(1930) 10 MAD CK 0015

In the Madras High Court

P.V.S. Kabalamurthi Pillai APPELLANT

Vs

P.V. Subramania Pillai and Others RESPONDENT

Date of Decision : 07-10-1930

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 18 Rule 6, Order 34 Rule 6

Citation : AIR 1931 Mad 500 : (1931) 60 MLJ 332

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—This summons is taken out by the 5th defendant. He applies that the receivers may either be removed or in the

alternative suitable directions be given to them. After hearing the application very fully, I have come to the conclusion that they should be continued

but that in the interests of the'' estate their duties should be more precisely denned than in the orders under which they were appointed. [His

Lordship stated the facts and after dealing with the charges made against the receivers proceeded:]

2. By far the most important question that has been argued is, what is the amount of remuneration to which the receivers are entitled? The point

really turns on the meaning of the expression ""gross sales"" in the Order of Court, dated 2nd June, 1925. Paragraph 13 of the Order reads thus:

With regard to the condiments business the said receivers do retain 5 per cent. on the gross sales in their hands as and for their remuneration for

the said condiment business.

3. It was by the consent and at the request of the parties that this order was made. It must be read in the light of the affidavit filed then by the

receivers. In that affidavit, they ask for a commission at 5 per cent. on the ""gross sale proceeds"". It is not disputed that the two expressions ""gross

sales"" and ""gross sale proceeds"" are identical in their meaning and effect. Messrs. Fraser & Ross in their report point out that the commission

retained by the receivers in respect of the business from the 18th of August, 1924 to the 31st of March, 1930 is Rs. 43,991-12-0. They have

drawn this commission on the footing that they are entitled to 5 per cent, on what is shown as the amount of the ""gross sales,"" namely, 9 lakhs odd.

This concern had dealings mainly with two firms;, Messrs. Sharwood & Co., England and Messrs. Fisher & Co., Australia, The goods were

supplied to them on a large scale from time to time under subsisting contracts. The invoices made out against them mention certain figures as the

price of the goods supplied and from those figures is deducted what is described in the report as. ""trade discount"". This latter term comprises

various items such as commission, bonus and discount. It is the aggregate of the total price''s that reaches the figure 9 lakhs odd, to which I have

referred. The ""trade discount"" amounts to about two lakhs and the actual proceeds received by the receivers is about 7 lakhs. The question is, are

they entitled to commission on the 9 lakhs odd or only on the sum of about 7 lakhs? In my opinion, the receivers are clearly not entitled to

commission on the sum shown as ""trade discount"". ""Proceeds"" mean produce, outcome, profit. (See the Concise Oxford Dictionary.) An amount

never received cannot be part of the proceeds. Whether from the point of view of the buyers or the sellers, the only figure that matters, is the

amount actually paid and received. As Messrs. Fraser & Ross point out:

It is usual in business concerns to quote list or catalogue prices and allow percentages off such prices to trade customers as trade discounts. Such

discounts are deducted in the invoices themselves and are. not brought into account in the financial books.

4. To seem to make a concession while in point of fact no concession is made or intended, is a devise which tradesmen usually employ. To take an

instance, if you want to charge for an article Rs. 75 you. may quote its price as Rs. 100 and allow a discount of 25 per cent.; or, you may quote

Rs. 125 as its price with a discount of 40 per cent. In either case, the buyer pays and the seller receives only Rs. 75. So long as the buyer parts only with Rs. 75, it little signifies to him whether the price quoted is Rs. 100 or Rs. 125. The receivers'' commission must not be made to depend

upon the fictitious figure that they may choose to show as the original price of the article.

5. Moreover, the receivers'' commission is in truth the price of the work done by them. It must have some relation to the labour involved and the

time taken. Why should they receive remuneration in respect of an amount which is added in the first instance and then straightway deducted? So

long as the buyer knows that he is paying only 7 lakhs, what matters to him whether the original price is shown as 9 lakhs, as in this case, or, say,

15 lakhs?

6. It has been suggested for the receivers that the very phrase ""gross proceeds"" involves that it is something distinct from net proceeds. Perfectly

true; but you cannot, for sustaining this distinction, import a fiction and call a sum never received, as a part of the proceeds. Having regard to the

nature of this business, the expression ""gross sale proceeds"" is extremely inapt and wholly unrelated to the facts of the case. The parties have used

the words loosely without passing to think what they mean. The difference between the gross and the net sale proceeds is recognised in some of

our enactments. For instance, in the Original Side Rules, Order 26, Rule 4 makes the commission depend on what may be described as ""gross sale

proceeds"". It says that the receiver may take his commission at 5 per cent. on sales calculated on the total value realised by him. On the other

hand, Order 18, Rule 6 provides that the Master may fix as the auctioneer''s remuneration a percentage on the net sale proceeds. The same

expression ""net sale proceeds"" occurs also in Order 34, Rule 6, also Rule 8-A, Civil Procedure Code. Let us take Order 34, Rule 6. Where after

the sale of a mortgaged property, there is still a balance due to the mortgagee, this rule says that the Court may pass a personal decree for the

balance. It is on the basis of net sale proceeds the rule provides that the balance is to be computed. In these several instances, the ""net proceeds

are something different from ""grossi proceeds"". The mortgagee in the rule quoted above has no concern with the* ""gross sale proceeds"". The

expenses of the sale must be first deducted; and thus the net ""sale proceeds"" are arrived at But in the present case, there are generally speaking, no expenses attending a sale at all. So, as I have said, the phrase ""gross sale proceeds"" is inappropriate and in any event cannot include an amount

never received. Whether the phrase is suitable or not, the question really is, did the parties at the time they used it, intend that the commission

should be paid on a fictitious sum, an amount that was never to come? In my opinion, the answer must clearly be in the negative.

7. The report points out, that the receivers have charged commission also on packing chargesi and freight, which are treated as part of the price. I

can give effect, if necessary, to the phrase ""gross sales"" by holding that they are entitled to remuneration on these two items. Strictly, in my opinion,

they cannot charge commission on freight; it is paid at one end and recovered at the other. But still the term used being ""gross proceeds"" as the

freight is a part of the sum they received, I am prepared to allow them commission on this head. In the result, they may retain commission on freight

and packing charges but not on ""trade discount"".

8. I have discussed this point at some length, as the sum involved is upwards of Rs. 10,000. On my finding, the receivers are accountable for this

sum, being the excess received by them. I do not propose to direct them to bring back this sum, but it will be treated as a debt clue by them to the

estate to be adjusted against any future commission they may earn.

9. In the result, I have decided not to remove the receivers but to give them the following directions. [His Lordship gave the necessary directions

and also passed orders regarding costs.]

