
(1926) 07 MAD CK 0007
In the Madras High Court

(Nalam) Lakshmikanthan and Another APPELLANT
Vs
V.T. Narayanaswami Iyer and Another RESPONDENT

Date of Decision : 28-07-1926

Acts Referred:

Citation : AIR 1926 Mad 1109

Judgement

1. This is a suit by the plaintiff to recover from the defendant damages which he assessed at Rs. 6,250 in addition to the payment of Rs. 3,081-4-6

which he says represents the excess amount paid to the defendants in advance for goods which were not delivered. He also claims the value of

3,000 gunnies which were given to the defendants for the purpose of enabling them to supply the goods, The contract between the plaintiff and the

defendants is evidenced by Ex. A dated the 7th. June 1919, and the contract is that the defendants should supply to the plaintiff 500 tons or 6000

bags of oil-cake at the price and on the terms specified in the contract.

2. We are not concerned with the quality of packing because the suit is only for goods not delivered. The only question here is as regards the time

of payment for and delivery of the goods. By Clause 3 of the contract the defendant says:

I agree to give the goods on board the steamer at Cuddalore as and when the steamer calls at Cuddalpre during June-July;

and there is also the agreement to hand over "" a clean bill-of-lading "" The 4th clause is

Delivery to be completed by you within one week from the date of acceptance and value paid for fully.

3. The 5th clause fixes the price of one ton of oil-cake at Rs. 110 f.o.c-Cuddalore.

The contract was to supply 500 tons or 6,000 bags. It is admitted that the defendants supplied 236 1/2 tons of goods but failed to deliver the balance of 263 1/2 tons. The plaintiff paid Rs. 28,500 in two instalments of Rs. 15,000 and Rs. 13,500, and it is said that the value of the goods delivered was less than the sum advanced by Rs. 3,081-4-6, which would ordinarily have been carried over in the accounts and adjusted towards the subsequent supply of goods. In this case what happened was that the defendants had with them this amount of Rs. 3,081-4-6 and also the 3000 empty gunny bags in which presumably the remaining goods yet to be supplied might have been delivered. Then each party charged the other with breach of contract.

4. As regards the claim for Rs. 3,081-4-6 and the value of the gunny bags, the learned trial Judge passed a decree in plaintiff's favour, and we are not concerned with these items here; but he dismissed the plaintiff's suit as regards damages on the ground that the plaintiff was not in a position to pay for the goods and that therefore he, having broken the contract, was not entitled to damages. He was of opinion that the plaintiff had not shown that the defendant was not in a position to deliver the goods and that the plaintiff was ready and willing to pay the balance. The terms of Ex.

A show clearly that it is a contract the performance of which was reciprocal. The plaintiff had to go to the defendant with the money and the defendant had to deliver the goods to the plaintiff. As regards the balance of goods to be delivered the plaintiff would, have to pay Rs. 26,500 The plaintiff's 1st witness Sriramuliah admits that he was sent to Cuddalore to take delivery of the remaining goods with instructions that he should arrange with the Imperial Bank to get 75 per cent. upon these goods and with that money pay the defendants. The Bank would naturally demand possession of the goods before it lent any money. In this case the Bank refused to pay anything more than 60 per cent. of the value of the goods.

5. There is no evidence on the plaintiff's side to show that when the Bank refused to pay over 60 per cent. the balance was sent from Madras, so that the plaintiff would be in a position to perform his part simultaneously with the delivery which he demanded from the defendants. One would have expected evidence on the plaintiff's side as to any instructions given to the agent from Madras as regards the payment of the balance for the

goods yet to be delivered. Nor is there any evidence on the plaintiff's side to show that the plaintiff's firm had any cash in Madras which it could

have transmitted to the agent to make him cover up the deficiency of the amount between 60 and 70 per cent and any further deficiency that may

arise when the goods were actually delivered.

6. The main argument of Mr. Radha krishniah is that the defendants had not in their possession the remaining quantity of bags to be delivered and

that they not having been in a position to deliver the remaining bags it did not matter whether the plaintiff had money with him or not, the breach

being on their part. I think that in all these cases where the performance is to be simultaneous each party must show that he was ready to perform

his part of the contract. The defendants, if they claim anything; from plaintiff, must show that they had the 6000 bags in their custody which would

enable them to give delivery the moment the money was paid. Supposing the defendant has not got in his possession the goods, but they are under

some pledge, then the plaintiff would very well be entitled to say that he would not part with his money before the defendant was in a position to

deliver the goods free from the pledge. Similarly, if the plaintiff went to the defendant without the money, the defendant can very well say:

I am not going to part with even a single bag unless you are ready to pay for the goods and take delivery of the same.

There is no evidence in this case to show that if the money had been tendered to the defendants they could not have bought the goods elsewhere

and delivered them over. There is no necessity for them to have all the goods in their own possession if they could get them elsewhere and make

delivery. It seems, therefore, on the findings of the learned trial Judge that if it is not shown that the defendants could not have performed their

contract the plaintiff would not be entitled to any damages for breach of the contract seeing that he must do everything to show his readiness and

willingness to perform his part of the contract.

7. In these circumstances we think that the decision of the learned trial Judge is correct and the ground on which the plaintiff relied to show his

readiness and willingness to perform his part of the contract not having been made out, we have to conclude that he was responsible for the breach

of it and as such he is not entitled to any damages. The appeal fails and is

dismissed with costs.