is not necessary to refer to the other contentions which were urged before the Trial Court, and were the subject-matter of other issues. The Trial Judge on this issue permitted oral evidence to be adduced by either side and came to the conclusion that since the appellant had available at the time of the contract ready goods and could have delivered them, it was a ready delivery contract and, therefore, the transaction was not illegal, nor was it hit by any of the provisions of the Forward Contracts Act. The Subordinate Judge Narasaraopet affirmed the decision of the Trial Court and dismissed the appeal.

5. Inasmuch as the validity of the contentions urged before us depends upon a proper interpretation of Section 15 read with Section 2(c)(f)(i)(m) and (n) of the Forward Contracts Act, it is necessary to extract those provisions.

Section 2(f): "non-transferable specific delivery contract" means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, ware-house receipt or any other document of title relating thereto are not transferable."

Section 2(i): "ready delivery contract" means a contract which provides for the delivery of goods and the payment of price therefore, either Immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period, under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise."

Section 2(m): "specify delivery contract" means a Forward Contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned."

Section 2(n): " transferable specific delivery contract" means a specific delivery contract which is not non-transferable specific delivery contract and which is subject to such conditions relating to its transferability as the Central Government may, by notification in official Gazette specify in this behalf."

Section 15: "(1) The Central Government may by notification in the Official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon subject to the provision contained in Section 18, every Forward Contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal."

(2) Any Forward Contract in goods entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of Section 11 shall be void.

(1) as respects the rights of any member of the recognised association who has entered into such contract in contravention of any such bye-law and also .

(ii) as respects the rights of any other person who was knowingly participated in the transaction entailing such contravention.

(3) Nothing in sub-section (2) shall affect the right of any person other than member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract:

Provided that such person had as knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section (3) of Section 11.

(3A) Any forward contract in goods entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (aa) of sub-section (3) of Section 11 shall be illegal.

(4) No member of a recognised association shall, in respect of any goods specified in the notification under sub-sec. (1) enter into any contract on his own account with any person other than a member of the recognised association unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has brought or sold the goods as the case may be on his own account:

Provided that x x x x

Provided further that x x x x

6. It is not disputed that both the appellant and the respondent are not members of any recognised association within the meaning of Section 15, and consequently any contract entered into between them under which the delivery of goods is to take place beyond eleven days is not a ready delivery contract, not is it a non-transferable specific delivery contract, as such is illegal and void under the provisions of the Forward Contracts Act. This proposition is not denied. The only contention is one relating to the interpretation of the contract as to whether the contract is a ready delivery contract or a non-transferable specific delivery contract, the delivery of the goods and the payment of a price therefore must be either immediate or within such period not exceeding eleven days after the date of the contract, and subject to such conditions as the Central Government may, by notification in the Official Gazette specify in respect of any goods the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise. It is not contended that the Central Government has imposed any conditions as contemplated in the definition. so, that if the

payment of the price immediately or within eleven days from the date of the contract, it will be a forward contract. It is not the case of the parties that the contract is a non-transferable specific delivery contract. So it is unnecessary to consider that aspect of the case. We will, therefore, confine ourselves to the question whether under the terms of the contract it is a ready delivery contract or not.

7. We have already given the terms of the contract viz. that the contract has been entered into on 10-11-1955 and the delivery is to be before "25-11-1955" and the price also to be paid immediately after the weighment of the bales. The appellate Court thought that the words (in Telugu) (Loga) which covered the meaning of "within" or "before" were ambiguous and therefore relying upon the decision in *Satyavatamma v. Padmavatamma*. 1956 LLT 478 (AIR 1957 A P 30) held that under the contract there was an obligation to deliver the goods immediately and, therefore, it was not a forward contract. Apart from this the evidence which has been permitted to be led in view of the ambiguity said to have been given rise by the use of the word "within" would establish that the seller had ready goods which he could deliver and that it was the intention of the parties that the goods should be delivered immediately on the completion of the contract. We may say at once that where the terms of the written contract are clear and unambiguous no oral evidence can be permitted to explain, vary or contradict the terms thereof. Court can only allow oral evidence if the conditions set out in Section 92 of the Evidence Act are satisfied. The relevant provisos which permit the adducing of oral evidence in so far as they relate to the matter in issue before us are provisos 1 and 2 the other provisos not being applicable even remotely. Section 92 with these two provisos is as under:

"When the terms of any such contract grant or other disposition of property or any matter required by law to be reduced to the form of a document, have been proved according to the last section, as evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to or subtracting from its terms:

Provisos: (1) Any fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contradicting party want or failure of consideration or mistake in fact or law.

(2) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms may be proved. IN considering whether or not this proviso applies the Court shall have regard to the degree of formality of the document."

8. Before these provisos are made applicable it must be ascertained whether the terms of the contract in respect of the date of delivery. the payment of price etc. have been specifically stated or whether there is any ambiguity therein. We do

not think that a reading of the contract would throw any doubt or ambiguity as to the terms relating to the date of delivery. As has been said earlier, the date of delivery in any time before 25-11-1955 and the payment is to be made immediately after the weighing. The seller, it may be stated, undertakes to deliver these goods any day before that period and if he offers them the buyer must take them within that period. The buyer, however, cannot compel the seller to deliver the goods on any date before 25-11-1955. In other words while the seller has an option of delivery before the period specified the buyer has no right to compel him to do so within that period. The term is similar to that generally incorporated in mortgages with regard to redemption and is designed for the benefit of the mortgagor. It was so held by their Lordships of the Privy Council in *Bakhtawar Begam v. Husaini Khanum*, 26 M LJ 474 (AIR 1914 PC 36) where they said that ordinarily in the absence of a special condition entitling the mortgagor to redeem during the period for which the mortgage is agreed the right of redemption can only arise on the expiration of the specific period but that there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge the debt within the specified period and take back the property, such a provision being usually to the advantage of the mortgagor. This was followed by Subbarao, C. J., (as he then was) in 1956 A LT 478 (481) = (AIR 1957 A P 30 at p. 31). After referring to the passage of Ameer Ali, J., who delivered the judgment of the Court in 26 M LJ 474 (AIR 1914 PC 36) cited above, the learned Chief Justice observed thus:-

"The well-established principle therefore, is that ordinarily the right to redeem cannot be exercised till the mortgage amount becomes due unless there is specific term conferring such a right on the mortgagor to redeem it earlier."

At p. 482 (of Andh LT) = (at p. 32 of AIR) after discussing the several decisions his Lordship summed up the position thus;

"All the aforesaid decisions give the plain meaning of the word "within" and its corresponding Telugu words indicate without any ambiguity that payment can be made on or before the date fixed. This term pre-supposes the existence of a right in the mortgagors to redeem earlier than the time fixed in the document. This imposes a condition that in case that right was exercised the mortgagee should be allowed to continue in possession."

9. It may be stated that clauses of this nature are enabling and intended for the benefit of the party who is under an obligation to do a particular act. It is far from saying that it imposes an obligation on the part of the person in whose favour it has been incorporated to perform the act on the date when the stipulation has been agreed to or any time thereafter within the period fixed.

10. We may point out that under the terms of the contract the goods are not deliverable on the date of the contract or any time thereafter as was the case in *G. Chinna Konda Reddy and Another Vs. East Asiatic Company (India) Ltd.*, upon which great reliance has been placed by the learned Counsel for the respondents.

There Subbarao, C. J., (as he then was) was dealing with a case where the parties had agreed to sell groundnut under two contracts one dated 14-5-1945 and another dated 19-5-1945. Under the first contract, it was agreed that delivery was to commence on the 14th May and completed before 30th June, 1945. It may be observed that under both those agreements a specific term was to commence delivery from the date on which each of the agreements was entered into. So that there can be no doubt that it was a ready delivery contract and fell outside the pale of Section 2(ii) of the Oilseeds Forward Contract Prohibition Order the terms of which are in pari materia with those in the Forward Contracts Act. The learned Chief Justice emphasised the importance of the stipulation that the delivery was to take place from the date of the contract itself. This is what his Lordship observed at page 42:-

"Under the contracts the parties clearly contemplated delivery on the dates of the contracts. If the defendants insisted upon delivering the groundnut on 14-5-1945 and on 18-5-1945 the plaintiff could not have legally refused them. Reasonable time was given to complete delivery of the entire goods only because of the transport difficulties."

11. Applying the same reasoning the buyer in the instant case could not have compelled the seller to deliver the goods before 25-11-1955, though nothing prevented the seller from delivering the goods at that date. There is no specific stipulation nor do the terms of the contract indicate otherwise. In this view we must hold that the Courts below were wrong in coming to the conclusion that the transaction is a valid contract not being hit by Forward Contracts Act and we hold otherwise.

12. As no other point has been argued and the contract has not been sought to be saved by any other provision of the Forward Contracts Act, we allow the appeal. The judgments and decrees of the Courts below are reversed and the suit is dismissed with costs in the Trial Court only.

13. Appeal allowed.