

(1941) 01 PAT CK 0017
In the Patna High Court

Noor Mohamad and Others

APPELLANT

Vs

Sonu Mistri and Others

RESPONDENT

Date of Decision : 20-01-1941

Acts Referred:

Contract Act, 1872 — Section 56

Citation : AIR 1941 Patna 429

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—The defendants-respondents hired 12 lights and a kila from the plaintiffs for the purpose of illuminating a marriage procession of two members of the defendants' family.

2. In the course of the procession three of these lights and the kila were destroyed or damaged by rioters who attempted to stop the procession. In the course of the riot the police took charge of these three damaged lights and the kila. The plaintiffs were subsequently asked by the police to take these damaged articles but refused to do so. The other nine lights were undamaged and are in the possession of the defendants. The plaintiffs claimed compensation for all the lights and the kila. The Court of appeal below has awarded them compensation for the nine lights which are at present in the defendants' possession but has refused compensation for the three lights and the kila which were damaged by the rioters.

3. The Court below has found that the contract between the parties provided that the defendants should be liable for damage to the articles hired but has construed this term in the contract as exempting the defendants from liability for loss or damage occasioned by third parties. There is no term in the contract expressly absolving the defendants from liability for damage caused by third parties; nor is there anything in the contract from which it can be inferred that such an exemption was intended by the parties.

4. The general rule is that where a party has not qualified his obligation he is liable to make compensation in damages for non-performance although the performance has been rendered impracticable by some unforeseen cause over which he had no control: see *Ford v. Cotesworth* (1870) 5 Q.B. 544, *Ashmore & Son v. C.S. Cox & Co.* (1899) 1 Q.B. 436 and *Barnett v. Javeri & Co.* (1916) 2 K.B. 390. In *Clifford v. Watts* (1870) L.R. 5 C.P. 577, Willes J. stated the law thus:

When a party by his own contract creates a duty or a charge upon himself, he is bound to make it good notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract.

5. As I have already observed, in the present case, the defendants did not qualify their obligation to return to the plaintiffs the lights which they had hired in an undamaged condition and, therefore, they are liable to compensate the plaintiffs for all the lights and the kila which have not been returned.

6. It was argued on behalf of the respondents and it has been held by the Court below that the defendants are absolved in the present case by reason of para. 2 of Section 56, Contract Act, which provides:

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

7. It is argued that the performance of the contract in this case, namely, the obligation to return the lights in an undamaged condition to the plaintiffs, has become impossible by reason of an event which the promisor could not prevent. The argument overlooks the two matters with which para. 2 of Section 56 deal. One is when an act becomes impossible and the other is when an act becomes unlawful.

8. In the case of an act which has become unlawful the promisor is exonerated if he is not responsible for the act having become unlawful. Part 1 of para. 2, however, does not speak of the act having become impossible by reason of the act of the promisor. What is exactly meant by speaking of an act becoming impossible in the sense referred to in that Sub-section is not clear but there is no reason to suppose that the Legislature intended to depart from the general common law rule which has been enunciated above.

9. The next question is whether in the circumstances of the present case the defendants are liable. The Court below has held that one of the plaintiffs himself was in charge of the lights in the procession and that the defendants simply had the use of the lights and were not in possession of them. It is difficult to reconcile this finding with the admitted facts of the case that some of the lights have always been in the possession of the defendants and the Court below has awarded the plaintiffs compensation in respect of nine lights on the footing that they are still in the possession of the defendants. The Court appears to have taken the view that because one of the plaintiffs was present in the procession

the plaintiffs had not handed over the custody of the lights to the defendants but had merely contracted with them not for supplying lights but for supplying illumination by means of a certain number of lights. The solution of that would have been an interesting question of fact had it been raised in the pleadings but it was not pleaded by the defendants that what they had contracted for was illumination by a certain number of lights and not the hire of a certain number of lights. As this question was not raised on the pleadings of the defendants the Courts below were not entitled to defeat the plaintiffs' claim on a case which the defendants themselves had not pleaded.

10. I would, therefore, modify the decision of the Court below by granting the plaintiffs a decree for rupees 306-15-0. Of this amount Rs. 200 represents two-thirds of the price of 12 lights, Rs. 75 represents a part of the price of kila, Rs. 12 for frames, Rs. 10-8-0 for carbide and Rs. 9-7-0 for the hire of lights and kila. The plaintiffs are entitled to costs throughout in proportion to their success.