
(1916) 07 MAD CK 0027
In the Madras High Court

Perala Krishnayyan Chettiv

APPELLANT

Vs

G. Padmanathan Chettiar

RESPONDENT

Date of Decision : 11-07-1916

Acts Referred:

Contract Act, 1872 — Section 119, 7(2)

Citation : 37 Ind. Cas. 792 : (1917) 5 LW 149

Hon'ble Judges : Seshagiri Aiyar, J;Phillips, J

Bench : Division Bench

Judgement

1. The defendant wrote to the plaintiff on the 17th of October 1909 to Palghat where the latter was permanently residing, to send 15 or 20 bags of areca nuts "at once". The letter also stated that the plaintiff should attend to other business, only after sending this consignment. The plaintiff, who had left Palghat owing to plague, wrote on the 28th October that he would send the goods within 15 or 20 days. No reply was admittedly received from the defendant in answer to this suggestion, 25 bags of nuts were finally sent by the plainiiff on the 1st of December. The defendant refused to take delivery of them. Hence this suit for damages for breach of contract. The Subordinate Judge dismissed the suit. In revision, the learned Judge of this Court awarded damages to the plaintiff. We agree with the learned Judge that the Subordinate Judge was wrong in holding that because 25 bags were sent instead of 15 or 20 bags, the defendant was justified in refusing to take delivery u/s 119 of the Contract Act, the test is whether the separation of the 5 or i0 bags from the main consignment was attended with "risk or trouble." We fail to see how the acceptance of 20 bags consigned would be risky or troublesome. On one other ground on which the Subordinate Judge's judgment proceeds, namely, that goods of cleaper value were not sent, we are in agreement with the learned Judge that the lower Court has not correctly understood the letter asking for goods.

2. On the main question whether there was a completed contract, we are constrained to differ from the learned Judge The proposal of the defendant that

there should be an immediate consignment was not accepted by the plaintiff. He apparently understood that time was of the essence of the contract, because he wrote back to say that he could send the goods only in 15 or 20 days. The acceptance was not absolute and unqualified as required by Section 7, clause 2 Bom. L.R. 691 : 12 Ind. Dec. 871. of the Contract Act. According to the authorities both in England and in this country, the letter of the plaintiff promising to send the goods within the time specified by him amounted to a counter-proposal: *Haji Mahomed Haji Jiva v. Spinner* 24 B.d 510. per Jessel M.R. in *Crossley v. Maycock* (1874) 18 Eq. 180. and *Jones v. Daniel* (1894) 2 Ch. 332 : 70 L.T. 588. also *Jordan v. Norton* (1838) 4 M. & W. 155 : 1 H. & H. 234.

3. The remaining question is whether this counter-proposal of the plaintiff was accepted by the defendant. It is true that u/s 3 of the Contract Act, the conduct of the acceptor or an omission" on his part to communicate may under certain circumstances amount to an acceptance. But to imply such an acceptance, the counter-proposal must have conveyed at least an intimation that silence would be regarded as an acceptance of the proposal. Beading Section 3 and Section 7, clause (2), together, it appears to us clear that a mere failure to reply to a counter-proposal would not per se amount to an acceptance of it. Willes, J., in *Felthouse v. Bindley* (1862) 6 L .T. 1574, went the length of saying that a person making a counter-proposal had no right to put upon the nephew (acceptor) that he should consider his offer accepted, if he did not write. It may be open to argument whether u/s 7 (2) read with Section 3, an intimation of the kind referred to by the learned Judge, when not replied to, may not amount to an acceptance. However that may be, in the present case there was no such intimation in the counter-proposal as rendered it obligatory on the defendant to reply to it. We are, therefore, of opinion that neither the first proposal nor the counter-one was accepted by the respective parties so as to establish, a binding contract between them. In this view, the refusal of the defendant to take delivery was not wrongful. We reverse the decree of the learned Judge and restore that of the Court below with costs.