

(1960) 03 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : First Appeal No. 26 of 1957 with Cross-Objections

N. Hardip Singh

APPELLANT

Vs

Hira Films and Others

RESPONDENT

Date of Decision : 29-03-1960

Acts Referred:

Contract Act, 1872 — Section 74

Citation : AIR 1960 P&H 637

Hon'ble Judges : I.D. Dua, J; Bishan Narain, J

Bench : Division Bench

Judgement

(1) Hira Films of Bombay is a firm which produced the film known as "Chandni Chowk". This firm, through its world distributing agents, Tribhavan Productions, again of Bombay, entered into an agreement with Sikand Films of Jullundur in 1953 whereunder the Jullundur firm was appointed to be the distributing agents for five years to exploit this film-Chandni Chowk-in the territories of the Punjab, Pepsu, Himachal Pradesh and Jammu and Kashmir on certain terms. The Jullundur firm exploited the film for a certain period and then on 22-2-1955 the Sikand Films filed the present suit in the Court of the Senior Sub-Judge, Jullundur, against the Bombay firm for recovery of Rs. 17,500/- as damages, for delivery of a fourth print of the film and for a declaration that the plaintiff firm was entitled to recover damages at the rate of Rs. 1,000/- per day from the date of the suit till the delivery of the fourth print.

The trial Court decreed the suit for delivery of the fourth print on payment of Rs. 1,400/- and awarded Rs. 2,000/- as damages but refused to grant the declaration for future damages. Dissatisfied with this decree the plaintiff has filed the present appeal in this Court for a decree of Rs. 17,500/- as damages and for a declaration of future damages. Hira Films has filed cross-objections for the dismissal of the suit in toto.

(2) The main point to be determined in this appeal is the amount of damages, if any, to which the plaintiff firm is entitled to recover from the defendants. The

facts relevant for the decision of this matter are these. On 11-11-1953 the parties entered into an agreement for exploitation of this film on the terms that (1) the plaintiff firm shall advance Rs. 45,000/- to the Hira Films in certain specified instalments. (2) the plaintiff firm shall spend Rs. 5,000/- on publicity on behalf of the Bombay firm, (3) the plaintiff firm shall be entitled to a commission of 20 per cent and the defendant firm will get 80 per cent on the earnings derived from the exploitation of the film. This ratio was to be altered to 30 per cent and 70 per cent respectively if the earnings reached the figure of Rs. 65,000/-, (4) the plaintiff firm shall recover the advance of Rs. 45,000/-, the actual publicity expenses and its commission from the earnings and shall remit the balance to the Bombay firm, (5) the plaintiff firm shall regularly submit detailed accounts of the earnings etc. to the Bombay firm, (6) the Bombay firm shall supply three new copies of the film but the plaintiff firm could get any number of copies on payment of certain specified amounts and (7) the film was to be exploited for five years from the date of its release for exhibition. It is not necessary to take other terms of the agreement into consideration.

On 27-1-1954 the agreement was modified so as to increase the amount of the advance payable by the plaintiff firm to Rs. 51,000/-. It appears that the film was released in Delhi during December, 1954. Differences arose between the parties and the defendant firm cancelled the agreement on 16-12-1954. Thereupon the plaintiff firm filed a suit for a declaration that it was the sole distributor of the picture for the contracted areas. The parties settled the dispute and modified the terms of the original agreement so as to further increase the amount of the advance by another Rs. 5,000/-. The Bombay firm further agreed to supply extra fourth copy on payment of Rs. 1,700/-, out of which Rs. 300/- had already been paid. Clause 4 of this agreement reads:

"We undertake to deliver you the fourth print on or before 27-1-1955, the latest. It is unambiguously and (torn) agreed by us that the delivery of the extra fourth print will be effected by us to you by 27-1-1955, the latest and in case of default and delay if any made by us in this behalf we undertake and agree to pay you Rs. 1,000/- (rupees one thousand) (torn) per day as your consolidated and agreed upon damages and.....torn.....(compensation) for such delay, if any, made by us till such date.....torn.....the delivery of the said print is actually effected by you (torn) Jullundur City".

The plaintiff's case is that the defendant firm did not supply the fourth copy in spite of demands and, therefore, was liable to pay damages in accordance with clause 4 of the agreement, that is, at the rate of Rs. 1,000/- per day till the date of the supply of the fourth copy. The defendants contest their liability and allege that the plaintiff firm was not ready to receive the additional copy. The trial court held that the defendant firm committed the breach and this finding has not been challenged before us. The damages must, therefore, be assessed on the basis that the defendant firm did not supply the fourth copy by 27-1-1955 and thus was in default.

(3) It is common ground between the parties that the damages payable to the plaintiff firm are to be assessed in accordance with S. 74 of the Indian Contract Act, 1872. This section reads:

"Section 74. When a contract has been broken if a sum is named in the contract as the amount is to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, 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 to contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for".

This section relates to contracts wherein on breach thereof liability to pay a specified amount as damages is mentioned or there is a stipulation by way of penalty. The section lays down that the person entitled to get damages is to receive reasonable compensation not exceeding the amount specified in the contract. What is reasonable compensation in the given case depends on the facts and circumstances of each case and to determine it a Court must take into consideration the entire material on the record and also consider the circumstances of the case. This section does not make any distinction between the amount mentioned in the contract as liquidated damages based on genuine pre-estimate or as a security for due performance thereof.

In either case it is incumbent on Courts of law to compute reasonable compensation and it is not for the parties concerned to determine the figure. In the amount of reasonable compensation exceeds the amount mentioned in the contract then the amount so mentioned therein must be treated as reasonable. Now this amount may have been fixed by the parties as a genuine pre-estimate of the loss or it may be that the amount fixed is an essential term of the contract and the parties may not have entered into agreement at all if the compensation had not been fixed at that figure or the amount may have been fixed as limiting the liability of the guilty party where actual damages are expected to exceed that figure.

There is no reason why Courts should not take these factors into consideration when calculating reasonable compensation. After all it is hardly ever (sic) that reasonable compensation can be calculated with mathematical exactness and in a given case Courts may well come to the conclusion as damages represents reasonable compensation in the circumstances of the case. It is, however, clear that in all cases covered by S. 74, Indian Contract Act, the amount is to be decreed as reasonable compensation and not by virtue of its mention in the contract.

It is obviously for the party claiming compensation to bring the necessary material on the record. Section 74 lays down that it is the duty of Courts to award reasonable compensation even when the aggrieved party has failed to prove that it had suffered any actual damage or loss. In such a case I take it that

the Courts will award nominal or in flagrant cases even substantial compensation. It, therefore, follows that in substance the only effect of naming a sum as compensation in a contract is that the decree is in no case to exceed that amount which operates as a maximum in the case. The Privy Council in AIR 1929 179 (Privy Council) , has described the effect of S. 74 of the Contract Act to be a disentitle the plaintiffs to recover simpliciter the sum mentioned in the contract as penalty or as liquidated damages. In Mool Chand Behari Lal v. S. D. Chand and Co. AIR 1947 Lah 112, it has been laid down that in cases where there is no data to estimate the amount of damages actually caused, the discretion of the Court is unfettered in allowing what it considers reasonable compensation subject to the maximum fixed by the parties and that where a party asserts that the amount had been fixed as genuine pre-estimate of damages then the Court may award it, if it is satisfied that the amount so fixed is reasonable compensation. I am in respectful agreement with this decision.

(4) It is true that the Indian Contract Act is based mainly on English Law but Section 74 is a departure from it. Under English Law when the contract specifies an amount payable by the party in default on breach of the contract then that amount may be liquidated damages or may be a penalty to secure performance. Whether it is one or the other must be determined in England by Courts of law. If the amount is fixed as liquidated damages then the party in default has to pay that amount. If, however, it is fixed as penalty then the party claiming the amount must prove the damages suffered by it subject to the maximum mentioned in the agreement (vide discussion in Halsbury's Laws of England, Third Edition, Vol. 11, page 298). The Indian Legislature has abolished distinction between liquidated damages and penalty and the consequences thereof. It is, therefore, not necessary in India for the Courts to decide whether the amount fixed in the contract has been fixed as liquidated damages or as a penalty because the result in either case is that the Courts must determine reasonable compensation.

(5) Shri F. C. Mittal, the learned counsel for the plaintiff firm, argued that the trial Court should have awarded as damages the amount mentioned in the contract. He urged that ordinarily the amount mentioned in the agreement should be allowed unless it is proved to be exorbitant. In support of this contention reliance was placed on Lachhman Das v. Bhoja Ram AIR 1925 Lah 284, Lekh Singh v. Dwarka Nath. AIR 1929 Lah 249, and Amin Chand Bholu Singh v. Jullundur Electric Supply Co. Ltd. 1953 55 P LR 7: (AIR 1953 Punj 166). In the first two decisions Sir Shadi Lal observed that the amount mentioned in the contract should ordinarily be awarded unless it is found to be opposed to equitable grounds or to be exorbitant or unconscionable.

These observations were adopted by the learned Judges deciding the last case. These decisions, however, related unlike the present case to cases in which the damage or loss exceeded the amount mentioned in the contract. These decisions, therefore, have no application to the present case and the language

and therein must be considered to be limited to the facts of those cases. For these reasons, I am of the opinion that in cases governed by S. 74, Indian Contract Act, reasonable compensation has to be assessed after taking into consideration all the facts and circumstances of the case.

(6) On facts it was argued on behalf of the plaintiff that reasonable compensation in present case was in no way less than the amount mentioned in the agreement dated 21-1-1955. (After discussion of evidence their Lordships proceeded):

In the circumstances I agree with the trial Court that the plaintiff has failed to prove the actual loss suffered by him. The learned Sub-Judge has fixed Rs. 2,000/- as damages and no reason has been suggested to us for departing from this figure. The appeal for increase of compensation, therefore, fails.

(The rest of the judgment is not material for this report).

(7) Appeal and cross objection dismissed.