
(1939) 02 AHC CK 0011
In the Allahabad High Court

Mohammad Anwar Ali Khan

APPELLANT

Vs

L. Nawal Kishore and Another

RESPONDENT

Date of Decision : 07-02-1939

Acts Referred:

Citation : AIR 1939 All 444 : (1939) 9 AWR 333

Hon'ble Judges : Mohammad Ismail, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohammad Ismail, J.—This is a defendant's appeal arising out of a suit brought by the plaintiffs for recovery of Rs. 945 as damages and Rs. 101 on account of refund of money advanced. The plaintiffs alleged that they entered into a contract with defendant for the supply of molasses under a deed of agreement dated 21st December 1936, The plaintiffs advanced Rs. 101 to the defendant as earnest money and the defendant agreed to supply 700 maunds of molasses to the plaintiffs during the running season, la case the defendant failed to supply the requisite quantity of molasses he stipulated that ho will be liable to the plaintiffs at the rate of Re. 1 per maund for the quantity of molasses that remain unsupplied. The defendant contested the suit and pleaded inter alia that the suit was not cognizable by the Court and that the plaintiffs were not entitled to any damages. The Courts below have decreed the suit. Learned counsel for the appellant contends that according to the case of the plaintiffs the defendant had supplied 70 maunds of molasses. Oh this basis the plaintiffs were entitled to only Rs. 630 at the rate of Re. 1 per maund. Over and above that sum the plaintiffs according to their case were entitled to the refund of Rs. 101. It is argued that the valuation of the suit was inflated deliberately in order to give jurisdiction to the learned Munsif on the regular side. It is a fact that under the terms of the contract the plaintiffs were entitled to damages only at the stipulated rate on the quantity of molasses which the defendant failed to supply. The plaintiffs however stated in para. 4 that the price of molasses had gone up considerably and

therefore they claimed Rs. 945 as damages. The Court below ultimately decreed the suit on the basis of the terms of the contract. It is difficult to see how the plaint could be returned for presentation to the proper Court, namely the Court of Small Causes, at the outset. It was only when the evidence was recorded and the parties were heard that the Court was in a position to ascertain the amount payable to the plaintiffs. Apart from this it is not clear how the defendant has been prejudiced by the procedure followed by the plaintiffs. The suit being on the regular side, the defendant had full opportunity to appeal from the decree of the Court of first instance which could not have been available to him had the case been tried as a Small Cause Court case.

2. The next point stressed by learned Counsel for the appellant is that u/s 7, Encumbered Estates Act, it was incumbent upon the Court to stay its hand and not to proceed with the suit further because the plaintiff had admittedly applied u/s 4 of the Act to the Collector who had forwarded the application to the Special Judge u/s 6 of the Act. Section 7 provides that

all proceedings pending at the date of the said order (under Section 6) in any Civil or Revenue Court in the United Provinces in respect of any public or private debt...shall be stayed.

3. The question whether the present suit was in respect of a private debt will depend on the decision of the further question whether the amount claimed came within the definition of the expression "debt". It may be mentioned that the claim in respect of the refund of Rs. 101 has been stayed. The claim for damages was proceeded with. Section 2, Sub-section (a), provides "Debt includes any pecuniary liability except a liability for unliquidated damages." It is argued that the present suit was not for recovery of unliquidated damages because the sum payable to the plaintiffs was an ascertained sum in view of the stipulation contained in the deed of agreement. Reference has been made to Halsbury's Laws of England, Edn. 2 Vol. 10, p. 141. The learned author relying on Public Works Commissioner v. Hills (1906) A.C. 368 at page 375, says:

If it is a sum which can be regarded as a genuine pre-estimate by the parties of the loss which they contemplated would flow from the breach, it is liquidated damages.

4. There is no doubt that according to the terms of the contract a specified sum was named which was payable by the defendants to the plaintiffs in the event of a breach of contract. But at that stage the Court concerned had only to look to the plaint of the plaintiff under which Rs. 945 was claimed on the ground of rise in price of molasses. On the allegations in the plaint the damages worked out at the rate of Re. 1-8-0 per maund. The defendants questioned the right of the plaintiffs to the sum claimed or, for the matter of that any other sum. On the pleadings it cannot be said that the liability of the defendant was for liquidated damages. The authority cited by learned Counsel for the appellant cannot be a proper guide to the Courts in India because the law on the subject in British

India is somewhat different. In England when the parties to a contract at the time of entering into it provide that in case of breach the party in default is to pay to the other a sum certain specified in, or ascertainable from the contract, it is not to be interfered with by the Court : see *Public Works Commissioner v. Hills* (1906) A.C. 368. We are however governed by Section 74, Contract Act, which provides:

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach...the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named....

5. It would appear that in spite, of a definite provision in the contract, it is left to the Court to determine the precise amount of damages the plaintiff is entitled to. It can not therefore be argued that in the present case the claim was for liquidated damages because the amount to be decreed was still uncertain and depended on the discretion of the Court. Under these circumstances in my judgment the lower Appellate Court was right in staying the suit with regard to Rs. 101 only and proceeding with the claim with regard to the damages. In the result the appeal fails and is dismissed with costs. Leave to appeal under the Letters Patent is refused.