
(1976) 03 MAD CK 0014
In the Madras High Court
Case No : Appeal No. 168 of 1972

N. Sundareswaran

APPELLANT

Vs

Sri Krishna Refineries

RESPONDENT

Date of Decision : 18-03-1976

Acts Referred:

Contract Act, 1872 — Section 2, 25, 55, 63
Sales of Goods Act, 1930 — Section 32, 64

Citation : AIR 1977 Mad 109 : (1976) 89 LW 593 : (1977) 1 MLJ 51

Hon'ble Judges : Ratnavel Pandian, J; Ramaprasada Rao, J

Bench : Division Bench

Judgement

Ramaprasada Rao, J.—The unsuccessful defendant in O. S. No. 239 of 1970 on the file of the Subordinate Judge of Erode is the appellant.

The plaintiff filed a suit for recovery of a sum of Rs. 43,875/- and costs which according to him was damages payable by the defendant

consequent upon his nonperformance of a major portion of three agreed contracts he entered into according to him on 15-11-1969, 16-12-1969

and during the third week of January, 1970. The plaintiff's case is that the defendant is a manufacturer and dealer of empty tin containers at Quilon,

and he being a businessman dealing in groundnut oil and refined oil, placed orders on three different prices for varied quantities and those contracts

are evidenced in writing excepting the last of them and the defendant accepted such contracts but failed to perform the same in full and therefore he

was entitled to claim such damages which flowed from the breach of contract committed by the defendant. The defendant's case is that it was no

doubt true that the first two contracts were entered into on the dates specified by the plaintiff in the plaint, but in so far as the third contract is

concerned, there was no written contract but only an oral contract to supply one wagon. His further claim is that from time to time the plaintiff

injunctioned him from normally performing the contract on the ground that he had sufficient stocks of tins or on the ground that the demand had come

down and that, therefore, he could not fully perform the agreed contracts. He would refer to the correspondence which we shall presently consider

and would add that in or about February-March, 1970 there was an increase in the excise duty payable on tins and as such increase has to be

borne in law by the buyer, he demanded whether the plaintiff was inclined to agree to the despatch of the goods at prices which would include such

excise duty also and the plaintiff categorically refusing to suffer any such additional responsibility the defendant could not, though he was anxious

otherwise to, perform the contract in terms thereof. The defendant's case is that there was no failure to deliver the goods due to any fault of his and

he would deny that the damages claimed were in accord with the usual measure of damages which could be claimed even if it is assumed that he

has committed a breach of contract. On the above relevant pleadings the following issues were framed:

- (1) Whether the defendant committed breach of contract?
- (2) Whether the plaintiff is bound to pay the Central Excise Duty on supplies made to him on and after 1-3-1970?
- (3) To what damages, if any, is the plaintiff entitled?
- (4) Whether this court has no jurisdiction to try the suit?
- (5) To what relief?

2. The trial Judge found that the defendant committed breach of contract and that the plaintiff is bound to pay the Central Excise Duty on supplies

made to him on and after 1-3-1970, and in the peculiar circumstances of the case and after having traced the recitals in the correspondence

between the parties, the learned Judge thought that the defendant was bound to pay damages and he assessed the damages in the manner he did

but having regard to the act that the plaintiff as buyer should also shoulder the responsibility of excise duty took this aspect into consideration and

finally assessed the damages at Rs. 30,780/-. The suit, was therefore, decreed for the said sum with subsequent interest and costs. It is against this

the defendant has preferred this appeal.

3. For purpose of the ready appreciation of the facts and contentions of parties, it is necessary for us to summarise the correspondent which is the foundation for the three contracts referred to by the plaintiff in the plaint. The first contract could be gathered from Exs. B-1 and B-2. Ex. B-1 is a telegram issued by the plaintiff dated 15-11-1969 seeking for the despatch of 15 wagons of tins. Obviously there were prior contract between the parties as well. We are not, however, concerned with them in this appeal. Under Ex. B-2, while confirming the telegram under Ex. B-1, the plaintiff requests the defendant to supply 15 wagons asked for under Ex. B-1 but gave supplemental despatch instructions regarding the same. The plaintiff, while seeking for confirmation of the order placed by him under Ex. B-1, said that the defendant could arrange to despatch 3 wagons between 18th and 20th of November, the next three wagons by the 30th of November, the next three wagons by the 7th of December and the next three wagons by 15th of December and the last 3 wagons by the 22nd of December. The defendant under Ex. B-3 would say that his proprietor was out of station and that the orders under Exs. B-1 and B-2 would be confirmed on Wednesday but claims that he has already despatched one wagon and indicates that there has been an increase in the market price of the goods. Under Exs. B-4 the defendant, in continuation of his telegram impliedly agrees to accept the offer made by plaintiff under Exs. B-1 and B-2 and in part performance of the same would despatch 5 wagons of tin but incidentally he wanted an increase in price. As early as November 20, 1969 under Ex. B-5, the defendant made it clear that he would be performing the contract as desired by the plaintiff under Exs. B-1 and B-2 but without making any condition precedent for its performance in the matter of increase in price. He however indicated that the market price has increased. Exs. B-6 and B-7 are further telegrams, former by the plaintiff and the latter by the defendant in which it is made clear that the quantity as well as the price offered for the supply of tin was agreed to by the defendant.

4. The second contract was made under Ex. B-10 and it is for the supply of 20 wagons of tins at the rate of Rupees 370/- per 100 tins. The third contract is said to have been made during the third week of January, 1970. There is some controversy between the parties as to whether there was

such a contract at all and even if there is one, whether it was for the supply of 5 wagons or one wagon. We may at once say that there cannot be

any controversy on this for the very reason that the defendant in the witness box admits that during personal negotiations the defendant agreed to

supply 5 wagons of tins at the rate of Rs. 425/- per 100 tins.

5. The Common feature in all these contracts is that no time limit was placed for the performance of these contracts. But it was left to the parties to

decide from time to time as to the manner as also the time during which the contracts should be performed in accordance with its tenor. In the

course of the working of these three contracts considerable correspondence passed between the parties and it is necessary for us to touch upon

them for the adjudication of the issues in this case. Under Ex. B-8, soon after the first contract was entered into, the plaintiff issued a telegram to

the effect "do not despatch-see letter." This was followed by Ex. B-9 wherein the plaintiff made it clear that they had a good stock of empty tins

by then and that the demand for refined oil has come down suddenly and, therefore, the plaintiff requests the defendant to stop further despatches

until they hear from him. This was on 23-11-1969. Under Ex. B-11 dated 16-1-1970 the plaintiff followed up his earlier stand, complained about

the failure on the part of the defendant to despatch tins and asked him to despatch two wagons on that date and two other wagons on the next

date. It is common ground that the defendant sent only one wagon in compliance to the above request. On that day also the defendant indicated

that the market price of the goods was Rs. 450/- per 100 tins. Under Ex. B-13 dated 17-1-1970, with reference to the first two contracts, the

plaintiff wanted four wagons to be supplied and the balance by next week following thereon. Curiously enough, under Ex. B-14 dated 10-1-1970,

the plaintiff issued a telegram reading "stop despatch balance contract wagons until further orders". Thereafter, under Ex. B-16 dated 23-1-1970,

the plaintiff requests the defendant to send two wagons of the containers and complains that in respect of the earlier supply there was a difference

in weight, but conspicuously added that "for our future requirements we shall write to you well in advance." This is followed up by a letter of the

defendant dated 26-2-1970, Ex. B-17. In this letter the defendant denies that there was any difference in weight in the matter of the supplies

already made and would agree to despatch the tins which the plaintiff wanted, one wagon load at the rate of Rs. 360/- per 100 tins and the other

at Rs. 425/- per 1000 tins. The plaintiff, on receipt the necessity for the despatch of two wagons in part performance of the subsisting contracts.

6. At or about that time, excise duty was imposed on tin and it became necessary for the defendant to issue a circular to all his buyers including the plaintiff. It is common round that under Ex. A-49 dated 2-3-1970 the defendant informed the plaintiff amongst others that the excise duty has gone

up and that they will be levying such duty on all containers which they would be supplying to the plaintiff from 1-3-1970. The plaintiff, in reply to

Ex. B-17 and under Ex. B-19 asks for the despatch of one wagon load at the rate of Rs. 360/- per 100 tins and another wagon at Rs. 425/- as

referred to by the defendant in Ex. B-17 and would add "further despatches need be made only after hearing from us". Apparently, dissatisfied in

the matter of the non-despatch of the two wagons which were being demanded by the plaintiff from time to time, the plaintiff reminds once again

under Exs. B-20 and B-21 to send those two wagons as they needed them urgently. The defendant replies under Ex. B-22. From Ex. B22 it is

seen that the plaintiff concedes that the prevailing market rate was Rs. 475/- but what is important in this exhibit is that the defendant makes it clear

that he has agreed to send three wagons and that would be despatched at an early date.

7. From the summary of correspondence given as above, it is seen that at no time the plaintiff withdrew from his emphatic stand that supplies

should be made in accordance with his despatch instructions which he might give from time to time. We have already seen that under Exs. B-8 and

B-9 the plaintiff wanted the defendant not to supply at all until he heard from him. Under Ex. B-14 dated 30-1-1970 he once again asked the

defendant to stop despatches. In Ex, B-16 he ask only for two wagons but makes it clear that for the future requirements the defendant should

hear from the plaintiff. As late as March 3, 1970 under Ex. B-19, the plaintiff would repeat that after supplying the two wagons asked for, further

despatches need be made only after hearing from him.

8. It is in the wake of the above correspondence, the lawyer's notice Ex. B-23 is given. We have already seen that the defendant was insisting

upon the plaintiff expressing his willingness to take the additional responsibility of paying the excise duty which is a statutory levy and which

according to the defendant was unavoidable. The plaintiff was conscious of such a responsibility. He was put on notice about it under Ex. A-49.

He did not give any despatch instructions beyond the claim for the performance of the contract in respect of two wagons for which the defendant

was prepared to send three wagons as is seen from Ex. B-22. At no time the plaintiff gave out in the course of the correspondence as above that

he was willing to pay the excise duty as claimed by the defendant. In fact the defendant's case is that he was informed orally that the plaintiff would

not pay such excess excise duty as part of price. It is in the light of this that we should now look into Ex. B-23 the notice issued by the lawyer on

behalf of the plaintiff. In this notice for the first time without advertent to the earlier interdicts and express despatch instructions given by the plaintiff

in the course of the working of the contracts, the plaintiff, through the lawyer, would say that as regards the first contract the defendant was to

deliver two wagons at the rate of Rs. 360/- per 100 tins and as regards the second contract, the defendant was yet to deliver 19 wagon loads of

tins at the contract four wagons remain yet undelivered. After having quantified the default alleged to have been committed by the defendant, the

plaintiff's counsel under Ex. B-23 says thus: "My clients are not concerned with the excise duty. You are also not entitled to add excise duty in the

price of goods..... Because of the sudden increase in price you are not willing to supply the goods as contracted." Having said that, he claimed,

based on a calculation made by him, a sum of Rs. 43,875/- as damages. To this, the defendant without precipitating matters by sending a reply

through their counsel writes to the plaintiff as follows:

We have for reference registered letter dated 13-4-1970 issued by Sri A. P. Chinnaswamy, Advocate, Erode, on your behalf we are both

surprised and concerned at the contents thereof, especially in view of the good business relationship we have had so far.

While, reserving our detailed reply to this statements and claims made in your Advocate's letter which incidentally contains certain erroneous

statements such as regards place of delivery etc., we could only point out for the present that we have always stood by and propose to fulfill our

part of the contract. A misunderstanding however seems to have arisen about the liability for the Excise duty. Under law as well as in equitable

grounds, the purchaser has to bear this duty. We hope you will agree to the same.

We are arraigning despatch of the balance of quantities under the pending contracts and we shall be drawing through bank the value including the

duty and S. T. In the meantime we feel that whatever misunderstanding is there, can be thrashed out in a personal discussion for which you may

send your representative over here or we shall send over to meet you there. We shall revert on hearing from you.

The defendants would say that they always stood by and propose to fulfill their part of the contract. They however referred to the increase in the

excise duty and would remind the plaintiff that in law as well as in equity the plaintiff has to bear the same. Finally as excerpted above, they

expressed their willingness to despatch the balance quantities under the pending contracts and made it clear that they would be drawing through the

bank the value including the duty and sales tax. They would conclude by saying that they would revert on hearing from the plaintiff. No reply was

sent and the only reply was the institution of the action.

9. We shall immediately deal with the contention of Mr. M. R. Narayanaswami, learned counsel for the respondent that Ex. B-23 in the instant

case should be treated as a demand for performance and Ex. B-24 as an express and overt act on the part of the defendant to commit a breach of

contract. Normally speaking, the argument of the learned counsel would have much force. But the counsel's letter should not be read de hors the

earlier correspondence and the true intention behind the postponement of the performance of the contract on the part of the defendant. The learned

counsel would agree that at stated intervals there were varied despatch instructions which sometimes interdicted the defendant from performing the

contract. In fact Exs. B-8 and B-9 and B-14 are couched in emphatic terms. The plaintiff would say "do not despatch" or "stop despatch". These

unambiguous instructions from the buyer cannot be explained away lightly. The instructions that followed under Exs. B-16 and B-19 though not so

emphatic however injuncted the defendant from performing the contract in accordance with the tenor and literature of the same. Under Ex. B-19

which is the latest letter on this aspect dated 3-3-1970 the plaintiff said that further despatches need be made "only after hearing from us." The word "only " used by the plaintiff has some significance. Mr. Narayanaswami was unable to point out any letter prior to 13-4-1970 which is the lawyer's notice under which the plaintiff gave any instructions at all regarding despatch. If therefore, for the first time the counsel demands performance of the unperformed parts of the three contracts under Ex. B-23 dated 13-4-1970 alleging breach on the part of the defendant, some more explanation and acceptable material is necessary for us to accept the contention of the plaintiff that there has been a wanton and deliberate breach of performance of the contract on the part of the defendant. No doubt, the price of the contracted goods was fluctuating but that by itself does not throw any light upon either the function or conduct of the defendant in the matter of the performance of the contracts. He had to abide by the instructions given from time to time as in this case no time limit for performance was ever fixed. No doubt, law enables both the plaintiff and the defendant to take umbrage under the equitable parenthesis which is available in such circumstances namely "reasonable time". But if the plaintiff as buyer, himself has chosen to play a significant part in the manner of the performance of the contracts, then resort to the principle of execution of contracts within a reasonable time recedes to the back-ground. We are not, therefor, impressed with the contention of the learned counsel for the respondent that Ex. B-23 in the circumstances of the case, should be deemed to be a letter of demand calling for the performance of the unperformed part of the three contracts and that consequent upon the non-performance of the same, the defendant should suffer damages.

10. At this stage it is convenient to refer to the arguments of Miss O. K. Sridevi, learned counsel for the appellant who stressed upon an important aspect arising in the instant case regarding the performance of the suit contracts. She would say that in the absence of any limitation or prescription as to the time and the manner of the performance of the contracts, no doubt the theory of performing the same within a reasonable time would apply. But having regard to the incessant instructions given by the plaintiff as already set out above, her case is that the plaintiff deliberately postponed the date for performance of the contracts in order to gain an advantage for himself. The question therefore is whether in the

circumstances of this case, and generally whether a buyer can on his own volition postpone the demand for performance, in the absence of any time for performance to an unreasonable and illogical extent so to enable him to claim such performance at a time when it is most advantageous to him. In our view the buyer cannot adopt such a self-serving policy. The plaintiff himself was not keen upon performance but he was further interested in part performance of the contracts. He would only ask for one wagon or two wagons in his correspondence and would, on more than one occasion, say "stop despatch." In such circumstances, the plaintiff, the buyer cannot of his own and to his advantage pick and chose the time for performance. What prompted the plaintiff to keep silent without furthering the instructions given under Ex. B-9 between March 3, 1970 and April 13, 1970 is not at all explained. In such circumstances, it would be highly inequitable and unjust to accept claim for compensation or damages on the part of such a self-interested buyer who postpones the demand for delivery without cause but obviously with intent to gain a material advantage to himself. As early as 1912 this principle in a different form was stated by a Division Bench of our court in *Muthayamanigaran Vs. Lakku Reddiar and Others*, . Sec. 63 of the Contract Act does not entitle a promisee for his own purposes and without the consent of the promisor to extend the time for performance which had been agreed to by the parties to the contract, Section 55 of the Contract Act does not enable the promisee to say that he elected to keep alive the contract in the hope of being able to claim heavier damages for the breach of the contract. Section 63 deals only with concession on the part of the promisor. Section 55 read with Section 2(i) relating to revocation of the contract only means that the promisor loses the power to enforce the contract, i.e., to claim any advantage due to himself thereunder. The promisee may enforce it or not as it suits him. In case he enforces it he can use for damages naturally resulting from the breach which cannot include any aggravation of damages caused by the promisee's action or inaction subsequent to the breach. We respectfully adopt the principle stated above, In the instant case the plaintiff had ample opportunities to treat the defendant in breach. He did not do so prior to first of March 1970. On the other hand he was asking him to stop supplies and after first of March, 1970 a controversy arose between the parties regarding the payment of the

excise duty, the liability to pay which we shall presently consider. Suffice it at this stage to say that the plaintiff has unilaterally postponed his right to claim performance and he cannot take advantage or undue benefit out of such a voluntary act on his part and take advantage of a favourable market.

11. Mr. Narayanaswami, however, says that there were such demands for performance orally. He would rely upon a practice as between the

parties spoken to by D.W. 1 himself. If it is no doubt true D.W. 1 would refer to the existence of a practice on the part of the existence of a practice

on the part of both the plaintiff and the defendant to speak over the phone or to issue telegram etc. in the matter of enlarging of a forging or

performance of contracts. Based on this the learned counsel would vaguely suggest that there might have been demands or such performance

either by phone or otherwise. If really that was the case of the plaintiff, notice by the plaintiff under Ex. B-23 is silent about any such alleged oral

instructions to supply. We are, therefore, of the view that no instructions contrary to that found in Ex. B-19 (which is the latest letter on this

question) should have ever been given by the plaintiff in the matter of the performance of the contracts. The only demand for performance is under

the lawyer's notice Ex. B-23 to which the defendant replied under Ex. B-24 asking the plaintiff whether he was willing to suffer extra excise duty

which was by then imposed by law and asked him to inform his willingness in that behalf. It is admitted that the plaintiff did not reply to Ex. B-24.

12. We shall now take up the question whether the plaintiff could, in the circumstances of this case, and on the basis of this demand for

performance under Ex. B-23, lay a suit for damages for non-performance of the demand couched in the lawyer's notice. It is common ground that

excise duty was increased as is seen from Ex. A-49 and other letters such as Exs. B-22 and B-24 written by the defendant. In a contract for sale

of goods the essential ingredient in it is the price. It is this price which is described as consideration for a contract in the Contract Act. Every

promise forming the consideration for each other is an agreement. An agreement enforceable by law is contract. Section 25 says that an agreement

made without consideration is void unless of course it comes within the exceptions mentioned therein. Therefore, in a contract of sale of goods the

acceptance by the parties as to price of the goods to be sold and delivered is the very foundation of such a contract. It is on account of the

importance of this element of price in such contract the Sale of Goods Act u/s 32 makes it clear that unless otherwise agreed delivery of the goods

and payment of the price are concurrent conditions. The importance in the language used by the Legislature when it referred to concurrent

conditions is obvious. Unless the buyer is prepared to pay the agreed price no obligation arises on the part of the seller to perform his reciprocal

obligation to deliver the goods. It is in this view the delivery and payment of price are concurrent. Expatiating this purpose Sec. 32 further says that

the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer shall be ready and willing

to pay the price in exchange for possession of the goods. Here again ""exchange"" is synonymous with ""concurrent"" appearing in the earlier portion of

Section 32. It is, therefore, clear that unless there is a consensus ad idem between the contracting parties in a contract of sale of goods regarding

payment of price, it would be difficult to expect either the buyer to purchase or the seller to supply the goods under it. Section 64-A is a special

provision in the Sale of Goods Act which provides for a specified contingency. In contracts of sale of goods, if during the working of performance

of the same, customs or excise duty or tax on the sale or purchase of goods is imposed by any law for the time being in force, then, if such an

imposition takes effect, Section 64-A(a) provides that the seller may add so much of such increase to the contract price as will be equivalent to the

amount paid or payable in respect of such tax or increase of tax and he shall be entitled to be paid and to sue for and recover such addition. This

statutory entitlement vested in the seller to claim the increase in excise duty, as this case, in case such a duty takes effect during the course of the

working of the contract is, in our view, a right which is per se enforceable. Of course, there may be a contract to the contrary. So long as there is

none, the force of this section could compel the seller to demand as of right the payment of such levy or increase in levy in excise duty and add the

same to the contract price and ask of its payment. The compendium of the initial contract price and the tax or the duty or the increase in the excise

duty would automatically become the agreed price between the parties. Such payment of price and delivery of goods are concurrent conditions

and one is an exchange for the other. As already referred to in Sec. 32 of the Sale of Goods Act, any attempt on the part of the buyer to avoid

such a statutory obligation would entitle the seller not to perform his reciprocal concurrent obligation of delivering the goods.

13. In the instant case the facts are clear. The defendant hinted about the increase in excise duty under Exs. A-49 and B-22 Ignorantia legis

neminem excusat. The plaintiff is bound to know the provisions of the Sale of Goods Act. As a matter of fact he very well knows about it. At any

rate when he spoke through his lawyer in Ex. B-23 he was conscious about it. He would instruct his lawyer to say that they are not concerned with

excise duty and that the defendant is not entitled to add the excise duty with the price of goods. There is, therefore, an express unequivocal

repudiation of statutory responsibility to pay excise duty. We have already referred to Section 64-A(a) which makes the excise duty as an adjunct

to price. One it forms part and parcel of the price, in our view, it becomes merged in the price and, therefore, if that amount (the contract price

plus increase in excise duty) is claimed by the seller and which in our view is the price payable in accordance with the statute and if that price is not

acceded to and in fact refused to be paid by the buyer, then such a buyer cannot, under any known provision of law, sue for damages for non-

performance of the contract. It is only a buyer who was not only ready and willing to perform his part of the contract as well as those statutory

obligations which he has to respect who could, in law, seek for performance and in case of non-performance ask for such reasonable damages

which flow from the non-performance of such contracts. But if a buyer refused to pay the price payable either expressly or by necessary

implication and categorically maintains that he is not liable to apply a part of the price, then the parties are not in unison in so far as one of the

concurrent conditions in the matter of performance of the contracts involving sale of goods. In therefore follows that in such circumstances, the

plaintiff has disengaged himself from the position from which he could demand performance and consequentially demand damages for

nonperformance.

14. No doubt, the plaintiff has rather placed his demands very high by solely relying upon Ex. B-23 and computing the damages on the basis that

there has been a breach in the performance of the unperformed portion of the three contracts. In view of the conclusion we desire to arrive in the

instant case, it is unnecessary to go into the other meticulous particulars, about as to what portion of each of the three contracts was performed.

15. When the plaintiff was demanding performance of the contract at least in respect of two wagons as is seen from Exs. B-16, B-18, B-19. B-20

and B-21, the defendant did not raise any dispute over such supply of the goods. On the other hand, under Ex. B-22 he would say that he has

agreed to supply 3 wagons and that he will despatch the same at an early date. This he has not done. On that particular point of time though no

doubt the excise duty was imposed the defendant did not raise the same as a shield to avoid the performance of the contracts. But on the other

hand the defendant was willing and ready to send three wagons of tins as agreed to. Therefore, there was an open breach of contract in so far as

three out of the total unperformed quantity of the goods in the contracts are concerned and the defendant cannot escape the normal liability to pay

damages which would flow from such a deliberate breach. We have already referred to the fact that the defendant from time to time as well as the

plaintiff were referring to the increase in the market price of the goods. The defendant having agreed to supply three wagons after so much of

controversy cannot escape the liability to suffer damages which would result from the avoidance of such an offer made by him to perform a part of

the contract. We are, therefore, of the view that the plaintiff should suffer damages for the non-supply of these three wagons.

16. We have already held that apart from the above, in the circumstances of the case and having regard to the fact that there was no consensus as

between the parties in the matter of the price of the goods to be supplied and which is an essential condition to prompt the defendant as seller to

supply the goods, the plaintiff would not be entitled to any damages other than the damages which have to be reckoned in view of our finding in

relation to the non-supply of three wagons. The counsel agree before us that as regards these three wagons, one wagon relates to the third contract

and the two other wagons relate to the first contract. The contract price agreed to between the parties under the third contract was Rs. 425/- and

the contract price under the first contract was Rupees 360/- per 100 tins. There is no dispute about it. There is equally no dispute that at or about

the time when the breach was committed by the defendant the market price of the goods was about Rs. 450/- per 100 tins. Computing the

damages in terms of money the defendant would be liable to pay a sum of Rs. 3075 only as and towards the suit claim. We agree with the finding

of the lower only the quantum of damages has been worked. The appeal is therefore allowed in part with costs. The defendant appellant should

suffer a decree only for a sum of Rs. 3075 with the usual interest from the date of suit till the date of payment with proportionate costs thereon.

17. Appeal allowed.